

## **LOCKHART RIVER ABORIGINAL COUNCIL BY-LAWS**

### **CHAPTER 16 – EXTRACTIVE INDUSTRIES**

#### ***Definition***

1. In this Chapter, the term ‘Extractive Industry’ includes any industry involving the extraction of sand, gravel, clay, turf, soil, rock, stone or similar substance from land and includes, when carried out on the land adjacent thereto, the treatment of such substances and the manufacture of products from such substances.

#### ***Permit Required***

2. (i) A person shall not carry on, or cause to be carried on, nor be concerned in the carrying on of an Extractive Industry on land within the Area without first obtaining a permit from the Council so to do.

(ii) An owner or an occupier of land within the Area shall not permit or suffer another person to carry on an Extractive Industry on such land unless such other person shall have first obtained a permit from the Council so to do.

(iii) An application for a permit under this Chapter shall be accompanied by an application fee of such amount as the Council may fix by resolution.

#### ***Advertisement of Intention to Make Application***

3. A person who desires to obtain a permit from the Council under this Chapter shall, before making application for such permit, cause public notice of his intention to make application to be given-

- (a) by advertisement published at least once in a newspaper circulating in the Area. Such advertisement shall set out particulars of the proposed application and shall state that objection in writing to the granting of the application may be lodged with the Council on or before the date specified in such advertisement (which date shall be not earlier than fourteen (14) days after the date of the publication of the advertisement or, if such advertisement is published more than once, the date of its publication); and
- (b) by posting a copy of such advertisement on the land in question. The copy of such advertisement posted on the land shall be not less than 0.6 metres in height, not less than 0.589 square metres in area and all lettering thereof shall be not less than 50 millimetres in height and the copy shall be posted not more than 1.75 metres from the road alignment of the land and so as to be clearly visible from the road and shall be kept so posted at all times during the period of fourteen (14) days next preceding the date stated in the advertisement as the date on or before which objections may be lodged with the Council.

### ***Application for Permit***

4. (i) An application for the issue of a permit under this Chapter shall-
- (a) be in writing;
  - (b) be accompanied by two (2) copies of a plan showing-
    - (i) Sufficient detail to enable the Council to understand the nature of the proposed excavation;
    - (ii) The location, together with the name and description of the occupier and/or owner of the land;
    - (iii) The limits of the area proposed to be excavated;
    - (iv) The depth and extent of the proposed excavation;
    - (v) The existing contours of the land;
    - (vi) The estimated depth and description of the over-burden present; and
    - (vii) The location of any existing or proposed buildings, so far as is known.
  - (ii) The accompanying plans shall in addition to the requirements of clause (i) of this by-law, clearly indicate the distance of the proposed excavation from adjoining drains, watercourses, roads, footpaths, buildings and other structures.
  - (iii) An applicant for a permit under this Chapter shall give to the Council such additional information concerning the proposed excavation, as the Council may reasonably require.

### ***Refusal of Permit***

5. The Council may refuse an application for a permit under this Chapter if-
- (a) the proposed site is in a locality, which in the opinion of the Council, is or probably will become a residential locality;
  - (b) the use of the proposed site for Extractive Industry would, in the opinion of the Council, be likely to mar an amenity or the scenic beauty of the locality;
  - (c) the roads giving access to the proposed site are not, in the opinion of the Council, constructed to a standard sufficient to carry traffic of the nature that the Extractive Industry would be likely to engender; or
  - (d) the Council considers that the application should be refused for good cause shown including that it is not in the interests of the Community.

### ***Points of Ingress and Egress***

6. (i) Each entrance to or exit from a site of an Extractive Industry shall be between 6 metres and 9 metres wide and be situated at least 9 metres from any other entrance to or exit from the site.
- (ii) Each entrance to or exit from a site of an Extractive Industry shall be so located as not to, in the opinion of the Council, create a new traffic hazard or increase an existing traffic hazard.

### ***Fencing***

7. (i) So much of the site as contains an excavation that is 1.25 metres or more below the level of the unexcavated ground immediately alongside it shall be enclosed by a fence at least 2 metres high.

(ii) The fence required by clause (i) of this by-law shall be so constructed and maintained that a person cannot enter the site except by climbing over the fence or by passing through a gateway.

(iii) Such gate in the fence required by clause (i) of this bylaw shall be of the same height as the fence and shall be so constructed and maintained that a person cannot enter the site except by passing through the open gate or by climbing over the closed gate.

(iv) Every gate shall be kept locked except when the person conducting the Extractive Industry or an employee of such person is on the site.

(v) The Council may modify or dispense with the provisions of this by-law in respect of land situated outside a township, where it is satisfied that the circumstances thereof warrant such modification or dispensation.

### ***Safety Precautions***

8. (i) Water shall not be allowed to accumulate so as to exceed 1 metre in depth in any uncovered excavation on the site.

(ii) The provisions of clause (i) of this by-law do not apply to a settling pond used in connection with the winning of sand by hydraulic sluicing.

### ***Mode of Operation***

9. (i) All processes of Extractive Industry are prohibited within-

(a) 18 metres of a road;

(b) 9 metres of land that is not being used for Extractive Industry

(ii) A person shall not cause or allow clay, gravel, rock, sand, silt, sludge, soil, stone or over-burden resulting from Extractive

Industry to-

(a) enter a swamp, watercourse or water storage;

(b) enter a drain or sewer;

(c) enter a drainage or sewerage easement;

(d) cause injury to or interference with the use of land that is not being used for Extractive Industry.

(iii) All buildings or other structures and stockpiles shall be so located and maintained as to prevent dust, sand or soil blowing on to a road or land that is not being used for such Extractive Industry.

(iv) A person shall not take an excavation to a greater depth than is authorised by the Council permits in respect of such excavation.

### ***Tree Planting and Maintenance***

10. (i) Shrubs and trees shall be so planted and maintained as to screen effectively and to the satisfaction of the Council, the activities on the site, from a person standing at ground level on any part of land used for residential purposes.

(ii) The Council may permit the planting of young shrubs and trees which when planted are not of sufficient height or development to comply with clause (i) of this by-law.

(iii) The Council may by resolution modify or dispense with the provisions of clause (i) of this by-law on the grounds that compliance therewith would be unreasonable.

### ***Land Reclamation***

11. (i) Where the Council is of that opinion that reclamation of an excavation, the subject of a permit under this Chapter, will be necessary-

(a) an applicant for a permit under this Chapter shall deposit with the Council, before the issue of a permit, such amount not exceeding two thousand dollars (\$2000) as the Council may, by resolution, determine, to be retained by the Council until the Extractive Industry ceases on the subject land, and until the permittee shall have complied with the provisions of this by-law, provided that the Council may accept a bond guaranteed by a Bank or an Insurance Company in lieu of such deposit;

(b)-

(i) if the permittee shall progressively reclaim such excavation to the satisfaction of the Council, and ensure that the excavation remaining to be reclaimed shall not at any time by measurement exceed the excavation that could be reclaimed if the deposit referred to in paragraph (a) of this clause were used to pay for such reclamation at the rate fixed by the Council by resolution;

(ii) if such excavation is being filled, refuse and rubbish from the Council shall be accepted as filling, without fee, on its being delivered to the site;

(iii) if vegetable or other matter likely to attract vermin or flies is used in the filling of such excavation, it shall be used and covered as directed by the Engineer or other Authorised Officer of the Council;

(c) The permittee shall ensure that-

(i) any face permitted to remain in the excavation is so sloped or battered as to remain stable, with all loose material removed therefrom;

(ii) any such slopes are planted with protective vegetation as directed by the Engineer or the Council;

(d) The permittee shall within three (3) years after Extractive Industry ceases on the subject land, complete the reclamation to the satisfaction of the Council.

(ii) Any deposit paid to the Council pursuant to clause (i) of this by-law shall be placed in the Council's Trust Fund, and all interest derived therefrom shall be added to the deposit, and credited to the permittee.

(iii) Where the permittee is convicted of a breach of the provisions of paragraph (b) of clause (i) of this by-law, or fails to comply with the provision of paragraph (c) or (d) of clause (i) of this by-law, the Council may cause the necessary work to be carried out and may deduct the cost thereof from the moneys deposited by the permittee including any interest accrued thereon, and if such cost exceeds the amount of the deposit and any interest accrued thereon, the permittee shall forthwith, on demand, pay to the Council the amount of such excess.

- (iv) Upon the completion of the works referred to in clause (i) of this by-law, the deposit (if any) and any interest accrued thereon or the balance of the deposit and any interest accrued thereon, as the case may be, shall be paid to the permittee.

***Penalties***

12. A person who, either by act or omission, contravenes the by-laws of this Chapter, or being the owner or occupier of land within the Area knowingly permits any act or omission on such and in contravention of such by-laws, shall be guilty of an offence.