



ORDINARY MEETING OF COUNCIL
20 May 2021

ATTACHMENTS PROVIDED UNDER SEPARATE COVER

ATTACHMENTS RELATE TO ITEM 15.05.21.01 – DRAFT LOCAL GOVERNMENT (MEETING PROCEDURE) LOCAL LAW 2021, AND REPEAL OF EXTRACTIVE INDUSTRY LOCAL LAW 2011

Attachment 15.05.21.01A – Local Government (Meeting Procedures) Local Law 2021

Attachment 15.05.21.01B – Shire of Brookton Extractive Industries Local Law 2011



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WESTERN AUSTRALIA

Local Government Act 1995

Shire of Brookton
Local Government (Meeting Procedures) Local Law 2021

ARRANGEMENT

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LOCAL GOVERNMENT ACT 1995

Shire of Brookton

Local Government (Meeting Procedures) Local Law 2021

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Shire of Brookton resolved on the 17th of December 2020 to make the following local law.

Part 1 - Preliminary

1.1 Citation

This local law may be cited as the Shire of Brookton Local Government (Meeting Procedures) Local Law 2021.

1.2 Commencement

By virtue of section 3.14 of the Act, these Local Laws come into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 Application and intent

- (1) These Local Laws provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and these Local Laws.
- (3) These Local Laws are intended to result in:
 - (a) better decision-making by the Council and committees;
 - (b) the orderly conduct of meetings dealing with Council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

- (1) In these Local Laws unless the context otherwise requires:

absolute majority has the meaning given to it in the Act;

75% majority has the meaning given to it in the Act;

Act means the *Local Government Act 1995*;

CEO means the Chief Executive Officer of the Local Government;

committee means a committee of the Council established under section 5.8 of the Act;

committee meeting means a meeting of a committee;

Council means the Council of the Shire of Brookton;

District means the district of the local government;

Local Government means the Shire of Brookton;

President means the President of the Local Government or other Presiding Member at a Council meeting under section 5.6 of the Act;

meeting means a meeting of the Council or a committee, as the context requires;

Member has the meaning given to it in the Act;

Presiding Member means:

- (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
- (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;

Regulations means the *Local Government (Administration) Regulations 1996*;

simple majority means more than 50% of the members present and voting; and,

substantive motion means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.

- (2) Unless otherwise defined in these Local Laws, the terms and expressions used in these Local Laws are to have the meaning given to them in the Act and Regulations.

1.5 Provisions of the Act, Regulations and other legislation

- (1) Throughout these Local Laws, provisions of the Act and Regulations, and provisions of other legislation, are reproduced in a boxed format.
- (2) The purpose of reproducing these provisions is to assist the reader by giving a fuller picture of related legislative provisions that also apply to meetings of the Council, committees and electors.
- (3) The reproduced provisions of the Act and Regulations and other legislation:
 - (a) are to be treated as footnotes and are not part of these Local Laws (see section 32(2) of the *Interpretation Act 1984*); and
 - (b) reproduce only the provisions that were in force at the time that the Council resolved to adopt these Local Laws and therefore may not necessarily be correct at a future date.

Part 2 – Establishment and membership of committees

2.1 Establishment of committees

- (1) The establishment of committees is dealt with in the Act.
- (2) A Council resolution to establish a committee under section 5.8 of the Act is to include:
 - (a) the terms of reference of the committee;
 - (b) the number of Council members, officers and other persons to be appointed to the committee;

- (c) the names or titles of the council members and officers to be appointed to the committee;
- (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
- (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.

(3) These Local Laws are to apply to the conduct of committee meetings.

2.2 Types of committees

The types of committees are dealt with in the Act.

2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

2.4 Limits on delegation of powers and duties to certain committees

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

2.5 Appointment of committee members

The appointment of committee members is dealt with in the Act.

2.6 Tenure of committee membership

Tenure of committee membership is dealt with in the Act.

2.7 Resignation of committee members

The resignation of committee members is dealt with in the Regulations.

2.8 Register of delegations to committees

The register of delegations to committees is dealt with in the Act.

2.9 Committees to report

A committee:

- (a) is answerable to the Council; and
- (b) is to report on its activities when, and to the extent, required by the Council.

Part 3 - Calling and convening meetings

3.1 Ordinary and special Council meetings

- (1) Ordinary and special Council meetings are dealt with in the Act.
- (2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.

- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

3.3 Convening Council meetings

- (1) The convening of a Council meeting is dealt with in the Act.
- (2) Subject to subclause (3), the CEO is to give at least 72 hours notice, for the purposes of section 5.5, in convening a special meeting of the Council.
- (3) Where, in the opinion of the President or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

3.4 Calling committee meetings

The CEO is to call a meeting of any committee when requested by the President, the Presiding Member of a committee or any two members of that committee.

3.5 Public notice of meetings

Public notice of meetings is dealt with in the Regulations.

Part 4 – Presiding Member and quorum

Division 1: Who presides

4.1 Who presides

Who presides at a Council meeting is dealt with in the Act.

4.2 When the Deputy President can act

When the Deputy President can act is dealt with in the Act.

4.3 Who acts if no President

Who acts if there is no President is dealt with in the Act.

4.4 Election of Presiding Members of committees

The election of Presiding Members of committees and their deputies is dealt with in the Act.

4.5 Election of Deputy Presiding Members of committees

The election of Deputy Presiding Members of committees is dealt with in the Act.

4.6 Functions of Deputy Presiding Members

The functions of Deputy Presiding Members are dealt with in the Act.

4.7 Who acts if no Presiding Member

Who acts if no Presiding Member is dealt with in the Act.

Division 2 – Quorum

4.8 Quorum for meetings

The quorum for meetings is dealt with in the Act.

4.9 Reduction of quorum for Council meetings

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

4.10 Reduction of quorum for committee meetings

The reduction of a quorum for committee meetings is dealt with in the Act.

4.11 Procedure where no quorum to begin a meeting

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

4.12 Procedure where quorum not present during a meeting

If at any time during a meeting a quorum is not present, the Presiding Member is:

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

4.13 Names to be recorded

At any meeting:

- (a) at which there is not a quorum present; or
 - (b) which is adjourned for want of a quorum,
- the names of the Members then present are to be recorded in the minutes.

Part 5 - Business of a meeting

5.1 Business to be specified

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or the Council.
- (2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.
- (3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that:

- (a) specified in the notice of the meeting which had been adjourned; and
 - (b) which remains unresolved.
- (4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 9) at that ordinary meeting.

5.2 Order of business

- (1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows:
 - 1. Declaration of Opening/Announcement of Visitors
 - 2. Announcements from the Presiding Member
 - 3. Attendance
 - 3.1 Apologies
 - 3.2 Approved leave of absence
 - 4. Declaration of interest
 - 5. Public Question Time
 - 5.1 Response to previous public questions taken on notice
 - 5.2 Public question time
 - 6. Applications for leave of absence
 - 7. Confirmation of minutes
 - 8. Presentations
 - 8.1 Petitions
 - 8.2 Presentations
 - 8.3 Deputations
 - 8.4 Delegates' reports
 - 9. Method of dealing with agenda business
 - 10. Reports
 - 11. Motions of which previous notice has been given
 - 12. Questions from Members without notice
 - 13. New business of an urgent nature introduced by decision of the meeting
 - 14. Meeting closed to public
 - 14.1 Matters for which the meeting may be closed
 - 14.2 Public reading of resolutions that may be made public
 - 15. Closure
- (2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.
- (3) In determining the order of business for any meeting of the Council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed. *[See section 5.24 of the Act; and regulations 6 & 7 of the Regulations]*

5.3 Motions of which previous notice has been given

- (1) Unless the Act, Regulations or these Local Laws otherwise provide, a Member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.
- (2) A notice of motion under subclause (1) is to be given at least 14 clear working days before the meeting at which the motion is moved.

- (3) A notice of motion is to relate to the good governance of the district.
- (4) The CEO -
 - (a) may, with the concurrence of the President, exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of these Local Laws or any other written law;
 - (b) will inform Members on each occasion that a notice of motion has been excluded and the reasons for that exclusion;
 - (c) may, after consultation with the Member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
 - (d) may provide to the Council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) A motion of which notice has been given is to lapse unless:
 - (a) the Member who gave notice of it, or some other Member authorised by the originating Member in writing, moves the motion when called on; or
 - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (6) If a notice of motion is given and lapses under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

5.4 New business of an urgent nature

- (1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.
- (2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the Local Government and must be considered and dealt with by the Council before the next meeting.

5.5 Adoption by exception resolution

- (1) In this clause 'adoption by exception resolution' means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the officer recommendation as the Council resolution.
- (2) Subject to subclause (3), the Local Government may pass an adoption by exception resolution.
- (3) An adoption by exception resolution may not be used for a matter:
 - (a) that requires a 75% majority or a special majority;
 - (b) in which an interest has been disclosed;
 - (c) that has been the subject of a petition or deputation;
 - (d) that is a matter on which a Member wishes to make a statement; or
 - (e) that is a matter on which a Member wishes to move a motion that is different to the recommendation.

Part 6 - Public participation

6.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

6.2 Meetings not open to the public

- (1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.
- (2) The Council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.
- (3) If a resolution under subclause (2) is carried:
 - (a) the Presiding Member is to direct everyone to leave the meeting except:
 - (i) the Members;
 - (ii) the CEO; and
 - (iii) any Officer specified by the Presiding Member; and
 - (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.
- (4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the Presiding Member, be removed from the meeting.
- (5) Upon the public again being admitted to the meeting, the Presiding Member, unless the Council or Committee decides otherwise, is to cause the motions passed by the Council or Committee whilst it was proceeding behind closed doors to be read out including the vote of a member or members to be recorded in the minutes under section 5.21 of the Act.
- (6) A person who is a Council member, a Committee member, or an employee is not to publish, or make public any of the discussion taking place on a matter discussed behind closed doors, but this prohibition does not extend to the actual decision made as a result of such discussion and other information properly recorded in the minutes.

6.3 Question time for the public

Question time for the public is dealt with in the Act.

6.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

6.6 Procedures for question time for the public

Procedures for question time for the public are dealt with in the Regulations.

6.7 Other procedures for question time for the public

- (1) A member of the public who raises a question during question time, is to state his or her name and address.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that:
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to:
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where:
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have two minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.9 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council is to either:

- (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either:
 - (a) approve the request and invite the deputation to attend a meeting of the Council; or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting:
 - (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and,
 - (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.
- (4) Any matter which is the subject of a deputation to the Council is not to be decided by the Council until the deputation has completed its presentation.

6.10 Petitions

- (1) A petition is to -
 - (a) be addressed to the President;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request; and
 - (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) Upon receiving a petition, the Local Government is to submit the petition to the Chief Executive Officer to be included in his or her deliberations and report on the matter that is the subject of the petition.
- (3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless:
 - (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

6.11 Presentations

- (1) In this clause, a “presentation” means the acceptance of a gift or an award by the Council on behalf of the Local Government or the community.
- (2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

6.12 Participation at committee meetings

- (1) In this clause a reference to a person is to a person who:
 - (a) is entitled to attend a committee meeting;
 - (b) attends a committee meeting; and
 - (c) is not a member of that committee.

- (2) Without the consent of the Presiding Member, no person is to address a committee meeting.
- (3) The Presiding Member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.
- (4) A person addressing the committee with the consent of the Presiding Member is to cease that address immediately after being directed to do so by the Presiding Member.
- (5) A person who fails to comply with a direction of the Presiding Member under subclause (4) may, by order of the Presiding Member, be removed from the committee room.
- (6) The Council may make a policy dealing with the circumstances in which a person may be given consent to address a committee meeting.

6.13 Council may meet to hear public submissions

- (1) Where an item on the agenda at a Council meeting is contentious and is likely be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.
- (2) The CEO and the President shall set the time and date of the meeting to provide the opportunity to be heard.
- (3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall:
 - (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
 - (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under clause 6.9 to make a deputation on the issue; and
 - (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.
- (4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.
- (5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.
- (6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.
- (7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.
- (8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.

- (9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO's report under subclause (8).

6.14 Public Inspection of agenda materials

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Shire of Brookton Administration Office and on the Local Government's website.

6.15 Confidentiality of information withheld

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be:
 - (a) identified in the agenda of a Council meeting under the item "Matters for which meeting may be closed";
 - (b) marked "*Confidential*" in the agenda; and
 - (c) kept confidential by Officers and Members until the Council resolves otherwise.
- (2) A member or an officer in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.
- (3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

6.16 Recording and communication of proceedings

- (1) A person is not to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member.
- (2) Subclause (1) does not apply if:
 - (a) the recording is performed in accordance with the provisions of a policy adopted by Council; or
 - (b) a recording is performed at the direction of the Presiding Member who must inform the meeting, immediately before the recording is commenced, that such permission has been granted together with the nature and extent of that permission.
- (3) A member is not to use any electronic device or instrument to receive or send information or communicate with another person during a meeting unless permission has first been granted by the Presiding Member.

6.17 Prevention of disturbance

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.

- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the Council.
- (5) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

Part 7 – Conduct of Members

7.1 Members to be in their proper places

- (1) At the first meeting held after each election day, the CEO is to allot, (alphabetically by ward if applicable), a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

7.2 Respect to the Presiding Member

After the business of a Council has been commenced, a Member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

7.3 Titles to be used

A speaker, when referring to the President, Deputy President or Presiding Member, or a Member or Officer, is to use the title of that person's office.

7.4 Advice of entry or departure

During the course of a meeting of the Council, a Member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time of entry or departure.

7.5 Members to indicate their intention to speak

A Member of the Council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council.

7.6 Priority of speaking

- (1) Where two or more Members indicate, at the same time, their intention to speak, the Presiding Member is to decide which Member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A Member is to cease speaking immediately after being asked to do so by the Presiding Member.

7.7 Presiding Member may take part in debates

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with these Local Laws.

7.8 Relevance

- (1) A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The Presiding Member, at any time, may:
 - (a) call the attention of the meeting to:
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order or decorum by a Member; and
 - (b) direct that Member, if speaking, to discontinue his or her speech.
- (3) A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

7.9 Speaking twice

A Member is not to address the Council more than once on any motion or amendment except:

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

7.10 Duration of speeches

- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Presiding Member which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.

7.11 No speaking after conclusion of debate

A Member is not to speak on any motion or amendment:

- (a) after the mover has replied; or
- (b) after the motion has been put.

7.12 No interruption

A Member is not to interrupt another Member who is speaking unless:

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 7.13; or
- (d) to move a procedural motion that the Member be no longer heard (see clause 10(1)(e)).

7.13 Personal explanations

- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.

- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
- (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

7.14 No reopening of discussion

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 15).

7.15 Adverse reflection

- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 15).
- (2) A Member is not:
 - (a) to reflect adversely on the character or actions of another Member or Officer; or
 - (b) to impute any motive to a Member or Officer, unless the meeting resolves, without debate, that the motion then before the meeting cannot otherwise be adequately considered.
- (3) A Member is not to use offensive or objectionable expressions in reference to any Member, Officer or other person.
- (4) If a Member specifically requests, immediately after their use, that any particular words used by a Member be recorded in the minutes:
 - (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
 - (b) the Council may, by resolution, decide to record those words in the minutes.

7.16 Withdrawal of offensive language

- (1) A Member who, in the opinion of the Presiding Member, uses an expression which:
 - (a) in the absence of a resolution under clause 7.15:
 - (i) reflects adversely on the character or actions of another Member or Officer; or
 - (ii) imputes any motive to a Member or Officer; or
 - (b) is offensive or insulting,
 must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.
- (2) If a Member fails to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may refuse to hear the Member further on the matter then under discussion and call on the next speaker.

Part 8 - Preserving order

8.1 Presiding Member to preserve order

- (1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any Member to order.
- (2) When the Presiding Member speaks during a debate, any Member then speaking, or indicating that he or she wishes to speak, is immediately to sit down and every Member present is to preserve strict silence so that the Presiding Member may be heard without interruption.
- (3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 7.7, but to preserve order.

8.2 Point of order

- (1) A Member may object, by way of a point of order, only to a breach of:
 - (a) any of these Local Laws; or
 - (b) any other written law.
- (2) Despite anything in these Local Laws to the contrary, a point of order:
 - (a) takes precedence over any discussion; and
 - (b) until determined, suspends the consideration or discussion of any other matter.

8.3 Procedures on a point of order

- (1) A Member who is addressing the Presiding Member is not to be interrupted except on a point of order.
- (2) A Member interrupted on a point of order is to resume his or her seat until:
 - (a) the Member raising the point of order has been heard; and
 - (b) the Presiding Member has ruled on the point of order,
 and, if permitted, the Member who has been interrupted may then proceed.

8.4 Calling attention to breach

A Member may, at any time, draw the attention of the Presiding Member to any breach of these Local Laws.

8.5 Ruling by the Presiding Member

- (1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.
- (2) A ruling by the Presiding Member on a point of order:
 - (a) is not to be the subject of debate or comment; and
 - (b) is to be final unless the majority of Members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.
- (3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that:
 - (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
 - (b) a statement made or act done by a Member is out of order, the Presiding Member may require the Member to make an explanation, retraction or apology.

8.6 Continued breach of order

If a Member:

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
 - (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 8.5(3),
- the Presiding Member may direct the Member to refrain from taking any further part in the matter under discussion, other than by voting, and the Member is to comply with that direction.

8.7 Precedence of Presiding Member

- (1) When the Presiding Member rises during the progress of a debate, any member of the Council or Committee then speaking, or offering to speak and every member of the Council or Committee present shall preserve strict silence so that the Presiding Member may be heard without interruption.
- (2) Subclause (1) is not to be used by the Presiding Member other than to preserve order.

8.8 Right of Presiding Member to adjourn

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

Part 9 - Debate of substantive motions

9.1 Motions to be stated and in writing

Any Member who wishes to move a substantive motion or an amendment to a substantive motion:

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

9.2 Motions to be supported

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

9.3 Unopposed business

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any Member opposes it.
- (2) If no Member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a Member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 15).

9.4 Only one substantive motion at a time

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than one substantive motion at any time.

9.5 Order of call in debate

The Presiding Member is to call speakers to a substantive motion in the following order:

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

9.6 Limit of debate

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all Members may not have spoken.

9.7 Member may require Motion to be read

A Member may require the motion or matter under discussion to be read at any time during a debate, but not so as to interrupt any other Member who is speaking.

9.8 Consent of seconder required for alteration

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

9.9 Order of amendments

Any number of amendments may be proposed to a substantive motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn, carried or lost.

9.10 Form of an amendment

An amendment must add, delete, or substitute words to the substantive motion.

9.11 Amendment must not negate original motion

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

9.12 Relevance of amendments

Each amendment is to be relevant to the motion in respect of which it is moved.

9.13 Mover of motion may speak on amendment

Any Member may speak during debate on an amendment.

9.14 Effect of an amendment

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any Member may speak and any further amendment may be moved.

9.15 Withdrawal of motion or amendment

- (1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.
- (2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of Members present, until the amendment proposed has been withdrawn or lost.

9.16 Right of reply

- (1) The mover of a substantive motion has the right of reply.
- (2) The mover of any amendment to a substantive motion has a right of reply.
- (3) The right of the reply may only be exercised:
 - (a) where no amendment is moved to the substantive motion – at the conclusion of the discussion on the motion; or
 - (b) where one or more amendments have been moved to the substantive motion – at the conclusion of the discussion on the substantive motion and any amendments.
- (4) After the mover of the substantive motion has commenced the reply:
 - (a) no other Member is to speak on the motion;
 - (b) there is to be no further discussion on, or any further amendment to, the motion.
- (5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.
- (6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

Part 10 - Procedural motions

10.1 Permissible procedural motions

In addition to the right to move an amendment to a substantive motion (under Part 9), a Member may move the following procedural motions:

- (a) that the debate be adjourned;
- (b) that the meeting now adjourn;
- (c) that the motion be now put;
- (d) that the Member be no longer heard;
- (e) that the ruling of the Presiding Member be disagreed with;
- (f) that the meeting be closed to the public (see clause 6.2).

10.2 No debate

- (1) The mover of a motion specified in paragraph (a), (b), (c) or (f) of clause 10.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.
- (2) The mover of a motion specified in paragraph (c) or (d) of clause 10.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

10.3 Who may move

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

10.4 Procedural motions - right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

10.5 Meeting to proceed to the next business

The motion “that the meeting proceed to the next business”, if carried, has the effect that:

- (a) the debate on the substantive motion or amendment ceases immediately;
- (b) no decision is made on the substantive motion;
- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

10.6 Debate to be adjourned

A motion “that the debate be adjourned”:

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

10.7 Meeting now adjourn

- (1) A Member is not to move or second more than one motion of adjournment during the same sitting of the Council.
- (2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).
- (3) A motion “that the meeting now adjourn”:
 - (a) is to state the time and date to which the meeting is to be adjourned; and
 - (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.
- (4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned unless the Presiding Member or the Council determines otherwise.

10.8 Motion to be put

- (1) If the motion “that the motion be now put”, is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.
- (2) If the motion "that the motion be now put" is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.
- (3) This motion, if lost, causes debate to continue.

10.9 Member to be no longer heard

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

10.10 Ruling of the Presiding Member to be disagreed with

If the motion “that the ruling of the Presiding Member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

Part 11 - Disclosure of interests

11.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

Part 12 - Voting

12.1 Motion - when put

- (1) Immediately after the debate on any Motion is concluded and the right of reply has been exercised, the Presiding Member -
 - (a) is to put the Motion to the Council; and

- (b) if requested by any Member, is to again state the terms of the Motion.
- (2) A Member is not to leave the meeting when the Presiding Member is putting any Motion.

12.2 Voting

Voting is dealt with in the Act and the Regulations.

12.3 Majorities required for decisions

The majorities required for decisions of the Council and committees are dealt with in the Act.

12.4 Method of taking vote

- (1) In taking the vote on any motion or amendment the Presiding Member:
 - (a) is to put the motion, first in the affirmative, and then in the negative;
 - (b) may put the motion in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
 - (c) may accept a vote on the voices or may require a show of hands; and,
 - (d) is, subject to this clause, to declare the result.
- (2) If a Member calls for a show of hands, the result of the vote is to be determined on the count of raised hands.
- (3) If a member of Council or a committee specifically requests that there be recorded -
 - (a) his or her vote; or,
 - (b) the vote of all members present,
 on a matter voted on at a meeting of the Council or committee, the person presiding is to cause the vote or votes, as the case may be, to be recorded in the minutes.
- (4) If a Member calls for a division:
 - (a) those voting in the affirmative are to pass to the right of the Chair; and
 - (b) those voting in the negative are to pass to the left of the Chair.
- (5) For every division, the CEO is to record:
 - (a) the name of each member who voted; and
 - (b) whether he or she voted in the affirmative or negative.

Part 13 – Minutes of meetings

13.1 Keeping of minutes

The keeping and confirmation of minutes are dealt with in the Act.

13.2 Content of minutes

- (1) The content of minutes is dealt with in the Regulations.
- (2) In addition to the matters required by regulation 11, the minutes of a Council meeting is to include, where an application for approval is refused or the

authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

13.3 Public inspection of unconfirmed minutes

The public inspection of unconfirmed minutes is dealt with in the Regulations.

13.4 Confirmation of minutes

- (1) When minutes of an ordinary meeting of the Council are distributed for consideration prior to their confirmation at the next meeting, if a Member is dissatisfied with the accuracy of the minutes, the Member may provide the Local Government with a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.
- (2) At the next ordinary meeting of the Council, the Member who provided the alternative wording shall, at the time for confirmation of minutes -
 - (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

Part 14 - Adjournment of meeting

14.1 Meeting may be adjourned

The Council may adjourn any meeting:

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

14.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under these Local Laws:

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 7.9 [speaking twice] apply when the debate is resumed.

Part 15 – Revoking or changing decisions

15.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

15.2 Limitations on powers to revoke or change decisions

- (1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision:
 - (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 15.3 to implement the decision; or
 - (b) where the decision is procedural in its form or effect.
- (2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

15.3 Implementing a decision

- (1) In this clause:
 - (a) "authorisation" means a licence, permit, approval or other means of authorising a person to do anything;
 - (b) "implement", in relation to a decision, includes:
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) "valid notice of revocation motion" means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person:
 - (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation:
 - (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

Part 16 - Suspension of Local Laws

16.1 Suspension of Local Laws

- (1) A Member may at any time move that the operation of one or more of the provisions of these Local Laws be suspended.

- (2) A Member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is:
 - (a) seconded; and
 - (b) carried by an absolute majority,is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

16.2 Where Local Laws do not apply

- (1) In situations where:
 - (a) one or more provisions of these Local Laws have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations or these Standing Orders, the Presiding Member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the Presiding Member under subclause (1) is final, except where a motion is moved and carried under clause 10.10.

Part 17 - Meetings of electors

17.1 Electors' general meetings

Electors' general meetings are dealt with in the Act.

17.2 Matters for discussion at electors' general meetings

The matters to be discussed at electors' general meetings are dealt with in the Regulations.

17.3 Electors' special meetings

Electors' special meetings are dealt with in the Act.

17.4 Requests for electors' special meetings

Requests for electors' special meetings are dealt with in the Regulations.

17.5 Convening electors' meetings

Convening electors' meetings is dealt with in the Act.

17.6 Who presides at electors' meetings

Who presides at electors' meetings is dealt with in the Act.

17.7 Procedure for electors' meetings

- (1) The procedure for electors' meetings is dealt with in the Act and the Regulations.

- (2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to these Local Laws.

17.8 Participation of non-electors

A person who is not an elector of the Local Government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

17.9 Voting at electors' meetings

Voting at electors' meetings is dealt with in the Regulations.

17.10 Minutes of electors' meetings

Minutes of electors' meetings are dealt with in the Act.

17.11 Decisions made at electors' meetings

Decisions made at electors' meetings are dealt with in the Act.

Part 18 - Enforcement

18.1 Penalty for breach

A person who breaches a provision of these Local Laws commits an offence.

Penalty: \$5,000.00 and a daily penalty of \$500.00.

18.2 Who can prosecute

Who can prosecute is dealt with in the Act.

Dated: **[INSERT DATE]**

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

Katrina Crute
President

Ian D'Arcy
Chief Executive Officer

SHIRE OF BROOKTON		RECEIVED
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LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOKTON

EXTRACTIVE INDUSTRIES LOCAL LAW 2011**ARRANGEMENT****PART 1 - PRELIMINARY**

- 1.1 Citation
- 1.2 Commencement
- 1.3 Purpose and effect
- 1.4 Interpretation
- 1.5 Application

PART 2 - LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

- 2.1 Extractive industries prohibited without licence
- 2.2 Applicant to advertise proposal
- 2.3 Application for licence

PART 3 - DETERMINATION OF APPLICATION

- 3.1 Determination of application
- 3.2 Payment of annual licence fee

PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

- 4.1 Transfer of licence
- 4.2 Cancellation of licence
- 4.3 Renewal of licence

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LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOKTON

EXTRACTIVE INDUSTRIES LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Brookton resolved on 17 February 2011 to adopt the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law is cited as the *Shire of Brookton Extractive Industries Local Law 2011*.

1.2 Commencement

This local law comes into operation fourteen days after the date of its publication in the *Government Gazette*.

1.3 Purpose and effect

- (1) The purpose of this local law is to establish requirements and conditions with which extractive industry proposals, within the district, must comply with.
- (2) The effect of this local law is to provide for the regulation, control and management of extractive industry proposals.

1.4 Interpretation

In this local law, unless the context otherwise requires –

“**Act**” means the *Local Government Act 1995*;

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand, clay, limestone, loam and other material;

“**CEO**” means the Chief Executive Officer of the local government;

“**district**” means the district of the local government;

“**excavation**” includes quarry;

“**General Regulations**” means the *Local Government (Functions and General) Regulations 1996*;

“**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;

“**licence**” means a licence issued under this local law;

“**licensee**” means the person named in the licence as the licensee;

“**local government**” means the Shire of Brookton;

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

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

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

“**secured sum**” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1; and

“**site**” means the land specified by the local government in a licence.

1.5 Application

- (1) The provisions of this local law–

- (a) subject to paragraphs (b), (c), (d) and (d)-
 - (i) apply and have force and 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 1978*;
 - (c) do not apply to the carrying on of an extractive industry on Crown land;
 - (d) 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.
- (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 must 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 must 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 and condition 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 must cease, provided that the local government must give written notice to the person carrying out the extractive industry which allows a minimum 28 days for the cessation of operations.

PART 2 - LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

2.1 Extractive industries prohibited without licence

A person must not carry on an extractive industry—

- (a) unless the person is the 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.

2.2 Applicant to advertise proposal

- (1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, 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, advising of the application and specifying that they may,

- within twenty-one 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 a 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 newspaper circulating in the area in which the proposed excavation 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 the proposed 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 content, size and construction of which have been approved by the CEO;
 - (c) specifying particulars of the proposed excavation; and
 - (d) inviting objections or comments within 21 days from the placement of the notice.

2.3 Application for licence

- (1) Subject to subclause (3), 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) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing–
 - (i) where the proposed excavation surface area is–
 - (I) not to exceed 5ha, the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (II) to be greater than 5ha, the existing and proposed land contours based on the Australian Height Datum and plotted at 5 metre contour intervals;
 - (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 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;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and

- (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;
- b) 3 copies of a works and 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 the 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, water supply, treatment plant, tanks and other improvements;
 - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise sand drift, 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*;
 - (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;
 - (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; 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) 3 copies of a 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 the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) the method by which topsoil is to be replaced and revegetated;
 - (iv) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (v) how rehabilitated areas are to be maintained;
 - (vi) the programme for the removal of buildings, plant, waste and final site clean up; and

- (vii) how any face is to be made safe and batters sloped.
- (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) a certificate from a licensed surveyor certifying the correctness of-
 - (i) the plan referred to in paragraph (a); and
 - (ii) the datum peg and related point referred to in paragraph (d);
- (f) evidence that the requirements of clause 2.2(1) and (2) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) the consent in writing to the application from the owner of the excavation site;
- (i) any other information that the local government may reasonably require;
- (j) the licence application fee specified by the local government from time to time;
- (k) copies of any environmental approval required under any environmental legislation; and
- (l) copies of any geotechnical information relating to the excavation site;
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) Where in relation to a proposed excavation—
 - (a) the surface area is not to exceed 5000 square metres; and
 - (b) the extracted material is not to exceed 5000 cubic metres;
 the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (l) of subclause (1).

PART 3 - DETERMINATION OF APPLICATION

3.1 Determination of application

- (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first 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 shall-
 - (a) determine the licence period, not exceeding 21 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 30 June, imposed and determined by the local government from time to time under and in accordance with sections 6.16 to 6.19 of the Act;

- (b) payment of the secured sum if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.
- (5) Without limiting subclause (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 material;
 - (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 those trucks;
 - (e) the hours during which any excavation work may be carried out;
 - (f) the hours during which any processing plant associated with, or located on, the site may be operated;
 - (g) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (h) the depths below which a person shall not excavate;
 - (i) distances from adjoining land or thoroughfares within which a person must not excavate;
 - (j) the safety of persons employed at or visiting the excavation site;
 - (k) the control of dust and wind-blown material;
 - (l) 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 and to provide for progressive rehabilitation;
 - (m) the prevention of the spread of dieback or other disease;
 - (n) the drainage of the excavation site and the disposal of water;
 - (o) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (p) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
 - (q) requiring the licensee to meet all conditions imposed under the development approval issued by the local government in relation to the extractive industry;
 - (r) 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;
 - (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;
 - (t) any other matter for properly regulating the carrying on of an extractive industry; and
 - (u) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence.

3.2 Payment of annual licence fee

On or before 30 June in each year, a licensee shall pay to the local government the annual licence fee imposed and determined by the local government from time to time, under and in accordance with sections 6.16 to 6.19 of the Act.

PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1 Transfer of licence

- (1) An application for the transfer of a licence shall—
 - (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) include 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 a 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 paid by the former licensee in respect of the transferred licence.

4.2 Cancellation of licence

- (1) The local government may cancel a licence where the licensee has—
 - (a) been convicted of an offence against—
 - (i) this local law; or
 - (ii) any other law relating to carrying on an extractive industry; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the 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 a 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 7.1(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 takes 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 paid by the licensee in respect of the cancelled licence.

4.3 Renewal of licence

- (1) A licensee who wishes 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 shall 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 that application;
 - (d) details of the works, 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 clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1) (d) or (e) if–
 - (a) an application to renew a licence is in relation 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 applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 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

5.1 Security for restoration and reinstatement

- (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that–
 - (a) as a condition of a licence; or
 - (b) before the issue of a licence,the licensee shall give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the 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 purposes of this clause.

5.2 Use by the local government of secured sum

- (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 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then; subject to the local government giving the licensee 14 days notice of its intention to do so–
 - (i) 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

- (ii) the licensee shall pay to the local government on demand 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, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

6.1 Limits on excavation near boundary

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 thoroughfare; or
- (d) 40 metres of any watercourse.

6.2 Prohibitions

A licensee shall not–

- (a) 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 thoroughfare 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) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Mines and Petroleum; or
- (c) 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.

6.3 Blasting

- (1) A person shall 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 subclause (2), the blasting takes place only between the hours of 8.00 a.m. and 5.00 p.m., or as determined by the local government, on Mondays to Fridays inclusive;
 - (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986*, 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 purposes 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.

- (2) A person shall 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.

6.4 Obligations of the licensee

A licensee shall-

- (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 1 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.

PART 7 - MISCELLANEOUS PROVISIONS

7.1 Public liability

- (1) A licensee shall have at all times a current public 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 \$10,000,000 in respect of any one claim relating to any of the excavation operations.
- (2) The licensee shall provide to the local government a copy of the policy taken out under subclause (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.

7.2 *Mines Safety and Inspection Act and Environmental Protection Act*

- (1) In any case where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site shall-
- (a) comply with all applicable provisions of that 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 and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

7.3 Notice of cessation of operations

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

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

the licensee shall, 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 on the date such cessation is so notified.
- (3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

7.4 Works to be carried out on cessation of operations

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, whichever first occurs, the licensee shall, 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, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); 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 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 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 all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently 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.

PART 8 - OBJECTIONS AND REVIEW

8.1 Objections and review

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 regulation 33 of the General Regulations shall apply to that decision.

PART 9 – MODIFIED PENALTIES

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 Prescribed offences

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

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 General Regulations; 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 General Regulations.

SCHEDULE - Prescribed offences MODIFIED PENALTIES

[cl. 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 near within 40 metres of the boundary without approval	300
5	6.2(b)	Store without required approval explosives or explosive devices	350
6	6.2(c)	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	350
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 as 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 conditions of licence imposed by the local government	500
14		All other offences not specified	200

Dated this the 17th day of March 2011

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



B COOTE, Shire President

G CLARK, Chief Executive Officer