

LOCAL GOVERNMENT ACT 1995 (WA) (CKI)

SHIRE OF COCOS (KEELING) ISLANDS

LOCAL LAW RELATING TO EXTRACTIVE INDUSTRIES

In pursuance of the powers conferred upon it by the abovementioned Act and all other powers enabling it, the Council of the Shire of Cocos (Keeling) Islands hereby records having resolved on the 28 March 2001, to make the following local laws.

PART 1 - PRELIMINARY

DEFINITIONS

1. In this local-law unless the context otherwise requires:-

“Act” means the Local Government Act 1995 (WA)(CKI);

“Carrying on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material not defined as a Mineral by the Mining Act 1968 (WA)(CKI);

“CEO” means the Chief Executive Officer of the Local Government;

“Council” means the Council of the Shire of Cocos (Keeling) Islands;

“Excavation Licence” means a licence to carry on an extractive issued in accordance with this local law;

“Excavation Site” means a defined area of land upon which it is proposed to carry on an extractive industry or upon which an extractive industry is carried out;

“Licensee” means the holder of an Excavation Licence;

“Minister” means the Minister for Territories;

“Person” includes a body corporate;

“Local Authority” means the Shire of Cocos (Keeling) Islands.

Other words and expressions have the same meaning as they have in the Act.

APPLICATION

1.2(1) The provisions of this local-law:-

a) subject to paragraph (b), (c), (d) and (e)-

- (i) apply and have force effect throughout the whole of the district;
and
 - (ii) apply to every excavation whether commenced prior to or
following the coming into operation of this local law.
 - b) do not apply to the extraction of minerals under the mining Act 1998
(WA)(CKI);
 - c) do not apply to the carrying on of an extractive industry on Crown land
where extraction is consistent with purpose;
 - d) do not apply to the carrying on of extractive industry on land by the
owner or occupier of that land for use on that land; and
 - e) do not effect the validity of any licence issued under the local law
repealed by Clause 1.3 of this local law if that licence is currently in force
at the date of gazettal of this local law
2. In subclause 1(d) land includes adjoining lots or location in the same
occupation or ownership of the owner or occupier referred to in sub clause
(1)(d).

PART 2 - LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

EXTRACTIVE INDUSTRIES PROHIBITED WITHOUT LISENCE

- 2.1 A person shall not carry on an extractive industry-
- a) Unless the person is a 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;

Penalty \$5000 and daily penalty not exceeding a fine of \$500 in respect of each
day or part of a day during which an offence has continued.

APPLICATION TO ADVERTISE PROPOSAL

- 2.2(1) Unless the local government first approve otherwise, a person seeking the
issue of a licence must, before applying to the local government for a
licence-
- a) forward by registered mail a notice in the form determined by the local
government from time to time 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,
advertising of the application and specifying that they may, within
twenty and days from the date of service of the letter, object to or

make representations in writing in respect of the issue of a licence by the local government.

(ii) Every authority or person having control or jurisdiction over any of the things referred to in clause 2.3 (1)(a)(vii) and (viii) 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 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 local newspaper circulating in the area in which the proposed exaction is located.

2) 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 to propose applicant to display, in a prominent position on the land one or more notices-

a) in the form determined by the Local Government from time to time;

b) the context, size and construction of which have been approved by the CEO;

c) specifying particulars of the proposed excavation; and

d) inviting objective or comments within 21 days from the placement of the notice.

APPLICATION FOR LICENCE

2.3 (1) subject to sub clause (3), 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 both the applicant and the owner of the land to the CEO together with -

(a) four copies of extraction site plan to a scale of between 1:500 and 1:2000, and showing inter alia -

(i) the maximum area and depth of the excavation site,

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

- (vi) the location of existing and proposed thoroughfares or other means if vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vii) the location of water lenses on or adjacent to the land;
 - (viii) the location and description of existing fences, gates and warnings signs around the land; and
 - (ix) the areas proposed to be used for stockpiling excavated material treated material, overburden and soil storage on the land and elsewhere;
- (b) four copies of work 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 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 treatment plants, tanks and other improvements;
 - (x) details of drainage conditions applicable to the land and methods by which excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise dust nuisance, erosion, watercourse saltation 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 proposed excavation will have on the environment in the vicinity of the land;
 - (xiv) details of the nature of the existing vegetation, shrubs and trees and a description of measures to be taken to minimise the description 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) four copies of 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 excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how each face is to be made safe and batter sloped;
 - (iv) the methods by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the programme for the removal of building, plant, waste and final site clean up;
 - 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) evidence that the requirements of clause 2.2(1) and (2) have been carried out;
 - 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; and
 - i) the licence application fee specified by the local government from time to time.
- (2) All survey data supplied by an application for the purpose of the purpose of sub clause (1) must comply with Australian Height Datum and Geocentric Data Australia standards unless otherwise agreed by the Local Authority.
- (3) The local government may exempt a person making application for a licence under subclause (1) from providing and of the data otherwise required under sub clause (1), if, in the opinion of the local government, the location and size of the proposed excavation are such that no significant adverse environmental effects will result therefrom.

PART 3 - DETERMINATION OF APPLICATION

- 3.1 (1) The local government may refuse to consider an application for a licence that does not comply with the requirement of clause 2.3, and in any event shall

refuse an application for a licence where planning approval for an extractive industry use of land has not 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 **5 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 31st December next, determined by the local government from time to time;
 - (b) payment of the secured sum if any, imposed under clause 5.1; and
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1, shall issue the licence to the applicant.
- (5) Without limiting sub clause (2), the local government may impose conditions in respect of the following matters –
 - (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 materials;
 - (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 open operated, but only limited circumstance and to limit the hours of transport of products from site;
 - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emissions of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (g) the depths below which a person must not excavate ;
 - (h) distance from adjoining land or roads within which a person must not excavate;
 - (i) the safety of person employed at or visiting the excavation site;
 - (j) the control of dust and wind blown material;

- (k) the planning, care and maintenance of trees, shrubs and other landscaping featured during the time in which 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 wall is 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 programme;
- (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay an extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by on or behalf of the licensee under the licence;
- (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.

TRANSFER OF A LICENCE

4.1 (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) included 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 licence, the local government shall 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 shall not be required to refund any part of the fees or secured sum paid by the former licensee in respect of the transferred licence.

CANCELLATION OF LICENCE

4.2 (1) The local government may cancel a licence where the licence has -

- (a) been convicted of an offence against -
 - (i) this local law; or
 - (ii) any other local law relating to carrying on an extractive industry; or
- (b) transferred or assigned or attempted to transfer or assign the licence without consent of the local government;
- (c) 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;
- (d) failed to pay the annual licence fee under clause 3.2; or
- (e) failed to have 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 7.2(2) .

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

- (a) the local government shall advise the licensee in writing of the cancellation;
- (b) the cancellation take effect on and from the day on which the licensee is served with the cancellation advice; and
- (c) the local government shall not be required to refund any part of the fees or secure sum paid by the licensee in respect of the cancelled licence.

RENEWAL OF LICENCE

4.3 (1) A licensee who wished to renew a licence must apply in writing to the local government at least 45 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 the application;
 - (d) Details of the work, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1)(b) and (c); and
 - (e) Any other things referred to in clause 2.3 and 3.1
- (2) The local government may waive any of the requirements specified in class 4.3(1)(d) or (e) .
- (3) If -
- (a) an application to renew a licence is in relations 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,
- then the application shall not obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 ad 3.1.
- (4) 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 APPLICATION THEREOF

SECURITY FOR RESTORATION AND REINSTATEMENT

5.1 (1) for the purpose of ensuring that an excavation site is properly restored or reinstated, the local government my require that -

- (a) as a condition of 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 tot he local government, in or for a sum determined by the local government from time to time.

(2) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposed of this clause.

USED BY THE LOCAL GOVERNMENT OF SECURED SUM

5.2 (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 a reasonable period to time from the completion of the excavation or portion of the excavation specified in the licence conditions,

then

- (c) 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
 - (d) the licensee must pay to the local government on demands 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.

PART 6 - LIMITATIONS AND PROHIBITIONS

LIMITS ON EXCAVATION NEAR BOUNDARY

6.1 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) 20 metres of the boundary of any land on which the excavation site is located;
- (b) 20 metres of any land affected by a registered grant of easement;
- (c) 40 metres of any thoroughfares; or
- (d) 50 metres of any watercourse.

Penalty \$2000

PROHIBITIONS

6.2 A licensee must –

- (a) not remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfares 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 subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) 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;
 - (c) 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**” both in English and in Cocos Malay;
 - (d) 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;
 - (e) not to store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies over than with the approval of the local government and the WA Department of Mineral and Energy;
 - (f) not 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;
 - (g) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the state plans and the works and excavation programme approved by the local government;
 - (h) take all reasonable steps to prevent the emission of dust, noise, vibrations and other forms of nuisance from the excavation site; and
 - (i) otherwise comply with the conditions imposed by the local government in accordance with Clause 3.1.

Penalty \$5000 for each offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

BLASTING

- 6.3 (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 sub clause (2), the blasting takes place only between the hours of 8:00 am and 4:00 pm, or as determined by the local government, on Mondays to Fridays inclusive;

- (c) the blasting and storage of explosives is carried out in strict accordance with the AS187 SAA 1986, or Explosives and Dangerous Goods Act 1961 (WA) (CKI) 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 purpose 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.

Penalty \$5000 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.

- (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.

Penalty \$2000

PART 7 - MISCELLANEOUS PROVISIONS

PUBLIC LIABILITY

- 7.1 (1) A licensee must have at all times a current 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 in respect of any on claim relating to any of the excavation operations.
- (2) The licensee shall provide to the local government a copy of the policy taken under sub clause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of renewal within 14 days of each renewal date.

MINES SAFETY AND INSPECTION ACT, ENVIRONMENTAL PROTECTION ACT AND EXPLOSIVE AND DANGEROUS GOODS ACT

- 7.2 (1) In any case where the Mines Safety and Inspection Act 1994 (WA) (CKI), Environmental Protection Act 1986 (WA) (CKI) or Explosives and Dangerous Goods Act 1961 (WA) (CKI) applies to any excavation carried on and storage of explosives or proposed to be carried on at site, the licensee in respect of that site must –
 - (a) comply with all applicable provisions of the 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 Act 1994 (WA) (CKI) and the Environmental Protection Act (WA) (CKI) include all subsidiary legislation made under those Acts.

NOTICE OF CESSATION OF OPERATION

7.3 (1) Where licensee intends to cease carrying on an extractive industry –

- (a) temporarily for a period in excess of 12 months; or
- (b) permanently,

the licensee must, as well as complying with clause 7.4, give the local government written notice of the cessation not later than 1 week after those operations have ceased.

- (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 as at the time of receipt of notification by the local government.
- (3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

WORKS TO BE CARRIED OUT ON CESSATION OF OPERATION

7.4 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, which first occurs, the licensee must, as well as complying with the provisions of clause 7.3 –

- (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 or similar loose materials, the sides are sloped to a batter of not more than 1.3 (vertical : horizontal) or 1.5 where the land is to be grazed; 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 programme 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 by 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 unless prior written approval has been granted by the local government for post mining utilisation, 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 holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficient 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.

Penalty \$5000 for each offence, and if the offence is of a continuing nature, to daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

PART 8 - OBJECTIONS & APPEAL

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

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

the provisions of Division 1 of Part 9 of the Act and Regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 (WA) (CKI) shall apply to that decision.

Dated this day of 2001-02-08

The Common Seal of the Cocos (Keeling) Islands Shire was hereto affixed in the presence of:-

Mhd Said Chongkin (President)

Bob Jarvis (Chief Executive Officer)