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**LOCAL GOVERNMENT ACT 1995****SHIRE OF VICTORIA PLAINS****EXTRACTIVE INDUSTRIES LOCAL LAW 2018**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Victoria Plains resolved on 21 June 2018 to make the following local law.

**PART 1—PRELIMINARY****1.1 Citation**

This local law may be cited as the *Shire of Victoria Plains Extractive Industries Local Law 2018*.

**1.2 Commencement**

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

**1.3 Application**

The provisions of this local law—

- (a) subject to paragraphs (b), (c) and (d)—
  - (i) apply and have force and effect throughout the whole of the district;
  - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law; and
  - (iii) apply to a previous licence as if it was issued under this local law;
- (b) do not apply to the extraction of minerals under the *Mining Act 1978*;
- (c) do not apply to the carrying on of an extractive industry on Crown land; and
- (d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land.

**1.4 Repeal**

The *Municipality of the Shire of Victoria Plains By-laws Relating to Extractive Industries* as published in the *Government Gazette* on 25 November 1988, are repealed.

**1.5 Transitional provisions**

(1) Within 90 days of commencement of this local law or within 90 days of the date of the annual licence fee of a previous licence becoming due and payable (under clause 7.3), the local government may in respect of the licence—

- (a) vary or delete a condition; or
- (b) impose one or more other conditions, as specified in clause 4.3(2).

(2) A condition that is varied, deleted or imposed under subclause (1) does not become effective until 90 days (or longer period that is specified by the local government) after written notice of the condition is given by the local government to the licensee.

**1.6 Definitions**

In this local law unless the context otherwise requires—

**Act** means the *Local Government Act 1995*;

**application for licence** includes application to renew, transfer, vary or cancel a licence as the context requires;

**authorised person** means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;

**carry on an extractive industry** means quarrying and excavating for stone, gravel, sand and other material, and the transporting of the material off the site, but excludes extractive activities undertaken by statutory authorities;

**CEO** means the Chief Executive Officer of the local government;

**cessation of operations** means termination of activities associated with the extraction and transport of the materials, whether permanent or temporary, but does not include activities under clause 6.3 for the care and maintenance of the site, or clause 6.4;

**district** means the district of the Shire of Victoria Plains;

**excavation** includes quarry;

**infringement notice** means the notice referred to in clause 10.4(a);

**land** unless the context requires otherwise, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates, and includes adjoining lots or locations in the same occupation or ownership;

**licence** means a licence issued under this local law and a previous licence;

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

**local government** means the Shire of Victoria Plains;

**local planning scheme** means a planning scheme of the local government made under the *Planning and Development Act 2005*;

**owner** has the meaning given to it in section 1.4 of the Act;

**occupier** has the meaning given to it in section 1.4 of the Act;

**person** does not include the local government;

**planning approval** means an approval for a development or a land use that is issued under a local planning scheme administered by the local government;

**previous licence** means a licence that is in force at the date of commencement of this local law;

**Schedule** means a Schedule to this local law;

**secured sum** means the sum required to be paid or the amount of a bond, bank guarantee or other security under clause 3.7;

**set fee** means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the Act;

**site** means the land specified by the local government in a licence;

**thoroughfare** has the meaning given to it in section 1.4 of the Act; and

**transferee** means a person who applies for the transfer of a licence to her or him under clause 4.8.

## PART 2—REQUIREMENT FOR LICENCE

### 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.

## PART 3—APPLICATION REQUIREMENTS

### 3.1 Applicant to advertise proposal

(1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, before making an application for a licence—

- (a) forward a notice to—
  - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence; and
  - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 3.3(1)(g) and (h) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence; and
- (b) as soon as practicable after complying with the requirements of paragraph (a)—
  - (i) forward a copy of the notice to the CEO; and
  - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

(2) The information contained in the notice referred to in subclause (1) shall include but is not limited to—

- (a) particulars of the proposed excavation; and
- (b) inviting objections or comments to be made to the CEO within 21 days of date of receipt of the notice.

(3) The local government may undertake a public consultation process including but not limited to—

- (a) provision of information by mail or similar;
- (b) electronically through a website or similar; and
- (c) public meetings.

(4) The local government may, within 14 days after receiving a copy of a notice referred to in subclause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—

- (a) in a form approved by the local government;
- (b) the content, size, construction and position of which have been approved by the local government;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

### 3.2 Application for licence

(1) An application for a licence shall—

- (a) be made in writing;
- (b) state—
  - (i) name of person or company for whom the application is being lodged;
  - (ii) name of primary contact person for the company and in relation to the application;
  - (iii) telephone, mobile phone and email contact details; and
  - (iv) postal and street address;
- (c) be accompanied by—
  - (i) the set fee;
  - (ii) a current certificate of currency for public liability policy in accordance with clause 7.1;
  - (iii) the consent in writing to the application from the owner of the excavation site; and
  - (iv) a copy of the planning approval for an extractive industry to be conducted on the land;
- (d) include any information that the local government may reasonably require; and
- (e) be signed by the applicant.

(2) An application for a licence must be lodged with the local government together with details of the proposed excavation, including but not limited to—

- (a) a plan of the excavation site in accordance with clause 3.3;
- (b) a works and excavation program in accordance with clause 3.4;
- (c) a rehabilitation and decommissioning program in accordance with clause 3.5;
- (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;
- (f) evidence that the requirements of clause 3.1(1), (3) and (4) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) copies of any environmental approval required under any environmental legislation;
- (i) copies of any geotechnical information relating to the excavation site;
- (j) evidence that an application for a clearing permit has been lodged with the Department of Water and Environmental Regulation if that is required under regulation 5 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*; and
- (k) any other information that the local government may reasonably require.

(3) The application under subclause (1) and detailed information under subclause (2) shall consist of one signed paper copy, and an electronic copy.

(4) The local government may exempt a person making an application for a licence from supplying any of the data specified in subclause (2)(c), (d), (e) or (i), where—

- (a) the surface area does not exceed 2000 square metres; and
- (b) the material to be extracted from the proposed excavation does not exceed 2000 cubic metres.

### 3.3 Plan of excavation site

(1) The plan referred to in clause 3.2(2)(a) shall be in a scale of between 1:500 and 1:2000 showing—

- (a) the existing and proposed land contours based on the Australian Height Datum and plotted at one metre contour intervals;
- (b) the land on which the excavation site is to be located;
- (c) the external surface dimensions of the land;
- (d) the location and depth of the existing and proposed excavation of the land;
- (e) 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;
- (f) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
- (g) the location of existing infrastructure services including but not limited to powerlines and communication 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;

- (h) the location of all existing bores, dams, watercourses, drains or sumps on or adjacent to the land;
- (i) the location and description of existing and proposed fences, gates and warning signs around the land; and
- (j) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere.

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

### 3.4 Works and excavation program

The works and excavation program referred to in clause 3.2(2)(b) shall contain—

- (a) the nature and estimated duration of the proposed excavation for which the licence is applied;
- (b) the stages and the timing of the stages in which it is proposed to carry out the excavation;
- (c) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
- (d) details of the depth and extent of the existing and proposed excavation of the site;
- (e) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
- (f) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
- (g) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
- (h) 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;
- (i) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
- (j) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
- (k) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
- (l) a noise management plan, including a description of the measures to be taken to comply with the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997*;
- (m) 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;
- (n) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation;
- (o) 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; and
- (p) details of measures to reduce impact on the adjoining owners and occupiers, and the wider community.

### 3.5 Rehabilitation and decommissioning program

The rehabilitation and decommissioning program referred to in clause 3.2(2)(c) shall indicate—

- (a) the objectives of the program, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
- (b) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
- (c) how any face is to be made safe and batters sloped;
- (d) the method by which topsoil is to be replaced and revegetated;
- (e) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
- (f) how rehabilitated areas are to be maintained; and
- (g) the program for the removal of buildings, plant, waste and final site clean up.

### 3.6 Certificate of a licensed surveyor

The certificate in subclause 3.2(2)(e) shall certify the correctness of—

- (a) the datum peg and related point referred to in subclause 3.2(2)(d); and
- (b) the plan referred to in subclause 3.2(2)(a).

### 3.7 Security for restoration and reinstatement

(1) The local government may require that the licensee shall 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 or for a sum determined by the local government, for the purposes of—

- (a) ensuring that an excavation site is properly restored or reinstated, and
- (b) ensuring that road infrastructure is repaired and maintained to the standard agreed in accordance with subclauses 4.5(2) and (3).

- (2) The security required under subclause (1) may be required to be provided by the applicant to the local government—
- (a) as a condition of a licence; or
  - (b) before the issue of a licence.
- (3) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.
- (4) If a bank guarantee or other security required under subclause (1) ceases to be current, excavation is to cease until a further security in a form acceptable to the local government has been provided.
- (5) Subject to clause 7.4, any interest accrued in respect of the bond paid into the fund under subclause (3) 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.

## PART 4—LICENCING

### 4.1 When an application may be determined

An application for a licence is not to be determined by the local government until—

- (a) the applicant submits proof that the requirements for notices, public information and consultation have been undertaken in accordance with subclauses 3.1(1) and (2);
- (b) the applicant has made an application for licence in accordance with subclause 3.2(1) and (2);
- (c) the local government has considered any written submissions received within the time specified in subclauses 3.1(2)(b) and 3.1(4), and
- (d) planning approval for an extractive industry use of the land has been obtained.

### 4.2 Determination of application

- (1) Upon receipt of an application, the local government may—
- (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.
- (2) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 3.2.
- (3) Where the local government approves an application for a licence, it shall—
- (a) determine the licence period, not exceeding 21 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 shall issue the licence to the applicant upon receipt by the local government of—
- (a) payment of the annual set fee;
  - (b) payment of the secured sum if any, imposed under clause 3.7;
  - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 3.7; and
  - (d) a copy of the public liability insurance policy required under clause 7.1(1).

### 4.3 Conditions which may be imposed

- (1) Clause 4.5 applies as a condition to all licences.
- (2) Without limiting subclause 4.2(1), the local government may impose conditions in respect of the following matters, including but not limited to—
- (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 hours during which any excavation work may be carried out;
  - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
  - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
  - (g) the depths below which a person shall not excavate;
  - (h) distances from adjoining land or roads within which a person must not excavate;
  - (i) the safety of persons employed at or visiting the excavation site;
  - (j) the control of dust and wind-blown material;
  - (k) 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;
  - (l) the prevention of the spread of dieback or other disease;
  - (m) the drainage of the excavation site and the disposal of water;

- (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
- (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
- (p) requiring 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 program;
- (q) requiring the licensee to enter into an agreement with the local government to pay a contribution in respect of thoroughfares in the district used by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence, in accordance with subclauses 4.5(2) and (3)—
  - (i) any extraordinary expenses incurred by the local government;
  - (ii) requirement for increased maintenance; and
  - (iii) repair of damage caused;
- (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
- (s) any other matter for properly regulating the carrying on of an extractive industry.

#### 4.4 Variation of conditions

(1) Within 30 days of the date of the annual licence fee becoming due and payable (under clause 7.3), the local government may, in respect of the licence—

- (a) vary or delete a condition; and
- (b) may impose one or more other conditions, as specified in clause 4.3(2).

(2) A condition that is varied, deleted or imposed under subclause (1) does not become effective until 90 days (or such longer period as is specified by the local government) after written notice of the condition is given by the local government to the licensee.

#### 4.5 Transport of materials

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

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

(3) 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.

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

#### 4.6 Renewal of licence

(1) An application to renew a licence is not to be determined by the local government until the applicant has complied with subclause (2).

(2) An application to renew a licence shall—

- (a) be made in writing;
- (b) state—
  - (i) name of person or company for whom the application is being lodged;
  - (ii) name of primary contact person for the company and in relation to the application;
  - (iii) telephone, mobile phone and email contact details; and
  - (iv) postal and street address;
- (c) be accompanied by—
  - (i) the set fee;
  - (ii) by a copy of the current licence; and
  - (iii) a current certificate of currency for public liability policy in accordance with clause 7.1;
- (d) be lodged by the licensee at least 90 days before the date of expiry of the licence;
- (e) include a plan showing the contours of the excavation carried out to the date of that application;
- (f) detail the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in subclauses 3.2(2)(b) and (c); and
- (g) submit any other things referred to in clauses 3.2 and 4.2.

- (3) The local government may waive any of the requirements specified in subclause (2)(f) or (g).
- (4) The applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 3.2 and 4.2 if—
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
  - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application.
- (5) Upon receipt of an application for renewal of a licence, the local government may—
- (a) refuse the application; or
  - (b) approve the application on such terms and conditions as it sees fit.
- (6) Where the local government renews a licence under subclause (5), it shall notify the licensee in writing.

#### 4.7 Variation of licence

- (1) An application to vary a licence by a licensee—
- (a) may be made at any time; and
  - (b) is not to be determined by the local government until the applicant has complied with subclause (2).
- (2) An application to vary a licence shall—
- (a) be made in writing;
  - (b) state—
    - (i) name of person or company for whom the application is being lodged;
    - (ii) name of primary contact person for the company and in relation to the application;
    - (iii) telephone, mobile phone and email contact details; and
    - (iv) postal and street address;
  - (c) be accompanied by—
    - (i) the set fee;
    - (ii) by a copy of the current licence; and
    - (iii) a current certificate of currency for public liability policy in accordance with clause 7.1;
  - (d) be lodged by the licensee at least 90 days before the date of expiry of the licence;
  - (e) include a plan showing the contours of the excavation carried out to the date of that application;
  - (f) detail the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 3.2(2)(b) and (c);
  - (g) any other things referred to in clauses 3.2 and 4.2;
  - (h) include any information that the local government may reasonably require; and
  - (i) be signed by the licensee and the owner of the excavation site (if different to the licensee).
- (3) The local government may waive any of the requirements specified in subclause (2)(f) or (g).
- (4) The applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 3.2 and 4.2 if—
- (a) an application to vary a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
  - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application.
- (5) Upon receipt of an application to vary a licence, the local government may—
- (a) refuse the application; or
  - (b) approve the application on such terms and conditions as it sees fit.
- (6) Where the local government approves a licence variation under subclause (5), it shall notify the licensee and owner of the excavation site in writing.

#### 4.8 Transfer of licence

- (1) An application to transfer a licence is not to be determined by the local government until the applicant has complied with subclause (2).
- (2) An application to transfer a licence shall—
- (a) be made in writing;
  - (b) state—
    - (i) name of person or company for whom the application is being lodged;
    - (ii) name of primary contact person for the company and in relation to the application;
    - (iii) telephone, mobile phone and email contact details; and
    - (iv) postal and street address;

- (c) be accompanied by—
    - (i) the set fee;
    - (ii) a copy of the current licence;
    - (iii) a certificate of currency in the name of the proposed transferee for a public liability insurance policy in accordance with clause 7.1; and
    - (iv) the consent in writing to the transfer from the owner of the excavation site;
  - (d) be lodged by the licensee at least 90 days before the date of proposed transfer of the licence;
  - (e) comply with and satisfy all conditions and requirements of the current licence;
  - (f) provide equivalent security under clause 3.7 as is required by the current licence;
  - (g) include any information that the local government may reasonably require; and
  - (h) be signed by the licensee and the proposed transferee.
- (3) Upon receipt of an application to transfer a licence, the local government may—
- (a) refuse the application; or
  - (b) approve the application on such terms and conditions as it sees fit.
- (4) Where the local government approves the transfer of a licence under subclause (3), it shall notify the licensee and owner of the excavation site in writing.
- (5) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees and charges paid by the former licensee in respect of the transferred licence.
- (6) Where the local government does not approve the transfer of a licence—
- (a) the local government may cancel the licence in accordance with clause 4.9; or
  - (b) the licensee may—
    - (i) continue operations in accordance with the licence issued;
    - (ii) give notice of cessation of operations in accordance with clauses 6.1; or
    - (iii) give notice of temporary cessation of operations in accordance with clause 6.3.

#### **4.9 Cancellation of licence by the local government**

- (1) The local government may cancel a licence where the licensee has—
- (a) ceased to substantially carry on the extractive industry for a period in excess of 12 months or has not advised the local government of cessation of operations under clause 6.1;
  - (b) been convicted of an offence against—
    - (i) this local law; or
    - (ii) any other law relating to carrying on an extractive industry;
  - (c) failed to comply with—
    - (i) any of the conditions of the licence;
    - (ii) any provisions of this local law; or
    - (iii) any term of an agreement made with the local government in accordance with this local law and default continues for a period of 14 days from service on the licensee of written notice of default;
  - (d) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
  - (e) 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;
  - (f) failed to pay the annual licence fee under clause 7.3;
  - (g) failed to have a current public liability insurance policy under clause 7.1(1); or
  - (h) 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 cancellation takes effect on and from the day on which the licensee is served with the notice; and
  - (b) the local government shall advise the licensee and owner of the excavation site in writing.
- (3) Where a local government cancels a licence under subclause (1), the local government shall not be required to refund any part of the fees and charges paid by the licensee in respect of the cancelled licence.
- (4) Where the local government cancels a licence under subclause (1), the licensee shall comply with clause 6.4, unless otherwise approved by the local government.

### **PART 5—LIMITATIONS, OBLIGATIONS AND PROHIBITIONS ON LICENSEE**

#### **5.1 Obligations of the licensee**

A licensee shall—

- (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 each sign—
  - (i) is not more than 200 metres apart;
  - (ii) is not less than 300 mm high and not less than 450 mm wide;
  - (iii) the top of the sign is between 1 metre and 1.8 metres above ground level; and
  - (iv) 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 program approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) comply with the conditions imposed by the local government in accordance with clause 4.3.

### 5.2 Limits on excavation near boundary

Subject to any licence conditions imposed by the local government, a person shall not, without the written approval of the local government, excavate within—

- (a) 500 metres of any residence unless with the consent of the adjoining neighbours;
- (b) 50 metres of any bore, watercourse, wetland, swamp or other water reserve;
- (c) 50 metres of any thoroughfare;
- (d) 20 metres of the boundary of any land on which the excavation site is located;
- (e) 20 metres of any land affected by a registered grant of easement; or
- (f) 2 metres of the estimated maximum groundwater level as determined from time to time by the Department of Water and Environmental Regulation or otherwise as adopted by the local government.

### 5.3 Prohibitions

A licensee shall not—

- (a) remove any trees or shrubs within 40 metres of the boundary of any thoroughfare on land in respect of which a licence has been granted without written permission from the local government and if required, the Department of Water and Environmental Regulation, 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 subject to any conditions which the local government may impose in accordance with clause 4.3;
- (b) store, or permit to be stored, except in the case of approved rock quarry sites, 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, Industry Regulation and Safety; 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 program approved by the local government.

### 5.4 Blasting

(1) A person shall 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 *Mines Safety and Inspection Act 1994*, 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 shall 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.

## PART 6—CESSATION OF OPERATIONS

### 6.1 Notice of cessation of operations by licensee

(1) A notice of cessation shall—

- (a) be made in writing;

- (b) state—
    - (i) name of person or company for whom the application is being lodged;
    - (ii) name of primary contact person for the company and in relation to the application;
    - (iii) telephone, mobile phone and email contact details; and
    - (iv) postal and street address;
  - (c) be accompanied by—
    - (i) a copy of the current licence; and
    - (ii) a current certificate of currency for public liability policy in accordance with clause 7.1;
  - (d) advise if the cessation is to be—
    - (i) temporary and the expected duration or circumstances for re-commencement; or
    - (ii) permanent;
  - (e) detail arrangements for meeting any ongoing liabilities or environmental obligations—
    - (i) name of person or company to whom matters are to be referred;
    - (ii) name of primary contact person for the company;
    - (iii) telephone, mobile phone and email contact details; and
    - (iv) postal and street address;
  - (f) be lodged by the licensee as soon as cessation of operations has been determined by the licensee and not more than seven days after the operations have ceased in any event;
  - (g) include a plan showing the contours of the excavation carried out to the date of that application;
  - (h) detail the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 3.2(2)(b) and (c);
  - (i) any other things referred to in clauses 3.2 and 4.2;
  - (j) include any information that the local government may reasonably require; and
  - (k) be signed by the licensee.
- (2) Upon notice of cessation of operations, the local government shall—
- (a) acknowledge the notice of cessation of operations; and
  - (b) confirm the acceptability or otherwise of the arrangements for the cessation of operation.

### **6.2 Cessation of operations—permanent**

- (1) 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 such cessation is so notified.
- (2) The 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.

### **6.3 Cessation of operation—temporary**

- (1) Where a licensee has given written notice of temporary cessation of operations, then on or before the annual licence date each year, the licensee shall—
- (a) confirm to the local government the matters in subclauses 6.1(1)(d) and (e); and
  - (b) provide a copy of the current public liability insurance policy required under clause 7.1.
- (2) For the duration of the cessation—
- (a) contributions or payments agreed under subclauses 4.3(2)(q) or (r) are suspended until such time as operations are resumed, but all other conditions and obligations remain in place; and
  - (b) the annual licence fee under clause 7.3 is suspended.
- (3) The licence granted under clause 4.2 shall remain valid for the term of the licence and shall not be extended by the duration of cessation of operations.
- (4) The temporary 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.

### **6.4 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 shall, as well as complying with the provisions of clause 6.1—

- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently agree in writing with the licensee;
- (b) ensure that any face permitted to remain upon the excavation site is left safe with all loose materials removed and where the excavation site is—
  - (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical : horizontal); and
  - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;
- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning program approved by the local government;

- (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse or drain that is not wholly situated within the land owned or occupied by the licensee;
- (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
- (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

## PART 7—MISCELLANEOUS

### 7.1 Public liability

- (1) A licensee shall have at all times a current public liability insurance policy naming the local government and indemnifying the licensee and the local government for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation operations.
- (2) The licensee shall provide to the local government a copy of the policy taken out under subclause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of policy renewal within 14 days of each policy renewal date.

### 7.2 *Mines Safety and Inspection Act 1994 and Environmental Protection Act 1986*

- (1) In any case 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 shall 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 Annual licence fee

On or before 30 June in each year, a licensee must pay to the local government the set fee for the annual licence.

### 7.4 Use of secured sum by the local government

- (1) If a licensee fails to pay any fees and charges or 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 work or so much of that work as remains undone; and
    - (ii) the licensee shall 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 3.7 towards its costs under this clause.
- (3) The liability of a licensee to pay the local government's costs or any outstanding fees and charges under this clause is not limited to the amount, if any, secured under clause 3.7.
- (4) For avoidance of doubt, the local government's powers under this clause are in addition to its other enforcement powers under this local law.

## PART 8—NOTICES

### 8.1 Notice to remedy non-compliance

Where any thing is required to be done or not permitted to be done by this local law, an authorised person may give the licensee a notice in writing requiring the licensee to comply with the requirements of this local law.

### 8.2 Notice requirements

A notice given must—

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

### 8.3 Local government may undertake requirements of notice

- (1) If a person fails to comply with a notice referred to in clause 8.1, the local government may—
- do the thing specified in the notice;
  - take whatever remedial action it considers appropriate and which would have been if the breach or failure had not occurred; and
  - recover all costs from the licensee, as a debt.
- (2) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 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 of the *Local Government Act 1995*.

### 8.4 Offence to fail to comply with notice

A person who fails to comply with a notice given under this local law commits an offence.

## PART 9—OBJECTIONS AND REVIEW

### 9.1 Objection and review rights

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

- grant a person a licence under this local law; or
- renew, vary, or cancel a licence that a person has under this local law.

## PART 10—OFFENCES AND PENALTIES

### 10.1 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.

### 10.2 General penalty

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 the day during which the offence has continued.

### 10.3 Modified penalties

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

### 10.4 Forms

For the purposes of this local law—

- the form of the 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
- 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 *Local Government (Functions and General) Regulations 1996*.

## SCHEDULE—PRESCRIBED OFFENCES

[clause 10.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.1(a)	Carry on an extractive industry without a valid and current licence	500
2	2.1(b)	Carry on an extractive industry not in accordance with conditions of licence	500
3	4.5(1)	Failure to comply with notice regarding transport of materials	500
4	5.1(a)	Failure to securely fence or keep gateways locked	500
5	5.1(b)	Failure to comply with boundary signage requirements	500
6	5.1(c)	Failure to provide adequate drainage	500
7	5.1(d)	Failure to restore and reinstate site in accordance with approved plan	500

Item	Clause	Nature of offence	Modified penalty \$
8	5.1(e)	Failure to control dust, noise, vibration and other nuisances	500
9	5.1(f)	Failure to comply with conditions of licence	500
10	5.2(a)	Excavate within 500 metres of a residence without approval	500
11	5.2(b)	Excavate within 50 metres of a bore, watercourse, wetland swamp or other water reserve without approval	500
12	5.2(c)	Excavate within 50 metres of a thoroughfare without approval	500
13	5.2(d)	Excavate within 20 metres of the boundary of any land on which the excavation is situated without approval	500
14	5.2(e)	Excavate within 20 metres of land affected by a registered grant of easement without approval	500
15	5.2(f)	Excavate within 2 metres of estimated maximum groundwater level without approval	500
16	5.3(a)	Removal of trees or shrubs within 40 metres of any boundary with a thoroughfare reserve without approval	500
17	5.3(b)	Store or permit to be stored explosives or explosive devices without approval	500
18	5.3(c)	Fill or excavate other than in accordance with the conditions of licence	500
19	5.4(1)(a)	Carry out or permit to be carried out blasting without approval	500
20	5.4(1)(b)	Carry out or permit to be carried out blasting outside the hours approved by the local government	500
21	5.4(1)(d)	Failure to comply with conditions relating to blasting imposed by the local government	500
22	5.4(2)	Carry out or permit to be carried out blasting on a Saturday, Sunday or public holiday without approval	500
23	6.1(1)	Failure to provide notice of cessation of operations	500
24	6.3(1)	Failure to provide annual confirmation of details during period of temporary cessation of operations	500
25	6.4	Failure to undertake restoration and reinstatement as required on cessation of operations	500
26	8.4	Failure to comply with requirements of notice	500
27	10.1	Other offences not specified	500

Dated: 3 July 2018.

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

D. S. LOVELOCK, President.  
G. M. TEEDE, Chief Executive Officer.