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Attachments:

Local Law Application Form

Local Law Licence Form

AIMS

To guide proponents of proposed extractive industries as to the requirements of an application to Council for the approvals required both under Town Planning Scheme No. 3 and the Shire of Denmark Extractive Industry Local Law.

OBJECTIVES

- 1. To provide Council prospective developers with guidelines for the processing of applications for extractive industries.*
- 2. To protect the environmental and landscape values and qualities of Denmark with its diverse economy ranging from rural production, horticultural production to tourism.*
- 3. To allow for the consideration of extractive industries in appropriate locations and to ensure such industries are operated in a correct and appropriate manner.*
- 4. To clearly and simply set out the requirements of the Shire of Denmark for applicants making an application for approval of an extractive industry.*

APPLICATION

- All freehold land within the Shire of Denmark.*
- This policy is to be read in conjunction with the Shire of Denmark Extractive Industry Local Law 2001.*

1.0 INTRODUCTION

- 1.1 The Shire of Denmark Extractive Industry Local Law was published in the Government Gazette on 29th May, 2001. That Local Law took effect from 14th June, 2001.
- 1.2 Council on 14th May, 2002 agreed to a range of fees to be levied for various requirements of the Local Law. Those fees were to be incorporated into Council's Budget proposals for 2002-2003.
- 1.3 Council also on 14th May, 2002 agreed to the format of forms needed for an application and for the licence.
- 1.4 As part of its consideration of this Local Law Council on 14th May, 2002 requested the preparation of this Town Planning Scheme Policy to aid the operation and use of the Local Law.
- 1.5 An extractive industry is defined in Town Planning Scheme No. 3 as follows:

means an industry which involves:
 - (a) the extraction of sand, gravel, clay, turf, soil, rock, stone, minerals, or similar substance from the land, and also the storage, treatment or manufacture of products from those materials when carried out on the land from which any of those materials is extracted or on land adjacent thereto; or
 - (b) the production of salt by the evaporation of sea water.
- 1.6 In respect to the Local Law to carry on an extractive industry means "quarrying and excavating for stone, gravel, sand and other material". The term "excavation" includes "quarry".

2.0 EXTRACTIVE INDUSTRY CLASSIFICATION AND GENERAL REQUIREMENTS

- 2.1 In order to determine what level of information is required for an extractive industry application, a three class rating system has been developed ranging from Class 1 (small scale) to Class 3 (large scale/commercial). As stipulated in Table 1 below, a Class 3 extractive industry would require more information than a Class 1, as the potential impacts of the development are likely to be more profound. The criteria for each of the three classes are detailed below, along with common examples pertinent to each Class.
- 2.2 Class 1 – An application will be given a Class 1 rating where the following applies:
 - The size of the extraction site is less than or equal to 7500m² or 0.75 hectares, and/or
 - Maximum depth of excavation does not exceed 1.5 metres

Examples of a Class 1 Extractive Industry include the short term extraction of gravel or sand for localised construction purposes such as the maintenance of rural roads, and the construction of dwellings and driveways.

2.3 Class 2 – An application will be given a Class 2 rating where the following applies:

- The size of the extraction site is between 0.75 hectares and three (3) hectares, and/or
- Maximum depth of excavation does not exceed 3 metres

Examples of a Class 2 Extractive Industry include the regular extraction of sand, gravel or limestone to supply the local market, predominantly for the local building industry. Some companies have exclusive use of such extraction pits (either owned or leased), in order to construct driveways, and provide clean fill to housing sites.

2.4 Class 3 – An application will be given a Class 3 rating where the following applies:

- Where the extraction site is greater than three (3) hectares in size and the depth exceeds 3 metres.

Examples of a Class 3 Extractive Industry would include the extraction of sand, gravel, rock or limestone for the purposes of supplying the local, state and international markets. Example would be a large lime quarry, which is likely to excavate to a depth in excess of 10-15 metres, and be open for several years depending on the level of resource.

2.5 General Requirements

2.5.1 Notwithstanding the specific requirements as detailed within Table One below and the Extractive Industry Local Law, the following general requirements shall apply to extractive industry proposals:

- No excavation is to occur within 200 metres of a house not located on the subject property;
- Buffers in accordance with DEP requirements to be accommodated within the boundaries of the subject property;
- The proposed pit is to be setback a minimum of 40 metres from any public road;
- No excavation is to occur within 50 metres of a water course or water body;
- No more than 20 percent of the proposed pit area is to consist of remnant vegetation, and should vegetation be affected, this area should not represent the only significant stand of vegetation on the site;

- Class 1 and 2 extractive industries are to provide a written statement verifying that they have complied with all conditions of their planning consent at the time of annual renewal.

3.0 INFORMATION REQUIRED FOR EACH CLASS

- 3.1 The following Table 1 details what information is required for each extractive industry class. Before applying this Table, the application needs to be classed as a Class 1, 2 or 3 as described in section 2.0 above.

TABLE 1
Information required when applying for an Extractive Industry under the
Shire of Denmark Extractive Industry Local Law

Key – ‘X’ = not required, ‘√’ = required, & ‘D’ = subject to detail (see notes)

Information Type	Class 1	Class 2	Class 3
(A) Three (3) copies of site plan to a scale between 1:500 and 1:2000 showing:			
(i) The existing and proposed land contours based on the Australian Height Datum and plotted at 1m contour intervals.	X	√	√
(ii) Description of Land which the extractive industry 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 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.	√	√	√
(vi) The location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land.	√	√	√
(vii) The location of existing power lines, telephone 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.	√	√	√
(viii) The location of all existing dams, watercourses, drains or sumps on or adjacent to the land.	D (only in vicinity of extraction site)	√	√
(ix) The location and description of existing and proposed fences, gates and warning signs around the land.	X	D (only in vicinity of major road)	√
(x) The location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere.	X	√	√
(B) Three (3) copies of a works and excavation program containing:			
(i) The nature and estimated duration of the proposed extraction for which the licence is applied.	√	√	√

(ii)	The stages and the timing of the stages in which it is proposed to carry out the extraction.	X	D (Only if extraction site is greater than 2 hectares)	√
(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 the 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.	X	√	√
(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.	X	√	√
(ix)	A description of any proposed buildings, treatment plant, tanks and other improvements.	D (only in vicinity of extraction site)	√	√
(x)	Details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained.	X	√	√
(xi)	A description of the measures to be taken to minimise dust nuisance, erosion, watercourse siltation and dangers to the general public.	√	√	√
(xii)	A description of the measures to be taken to comply with the Environmental Protection Noise Regulations 1997.	X	D (Applicable where a residence is within 300m of extraction site)	√
(xiii)	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.	X	D (applicable where remnant vegetation and water-courses are found on the property)	√
(xiv)	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.	D (Applicable if remnant vegetation will be affected by the proposed excavation site)	√	√
(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) Three (3) copies of a rehabilitation and decommissioning program indicating:				
(i)	The objectives of the program, having due regard to the nature of the surrounding area and proposed end-use of the 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 batters sloped.	X	√	√
(xvi)	The method by which topsoil is to be replaced and revegetated.	√	√	√
(xvii)	The number and type of trees and shrubs to be planted and other landscaping features to be developed.	D (only applicable where remnant vegetation has been cleared)	√	√
(xviii)	How rehabilitated areas are to be maintained.	√	√	√
(xix)	The program for the removal of buildings, plant, waste and final site cleanup	X	√	√
(D) Evidence of Datum Peg / Surveyors Certificate				
(i)	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.	D (only if access onto public thoroughfare is from a major road, or where sight distances may be compromised)	√	√
(ii)	A certificate from a licenced surveyor certifying the correctness of: (a) the approved excavation site plan; (b) the datum peg and related point referred to in D(i); and (c) pegs to mark external boundary of extraction area.	X	D (when pit area is in excess of 2 hectares)	√
(iii)	Copies of all land use planning approvals required under any planning legislation.	√	√	√
(iv)	The consent in writing to the application from the owner of the excavation site.	√	√	√
(v)	Evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the Soil and Land Conservation Regulations 1992.	X	D (only if clearing of vegetation required)	D (only if clearing of vegetation required)
(vi)	The licence application fee specified by the local government from time to time.	√	√	√

- 3.2 Applicants must ensure the consultation process with owners and occupiers of all adjoining land, any relevant government agency, a notice in a local newspaper and if necessary a sign being placed on site has been carried out in accordance with the Local Law requirements (Section 2.2).

4.0 OTHER ISSUES

4.1 VISUAL

- 4.1.1 Of extreme importance to Council is the potential visual impact any proposed development may have on the scenic qualities of the district. This is evident in the Objectives of Council's Rural Settlement Strategy and any proposals for development particularly on the key strategic tourist routes, will be considered in the light of their visual impact.

The key strategic tourist routes identified in the Rural Settlement Strategy are Scotsdale Road, Mt Shadforth Road, William Bay Road, Parry's Beach Road, McLeod Road, Peaceful Bay Road, Valley of the Giants Road and South Coast Highway. For the purposes of this policy, other important tourist routes include Ocean Beach Road and the Denmark-Mt Barker Road.

- 4.1.2 Measures which can be used to reduce visual impacts are boundary setbacks, appropriately designed and located landscaping and the use of natural coloured external building materials and finishes on any structures.
- 4.1.3 Each individual proposal for development of an extractive industry will be considered on its merits in respect to visual amenity.

4.2 ENVIRONMENTAL

- 4.2.1 Extractive industries can have various environmental impacts hence the need for certain aspects of detail in the Extractive Industries Local Law in particular details of rehabilitation.
- 4.2.2 Council is committed to ensure that for all pits and quarries for extraction of basic raw materials, environmental management of the extraction operation and rehabilitation of the disturbed land will be carried out to support the intended end-use of the site.
- 4.2.3 A prerequisite for all new sites will be a written environmental management plan to be implemented by the operator of the site. The plan will generally follow the methods described in Environmental Management of Quarries: Development, Operation and Rehabilitation Guidelines, Department of Minerals and Energy, November 1994. The section in this guideline on monitoring rehabilitation treatments to ensure objectives are met will be included in the plan and will involve at least annual inspections by the operator for 3 years after initial rehabilitation work is completed. Corrective action will be implemented as necessary.
- 4.2.4 Visual, noise, dust and lighting impacts will be minimized by appropriate measures including establishment of barriers and buffer zones between the excavations and the public and the restriction of the hours of operation to daylight hours for example.
- 4.2.5 If applicable to the intended end use of the site, vegetation, topsoil and overburden will be stockpiled separately for respreading over the area as part of the rehabilitation process. Water ponding or erosion will be minimized by suitable drainage measures.
- 4.2.6 For large or long term excavations, progressive rehabilitation will be carried out.

4.2.7 For sites to be rehabilitated back to pasture, the area will be ripped along the contours, the land leveled and battered down as much as possible, the overburden and topsoil respread and the area reseeded and fertilized. If necessary, the area will be temporarily fenced to exclude grazing stock.

4.2.8 For bush sites, if respread vegetation is unlikely to result in successful plant rehabilitation, local plant species seeds will be collected to supplement regrowth. Seed collection and reseeded will be done at the appropriate time of the year to maximize germination. If necessary, seedlings will be planted.

The method for rehabilitation will be:

- Rip the pit floor at 1 metre spacing across the contours
- Level/batter the pit with sides no steeper than 1 measure verticle to 4 horizontal
- Respread overburden
- Respread topsoil
- Crossrip at 1 metre spacing along the contours
- Respread stockpiled vegetation
- Reseed and replant if necessary
- Fence to exclude grazing stock if applicable

4.2.9 Disused pits and quarries should be progressively rehabilitated, as much as possible by the methods used for new sites. The rehabilitation program will be implemented in the most cost efficient way such as performing the works when plant and construction/maintenance crews are in the area for other jobs. If no topsoil or overburden is available at the site for respreading, this type of material will be carted in.

4.2.10 An annual evaluation report on the rehabilitation program will be submitted to Council.

4.2.11 All proposals will need to comply with Council's Town Planning Scheme Policy 1 (Dieback Disease Management).

4.3 TRAFFIC

4.3.1 Council will have regard to potential traffic impacts created by extractive industry operations when considering applications for approval.

4.3.2 These traffic impacts can consist of things such as:

- Traffic conflict resulting from the operator's vehicles going to and from the site needing to mix with local traffic including school buses.
- Damage to the road network by heavy laden vehicles removing materials from the operation; and
- Heavy laden vehicles traveling through residential areas, the CBD and past schools.

5.0 SUBMITTING AN APPLICATION

- 5.1 For those applications identified as being Class 1, the Local Law application form (attached) shall be submitted along with an application for Planning Consent, and the necessary fee.
- 5.2 Those applications which are identified as being Class 2 or 3, shall address the criteria as stipulated in the above Table 1, in addition to submitting an application for Planning Consent and the necessary fee. If the above information is not submitted, a decision on the application will not be made pending receipt of the needed information. Where a requirement is discretionary ('D') as indicated in Table 1, the applicant is required to establish whether the requirement is relevant to the application.
- 5.3 Council will issue its decision on a Notice of Approval/Refusal of Planning Consent in respect to the Planning Consent application and the applicant will be advised of the appeal rights that exist.
- 5.4 Council, if it approves an extractive industry proposal will also issue the necessary licence required under the Extractive Industry Local Law (copy attached).

6.0 EXISTING LAWFUL EXTRACTIVE INDUSTRIES

- 6.1 Existing extractive industries are those which were operational lawfully prior to the coming into force of this Policy (eg. the Lime Quarry at Ocean Beach).
- 6.2 No provision of this Policy shall prevent the continued use of an extractive industry for which, immediately prior to this Policy coming into operation, all licences and approvals required to authorize the extractive industry, were duly obtained and are current.

7.0 ENFORCEMENT

- 7.1 The Council has powers to enforce compliance with the approvals and conditions it issues for extractive industries.
- 7.2 The Council may serve an enforcement notice upon a non-complying operator, and the notice shall specify the following:
 - the extractive industry in question;
 - full details of the action to be taken by the operator/owner to comply with the notice;
 - the period (which will not be less than 28 days) within which the action specified by the Council shall be completed by the operator/owner.

- 7.3 The extractive industries addressed by this Policy which do not have Council approval shall be closed and rehabilitated within 28 days or such other specified time of the owner of the extractive industry being advised by an enforcement notice to do so by Council.
- 7.4 Any person upon whom an enforcement notice is served may, within a period of 60 days from the date of the notice, appeal against the Council's action – either to the Minister for Planning and Infrastructure or to the Town Planning Appeal Tribunal. Where any such appeal is lodged, the effect of the notice shall be suspended until the appeal is determined.
- 7.5 Any person who fails to comply with the requirements of an enforcement notice commits an offence as set out in Town Planning Scheme No 3 and is liable to the penalties prescribed in section 10 of the Town Planning & Development Act 1928 (as amended).
- 7.6 If a person fails to comply with the requirements of the enforcement notice, representatives of the Council may enter the subject land and carry out the requirements of the notice and Council may then recover its costs as a debt from the person who failed to comply with the enforcement notice.
- 7.7 Notwithstanding the above, the Shire of Denmark Extractive Industry Local Law contains various requirements relative to enforcement, objections and appeals and penalties under the Local Government Act which must be considered.

8.0 FEES

- 8.1 Council may charge a fee in respect to applications for planning consent for extractive industries which are classified as 'AA' discretionary in the Rural Zone under TPS No. 3.
- 8.2 The Shire of Denmark Extractive Industry Local Law sets various stages where fees are required to be paid.
- 8.3 The fees referred to at 8.1 and 8.2 are set each financial year in Council's Budget.

Adopted on 13th August, 2002 in accordance with clause 8.2 of Town Planning Scheme No. 3.