

PART VIII - BLASTING, QUARRYING AND EXCAVATIONS

Division 1 – Preliminary

8.1 PRELIMINARY PROVISIONS

8.1.1 Part VIII Definitions

In this Part unless the context otherwise requires:-

"excavation" in its substantive sense includes a quarry and when used as a verb includes the activity of quarrying, and in a like manner the term refers to any other process or activity for removal of substances from the earth;

“excavation fund” means a fund established by the Council for the purpose of restoring and reinstating an excavation site.

"excavation licence" means a licence to carry on an extractive industry issued in accordance with this Part;

"excavation site" means a defined area of land upon which an extractive industry is, or is proposed to be, carried on;

"extractive industry" means an industry or process or any other activity whatsoever involving the quarrying, excavation or other removal whatsoever from its natural state in the earth of any material;

"material" means any stone, gravel, sand, clay, limestone, loam or any other substance of a like kind.

8.1.2 Terms and expressions used in this Part:

- (a) shall have the meanings given in subsection 8.1.1 which shall prevail over any other conflicting definition; and
- (b) otherwise shall be interpreted in accordance with section 2.1.

8.1.3 Application

The provisions of this Part do not apply to the carrying on of an extractive industry on Crown land.

Division 2 – Licensing Provisions

8.2 LICENSING

8.2.1 Excavation Licence Required

A person shall not, without an excavation licence first having been issued by the Council under this Part, carry on any extractive industry on any land within the District.

8.2.2 Blasting Permits

A Blasting Permit must be obtained from Council before any blasting is carried out on the excavation site.

8.2.3 An applicant for an excavation licence shall provide the Council with such additional information concerning the proposed excavation as the Council may reasonably require over and above the planning approval.

8.2.4 An application for an excavation licence must be accompanied by:

- (a) evidence that the applicant served notice by certified mail on:
 - (i) every owner or occupier of land within 500 metres from the boundaries of the excavation site; and
 - (ii) every authority or the person having control or jurisdiction over any power lines or telephone cables or poles, or pylons in respect thereof, public or private easements, sewers, pipelines, reserves, bridges, railway lines, dams, water-courses, drains or sumps within 500 metres from the boundaries of the excavation site.
- (b) evidence that the applicant advertised notice of the intended application in a newspaper circulating within the District on a date not less than 1 month or more than 2 months prior to the date upon which the application is lodged with the CEO; and
- (c) copies of all planning approvals required under any Town Planning Scheme with respect to the proposed carrying on of the extractive industry.

8.2.5 Discretion

The Council may in its discretion issue or refuse to issue a licence or issue a licence subject to such conditions as it thinks fit.

Division 3 - Conditions

8.3 CONDITIONS

8.3.1 Imposition of Conditions on Licence

Without limiting the generality of subsection 8.2.5, the Council may impose conditions on an excavation licence relating to any or all of the following: These will be over and above the planning conditions:

- (a) the hours during which excavation work may be carried out;
- (b) the hours during which blasting operations may be carried out;
- (c) the hours during which any processing plant associated with, or located on, the excavation site may be operated;
- (d) the depths below which a person shall not excavate;
- (e) distances from adjoining land or streets within which a person shall not excavate;
- (f) the safety of persons employed at the excavation site;
- (g) 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;
- (h) the drainage of the excavation site and the disposal of water therein;
- (i) the restoration and reinstatement of the excavation site;
- (j) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
- (k) requiring the licensee to enter into an agreement with the Council in respect of any condition or conditions imposed;
- (l) distances from adjoining land or streets within which a person shall not excavate;
- (m) requiring the licensee to furnish to the Council a Surveyor's Certificate each year one month prior to the annual fee being payable to certify that material has not been excavated below the final contour levels outlined within the approved excavation programme; and
- (n) otherwise regulating the carrying on of an extractive industry.

- 8.3.2 Without limiting the generality of paragraph (k) of subsection 8.3.1 Council may, before granting any licence under these Local Laws, require the applicant to enter into an agreement for the payment to the Council of a sum of money, being the expense estimated by the Council as likely to be incurred by it, in repairing and maintaining roads under its control in the neighbourhood of the proposed excavation by reason of extraordinary damage, as a result of heavy or extraordinary traffic conducted by the licensee or any person acting on the licensee's behalf in the exercise of the licence, if granted; and any such agreement shall be deemed to have been entered into under the provisions of section 57(1) of the Road Traffic Act, 1974.
- 8.3.3 The due observance of any agreement entered into by the applicant pursuant to subsection 8.3.3 shall be a condition of the granting and holding of the licence.
- 8.3.4 In the event of disagreement between the applicant and the Council as to the amount of the expense estimated by the Council pursuant to these Local Laws, that disagreement shall be referred to the Minister whose decision shall be binding on both the applicant and the Council.
- 8.3.6 A person to whom a licence has been issued under this Part shall ensure that the provisions of these Local Laws and any conditions of such licence are observed at all times. If any provision of these Local Laws or any condition of a licence is not observed and complied with that person commits an offence against these Local Laws and in addition to any other penalty which might be imposed under these Local Laws, if the default continues for 14 days after the service on the licensee of written notice of the default the Council may by further written notice cancel the licence.

8.3.7 **Default Under Agreement**

Where an agreement has been made between the licensee and the Council in accordance with paragraph (k) of subsection 8.3.1, or subsection 8.3.3 and there is default in complying with any of the terms of the agreement which continues following the expiration of a period of 14 days from service upon the licensee of written notice from the Council of such default, the licensee commits an offence against these Local Laws and in addition to any other penalty which might be imposed under these Local Laws or any other order, the Council may by further written notice cancel the excavation licence of the defaulting licensee.

8.4 **FORM**

An excavation licence issued under this Part shall be in accordance with the form (if any) prescribed by the Council for the purpose.

8.5 **TRANSFER OF LICENCE**

A licence issued under this Part shall not be transferred to another person except with the written consent of the Council and such additional conditions as the Council may impose.

- 8.6 Every application to transfer a licence under section 8.13 shall be in writing in the form (if any) prescribed by the Council for the purpose and shall be signed by both the transferor and transferee, and shall be accompanied by a consent in writing to the application signed by the owner of the excavation site where the applicant is not the owner of the excavation site. Without limiting the discretion of the Council in that regard, the Council may refuse to transfer a licence to a person who has failed to comply with a condition of any excavation licence issued by the Council, or who has defaulted under an agreement with the Council relating to excavation.

8.7 **TERM OF LICENCE**

An excavation licence issued under this Part shall be valid for a term not exceeding 10 years from the date of issue as the Council at that date determines and may in the discretion of the Council be renewed thereafter by the Council for a further term or terms. Without limiting the discretion of the Council in that regard, the Council may refuse to renew a licence on the application of any person who has failed to comply with a condition of the licence, or who has defaulted under an agreement with the Council relating to excavation or breached a duty under section 8.11. The refusal of renewal shall not excuse the licensee from the obligation to comply with the conditions on the licence previously issued, or from compliance with the provisions of any agreement with the Council.

8.8 **CANCELLATION**

If a licensee fails to comply with any condition of an excavation licence or breaches a duty provided in section 8.11, the Council after giving reasonable notice, may cancel the licence.

8.9 **NO COMPENSATION**

The Council's refusal to transfer a licence under section 8.6, refusal to renew a licence under section 8.7, or cancellation of a licence under section 8.8 shall not give rise to any claim for compensation or damages.

8.10 **FEES**

The fees to be charged for an application for licence and for every renewal thereof and for an application to transfer a licence shall be prescribed by the Council from time to time. No licence is valid until the fees have been paid.

Division 4 - Duties of Licensee

8.11 DUTIES OF LICENSEE

A licensee shall, subject to any condition imposed by the Council pursuant to this Part:

- (a) not remove any tree or shrub within 40 metres (or such lesser distance specified as a condition of the excavation licence) of the boundary of any road reserve on land in respect of which an excavation licence has been granted, except for the purpose of constructing access roads or erecting buildings for use in connection with the excavation and then only with the express approval of the Council;
- (b) securely fence the excavation and keep the gateways locked when not actually in use in order that unauthorised persons will not enter the excavation. Provide signage on the fence indicating danger, quarry site, every 100m;
- (c) drain and keep drained the excavation site in such a manner as to prevent the accumulation of water therein;
- (d) refrain from carrying out blasting operations in or about an excavation site on Christmas Day and Good Friday and except between the hours of 8.00 a.m. and 5.00 p.m. Mondays to Fridays (inclusive);
- (e) take all reasonable steps to prevent the emission of dust, noise and other forms of nuisance from the excavation site;
- (f) not excavate otherwise than in accordance with the terms of the application and accompanying site plans and excavation and management programmes approved by the Council;
- (g) restore, and reinstate the excavation site in accordance with the terms of the application and accompanying site plans and excavation and management programmes approved by the Council;
- (h) give the Council at least 7 days' written notice of his or her intention to temporarily cease operations for a period of 12 months or more or to cease operating under his or her licence permanently;
- (i) unless an exemption is given in writing by the Council, ensure that all crushing or other treatment plant is enclosed within suitable buildings or otherwise treated to reduce noise, dust and any other emissions whatsoever to the point where they do not cause nuisance or disturbance to the occupiers or users of any neighbouring properties;
- (j) comply with the safe working provisions of the Mines Regulations Act, 1946 and the safety rules for pits issued by the Council from time to time;
- (k) apply for a blasting permit for any blasting from Council.

8.12 REHABILITATION OF SITE

Upon the expiration or cancellation of an excavation licence or the sooner cessation of any excavation work, the licensee shall ensure that:

- (a) the excavation is restored and reinstated in accordance with proposals approved by the Council or in such manner as the Council shall subsequently agree with the licensee in writing;
- (b) any face permitted to remain upon the excavation site is left safe to the satisfaction of the Council's Director of Infrastructure Services, and with all loose materials removed therefrom, and the sides sloped to a batter of not more than 1:3;
- (c) the agreed floor level of the excavation site is graded to an even surface or otherwise in accordance with any excavation and rehabilitation programme approved by the Council; and
- (d) all dumps of stone, sand, or other material are so left that no portion of that stone or other material can escape onto land not owned or occupied by the licensee nor into any stream, water-course or drain that is not wholly situated within the land owned or occupied by the licensee.

8.13 Upon satisfactory restoration and reinstatement of the excavation site by the licensee the Council shall refund any moneys paid by the licensee into the excavation fund.

8.14 If the licensee does not carry out restoration and reinstatement of the excavation site at the licensee's own cost upon completion of the excavation or the expiration of the licence, the Council may:

- (a) apply money from the excavation fund to or towards the restoration and reinstatement of the excavation site;
- (b) forfeit the bond obtained from the licensee pursuant to section 8.9 and may apply the amount of the bond forfeited or so much of that amount as is required, towards the carrying out of such restoration and reinstatement work.

8.15 GENERAL CONDITIONS

Subject to any condition imposed by the Council in accordance with this Part, a person shall not without the written approval of the Council:

- (a) excavate within 20 metres of a boundary of any land not the subject of an excavation licence held by, and not owned by, that person;
- (b) excavate within 20 metres of any land affected by a registered grant of easement or 40 metres of any water course; or
- (c) excavate within a distance of 40 metres of any road reserve.