

Local Government Act 1995

Shire of Gingin

Extractive Industries Amendment Local Law 2015

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Council of the Shire of Gingin resolved on 16 June 2015 to make this local law.

1. Title

This local law may be cited as the *Shire of Gingin Extractive Industries Amendment Local Law 2015*.

2. Commencement

This local law commences on the 14th day after the day on which it is published in the *Government Gazette*.

3. Principal Local Law

In this local law, the *Shire of Gingin Extractive Industries Local Law 2004* published in the *Government Gazette* on 13 September 2004 is referred to as the principal local law. The principal local law is amended as follows -

4. Clause 1.1 amended

In clause 1.1 –

- (a) Delete the definition for “**carry on an extractive industry**” and insert:

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

- (b) Insert new definitions in alphabetical order as follows:

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

“**occupier**” has the meaning given to it in the Act;

“**owner**” has the meaning given to it in the Act; and

“**person**” does not include the local government.

5. Clause 1.2 amended

- (1) The first line of clause 1.2 is renumbered as subclause (1).
(2) At the end of subclause 1.2(1)(c), delete “and”.

- (3) At the end of subclause 1.2(1)(d), delete the full stop and insert “; and”.
- (4) Insert a new subclause 1.2(1)(e) as follows:
 - (e) do not apply to the carrying out of an extractive industry on a lot by the owner or occupier of that lot where the material extracted is not sold and is used solely on that lot or on an adjacent lot owned or occupied by the person carrying out the extractive industry.
- (5) Insert a new subclause 1.2(2) as follows:
 - (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 shall 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 shall 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 any conditions 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 shall cease, provided that the local government shall give written notice to the person carrying out the extractive industry which allows a minimum 28 days for the cessation of operations;

6. Clause 2.1 amended

At the end of clause 2.1, delete “Penalty \$5000 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.”

7. Clause 2.2 amended

Delete clause 2.2 and insert the following:

2.2 Application for Licence

- (1) A person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with –
 - (a) The application fee as prescribed by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act.
 - (b) A site plan, including a plan of the area of extraction at a scale of not less than 1:1000, and including the following:
 - (i) area depth and volume of extraction (existing and proposed final contours at 1 metre intervals);
 - (ii) distances from lot boundaries and all dwellings and other sensitive uses within a 1km radius of the extraction site;
 - (iii) road frontages and property access;
 - (iv) details of existing and surrounding land uses;
 - (v) existing vegetation, wetlands and watercourses, and distance to the proposed area of extraction;
 - (vi) area, height and volume of material and top soil stockpiles; and
 - (vii) the location of any buildings associated with the proposal.
 - (c) A report addressing and/or including the following –
 - (i) type of material to be excavated;
 - (ii) details of methods of extraction, including any crushing or blasting, or whether extraction only;
 - (iii) hours of operation (including crushing, blasting and excavation);
 - (iv) storage of chemicals;
 - (v) estimated completion date;
 - (vi) type of equipment to be used, including size of trucks and machinery;
 - (vii) maintenance and any refuelling of trucks on site;
 - (viii) number of truck movements per day/week;
 - (ix) details of staging;
 - (x) proposed haulage routes and destinations;
 - (xi) proposed road warning signage;

- (xii) noise, dust and vibration abatement measures;
- (xiii) visual impact assessment, with particular reference to major roads, tourist routes and interest points, and surrounding properties and structures;
- (xiv) drainage implications including surface and ground water impacts;
- (xv) proposed end use of site;
- (xvi) a detailed rehabilitation plan including types of materials, staging, source of materials, re-contouring, replacement of topsoil, screen planting and revegetation (vegetation species and densities);
- (xvii) assessment of the risk of spreading *Phytophthora* dieback and management techniques appropriate to that level of risk;
- (xviii) management techniques to address potential conflict with surrounding landuses and protection of environmental attributes; and
- (ixx) any other assessment the local government may require, including Aboriginal and European heritage considerations if within a known area of significance.

8. Clause 2.3 deleted

Delete clause 2.3.

9. Clause 3.1 amended

- (1) In subclause 3.1(3)(a) –
 - (a) delete “21” and insert “5”; and
 - (b) following “issue” insert “or such other period so as to be in accordance with the relevant planning approval”.
- (2) In subclause 3.1(4)(a) -
 - (a) delete “31st” and insert “31”; and
 - (b) insert “in accordance with sections 6.16 to 6.19 of the Act” at the end of the subclause.
- (3) In subclause 3.1(4)(b), delete “and”.
- (4) In subclause 3.1(4)(c), delete the comma at the end of the subclause and insert “; and”.
- (5) In subclause 3.1(4)(d), delete the full stop at the end of the subclause and insert a comma.
- (6) Delete “shall issue the licence to the applicant.” between subclauses 3.1(4)(c) and 3.1(4)(d).

- (7) Insert “shall issue the licence to the applicant.” In the next line after subclause 3.1(4)(d).
- (8) In subclause 3.1(5)(b), delete “roads” and insert “thoroughfares”.
- (9) Insert a new subclause 3.1(5)(d) as follows:
 - (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 the trucks;
- (10) In subclause 3.1(5)(i), delete “roads” and insert “thoroughfares”.
- (11) Insert new subclauses 3.1(5)(r) and (s) as follows -
 - (r) requiring the licensee to meet all conditions imposed under the approval issued by the local government in relation to the extractive industry;
 - (s) 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
- (12) Renumber existing subclauses 3.1(5)(d) to (r) accordingly.

10. Clause 3.2 amended

In clause 3.2 –

- (a) delete “31 December” and insert “30 June”.
- (b) insert “and in accordance with sections 6.16 to 6.19 of the Act” at the end of the clause.

11. Clause 5.2 amended

In subclause 5.2(1)(b) –

- (a) delete “then –”; and
- (b) insert “then, subject to the local government giving the licensee 14 days’ notice of its intention to do so,”.

12. Clause 6.1 amended

- (1) In subclause 6.1(c), delete “road” and insert “thoroughfare”; and
- (2) At the end of clause 6.1, delete “Penalty \$2,000”.

13. Clause 6.2 amended

- (1) In clause 6.2, insert “not” immediately following “A licensee must”.
- (2) In subclause 6.2(a) -
 - (a) delete “not” at the beginning of the subclause; and
 - (b) delete “roads” and insert “thoroughfares”.

- (3) Delete subclauses 6.2(b), 6.2(c), 6.2(g), 6.2(h) and 6.2(i) and renumber remaining subclauses accordingly.
- (4) In subclause 6.2(c) -
 - (a) delete “not”; and
 - (b) delete “Minerals and Energy;” and insert “Mines and Petroleum; or”.
- (5) In subclause 6.2(d) -
 - (a) delete “not”; and
 - (b) delete the semi colon and insert a full stop.
- (6) At the end of clause 6.2, 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 during which the offence has continued.”

14. Clause 6.3 amended

- (1) Following subclause 6.3(1)(d), delete “Penalty \$5,000.00 for each offence, and if the 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.”
- (2) Following subclause 6.3(2), delete “Penalty \$2,000”.

15. Clause 6.4 inserted

Insert a new clause 6.4 as follows:

6.4 Obligations of the Licensee

A licensee must –

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign –
 - (i) is not more than 200 metres apart;
 - (ii) is not less than 1.8 metres high and not less than one 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.

16. Clause 7.2 amended

In clause 7.2, insert "1994" following "Mines Safety and Inspection Act" and "1986" following "Environmental Protection Act" in the clause heading.

17. Clause 7.3 amended

In subclause 7.3(1)(b), delete "1" and insert "one".

18. Clause 7.4 amended

At the end of clause 7.4, 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 \$500.00 in respect of each day or part of a day during which the offence has continued."

19. Part 8 amended

Delete "Appeals" in Part 8 heading and insert "Review".

20. Clause 8.1 amended

- (1) Insert clause 8.1 heading "Objections and Review".
- (2) In the final paragraph of clause 8.1, delete "regulations 33 and 34" and insert "regulation 33".

21. Part 9 inserted

Insert a new Part 9 as follows:

PART 9 – ENFORCEMENT

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 Modified Penalties

- (1) An offence against a clause specified in Schedule 1 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 Schedule 1.

9.3 Forms

For the purposes of this local law –

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; 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 *Local Government (Functions and General) Regulations 1996*.

22. Schedule 1 inserted

Insert a new Schedule 1 as follows:

Schedule 1 – Prescribed offences and modified penalties [clause 9.2(1)]

Item	Clause	Description	Modified Penalty \$
1.	2.1(a)	Excavate without a valid and current licence	500
2.	2.1(b)	Carry on extractive industry without licence or in breach of terms and conditions	500
3.	6.1	Excavate near boundary	250
4.	6.2(a)	Removal of trees or shrubs within 40 metres of the boundary without approval	350
5.	6.2(c)	Store without required approval explosives or explosive devices	350
6.	6.2(d)	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	300
8.	6.3(1)(d)	Failure to comply with conditions imposed by the local government in relation to blasting activities	350
9.	6.3(2)	Carry out or permit to be carried out any blasting on Saturday, Sunday, or public holiday without approval	250

10.	6.4(a)	Failure to securely fence and/or keep gateways locked where required	350
11.	6.4(b)	Failure to erect and maintain warning signs where required	350
12.	6.4(c)	Failure to drain and keep drained any excavation to which the licence applies	350
13.	6.4(f)	Failure to comply with the conditions of licence imposed by the local government	500
14.		All other offences not specified	200

Dated this Sixth day of July 2015

The Common Seal of the Shire of Gingin)
was affixed by authority)
of a resolution of the Council in the)
presence of:)

M ASPINALL
Shire President

J EDWARDS
Chief Executive Officer