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SHIRE OF MORAWA

BUSH FIRES ACT 1954
LOCAL GOVERNMENT ACT 1995

BUSH FIRE BRIGADES LOCAL LAW 2018

LOCAL GOVERNMENT ACT 1995

EXTRACTIVE INDUSTRIES LOCAL LAW 2018

LOCAL GOVERNMENT ACT 1995

FENCING LOCAL LAW 2018

**BUSH FIRES ACT 1954
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

BUSH FIRE BRIGADES LOCAL LAW 2018

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**BUSH FIRES ACT 1954
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

BUSH FIRE BRIGADES LOCAL LAW 2018

Under the powers conferred by the *Bush Fires Act 1954*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Morawa resolved on 21 June 2018 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Morawa Bush Fire Brigades Local Law 2018*.

1.2 Commencement

This local law will come into operation 14 days after its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The Municipality of the Shire of Morawa Firebreak By-laws published in the *Government Gazette* on 31 December 1982 are repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Bush Fires Act 1954*;

bush fire brigade has the meaning given to it in section 7 of the Act;

bush fire brigade area has the meaning given to it in clause 2.2(b);

bush fire brigade member means a volunteer fire fighter having current membership of a bush fire brigade;

bush fire brigade officer means a person holding a position referred to in clause 3.3, irrespective of method of appointment to the position;

bush fire control officer means a person appointed by the local government to exercise the powers of a bush fire control officer or bush fire officer in accordance with the Act and this local law;

Bush Fire Operating Procedures means the Bush Fire Operating Procedures as may be adopted by the local government and amended from time to time;

Captain means the person holding or acting in that position in a bush fire brigade;

CBFCO means the Chief Bush Fire Control Officer;

CEO means the Chief Executive Officer of the local government;

Council means the Council of the local government;

district means the district of the local government;

fire fighting activities means all normal brigade activities relating to a live bush fire which is active in the district, and includes burning off, creating fire breaks and other methods for the control of bush fires;

Lieutenant means the person holding that position in a bush fire brigade;

local government means the Shire of Morawa;

normal brigade activities has the meaning given to it in section 35A of the Act;

President means President of the Council;

Regulations means Regulations made under the Act; and

volunteer fire fighter has the meaning given to it in section 35A of the Act.

PART 2—ESTABLISHMENT OF BUSH FIRE BRIGADES**2.1 Establishment of a bush fire brigade**

(1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

2.2 Name and area of bush fire brigade

On establishing a bush fire brigade under clause 2.1(1) the local government is to—

- (a) give a name to the bush fire brigade; and
- (b) specify the area within the district in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities.

2.3 Objects of bush fire brigades

The objects of the bush fire brigade are to carry out—

- (a) the normal brigade activities; and
- (b) the functions of the bush fire brigade which are specified in the Act, the Regulations and the local law.

2.4 Chain of command during fire fighting activities

(1) Subject to the Act, the chain of command to apply during normal brigade activities is—

- (a) bush fire control officers in order of seniority;
- (b) bush fire brigade officers in order of seniority; and
- (c) all other volunteer fire fighters.

(2) The person in command has full control over other persons fighting the fire, and is to issue instructions as to the methods to be adopted by the volunteer fire fighters, and may exercise all the powers and duties provided for by the Act.

2.5 Existing bush fire brigades

A bush fire brigade established prior to the day on which this local law comes into operation—

- (a) is to be taken to be a bush fire brigade established under and in accordance with this local law;
- (b) the provisions of this local law apply to the bush fire brigade save for clause 2.1; and
- (c) any rules governing the operation of the bush fire brigade are repealed and substituted with the provisions of this local law.

2.6 Dissolution of bush fire brigade

In accordance with section 41(3) of the Act, the local government may cancel the registration of a bush fire brigade if it is of the opinion that the bush fire brigade is not complying with the Act, this local law, or is not achieving the objectives for which it was established.

2.7 New arrangement after dissolution

If the local government cancels the registration of a bush fire brigade, alternative fire control arrangements are to be made in respect of the bush fire brigade area.

PART 3—ORGANISATION OF BUSH FIRE BRIGADES**3.1 Local government responsible for structure**

The local government is to ensure that there is an appropriate structure through which the organisation of bush fire brigades is maintained.

3.2 Appointment of bush fire control officers

(1) The local government may appoint bush fire control officers in their absolute discretion, and apply conditions as considered appropriate.

(2) Where only one person is appointed as a bush fire control officer, that person is the CBFCO for the purposes of this local law.

(3) Where more than one person is appointed as a bush fire control officer, the local government shall determine seniority as CBFCO, Deputy CBFCO, and further seniority as is considered appropriate.

(4) When considering the appointment of a person as a bush fire control officer, the local government is to have regard to the qualifications, training and experience which may be advisable to fill the position.

3.3 Election and appointment of bush fire brigade officers

(1) Subject to subclause (2), the members of a bush fire brigade shall elect—

- (a) a Captain;
- (b) a first lieutenant;
- (c) a second lieutenant; and
- (d) any additional lieutenants or other officers considered appropriate for the effective management of normal brigade activities.

(2) If the members of a bush fire brigade have not elected a bush fire brigade member to a position, the local government may make an appointment to the position as they see fit and as considered appropriate.

(3) When considering the election or appointment of persons to the positions in subclause (1), the bush fire brigade members or the local government as the case may be, are to have regard to the qualifications, training and experience which may be advisable to fill each position.

(4) The local government may remove any person elected or appointed from any position.

3.4 Managerial role of CBFCO

Subject to any directions by the local government the CBFCO has primary managerial responsibility for the organisation and maintenance of bush fire brigades.

3.5 Duties of CBFCO and bush fire brigade officers

The duties of the CBFCO and bush fire brigade offices include—

- (a) to provide leadership to bush fire brigades;
- (b) to monitor bush fire brigades' resourcing, equipment and training levels;
- (c) to liaise with the local government concerning fire prevention or fire suppression matters generally and directions to be issued by the local government to bush fire control officers (including those who issue permits to burn), bush fire brigades or bush fire brigade officers;
- (d) to ensure that lists of bush fire brigade members are maintained in accordance with clause 4.3;
- (e) to report annually to the local government the office bearers of the bush fire brigade in the form of Form 12 of the Regulations; and
- (f) to report to the local government prior to the local government's annual budget each year, for consideration and appropriate provision being made in the next budget, the status of a bush fire brigade's—
 - (i) training and readiness;
 - (ii) protective clothing;
 - (iii) equipment; and
 - (iv) vehicles and appliances.

3.6 Training of officers

(1) The local government is to supply each bush fire control officer and Captain with a copy of the Act, the Regulations, any Bush Fire Operating Procedures adopted, this local law and any other written laws which may be relevant to the performance of the bush fire brigade officers' functions, and any amendments made from time to time.

(2) Bush fire control officers are to complete a Bush Fire Control Officers course conducted by an organisation approved by the CEO, within 12 months of commencement of this local law or appointment, unless a course has been completed within the 4 years prior to commencement of this local law or appointment as a bush fire control officer.

(3) Bush fire control officers are required to complete a bush fire control officers course or a bush fire control officers refresher course at least once every 5 years.

PART 4—MEMBERSHIP

4.1 Types of membership of bush fire brigade

(1) The membership of a bush fire brigade consists of volunteer fire fighters.

(2) Registration as a volunteer fire fighter does not commit the person to participating in all normal brigade activities.

4.2 Membership applications

The decision on an application for admission of member, with or without conditions or restrictions, may be made by—

- (a) either the Captain or CBFCO; jointly with
- (b) either the CEO or President.

4.3 Membership—review, refusal, suspension or termination

(1) Not later than 30 April in each year, the Captain is to review the membership and report to the CEO and CBFCO the name and contact details of each bush fire brigade member.

(2) If circumstances warrant, membership of the bush fire brigade may be refused or suspended at any time for a period considered appropriate.

(3) Membership of the bush fire brigade terminates if the member—

- (a) dies;
- (b) gives written notice of resignation to the Captain or CEO;
- (c) is permanently incapacitated by mental or physical ill-health; or
- (d) is no longer a resident or landowner or a landowner of occupier in the district, or for other sufficient reason.

- (4) A decision under subclause (2), (3)(c) or (d) is to be made by—
 - (a) either the Captain or CBFCO; jointly with
 - (b) either the CEO or President.
- (5) Where a decision under subclause (2), (3)(c) or (3)(d) is unable to be agreed, the matter is to be referred to Council, whose decision shall be final.
- (6) Members are eligible to reapply where membership has ceased for any reason.

4.4 Right to object to or review of decision

- (1) If an application for membership is refused under clause 4.2, the CEO is to notify the applicant in writing as soon as practicable after the decision is made, of—
 - (a) the reasons for the refusal; and
 - (b) the right to object to the local government within 14 days of the date of notice.
- (2) If it is proposed that bush fire brigade member is to be suspended under clause 4.3(2) or terminated under clause 4.3(3)(c) or (d), the CEO is to notify the bush fire brigade member in writing as soon as practicable after the decision is made, of—
 - (a) the reasons for the intention to suspend or terminate the bush fire brigade member;
 - (b) the opportunity to respond and answer any matters which might give grounds for suspension or dismissal—
 - (i) in person or in writing to the CEO; or
 - (ii) to meet with a minimum of any three of the Captain, CBFCO, CEO; or President; and
 - (c) the right to object to the local government within 14 days of the date of notice, or such other time as may be agreed.
- (3) The decisions of any meeting in accordance with subclause (2)(b)(ii) of a bush fire brigade member with a minimum of any three of the Captain, CBFCO, CEO; or President—
 - (a) are to be made by simple majority; and
 - (b) may revoke, vary or confirm the original decision to suspend or terminate the bush fire brigade member.
- (4) The bush fire brigade member is to be notified in writing as soon as practical after a decision under subclause (3) is made, of—
 - (a) the decision and the reasons for the decision; and
 - (b) the right to object to the local government within 14 days of the date of notice.
- (5) The local government may dispose of an objection by—
 - (a) dismissing the objection;
 - (b) varying the decision objected to; or
 - (c) revoking the decision objected to, with or without—
 - (i) substituting for it another decision; or
 - (ii) referring the matter, with or without directions, for another decision by a minimum of any three of the Captain, CBFCO, CEO; or President.
- (6) The local government shall give written advice of the decision made under subclause (5) to the person.

4.5 Existing liabilities to continue

The resignation, suspension or termination of a member under clause 4.3 does not affect any liability of the bush fire brigade member arising prior to the date of resignation, suspension or termination of membership.

4.6 Disagreements

- (1) Any disagreement between bush brigade members regarding normal brigade activities may be referred to the Captain.
- (2) Where a disagreement in subclause (1) is considered by the Captain to be of importance to the interests of the bush fire brigade, then the Captain is to refer the disagreement to the CBFCO or to the Council.
- (3) Where a disagreement is referred to the CBFCO, the CBFCO may—
 - (a) determine the disagreement; or
 - (b) refer the matter to the Council.
- (4) The Council is the final authority on matters affecting the bush fire brigade, and may resolve any disagreement referred to it.

PART 5—GENERAL

5.1 Administration

All administrative matters of a bush fire brigade are to be managed by the local government, other than bush fire brigade specific internal arrangements.

5.2 Finances

All financial matters of a bush fire brigade are to be managed by the local government, other than bush fire brigade specific internal arrangements.

5.3 Equipment

All equipment purchased by the local government is the property of, and shall be insured by, the local government.

5.4 Consideration in the local government budget

In addition to funding made available through emergency services grants, the local government may provide further funding depending upon the assessment of budget priorities for the year in question.

Dated: 6 July 2018.

The Common Seal of the Shire of Morawa was affixed by authority of a resolution of Council in the presence of—

K. J. CHAPPEL, President.
C. P .M. LINNELL, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF MORAWA

EXTRACTIVE INDUSTRIES LOCAL LAW 2018

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LOCAL GOVERNMENT ACT 1995

SHIRE OF MORAWA

EXTRACTIVE INDUSTRIES LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Morawa resolved on 21 June 2018 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Morawa Extractive Industries Local Law 2018*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

The provisions of this local law—

- (a) subject to paragraphs (b), (c) and (d)—
 - (i) apply and have force and effect throughout the whole of the district;
 - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law; and
 - (iii) apply to a previous licence as if it was issued under 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; and
- (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.

1.4 Repeal

The *Shire of Morawa Extractive Industries Local Law 2008* as published in the *Government Gazette* on 16 July 2008, is repealed.

1.5 Transitional provisions

(1) Within 90 days of commencement of this local law or within 90 days of the date of the annual licence fee of a previous licence becoming due and payable (under clause 7.3), the local government may in respect of the licence—

- (a) vary or delete a condition; or
- (b) impose one or more other conditions, as specified in clause 4.3(2).

(2) A condition that is varied, deleted or imposed under subclause (1) does not become effective until 90 days (or longer period that is specified by the local government) after written notice of the condition is given by the local government to the licensee.

1.6 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

application for licence includes application to renew, transfer, vary or cancel a licence as the context requires;

authorised person means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;

carry on an extractive industry means quarrying and excavating for stone, gravel, sand and other material, and the transporting of the material off the site, but excludes extractive activities undertaken by statutory authorities;

CEO means the Chief Executive Officer of the local government;

cessation of operations means termination of activities associated with the extraction and transport of the materials whether permanent or temporary, but does not include activities under clauses 6.3 for the care and maintenance of the site, or clause 6.4.

district means the district of the Shire of Morawa;

excavation includes quarry;

infringement notice means the notice referred to in clause 10.4(a);

land, unless the context requires otherwise, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates, and includes adjoining lots or locations in the same occupation or ownership;

licence means a licence issued under this local law and a previous licence;

licensee means the person named in the licence as the licensee;

local government means the Shire of Morawa;

local planning scheme means a planning scheme of the local government made under the *Planning and Development Act 2005*;

owner has the meaning given to it in section 1.4 of the Act;

occupier has the meaning given to it in section 1.4 of the Act;

person does not include the local government;

planning approval means an approval for a development or a land use that is issued under a local planning scheme administered by the local government;

previous licence means a licence that is in force at the date of commencement of this local law;

Schedule means a schedule to this local law;

secured sum means the sum required to be paid or the amount of a bond, bank guarantee or other security under clause 3.7;

set fee means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the Act;

site means the land specified by the local government in a licence;

thoroughfare has the meaning given to it in section 1.4 of the Act; and

transferee means a person who applies for the transfer of a licence to her or him under clause 4.8.

PART 2—REQUIREMENT FOR LICENCE

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.

PART 3—APPLICATION REQUIREMENTS

3.1 Applicant to advertise proposal

(1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, before making an application for a licence—

- (a) forward a notice 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; and
 - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 3.3(1)(g) and (h) 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 information contained in the notice referred to in subclause (1) shall include but is not limited to—

- (a) particulars of the proposed excavation; and
- (b) inviting objections or comments to be made to the CEO within 21 days of date of receipt of the notice.

(3) The local government may undertake a public consultation process including but not limited to—

- (a) provision of information by mail or similar;
- (b) electronically through a website or similar; and
- (c) public meetings.

(4) 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 a form approved by the local government;
- (b) the content, size, construction and position of which have been approved by the local government;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

3.2 Application for licence

(1) An application for a licence shall—

- (a) be made in writing;
- (b) state—
 - (i) name of person or company for whom the application is being lodged;
 - (ii) name of primary contact person for the company and in relation to the application;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address.
- (c) be accompanied by—
 - (i) the set fee;
 - (ii) a current certificate of currency for public liability policy in accordance with clause 7.1;
 - (iii) the consent in writing to the application from the owner of the excavation site; and
 - (iv) a copy of the planning approval for an extractive industry to be conducted on the land;
- (d) include any information that the local government may reasonably require; and
- (e) be signed by the applicant.

(2) An application for a licence must be lodged with the local government together with details of the proposed excavation, including but not limited to—

- (a) a plan of the excavation site in accordance with clause 3.3;
- (b) a works and excavation program in accordance with clause 3.4;
- (c) a rehabilitation and decommissioning program in accordance with clause 3.5;
- (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;
- (f) evidence that the requirements of clause 3.1(1), (3) and (4) 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) evidence that an application for a clearing permit has been lodged with the Department of Water and Environmental Regulation if that is required under regulation 5 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*; and
- (k) any other information that the local government may reasonably require.

(3) The application under subclause (1) and detailed information under subclause (2) shall consist of one signed paper copy and an electronic copy.

(4) The local government may exempt a person making an application for a licence from supplying any of the data specified in subclause (2)(c), (d), (e) or (i), where—

- (a) the surface area does not exceed 2000 square metres; and
- (b) the material to be extracted from the proposed excavation does not exceed 2000 cubic metres.

3.3 Plan of excavation site

(1) The plan referred to in clause 3.2(2)(a) shall be in a scale of between 1:500 and 1:2000 showing—

- (a) the existing and proposed land contours based on the Australian Height Datum and plotted at one metre contour intervals;
- (b) the land on which the excavation site is to be located;
- (c) the external surface dimensions of the land;
- (d) the location and depth of the existing and proposed excavation of the land;
- (e) 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;
- (f) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
- (g) the location of existing infrastructure services including but not limited to powerlines and communication 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;

- (h) the location of all existing bores, dams, watercourses, drains or sumps on or adjacent to the land;
- (i) the location and description of existing and proposed fences, gates and warning signs around the land; and
- (j) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere.

(2) All survey data supplied by an applicant for the purpose of subclause (1) shall comply with Australian Height Datum and Australian Map Grid standards.

3.4 Works and excavation program

The works and excavation program referred to in clause 3.2(2)(b) shall contain—

- (a) the nature and estimated duration of the proposed excavation for which the licence is applied;
- (b) the stages and the timing of the stages in which it is proposed to carry out the excavation;
- (c) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
- (d) details of the depth and extent of the existing and proposed excavation of the site;
- (e) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
- (f) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
- (g) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
- (h) 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;
- (i) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
- (j) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
- (k) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
- (l) a noise management plan, including a description of the measures to be taken to comply with the *Environmental Protection Act 1986* and the *Environmental Protection (Noise) Regulations 1997*;
- (m) 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;
- (n) 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;
- (o) 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; and
- (p) details of measures to reduce impact on the adjoining owners and occupiers, and the wider community.

3.5 Rehabilitation and decommissioning program

The rehabilitation and decommissioning program referred to in clause 3.2(2)(c) shall indicate—

- (a) the objectives of the program, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
- (b) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
- (c) how any face is to be made safe and batters sloped;
- (d) the method by which topsoil is to be replaced and revegetated;
- (e) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
- (f) how rehabilitated areas are to be maintained; and
- (g) the program for the removal of buildings, plant, waste and final site clean up.

3.6 Certificate of a licensed surveyor

The certificate in subclause 3.2(2)(e) shall certify the correctness of—

- (a) the datum peg and related point referred to in subclause 3.2(2)(d); and
- (b) the plan referred to in subclause 3.2(2)(a).

3.7 Security for restoration of excavation site and for road infrastructure

(1) The local government may require that 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, for the purposes of—

- (a) ensuring that an excavation site is properly restored or reinstated; and
- (b) ensuring that road infrastructure is repaired and maintained to the standard agreed in accordance with subclauses 4.5(2) and (3).

- (2) The security required under subclause (1) may be required to be provided by the applicant to the local government—
- (a) as a condition of a licence; or
 - (b) before the issue of a licence.
- (3) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.
- (4) If a bank guarantee or other security required under subclause (1) ceases to be current, excavation is to cease until a further security in a form acceptable to the local government has been provided.
- (5) Subject to clause 7.4, any interest accrued in respect of the bond paid into the fund under subclause (3) is to be returned to the licensee at the completion of the restoration and reinstatement works required by the licence conditions or otherwise under this local law.

PART 4—LICENCING

4.1 When an application may be determined

An application for a licence is not to be determined by the local government until—

- (a) the applicant submits proof that the requirements for notices, public information and consultation have been undertaken in accordance with subclauses 3.1(1) and (2);
- (b) the applicant has made an application for licence in accordance with subclause 3.2(1) and (2);
- (c) the local government has considered any written submissions received within the time specified in subclauses 3.1(2)(b) and 3.1(4), and
- (d) planning approval for an extractive industry use of the land has been obtained.

4.2 Determination of application

- (1) Upon receipt of an application, the local government may—
- (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.
- (2) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 3.2.
- (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 shall issue the licence to the applicant upon receipt by the local government of—
- (a) payment of the annual set fee;
 - (b) payment of the secured sum if any, imposed under clause 3.7;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 3.7; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1).

4.3 Conditions which may be imposed

- (1) Clause 4.5 applies as a condition to all licences.
- (2) Without limiting subclause 4.2(1), the local government may impose conditions in respect of the following matters, including but not limited to—
- (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 program;
- (q) requiring the licensee to enter into an agreement with the local government to pay a contribution in respect of thoroughfares in the district used by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence, in accordance with subclauses 4.5(2) and (3)—
 - (i) any extraordinary expenses incurred by the local government;
 - (ii) requirement for increased maintenance; and
 - (iii) repair of damage caused;
- (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.

4.4 Variation of conditions

(1) Within 30 days of the date of the annual licence fee becoming due and payable (under clause 7.3), the local government may, in respect of the licence—

- (a) Vary or delete a condition; and
- (b) May impose one or more other conditions, as specified in clause 4.3(2).

(2) A condition that is varied, deleted or imposed under subclause (1) does not become effective until 90 days (or such longer period as is specified by the local government) after written notice of the condition is given by the local government to the licensee.

4.5 Transport of materials

(1) The local government may, from time to time, prescribe by giving written notice to the licensee—

- (a) determine routes to be taken by the licensee for the transport of materials from the site through the roads within the district, if the proposed routes are not suitable for the proposed haulage;
- (b) the tonnage limits to be transported along a particular route; and
- (c) the times during which materials from the site may be transported through the roads within the district.

(2) If a road on a route prescribed under subclause (1) is inadequate for the transport of materials from the site, the local government may require the licensee to pay all or part of the costs or estimated costs, as determined by the local government, of upgrading the road to the standard required by the local government for these purposes.

(3) The licensee must pay to the local government, as and when required by the local government, the costs or estimated costs, as determined by the local government, of repairs and maintenance to any road that are required as a result of the transport of materials from the site.

(4) Each licence is to be taken to be subject to a condition requiring the licensee to comply with this clause.

4.6 Renewal of licence

(1) An application to renew a licence is not to be determined by the local government until the applicant has complied with subclause (2).

(2) An application to renew a licence shall—

- (a) be made in writing;
- (b) state—
 - (i) name of person or company for whom the application is being lodged;
 - (ii) name of primary contact person for the company and in relation to the application;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address.
- (c) be accompanied by—
 - (i) the set fee;
 - (ii) by a copy of the current licence;
 - (iii) a current certificate of currency for public liability policy in accordance with clause 7.1;
- (d) be lodged by the licensee at least 90 days before the date of expiry of the licence;
- (e) include a plan showing the contours of the excavation carried out to the date of that application;
- (f) detail the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in subclauses 3.2(2)(b) and (c); and
- (g) submit any other things referred to in clauses 3.2 and 4.2.

- (3) The local government may waive any of the requirements specified in subclause (2)(f) or (g).
- (4) 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 3.2 and 4.2 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.
- (5) Upon receipt of an application for renewal of a licence, the local government may—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions as it sees fit.
- (6) Where the local government renews a licence under subclause (5), it shall notify the licensee in writing.

4.7 Variation of licence

- (1) An application to vary a licence by a licensee—
- (a) may be made at any time; and
 - (b) is not to be determined by the local government until the applicant has complied with subclause (2).
- (2) An application to vary a licence shall—
- (a) be made in writing;
 - (b) state—
 - (i) name of person or company for whom the application is being lodged;
 - (ii) name of primary contact person for the company and in relation to the application;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address;
 - (c) be accompanied by—
 - (i) the set fee;
 - (ii) by a copy of the current licence; and
 - (iii) a current certificate of currency for public liability policy in accordance with clause 7.1;
 - (d) be lodged by the licensee at least 90 days before the date of expiry of the licence;
 - (e) include a plan showing the contours of the excavation carried out to the date of that application;
 - (f) detail 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 3.2(2)(b) and (c);
 - (g) any other things referred to in clauses 3.2 and 4.2.
 - (h) include any information that the local government may reasonably require; and
 - (i) be signed by the licensee and the owner of the excavation site (if different to the licensee);
- (3) The local government may waive any of the requirements specified in subclause (2)(f) or (g).
- (4) 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 3.2 and 4.2 if—
- (a) an application to vary 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.
- (5) Upon receipt of an application to vary a licence, the local government may—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions as it sees fit.
- (6) Where the local government approves a licence variation under subclause (5), it shall notify the licensee and owner of the excavation site in writing.

4.8 Transfer of licence

- (1) An application to transfer a licence is not to be determined by the local government until the applicant has complied with subclause (2).
- (2) An application to transfer a licence shall—
- (a) be made in writing;
 - (b) state—
 - (i) name of person or company for whom the application is being lodged;
 - (ii) name of primary contact person for the company and in relation to the application;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address.

- (c) be accompanied by—
 - (i) the set fee;
 - (ii) a copy of the current licence;
 - (iii) a certificate of currency in the name of the proposed transferee for public liability policy in accordance with clause 7.1;
 - (iv) the consent in writing to the transfer from the owner of the excavation site;
 - (d) be lodged by the licensee at least 90 days before the date of proposed transfer of the licence;
 - (e) comply with and satisfy all conditions and requirements of the current licence;
 - (f) provide equivalent security under clause 3.7 as is required by the current licence; and
 - (g) include any information that the local government may reasonably require; and
 - (h) be signed by the licensee and the proposed transferee.
- (3) Upon receipt of an application to transfer a licence, the local government may—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions as it sees fit.
- (4) Where the local government approves the transfer of a licence under subclause (3), it shall notify the licensee and owner of the excavation site in writing.
- (5) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees and charges paid by the former licensee in respect of the transferred licence.
- (6) Where the local government does not approve the transfer of a licence—
- (a) the local government may cancel the licence in accordance with clause 4.9, or
 - (b) the licensee may—
 - (i) continue operations in accordance with the licence issued;
 - (ii) give notice of cessation of operations in accordance with clauses 6.1; or
 - (iii) give notice of temporary cessation of operations in accordance with clause 6.3.

4.9 Cancellation of licence by the local government

- (1) The local government may cancel a licence where the licensee has—
- (a) ceased to substantially carry on the extractive industry for a period in excess of 12 months or has not advised the local government of cessation of operations under clause 6.1;
 - (b) been convicted of an offence against—
 - (i) this local law; or
 - (ii) any other law relating to carrying on an extractive industry;
 - (c) failed to comply with—
 - (i) any of the conditions of the licence;
 - (ii) any provisions of this local law; or
 - (iii) any term of an agreement made with the local government in accordance with this local law and default continues for a period of 14 days from service on the licensee of written notice of default;
 - (d) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (e) 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;
 - (f) failed to pay the annual licence fee under clause 7.3;
 - (g) failed to have a current public liability insurance policy under clause 7.1(1); or
 - (h) 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 cancellation takes effect on and from the day on which the licensee is served with the notice, and
 - (b) the local government shall advise the licensee and owner of the excavation site in writing.
- (3) Where the local government cancels a licence under subclause (1), the local government shall not be required to refund any part of the fees and charges paid by the licensee in respect of the cancelled licence.
- (4) Where the local government cancels a licence under subclause (1), the licensee shall comply with clause 6.4, unless otherwise approved by the local government.

PART 5—LIMITATIONS, OBLIGATIONS AND PROHIBITIONS ON LICENSEE

5.1 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 300 mm high and not less than 450 mm wide;
 - (iii) the top of the sign is between 1.2 metres and 1.8 metres above ground level; and
 - (iv) 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 program 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) comply with the conditions imposed by the local government in accordance with clause 4.3.

5.2 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) 500 metres of any residence unless with the consent of the adjoining neighbours;
- (b) 50 metres of any bore, watercourse, wetland, swamp or other water reserve;
- (c) 50 metres of any thoroughfare;
- (d) 20 metres of the boundary of any land on which the excavation site is located;
- (e) 20 metres of any land affected by a registered grant of easement; or
- (f) 2 metres of the estimated maximum groundwater level as determined from time to time by the Department of Water and Environmental Regulation or otherwise as adopted by the local government.

5.3 Prohibitions

A licensee shall not—

- (a) remove any trees or shrubs within 40 metres of the boundary of any thoroughfare on land in respect of which a licence has been granted without written permission from the local government and if required, the Department of Water and Environmental Regulation, 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 4.3;
- (b) store, or permit to be stored, except in the case of approved rock quarry sites, 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, Industry Regulation and Safety; 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 program approved by the local government.

5.4 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 8.00am 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 *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.

PART 6—CESSATION OF OPERATIONS

6.1 Notice of cessation of operations by licensee

(1) A notice of cessation shall—

- (a) be made in writing;

- (b) state—
 - (i) name of person or company for whom the application is being lodged;
 - (ii) name of primary contact person for the company and in relation to the application;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address;
 - (c) be accompanied by—
 - (i) a copy of the current licence; and
 - (ii) a current certificate of currency for public liability policy in accordance with clause 7.1;
 - (d) advise if the cessation is to be—
 - (i) temporary and the expected duration or circumstances for re-commencement; or
 - (ii) permanent,
 - (e) detail arrangements for meeting any ongoing liabilities or environmental obligations—
 - (i) name of person or company to whom matters are to be referred;
 - (ii) name of primary contact person for the company;
 - (iii) telephone, mobile phone and email contact details; and
 - (iv) postal and street address;
 - (f) be lodged by the licensee as soon as cessation of operations has been determined by the licensee and not more than seven days after the operations have ceased in any event;
 - (g) include a plan showing the contours of the excavation carried out to the date of that application;
 - (h) detail 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 3.2(2)(b) and (c);
 - (i) any other things referred to in clauses 3.2 and 4.2.
 - (j) include any information that the local government may reasonably require; and
 - (k) be signed by the licensee.
- (2) Upon notice of cessation of operations, the local government shall—
- (a) acknowledge the notice of cessation of operations; and
 - (b) confirm the acceptability or otherwise of the arrangements for the cessation of operations.

6.2 Cessation of operations—permanent

(1) 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.

(2) The 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.

6.3 Cessation of operation—temporary

(1) Where a licensee has given written notice of temporary cessation of operations, then on or before the annual licence date each year, the licensee shall—

- (a) confirm to the local government the matters in subclauses 6.1(1)(d) and (e); and
- (b) provide a copy of the current public liability certificate required under clause 7.1.

(2) For the duration of the cessation—

- (a) contributions or payments agreed under subclauses 4.3(q) or (r) are suspended until such time as operations are resumed, but all other conditions and obligations remain in place; and
- (b) the annual licence fee under clause 7.3 is suspended.

(3) The licence granted under clause 4.2 shall remain valid for the term of the licence and shall not be extended by the duration of cessation of operations.

(4) The temporary 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.

6.4 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 6.1—

- (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 program 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 7—MISCELLANEOUS

7.1 Public liability

(1) A licensee shall have at all times a current public liability insurance policy naming the local government and indemnifying the licensee and the local government for a sum of not less than \$20,000,000 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 policy renewal within 14 days of each policy renewal date.

7.2 *Mines Safety and Inspection Act 1994 and Environmental Protection Act 1986*

(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 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 Annual licence fee

On or before 30 June in each year, a licensee must pay to the local government the set fee for the annual licence.

7.4 Use of secured sum by the local government

(1) If a licensee fails to pay any fees and charges or 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 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 3.7 towards its costs under this clause.

(3) The liability of a licensee to pay the local government's costs or any outstanding fees and charges under this clause is not limited to the amount, if any, secured under clause 3.7.

(4) For avoidance of doubt, the local government's powers under this clause are in addition to its other enforcement powers under this local law.

PART 8—NOTICES

8.1 Notice to remedy non-compliance

Where anything is required to be done or not permitted to be done by this local law, an authorised person may give the licensee a notice in writing requiring the licensee to comply with the requirements of this local law.

8.2 Notice requirements

A notice given must—

- (a) be in writing;
- (b) specify the reason for giving the notice, the work or action that is required to be undertaken; and
- (c) the time within which the work or action is to be undertaken.

8.3 Local government may undertake requirements of notice

If a person fails to comply with a notice referred to in clause 8.1, the local government may—

- (a) do the thing specified in the notice;
- (a) take whatever remedial action it considers appropriate and which would have been if the breach or failure had not occurred; and
- (b) recover all costs from the licensee, as a debt.

8.4 Offence to fail to comply with notice

A person who fails to comply with a notice given under this local law commits an offence.

PART 9—OBJECTIONS AND REVIEW**9.1 Objection and review rights**

(1) The provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply 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.

(2) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995*.

PART 10—OFFENCES AND PENALTIES**10.1 Offences**

A 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.

10.2 General penalty

A person who commits an offence under this local law is liable, on 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 the day during which the offence has continued.

10.3 Modified penalties

(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.

10.4 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 *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 10.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.1(a)	Carry on an extractive industry without a valid and current licence	500
2	2.1(b)	Carry on an extractive industry not in accordance with conditions of licence	500
3	4.5(1)	Failure to comply with notice regarding transport of materials	500
4	5.1(a)	Failure to securely fence or keep gateways locked	500
5	5.1(b)	Failure to comply with boundary signage requirements	500
6	5.1(c)	Failure to provide adequate drainage	500
7	5.1(d)	Failure to restore and reinstate site in accordance with approved plan	500

Item	Clause	Nature of offence	Modified penalty \$
8	5.1(e)	Failure to control dust, noise, vibration and other nuisances	500
9	5.1(f)	Failure to comply with conditions of licence	500
10	5.2(a)	Excavate within 500 metres of a residence without approval	500
11	5.2(b)	Excavate within 50 metres of a bore, watercourse, wetland swamp or other water reserve without approval	500
12	5.2(c)	Excavate within 50 metres of a thoroughfare without approval	500
13	5.2(d)	Excavate within 20 metres of the boundary of any land on which the excavation is situated without approval	500
14	5.2(e)	Excavate within 20 metres of land affected by a registered grant of easement without approval	500
15	5.2(f)	Excavate within 2 metres of estimated maximum groundwater level without approval	500
16	5.3(a)	Removal of trees or shrubs within 40 metres of any boundary with a thoroughfare reserve without approval	500
17	5.3(b)	Store or permit to be stored explosives or explosive devices without approval	500
18	5.3(c)	Fill or excavate other than in accordance with the conditions of licence	500
19	5.4(1)(a)	Carry out or permit to be carried out blasting without approval	500
20	5.4(1)(b)	Carry out or permit to be carried out blasting outside the hours approved by the local government	500
21	5.4(1)(d)	Failure to comply with conditions relating to blasting imposed by the local government	500
22	5.4(2)	Carry out or permit to be carried out blasting on a Saturday, Sunday or public holiday without approval	500
23	6.1(1)	Failure to provide notice of cessation of operations	500
24	6.3(1)	Failure to provide annual confirmation of details during period of temporary cessation of operations	500
25	6.4	Failure to undertake restoration and reinstatement as required on cessation of operations	500
26	8.4	Failure to comply with requirements of notice	500
27	10.1	Other offences not specified	500

Dated: 6 July 2018.

The Common Seal of the Shire of Morawa was affixed by authority of a resolution of Council in the presence of—

K. J. CHAPPEL, President.
C. P. M. LINNELL, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF MORAWA

FENCING LOCAL LAW 2018

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LOCAL GOVERNMENT ACT 1995

SHIRE OF MORAWA

FENCING LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Morawa resolved on 21 June 2018 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Morawa Fencing Local Law 2018*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Morawa Local Laws Relating to Fencing 2008* as published in the *Government Gazette* on 16 July 2008 are repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

applicant means a person who makes an application for approval under this local law;

approval means a favourable decision in respect of an application which is in writing, may be subject to conditions and which allows a proposal to proceed;

AS or AS/NZS means an Australian or Australian/New Zealand Standard published by Standards Australia, and available for viewing free of charge at the Shire of Morawa Administration Centre;

authorised person means a person appointed by the local government to perform any of the functions under this local law;

boundary fence means a fence constructed on the boundary of a lot which abuts a thoroughfare, and results in the application of section 16(1) of the *Dividing Fences Act 1961*;

Building Code has the meaning given in section 3 of the *Building Regulations 2012*;

commercial lot means a lot zoned as commercial under the local planning scheme;

CEO means the Chief Executive Officer of the local government;

dangerous in relation to any fence means—

- (a) an electrified fence which does not comply with clause 5.2 of this local law;
- (b) a fence containing barbed wire other than a fence constructed and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire, metal spikes or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given in section 5 of the *Dividing Fences Act 1961*;

electrified fence means a fence carrying or designed to carry an electric charge;

estate boundary fence means the fence constructed around the external boundary of a subdivision of land to indicate the extent of that subdivision and includes any special works or construction that identifies the entrance to that land;

estate entry statement means a fence, or wall constructed of masonry or other materials to identify the entrance of an estate and may include but not be limited to a sign indicating the estate name and locality, sculptures, flagpoles and flags;

fence means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening;

front boundary means the boundary line between a lot and the thoroughfare upon which that lot abuts, or in the case of a lot abutting on more than one thoroughfare the boundary line between the lot and the primary thoroughfare;

front setback area means the area between the building line of a lot and the front boundary of that lot;

height in relation to a fence means the vertical distance between the top of the fence at any point and—

- (a) the ground level; or
- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or
- (c) where the fence is constructed on a retaining wall approved by the local government, from the top of the retaining wall;

industrial lot means a lot zoned as industrial under the local planning scheme;

local government means the Shire of Morawa;

local planning scheme means a local planning scheme and includes any structure plan adopted or approved by the local government made under the *Planning and Development Act 2005*;

lot has the meaning given to it in and for the purposes of the *Planning and Development Act 2005*;

notice of breach means a notice referred to in clause 8.1;

occupier has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

owner has the meaning given to it in section 5 of the *Dividing Fences Act 1961*;

repair has the meaning given to it under section 5 of the *Dividing Fences Act 1961*;

residential lot means a lot zoned as residential under the local planning scheme;

retaining wall means any structure prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

rural lot means a lot zoned as rural under the local planning scheme;

rural residential lot means a lot zoned as rural residential under the local planning scheme;

Schedule means a Schedule to this local law;

screening means any perforated panels or trellises composed of solid or obscured translucent panels;

set fee means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;

special use lot means a lot zoned as special use under the local planning scheme;

sufficient fence means a fence described in clause 2.2 or 2.3 and includes a fence of the description and quality agreed upon by the owners of adjoining lots which does not fail to satisfy clause 2.2 or 2.3;

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*; and

townsite lot means a lot zoned as townsite under the local planning scheme.

1.6 Requirements of local planning scheme

In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the local planning scheme are to prevail.

1.7 Requirements of *Building Act 2011*

Nothing in this local law affects a provision in any written law in respect of a building permit for a fence.

PART 2—SUFFICIENT FENCES

2.1 Sufficient fences—requirement

A person shall not construct a dividing fence or a boundary fence that is not a sufficient fence.

2.2 Sufficient fences—generally

Subject to clause 2.3 a sufficient fence—

- (a) on a residential lot or townsite lot is a dividing fence or a boundary fence constructed in accordance with Schedule 1;
- (b) on a commercial lot, industrial lot or special use lot is a dividing fence or a boundary fence constructed in accordance with Schedule 2; and
- (c) on a rural lot or rural residential lot is a dividing fence or a boundary fence constructed in accordance with Schedule 3.

2.3 Sufficient fences—between lots having different requirements

Where a fence is constructed on or near the boundary between—

- (a) a residential lot or townsite lot and a lot zoned for any other purpose, a sufficient fence is a fence constructed in accordance with Schedule 1; and
- (b) a commercial lot or industrial lot and a rural lot or rural residential lot, a sufficient fence is a fence constructed in accordance with Schedule 3.

2.4 General discretion of the local government

(1) Notwithstanding the provisions of clause 2.1, an authorised person may give written consent for the construction or repair of a fence which is not a sufficient fence where all of the owners of the lots adjoin the fence make an application for approval for that purpose.

(2) In determining whether to grant its approval under subclause (1), the local government may consider whether the construction or repair of the fence would have an adverse effect on—

- (a) the safe or convenient use of any land;
- (b) the safety or convenience of any person;
- (c) the visual amenity of the locality; and
- (d) any other matter considered relevant.

2.5 Transitional provision

A dividing fence or fence lawfully constructed prior to this local law coming into operation constitutes a sufficient fence.

PART 3—FENCING GENERALLY

3.1 Fences within front and secondary setback areas

(1) A person shall not, without the written consent of an authorised person, construct a free-standing fence greater than 1200mm in height, within the front setback area of a residential lot or townsite lot.

(2) An authorised person may approve the construction of a fence of a height greater than 1200mm in the front setback area of a residential lot or townsite lot, if provision is made for lines of vision for a motorist using the driveway to access a thoroughfare where the fence on each side of the driveway into the lot across the front boundary is angled—

- (a) into the lot for a distance of not less than 1500mm along the frontage, and
- (b) to a distance of not less than 1500mm from the frontage.

(3) The provision of subclause (2) shall not apply to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

(4) The provision of subclause (2) shall apply to a secondary setback area where a driveway in the secondary setback area is used as the primary driveway access.

3.2 Alteration of ground levels

(1) A person shall not alter the natural ground level of land on or within 1000mm of the boundary of a lot, whether by removing soil or bringing onto the land any fill of any kind, by more than 500mm without the approval of an authorised person.

(2) A fence constructed of corrugated fibre-reinforced pressed cement shall not have more than 150mm difference in the ground levels on each side of the fence.

(3) Where land has been filled or retained to a height of more than 500mm above natural ground level at or within 1000mm of a boundary of a lot, a person shall only construct a dividing fence that is a sufficient fence on the said filled land or retaining wall if the person produces to an authorised person the written agreement of the owners of the adjoining lot.

3.3 Obstruction of watercourse

No person shall construct a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a natural watercourse.

3.4 Gates or doors in fences

A person shall not construct a gate or door in a fence which encroaches into or over any other property.

3.5 Retaining walls

A person must not commence to construct a retaining wall which is on the boundary line unless—

- (a) an application has been lodged with the local government including—
 - (i) two copies of a plan and specifications of the proposed retaining wall; and
 - (ii) in the case of a retaining wall exceeding 500mm in height and when required by an authorised person, engineering calculations in respect of the proposed retaining wall; and
- (b) an authorised person has approved the application.

3.6 Estate fencing

(1) A person shall not construct an estate entry statement or estate boundary fence without the approval of an authorised person.

(2) Where an estate entry statement or estate boundary fence is constructed and contains an estate name, the entry statement or estate boundary fence shall also depict the locality name in at least equal prominence.

(3) An owner or occupier of a lot adjacent to an estate boundary fence shall, where that fence is damaged, dilapidated or in need of repair, cause it to be repaired or replaced with the same or similar materials with which it was first constructed, so as far as practicable the repaired or replaced section shall be the same as the original fence.

3.7 Maintenance of fences

An owner or occupier of a lot on which a fence is constructed shall maintain the fence in good condition and suitably enclosed so as to prevent it from becoming damaged, dangerous, dilapidated, unfit for purpose or unsightly.

3.8 Fences across rights-of-way, public access ways or thoroughfares

A person must not construct or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed without the approval of an authorised person.

PART 4—FENCING MATERIALS, SCREENING AND MAINTENANCE

4.1 Prohibited materials

A person must not construct a fence which is comprised, in whole or in part of spikes, broken glass, jagged materials, barbed wire, razor wire, asbestos or any other dangerous material except to the extent provided for in Part 5.

4.2 Pre-used fencing materials

- (1) A person shall not construct a boundary fence, dividing fence or estate fence from pre-used materials without the approval of an authorised person.
- (2) Where an authorised person approves the use of pre-used materials, the materials shall be structurally fit for the purpose, and comply with any conditions imposed by an authorised person.
- (3) Conditions for use of pre-used fencing materials may include but are not limited to—
 - (a) painting;
 - (b) treated;
 - (c) specific use or placement; and
 - (d) upgrading.

4.3 Approved materials

Subject to clause 4.2, a person shall only construct a dividing fence or boundary fence from materials specified in the Schedules of this local law, unless otherwise approved or required by an authorised person.

4.4 Screening

- (1) Screening may be fixed to a sufficient fence that is compliant with Schedule 1 which is consistent with the colours, materials and specification of that sufficient fence.
- (2) Screening is not to be affixed to a fence so that the maximum height exceeds 2.1m.
- (3) Screening affixed to a fence shall be installed and maintained in accordance with the manufacturer's specifications and not compromise the structural integrity of a fence.

PART 5—RESTRICTED FENCING

5.1 Barbed wire fencing

- (1) An owner or occupier of a residential lot shall not affix or allow to remain any barbed wire on any fence bounding that lot.
- (2) An owner or occupier of a townsite lot, rural lot or rural residential lot shall not place or affix barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the top or the side of the fence posts furthest from the thoroughfare or other public place.
- (3) An owner or occupier of a commercial lot, industrial lot or special use lot shall not construct or affix to any fence bounding that lot any barbed wire unless—
 - (a) the wire or material are attached on posts vertically or at an angle of 45 degrees; and
 - (b) the bottom row of wire or other materials is not less than 2000mm above the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach onto or over adjoining land.

5.2 Electrified fencing

- (1) An owner or occupier of a lot shall not construct or use an electrified fence on that lot without first obtaining approval of an authorised person.
- (2) Notwithstanding subclause (1), approval is not required for an electrified fence if—
 - (a) constructed on a rural lot or rural residential lot;
 - (b) for the purpose of animal control;
 - (c) installed in accordance with the manufacturer's specifications; and
 - (d) which is not the dividing fence with a residential lot, townsite lot or special use lot.

(3) An electrified fence for the purpose of security must not be present on a lot unless it complies with *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences*, as amended from time to time, and which is available for viewing free of charge at the Shire of Morawa Administration Centre.

- (4) Approval to have and use an electrified fence for the purpose of security shall not be issued—
- (a) in respect of a lot which is or which abuts a residential lot or townsite lot; and
 - (b) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is constructed.

5.3 Razor wire fencing

- (1) An owner or occupier of a lot shall not construct a fence wholly or partly of razor wire on that lot without first obtaining approval under subclause (2).
- (2) Approval to have a fence constructed wholly or partly of razor wire shall not be issued—
- (a) in respect of a lot which is or which abuts a residential lot or townsite lot;
 - (b) if the fence is within 3m of the boundary of the lot; or
 - (c) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.

PART 6—APPROVALS

6.1 Application for approval

- (1) An owner of a lot may apply to the local government for approval of any discretionary matter contained within this local law.
- (2) An application for approval under this local law shall—
- (a) provide all necessary documentation and information required for a decision;
 - (b) provide two copies of a plan and specifications of the proposed;
 - (c) engineering certification of structural or electrical engineering specifications, if required;
 - (d) be signed by the owner of the lot;
 - (e) be forwarded to the CEO together with any set fee; and
 - (f) be in the form determined by the local government from time to time.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (4) An authorised person may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

6.2 Decision on application for approval

- (1) An application submitted to the local government under this local law may be—
- (a) approved by an authorised person;
 - (b) approved by an authorised person subject to conditions as the authorised person sees fit; or
 - (c) rejected by an authorised person.
- (2) In determining whether to grant its consent to the construction or installation, an authorised person may consider, in addition to any other matter that it is authorised to consider, whether the construction or retention of the fence would have an adverse impact on—
- (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.
- (3) An authorised person may by written notice amend a condition imposed under subclause (1)(b) at any time.
- (4) An amendment under subclause (3) is effective from the date specified in the notice.
- (5) If an authorised person approves an application for approval, it is to give written notice of the approval and any conditions applied, to the applicant.
- (6) If an authorised person refuses to approve an application for approval, it is to give written notice of that refusal and the reasons for the decision to the applicant.

6.3 Compliance with approval

Where an application for approval has been approved under clause 6.2, the applicant and the owner or occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

6.4 Cancellation of an approval

An authorised person may cancel an approval if—

- (a) the owner or occupier requests an authorised person to do so;
- (b) the fence to which the approval applies has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that an approval for the fence could no longer be granted under the local law;

- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence; or
- (e) the owner or occupier fails to comply with a notice of breach issued under clause 8.1.

6.5 Duration of approval

- (1) Unless otherwise stated in the form of approval, an approval granted under this local law transfers with the lot to which it relates and is deemed to transfer to each successive owner or occupier of the lot to which the approval applies.
- (2) Where an approval is transferred under subclause (1), the successive owner or occupier may apply to an authorised person for written confirmation of this transfer.
- (3) For the avoidance of doubt, approval granted under this local law may be relied upon by any subsequent owner or occupier of the lot, and may be enforced against them by the local government.

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

Where an authorised person exercises a discretion pursuant to this local law, an affected person has a right of objection and appeal under Division 1 of Part 9 of the *Local Government Act 1995*.

PART 8—ENFORCEMENT

8.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person may give a notice of breach in writing to the owner or occupier of that lot.
- (2) A notice of breach shall—
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier is required to remedy the breach within the time specified in the notice.
- (3) An owner or occupier given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.
- (4) Should an owner or occupier fail to comply with a notice, an authorised person may enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of doing so from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
- (5) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995*.

8.2 Offences and penalties

- (1) A 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 has continued.

8.3 Modified penalties

The amount appearing in the final column of Schedule 4 directly opposite a prescribed offence in that Schedule is the modified penalty for that prescribed offence.

8.4 Form of notices

For the purposes of this local law—

- (1) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (2) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

SCHEDULE 1—SUFFICIENT FENCE—RESIDENTIAL AND TOWNSITE LOTS

[Clause 2.2(a)]

Each of the following is a sufficient fence on residential and townsite lots—

- (a) except with respect to the front setback area for which there is no minimum height but which is subject to clause 3.1; and
- (b) where constructed to an average height of 1800mm.

1. Timber fence

- (1) Any type of professionally manufactured timber fence, constructed in accordance with the manufacturer's specifications.
- (2) A dense brushwood constructed in accordance with the manufacturer's specifications.

(3) A timber fence constructed as follows—

- (a) corner posts to be 125mm x 125mm x 2 400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
- (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
- (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
- (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (e) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered; and
- (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail.

2. Corrugated fence

(1) Any fence constructed of corrugated fibre reinforced pressed cement sheet fence or steel sheeting fence in accordance with the manufacturer's specifications.

(2) A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which satisfies the following specifications—

- (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
- (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet; and
- (c) the sheets to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturer's specifications.

3. Brick, stone or concrete fence

Any type of brick stone or concrete fence that—

- (a) is constructed in accordance with the Building Code, finished plumb, true and level and appropriately jointed, cleaned and of good general appearance.
- (a) has footings having a minimum of 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres; and
- (c) expansion joints in accordance with the manufacturer's specifications.

4. Composite fence

(1) A composite fence which satisfies the following specifications for the brick construction—

- (a) brick piers shall have a minimum of 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
- (b) each brick pier shall be reinforced with one R10 galvanised starting rod 1 500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
- (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
- (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
- (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres;

(2) Notwithstanding paragraphs (1)(a) and (b), a composite fence may be constructed so that—

- (a) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base wall;
- (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified, and
- (c) all other requirements are as previously specified.

SCHEDULE 2—SUFFICIENT FENCE—COMMERCIAL, INDUSTRIAL AND SPECIAL USE LOTS

[Clause 2.2(b)]

Each of the following is a sufficient fence on commercial and industrial lots—

- (1) A fence constructed of galvanized or PVC coated—
 - (a) rail-less link;
 - (b) chain; or
 - (c) steel mesh.

- (2) A fence constructed in accordance with clause (1) shall be constructed in accordance with the following specifications—
- (a) to a height of 2000mm;
 - (b) corner posts to be a minimum of 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (c) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 4 metre centres and with footings of a 225mm diameter x 600mm;
 - (d) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;
 - (e) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;
 - (f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables;
 - (g) vehicle entry gates shall provide an opening of not less than 3.6 metres and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework; and
 - (h) gates shall be fixed with a drop bolt and locking attachment.
- (3) A fence constructed in accordance with paragraph (2) may have up to 3 strands of plain or barbed wire, none being less than 1800mm above ground level, not more than 2400mm above ground level
- (4) Fences constructed in accordance with Schedule 1.

SCHEDULE 3—SUFFICIENT FENCE—RURAL AND RURAL RESIDENTIAL LOTS

[Clause 2.2(c)]

Each of the following is a sufficient fence on rural and rural residential lots—

- (1) In the case of a non-electrified fence, a fence of posts and wire construction, the minimum specifications for which are—
- (a) wire shall be—
 - (i) high tensile wire and not less than 2.5mm; and
 - (ii) a minimum of seven wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;
 - (b) posts shall be of indigenous timber or other suitable material including—
 - (i) timber impregnated with a termite and fungicidal preservative, and not less than 1650mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn;
 - (ii) standard iron star pickets; or
 - (iii) concrete;
 - (c) posts to be set minimum 400mm in the ground and 1200mm above the ground; and
 - (d) strainer posts shall be—
 - (i) not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter);
 - (ii) cut from indigenous timber or other suitable material; and
 - (iii) placed a minimum of 1000mm in the ground.
- (2) An electrified fence having five wires only is a sufficient fence if constructed generally in accordance with clause (1).

SCHEDULE 4—PRESCRIBED OFFENCES

[Clause 8.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.1	Construction of a dividing fence or boundary fence on a lot that is not a sufficient fence without approval	200
2	3.1	Construction of a non-compliant fence within setback area without approval	200
3	3.2(1)	Alteration of ground levels without approval	500

Item	Clause	Nature of offence	Modified penalty \$
4	3.3	Obstruction of a watercourse	200
5	3.4	Construction of a gate or fence encroaching over other property	200
6	3.5	Construction of retaining wall without approval	500
7	3.6(1)	Construction of estate fencing without approval	500
8	3.7	Failure to maintain fence in good condition	200
9	3.8	Construction of a fence across right-of-way etc. without approval	500
10	4.1	Use of prohibited materials in a fence	500
11	4.2(1)	Use of pre-used fencing materials without approval	200
12	4.4(2)	Construction of screen exceeding 2.1m in height	200
13	5.1(1)	Using or allowing to remain barbed wire on a residential lot	200
14	5.1(2)	Non-compliant use of barbed wire on a townsite, rural or rural residential lot	200
15	5.1(3)	Non-compliant use of barbed wire on a commercial, industrial or special use lots	500
16	5.2	Construction of an electric fence without approval	500
17	5.3	Construction of a razor wire fence without approval	500
18	6.3	Failure to comply with conditions of approval for fence	500
19	8.1(3)	Failure to comply with notice of breach in relation to Part 5—Restricted Fencing	500
20	8.1(3)	Failure to comply with notice of breach in relation to all matters other than Part 5—Restricted Fencing	200
21	8.2(1)	Other offences not specified	200

Dated: 6 July 2018.

The Common Seal of the Shire of Morawa was affixed by authority of a resolution of Council in the presence of—

K. J. CHAPPEL, President.
C. P. M. LINNELL, Chief Executive Officer.