

LOCAL GOVERNMENT ACT 1995

Shire of York

EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of York resolved on 27 April 2011 to make the following local law.

1. Citation

This local law is cited as the *Shire of York Extractive Industries Amendment Local Law 2011*.

2. Commencement

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

3. Principal Local Law

In this local law, the *Shire of York Extractive Industries Local Law* published in the *Government Gazette* on 22 February 2000 is referred to as the principal local law. The principal local law is amended.

4. New Clause 1.1

Insert-

“1.1 Citation

This local law is cited as the *Shire of York Extractive Industries Local Law*.”.

5. New Clause 1.2

Insert-

1.2 Purpose and effect

- (1) The purpose of this local law is to establish requirements and conditions with which extractive industry proposals, within the district, must comply with.
- (2) The effect of this local law is to provide for the regulation, control and management of extractive industry proposals.

6. Clause 1.1 amended

- (1) Delete the heading “**Definitions**” and insert “**Interpretation**”.
- (2) Delete the definition “**carry on an extractive industry**” and insert-

carry on an extractive industry means quarrying and excavating for stone, gravel, sand, clay, limestone, loam and other material;”

- (3) Amend the definition “**secured sum**” by inserting “and” after the semi colon.
- (4) Insert, in the appropriate alphabetical order, the following-

- (a) **General Regulations** means the *Local Government (Functions and General) Regulations 1996*;
- (b) **occupier** has the meaning given to it in the Act;”;
- (c) **owner** has the meaning given to it in the Act;”
- (d) **person** does not include the local government;”.

7. Clause 1.2 amended

After subclause (1) insert-

- (2) Notwithstanding any other provision, the local government may waive any requirement or provision of this local law (including a requirement to hold a valid licence), where the local government is satisfied on receiving a written application for an exemption under this clause that the extractive industry is to be carried out solely for the benefit of a local community or sporting organisation (whether incorporated or not), provided that where the local government is so satisfied:
 - (a) The extractive industry may only be carried out if the local government has authorised it in writing;
 - (b) The local government may impose conditions on the authorisation pursuant to which the extractive industry must operate (including in a case where the CEO otherwise waives the requirement to hold a valid and current licence);
 - (c) The person carrying out the extractive industry must comply with any conditions imposed by the local government on the authorisation;
 - (d) Failure to comply with any condition imposed by the local government is deemed to be an offence pursuant to clause 2.1(b);
 - (e) The local government may from time to time vary or delete and condition previously imposed, and may impose a new condition or conditions; and
 - (f) The local government may at any time determine that the extractive industry authorised pursuant to this clause must cease, provided that the local government must give written notice to the person carrying out the extractive industry which allows a minimum 28 days for the cessation of operations.

8. Clause 2.1 amended

Delete-

Penalty \$5,000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

9. Clause 2.2 amended

In subclause (1) delete “must” and insert “shall”.

10. Clause 2.3 amended

- (1) In subclause(1)(a), delete subparagraph (i) and insert-
 - (i) where the proposed excavation surface area is-
 - (I) not to exceed 5ha, the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metres contour intervals;
 - (II) to be greater than 5ha, the existing and proposed land contours based on the Australian Height Datum and plotted at 5 metre contour intervals;
- (2) In subclause (1)(b), delete subparagraph (xi) and insert-
 - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
- (3) In subparagraph (xii) of subclause (1)(b), italicise “Environmental Protection (Noise) Regulations 1997”.
- (4) In subparagraph (v) of subclause (1)(c), delete “and” at the end of the paragraph.
- (5) In subclause (1)(c) insert a new subparagraph (vii)-
 - (vii) how any face is to be made safe and batters sloped.
- (6) In subclause (1)(i) delete “and”.

(7) After subclause (1)(j) insert-

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

(l) copies of any geotechnical information relation to the excavation site.

(8) In subclause (2) delete “must” and insert “shall”.

(9) After subclause (2) insert-

(3) Where in relation to a proposed excavation-

(a) the surface area is not to exceed 5,000 square metres; and

(b) The extracted material is not to exceed 5,000 cubic metres;

the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (l) of subclause (1).

11. Clause 3.1 amended

(1) In subclause (4), delete paragraph (a) and insert-

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

(2) In paragraph (b) of subclause (4) delete “and”.

(3) After the semi colon in paragraph (c) of subclause (4) insert “and”.

(4) After subclause (4)(c) insert-

(d) a copy of the public liability insurance policy required under clause 7.1(1),

(5) In subclause (5) insert a new paragraph (d)-

(d) the approval of the number and size of trucks entering and leaving the site each day and the route or routes to be utilised by those trucks;

(6) In paragraph (h) of subclause (5) delete “roads” and insert “thoroughfares”.

(7) In paragraph (q) of subclause (5) after the semi colon delete “and”.

(8) In subclause (5) insert a new paragraph-

(q) requiring the licensee to meet all conditions imposed under the development approval issued by the local government in relation to the extractive industry;

(9) In paragraph (r) of subclause (5) after the semi colon insert “and”.

(10) In subclause (5) insert a new paragraph (u)-

(u) requiring 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.

12. Clause 3.2 amended

(1) Delete “31 December” and insert “30 June”.

(2) After the word “fee” insert “imposed and”.

(3) After the words “time to time” insert “under and in accordance with sections 6.16 to 6.19 of the Act”.

13. Clause 4.1 amended

In subclause (1) delete “must” and insert “shall”.

14.Clause 5.2 amended

In subclause (1), delete paragraphs (b), (c) and (d) and insert-

(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 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.

15.Clause 6.1 amended

- (1) In paragraph (d) delete “With”.
- (2) After paragraph (d), delete “Penalty \$2,000”.

16.Clause 6.2 amended

- (1) Delete the word “must” and insert “shall not”.
- (2) In paragraph (a) delete “not”.
- (3) Delete paragraphs (b), (c) and (d).
- (4) In paragraph (e), delete “not”.
- (5) In paragraph (e) delete “Minerals and Energy” and insert “Mines and Petroleum”.
- (6) In paragraph (f), delete “not”.
- (7) Delete paragraphs (g), (h) and (i).
- (8) After paragraph (i) delete-

“Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day which the offence has continued.

17. Clause 6.3 amended

- (1) In subclause (1) delete “must” and insert “shall”.
- (2) In paragraph (b) of subclause (1) delete “am” and insert “a.m.”, and delete “pm” and insert “p.m.”.
- (3) In subparagraph (ii) of subclause (1)(d), insert after the semi colon “and”.
- (4) Delete subparagraphs (iii) and (iv) of subclause (1)(d).
- (5) After subclause (1)(d) delete-

“Penalty: \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

- (6) After subclause (2), delete “Penalty \$2,000”.

18. New Clause 6.4

Insert new clause 6.4-

6.4 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 1.8 metres high and not less than 1 metre wide; and
 - (iii) 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, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

19. Clause 7.2 amended

- (1) In subclause (1), italicise “Mines Safety and Inspection Act 1994” and “Environmental Protection Act 1986”.
- (2) In subclause (2) , italicise “Mines Safety and Inspection Act 1994” and “Environmental Protection Act 1986”.

20. Clause 7.4 amended

After paragraph (g) delete-

Penalty \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

21. Part 8 heading amended

In the heading delete “APPEALS” and insert “REVIEW”.

22. Clause 8.1 amended

- (1) In the heading delete “Appeals” and insert “review”.
- (2) Delete “regulations 33 and 34” and insert “regulation 33”.
- (3) Delete “*Local Government (Functions and General) Regulations 1996*” and insert “General Regulations”.

23. New Part 9

Insert-

PART 9 – MODIFIED PENALTIES

9.1 Offences

- (1) Any 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.
- (2) Any person who commits an offence under this local law is liable, upon 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 Prescribed offences

- (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.

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.

24. Forms deleted

Delete Form 1 through to Form 5.

25. New Schedule

Insert—

Schedule – Prescribed offences

MODIFIED PENALTIES

[cl. 9.2(1)]

ITEM NO.	CLAUSE NO.	NATURE OF OFFENCE	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	300
5	6.2(b)	Store without required approval explosives or explosive devices	350
6	6.2(c)	Fill or excavate, contrary to the terms 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	350
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
12	6.4(c)	Failure to drain and keep drained any excavation to	350

		which the licence applies	
13	6.4(f)	Failure to comply with conditions of licence imposed by the local government	500
14		All other offences not specified	200

26. Redesignation of divisions and clauses

- (1) Designations “1.1” through to “1.3”, are redesignated “1.3” to “1.5”.
- (2) Designations “3.1(5)(d)” through to “(o)” are redesignated “3.1(5)(e)” to “(p)”.
- (3) Designations “3.1(5)(p)” through to “(r)” are redesignated “3.1(5)(r)” to “(t)”.
- (4) Designations “6.2(e)” to “(f)” are redesignated “6.2(b)” to “(c)”.
- (5) Designation “6.3(1)(d)(v)” is redesignated “6.3(1)(d)(iii)”.

Dated: 27 April 2011

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

J P HOOPER, Shire President.

R P HOOPER, Chief Executive Officer.