SHIRE OF TRAYNING

EXTRACTIVE INDUSTRIES LOCAL LAW

Local Government Act 1995

SHIRE OF TRAYNING

EXTRACTIVE INDUSTRIES LOCAL LAW

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LOCAL GOVERNMENT ACT 1995

SHIRE OF TRAYNING

EXTRACTIVE INDUSTRIES LOCAL LAW

Under the powers conferred by the Local Government Act 1995 and by all other powers, the local government of the Shire of Trayning resolved to make the following local laws on the twenty-first day of March 2001.

PART 1 - PRELIMINARY

Definitions

1.1 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 and other material;

"CEO" means the Chief Executive Officer of the local government;

"district" means the district of the local government;

"excavation" includes quarry;

"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 Trayning;

"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;

"site" means the land specified by the local government in a licence.

Application

1.2 (1) The provisions of this local law –

(a) subject to paragraphs (b), (c), (d) and (e);

(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 on of an extractive industry on land by the owner or occupier of that land for use on that land; and

(e) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law.

(2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).

Repeal

1.3 The local laws of the Shire of Trayning Relating to Extractive Industries published in the Government Gazette of 4 October 1972 are repealed.

PART 2 – LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

Extractive Industries Prohibited Without Licence

2.1.1 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.

Penalty $5000 and a daily penalty not exceeding a fine of $500 in respect of each day or part of a day during which an offence has continued.

Applicant To Advertise Proposal

2.2 (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 –

(2) 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.

(2) 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) –

(2) forward a copy of the notice to the CEO; and

(2) 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 sub-clause (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.

Application For Licence

2.3 (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 shall forward the application duly completed and signed by both the applicant and the owner 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) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 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) how any face is to be made safe and batters sloped;
(iv) the method by which topsoil is to be replaced and revegetated;
(v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
(vi) how rehabilitated areas are to be maintained; and
(vii) the programme for the removal of buildings, plant, waste and final site clean up;

(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) copies of any environmental approval required under any environmental legislation;

(i) copies of any geotechnical information relating to the excavation site;

(j) the consent in writing to the application from the owner of the excavation site;

(k) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the *Soil and Land Conservation Regulations 1992*;

(l) any other information that the local government may reasonably require; and

(m) the licence application fee specified by the local government from time to time.

(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) The local government may exempt a person making application for a licence under subclause (1) from providing any of the data otherwise required under subclause (1), if, in the opinion of the local government, the location and size of the proposed excavation are such that no significant adverse environmental affects will result therefrom.

PART 3 - DETERMINATION OF APPLICATION

Determination Of Application

3.1 (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 31st December next, determined by the local government from time to time;
(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 hours during which any excavation work may be carried out;
e) the hours during which any processing plant associated with, or located on, the site may be operated;
f) 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;
g) the depths below which a person shall not excavate;
h) distances from adjoining land or roads within which a person must not excavate;
i) the safety of persons employed at or visiting the excavation site;
j) the control of dust and wind-blown material;
k) 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;
l) the prevention of the spread of dieback or other disease;
m) the drainage of the excavation site and the disposal of water;
n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
p) 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;
q) 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;
r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
s) any other matter for properly regulating the carrying on of an extractive industry.

Payment Of Annual Licence Fee

3.2 On or before 31 December in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

Transfer Of Licence

4.1 (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.

Cancellation Of Licence

4.2 (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.

Renewal Of Licence

4.3 (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).

(3) 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

Security For Restoration And Reinstatement

5.1 (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.

Use By The Local Government Of Secured Sum

5.2 (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 –

(c) 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

(d) 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

Limits On Excavation Near Boundary

6.1 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.

Penalty $2,000

Obligations Of The Licensee

6.2 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.

Penalty $5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of $500.00 in respect of each day or part of a day during which the offence has continued.

Prohibitions

6.3 A licence 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 Minerals and Energy; 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.

Penalty $5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of $500.00 in respect of each day or part of a day during which the offence has continued.

Blasting

6.4 (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 sub-clause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, 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.

Penalty $5,000.00 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of $500.00 in respect of each day or part of a day during which the offence has continued.

(2) 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.

Penalty $2,000

PART 7 - MISCELLANEOUS PROVISIONS

Public Liability

7.1 (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 sub-clause (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.

Mines Safety and Inspection Act and Environmental Protection Act

7.2 (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.

Notice Of Cessation Of Operations

7.2 (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.

Works To Be Carried Out On Cessation Of Operations

7.4 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.

Penalty $5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of $500.00 in respect of each day or part of a day during which the offence has continued.

PART 8 - OBJECTIONS & APPEALS

8.1 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 regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

PART 9 – MODIFIED PENALTIES

9.1 An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.

9.2 The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

Forms

9.3 For the purposes of this local law –

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

(b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

SCHEDULE

PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY $
2.1	Carry on extractive Industry without licence or in breach of terms and conditions	300
6.1	Excavate near boundary	200
6.2(a)	Gateways not kept locked where required	300
6.2(b)	Warning signs not erected or maintained as required	300
6.2(c)	Excavation not drained as required	300
6.3(a)	Remove trees or shrubs near boundary without approval	250
6.3(b)	Store without required approval explosives or explosive devices	300
6.3(c)	Fill or excavate in breach of licence	300
6.4(1)(a)	Blasting without approval of the local government	200
6.4(1)(b)	Blasting outside times authorised	300
6.4(1)(d)	Blasting in breach of conditions imposed by the local government	300
6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	200

Dated this ……day of ……..2000.

The Common Seal of)
The Shire of Trayning)
was affixed in the presence of:)

…… ……
T R Lamond, President G M Peddie, CEO