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| <b>POLICY:-</b>                               |                        |
| Policy Title:                                 | Gravel Quarries Policy |
| File reference:                               | F10/618-13             |
| Date Policy was adopted by Council initially: | 21 July 2011           |
| Resolution Number:                            | 281/11                 |
| Other Review Dates:                           | 21 April 2016          |
| Resolution Number:                            | 281/11, 86/16, 127/23  |
| Current Policy adopted by Council:            | 20 July 2023           |
| Resolution Number:                            | 127/23                 |
| Next Policy Review Date:                      | 2026                   |

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| <b>PROCEDURES/GUIDELINES:-</b>          |  |
| Date procedure/guideline was developed: |  |
| Procedure/guideline reference number:   |  |

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| <b>RESPONSIBILITY:-</b>   |                                    |
| Draft Policy Developed by:  | Director of Infrastructure         |
| Committee/s (if any) consulted in the development of this policy: | N/A                                |
| Responsibility for implementation:                                | Director of Infrastructure         |
| Responsibility for review of Policy:                              | Manager of Infrastructure Delivery |

## Introduction

Upper Lachlan Shire Council operates approximately 30 quarries that are located on privately owned land. The quarries are used to provide gravel used in the construction and maintenance of the State, Regional and local roads network. This policy is intended to provide a basis for the fair conduct of business between Council and landowners.

## Policy Conditions and Guidelines

The following points will apply to the relationship between Council and private quarry owners.

- Council will negotiate with land owners to access and obtain gravels from their properties to be used in the construction and maintenance of roads and other structures.
- Title to all sand, gravel and other aggregates from the Quarry shall vest in the Council free from every encumbrance and lien.
- Council shall pay all owners of gravel quarries a licence fee of \$100 per annum where a licence agreement has been entered into between the two parties. This payment will be shown in Council's Operational Plan Schedule of Fees and Charges and be reviewed at the renewal of each licence.
- The Council shall pay all owners of gravel quarries for gravel extracted from their property each six monthly period. The compensation payable in respect of gravel extracted during such six month period not later than the last days of January and July in each calendar year and shall deliver to the Owner a Recipient Tax Invoice detailing the dates of extraction and quantities extracted.
- Compensation payable will be paid on the basis of all quarry owners being paid the same amount with Council undertaking to carry out restoration of the quarry. Compensation will be set at \$1.60 excluding GST per cubic metre with this figure being adjusted annually (at 30 June) using the Australian Bureau of Statistics All Groups Consumer Price Index. The compensation rate will be published annually in Councils Schedule of Fees and Charges.
- Council is the Owner of the Quarry in terms of the Mines Inspection Act. The Council covenants to comply with and observe all terms and conditions of a Mine with respect to the Quarry as determined by the Department of Mineral Resources and as stipulated in the Mines Inspection Act 1901 and the WH&S (Mines & Petroleum Sites) Regulation 2022.
- At the termination of the licence, there shall be no obligation on the part of Council to level and reinstate the Quarry to its natural state.
- Council will reserve an amount of money each year to finance a quarry maintenance and rehabilitation reserve at the rate of \$0.10 per cubic metre with this figure being adjusted annually (at 30 June) using the Australian Bureau of Statistics All Groups Consumer Price Index. The compensation rate will be published annually in Councils Schedule of Fees and Charges.
- The Owner will agree that no gravel shall be removed from the quarry by the owner during the term of the licence without permission from Council. Also no person, employee, servant or agent of the owner shall be granted access to the Quarry in breach of the Council Quarry Safety Management Plan.
- The Council shall be permitted to transport store and crush for the purposes of sample testing gravel from other quarries and sources under the control of Council provided that the consent of the Owner has been obtained by Council with such consent not to be unreasonably withheld.

## **Procedures**

Quarry Agreement (See Annexure 1)

## **Relevant Legislation**

The following Legislation effects the operation of this Policy:-

- Privacy and Personal Information Protection Act 1998;
- Environmental Planning and Assessment Act 1979;
- State Records Act 1998;
- Local Government Act 1993;
- Local Government (General) Regulation 2021;
- Environmental Planning and Assessment Act 1979;
- Roads Act 1993
- Upper Lachlan Shire Council Quarry Safety Management Plan
- Workers Compensation Act 1987
- Workplace Health and Safety Act N.S.W. 2011
- Workplace Health and Safety Act (Mines and Petroleum Sites) 2013
- Mining Act 1992
- Work Place Health and Safety Regulation 2017
- Work Health and Safety Regulation (Mines and Petroleum Sites) 2022
- Government Information (Public Access) Act 2019 (GIPA)

## **RELEVANT LEGISLATION AND COUNCIL POLICIES**

The following Council policies and documents that are relevant to this Policy include: -

- Code of Conduct for Councillors, staff and delegates of Council;
- Statement of Ethical Principles;
- Procurement Policy;
- Delegations of Authority Procedure;
- Code of Business Practice;
- Bribes, Gifts and Benefits Policy;
- Privacy Management Plan;
- Fraud & Corruption Prevention Policy;
- GIPA Policy;
- Council Operational Plan;
- Complaints Management Policy.

## **Variation:**

Council reserves the right to vary the terms and conditions of this policy.

**QUARRY AGREEMENT**

**PIT No. :**                      **Quarry Name :**

**THIS AGREEMENT is made this                      day of                      20XX**

**Between:**

**And                      UPPER LACHLAN SHIRE COUNCIL** of Spring Street, Crookwell  
(with its successors and permitted assigns called '**Council**').

**RECITALS:**

- A.     The Owner is the owner of the land described in **Item A** of the Schedule upon which land is located a Quarry (called 'the Quarry') the approximate location of which is indicated on the topographical map annexed hereto and marked '**A**'
- B.     The Owner has agreed to grant a licence of the Quarry to the Council on the terms and conditions contained in this agreement.

**THE PARTIES AGREE:**

**1.     Interpretation**

- a.     Words importing the singular or plural number shall include the plural or singular number respectively, and the masculine gender only shall include the feminine or neuter and vice versa, and words importing persons include corporations and vice versa.
- b.     Reference to an Act includes all regulations under and amendments to that Act whether by subsequent Acts or otherwise, and an Act passed in substitution for the Act referred to or incorporating any of its provisions
- c.     Headings have been inserted for guidance only, and shall not form any part nor affect the construction of this licence.
- d.     Reference to a 'month' shall where the context so permits mean calendar month.
- e.     Reference to the map annexed and marked "**A**" shall include any map bearing the signatures of both parties as being a further or more detailed map of the Quarry
- f.     Where under or pursuant to this licence, the day on or by which any act, matter or thing is to be done is a Saturday or a Sunday or a public holiday in New South Wales, the act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or a public holiday.



## **2. Term**

The Owner licences the Quarry to the Council on the terms and conditions contained in this licence, and for the term specified in **Item B** of the Schedule the commencement date and termination date of which term are specified in **Item C and D** of the Schedule:

## **3. Licence Fee**

The Council agrees to pay the licence fee referred to in **Item E** of the Schedule to the Owner as the Owner may from time to time in writing direct, without any deduction.

## **4. Licences**

- a. The Owner licences the Council and any authorised clerk, servant, workman, licensee, invitee, employee, agent, of the Council to enter the Quarry and for that purpose to travel to and from the Quarry from the nearest Public road on the access road (called "the access road") the approximate location of which is indicated on the map annexed "A", for the purposes of extracting gravel and other extractive material from the Quarry for use by the Council on its road construction and maintenance program and other associated purposes.
- b. If it is necessary, during the currency of the Quarry, to obtain any licence, permit, lease or other authority in order that the works contemplated in the licence may be carried on, then the Council will apply for such renewal, licence, permit, lease or authority and shall execute such documents and do all things reasonably necessary for such purposes.
- c. To carry out such improvements, enhancements or modifications to the Quarry as are necessary to comply with Council's or the Owner's obligations under the Mining Act 1992, Work Health and Safety (Mines and Petroleum Sites) Act 2013, Work Health and Safety (Mines and Petroleum sites) Regulation 2022, Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017.
- d. The Owner will execute such documents and do all things required by any Act or statutory or governmental authority to ensure that the activities contemplated in the licence may be carried out upon the Quarry during the currency of the term of the Licence.

## **5. Compensation**

- a. The Council shall pay to the Owner, in respect of each six monthly period, the compensation payable in respect of gravel extracted during such six month period not later than the last days of January and July in each calendar year and shall deliver to the Owner a Recipient Tax Invoice detailing the dates of extraction and quantities extracted.
- b. The compensation referred to in Cl 5(a.) shall commence at the Compensation price specified in Item F of the Schedule hereto
- c. In the event that the Council defaults in its obligations to pay the compensation payable pursuant to Cl. 5(a.) at any time, and such default

continues for a period of thirty (30) days after written notice of such default requiring the Council to remedy the same, the owner shall be entitled by notice in writing to the Council to require the Council to suspend all operations carried out by or on behalf of the Council upon the area until payment is resumed.

- d. The Compensation herein before provided for shall be adjusted annually at 30 June in accordance with the Australian Bureau of Statistics All Groups Consumer Price Index .

## **6. Right of inspection**

The Owner shall be entitled to inspect the books and records of the Council upon reasonable notice of the Owner's desire to do so but such right shall be limited to the purpose of ascertaining and verifying the amounts of compensation payable under this deed.

## **7. Council's commitment**

- a. The Council agrees to pay all assessments, impositions and other charges which may at any time during the continuance of this licence become due, owing or payable in respect of the Quarry, including all royalties payable to the owner provided however the Owner shall continue to be liable for the payment of Council rates charges and assessments as the Owner of the Land.
- b. The Parties acknowledge that the Council is the Owner of the Quarry in terms of the Mining Act 1992 Inspection Act. The Council agrees to comply with and observe all terms and conditions of a the Quarry as determined by the NSW Resources Regulator and as stipulated under the Work Health and Safety (Mines and Petroleum Sites) Act 2013 , Work Health and Safety ( Mines and Petroleum sites ) Regulation 2022, Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017.
- c. The Council shall duly and punctually comply with and observe at its own cost all statutes now or from here on in force and all ordinances, regulations and by-laws thereunder, and all requirements and orders of any relevant authorities or public bodies relating to the Quarry or to the business of the Council carried on at the Quarry, and also to observe, perform, fulfil and comply with all requisitions and requirements of the NSW Resources Regulator or of any other public body properly authorised or of any official duly authorised under any public Act, rule or regulation or by-law, and pay all the costs, charges and expenses of all or any works necessary to comply with any such requirement or requisition or the provisions of any such Act.
- d. The Council shall within twelve (12) months after the determination of this licence, remove at its own cost the works and structures erected upon the Quarry. Any such property not so removed at the expiration of such twelve (12) month period shall immediately vest in the Owner absolutely, unless the Owner declines title, in which case the property remains the responsibility of the Council, and the Owner may remove and store such property as the Council has failed to remove and may make good the land, and the Council shall repay to the Owner on demand all costs and expenses in so doing.

- e. At the termination of the licence, there shall be no obligation on the part of Council to level and reinstate the Quarry to its natural state. The party required to carry out any rehabilitation of the Quarry both during the term of this agreement or the conclusion thereof is stipulated in **Item I** of the Schedule
- f. The Council indemnifies and keeps indemnified the Owner from and against all loss and damage to the Quarry and all property therein, caused by any act or omission of the Council or of any clerk, servant, workman, licensee, invitee, employee, agent, client, customer or visitor of the Council.
- g. The Council indemnifies and keeps indemnified the Owner from and against all damages, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against the Owner by any person, for any injury which such person may sustain when using or entering or near any portion of the Quarry, whether in the occupation of the Owner or of the Council or of any other person, where the injury arises or has arisen as a result of any act or omission of the Council or of any clerks, servant, workman, employee or agent of the Council.

#### **8. Owner's commitment**

- a. The Owner agrees with the Council that upon the Council punctually paying the Compensation and other moneys due at the times and in the manner contained in this licence and appointed for the time of payment, and duly and punctually performing and observing the several, conditions, agreements, restrictions and stipulations expressed or implied, and on the Council's part to be kept performed or observed to permit the Council peaceably to hold and enjoy the Quarry during the term of the licence without any interruption or disturbance by the Owner or any person or persons lawfully claiming by, through, under or in the trust for the Owner.
- b. The Owner agrees that no gravel shall be removed from the Quarry by the owner during the term hereof and that no person, employee, servant or agent of the owner shall be granted access to the Quarry in breach of the Safety Management System provided for herein.

#### **9. Default**

The agreement to pay compensation expressed in Cl. 5(a) is an essential and fundamental term of this licence, and in the event that the Owner determines this licence pursuant to the powers conferred on it by this licence or at law in consequence of the breach by the Council of the covenant to pay compensation, the Owner is (without prejudice to any other action or remedy) entitled to recover from the Council as and by way of liquidated damages a sum equal to the total compensation and any other sum payable by the Council to the Owner which would have been payable by the Council to the Owner during the balance of the term of this licence but for such determination by the Owner.

#### **10. General**

- a. No consent or waiver, express or implied by the Owner to, or of, any breach of any covenant, condition or duty of the Council shall be construed as a



consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

- b. The Owner does not expressly or impliedly warrant that the Quarry is or will remain suitable or adequate for all or any of the purposes of the Council, and all warranties (if any) as to suitability and adequateness of the Quarry implied by law are expressly negated.
- c. Unless otherwise provided in this agreement, any notice or demand given or made by the Owner or Council shall be deemed to be duly served on the addressee if delivered to any person at or near the registered office of the addressee who appears to be a servant of them or sent to the addressee through the post addressed to its/registered office, and in the latter case service shall be deemed to have been effected on the day following the posting of it. Any notice or demand served or given by the Owner or Council shall be valid and effectual if served or given under common seal or under the hand of any director or manager or secretary of the Owner or Council (as the case may be) or of its duly authorised agents.
- d. The failure, for any period whatsoever, of the Owner to exercise any right or presents in the event of a breach of any covenant on the part of the Council contained or implied in this agreement shall not be deemed at law to be an abandonment or waiver of any rights or remedies for damage, forfeiture, injunction or otherwise which the Owner may have or could put in force against the Council in respect of any such breach.
- e. The Council shall pay all stamp duty and all costs incidental to the preparation, completion, stamping and registration of the licence, and of any surrender or other termination made under this agreement otherwise than by effluxion of time, but the Council and Owner shall in all other respects bear their own costs.

#### **11. Termination by Council**

Where, in the opinion of the Council, there are no economically recoverable reserves of sand, gravel or other aggregates on the Quarry, the Council may determine this licence by giving to the Owner three (3) months prior notice in writing to that effect, and, in consequence of that, provided the Council shall up to the time of such determination pay the compensation hereby reserved and perform and observe the agreements and provisions on the part of the Council contained in this **Agreement**, this licence shall immediately after that determine save in respect of anything which ought to be performed or observed by the Council upon the determination of the licence.

#### **12. Use of the Quarry**

- a. The Council may use the Quarry for all purposes associated with the recovery, treatment and stockpiling of gravel and other aggregates and all associated activities.
- b. The Council may at its own expense and risk construct and erect upon the Quarry and in accordance with the regulations and by-laws of any relevant authority in force from time to time, any fixture, structure or improvement which the Council requires for the conduct of its business upon the Quarry



and every such fixture, structure and improvement shall be deemed to remain the property of the Council as if it were severed from the Quarry.

- c. Title to all sand, gravel and other aggregates from the Quarry shall vest in the Council free from every encumbrance and lien.
- d. The Council shall be permitted to transport, store and crush for the purposes of sample testing gravel from other quarries under the control of Council provided that the consent of the Owner has been obtained by Council with such consent not to be unreasonably withheld.
- e. The Council shall give the Owner 48 hours notice of its intention to access the Quarry provided however if the Council requires emergency access to the Quarry reduced notice of less than 48 hours may be given and in the event of Council being unable to contact the Owner, the Council shall be entitled to enter the Quarry and shall advise the Owner of such entry as soon as reasonably practicable.
- f. The Council shall not permit access to the Quarry by any Contract Truck without Council approval.
- g. The Council shall carry out, in consultation with the Owner, dust suppressant procedures such as the application of water to the access road or other approved measures, so as to ensure so far as is reasonably practicable that any dust generated by the activities of the Council and its servant, workman, licensee, invitee, employee or agent is minimised.
- h. The Council shall not be required to bitumen seal such access road during the term hereof.
- i. The Council shall, at its expense, carry out in a proper and workmanlike manner and in compliance with all regulations and by-laws of any relevant authority the additional works referred to in **Item G** of the Schedule.
- j. The Council shall prepare a Mine Safety Management Plan (called "MSMP") as soon as reasonably practicable and shall provide a copy of such MSMP to the Owner. The Owner agrees for himself, his agents and employees that no action shall be carried out by the Owner his agents or servants in breach of such MSMP.
- k. During the period of active use of such access road by the Council, the Council shall maintain the access road in an all weather trafficable condition.
- l. The Council in the treatment of gravel as defined by the Mines Inspections Act shall be entitled to carry out all processes necessary to meet the requirements of Single Invitational Maintenance Contracts (called "SIMC") issued by the Road and Traffic Authority or any other Statutory authority. The permitted treatment processes are stipulated in **Item J** of the Schedule.

### **13. Goods & Services Tax**

- a. Definitions

In this clause the expressions "GST", "supply" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

b. Amounts GST Exclusive

With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Licence are exclusive of GST

c. Responsibility for GST

i. Despite any other provision in this Licence, GST is imposed on any supply made under this Licence, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

ii. The recipient must pay the amount referred to in subclause (c) (i) in addition to and at the time payment for the taxable supply is required to be made under this Licence.

**14. Enforceability**

The parties covenant that this agreement is intended to irrevocably apply to and bind their respective heirs successors and assigns during the term hereof or any extension hereof.

**15. Registration of caveat**

The parties acknowledge that the Council shall be empowered to attend to the registration of a caveat against the title to the land to protect its interest pursuant to the terms of this agreement. All costs and registration fees related to the registration or removal of such caveat shall be payable by the Council

**16. Governing law**

This agreement shall be governed by and with the law of the State of New South Wales and the parties agree to and in this agreement submit themselves to the non-exclusive jurisdiction of the courts of that State in relation to all matters concerning the operation and interpretation of this agreement.

**17. Severance**

Should any part of the Agreement be void or unenforceable for any reason that part shall be severed from the Agreement without in any way affecting the validity or enforceability of the remainder, which shall be construed with such additions deletions and modifications of language as shall be necessary to enable it to be given effect after severance.

## SCHEDULE

| Item No | Clause | Description                          | Details   |
|---------|--------|--------------------------------------|---|
| A       | A      | THE LAND                             | Area of Quarry on:<br><br>Lot: DP:<br><br>known as  |
| B       | 2      | TERM:                                | X Years   |
| C       | 2      | COMMENCEMENT DATE:                   | / /XXXX   |
| D       | 2      | TERMINATION DATE:                    | / /XXXX   |
| E       | 3      | LICENCE FEE:                         | \$ as required by the legislation   |
| F       | 5(b)   | COMPENSATION PAYMENT:                | \$ 1.60 per m3 + GST<br>to be indexed on 30 June annually by the CPI (all groups)   |
| G       | 12(i)  | ADDITIONAL WORKS:                    | Council will stockpile in the quarry 100 cubic metres of gravel per year for your usage on farm maintenance;  |
| H       | 13     | OPTION TERM:                         | Option to be negotiated and resolved 1 month prior to Termination date  |
| I       | 7(e)   | PARTY RESPONSIBLE FOR REHABILITATION | Upper Lachlan Shire Council   |
| J       | 12(l)  | PERMITTED TREATMENT PROCESSES        | The crushing, grinding, classifying, reducing, concentrating, precipitating or separating of any product of the Quarry or any other part of a process for obtaining any product from a quarry |

**SIGNED**

**by the Upper Lachlan Shire Council** )

.....

**NAME (Print)** )

.....

**SIGNED by the said Owner:** )

.....

**NAME (Print)** )

.....

**Date signed by both Parties** ) .....

