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## SHIRE OF MORAWA

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LOCAL GOVERNMENT ACT 1995

### EXTRACTIVE INDUSTRIES LOCAL LAW 2008

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LOCAL LAWS RELATING TO FENCING

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### REPEAL LOCAL LAW 2008

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CEMETERIES ACT 1986

### MANAGEMENT AND CONTROL OF MORAWA CEMETERY LOCAL LAW 2008

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DOG ACT 1976

### DOGS LOCAL LAW 2008



**LOCAL GOVERNMENT ACT 2005**

## SHIRE OF MORAWA

**EXTRACTIVE INDUSTRIES LOCAL LAW 2008**

## ARRANGEMENT

**PART 1—PRELIMINARY**

- 1.1 Definitions
- 1.2 Citation
- 1.3 Repeal

**PART 2—APPLICATION**

- 2.1 Extent of Jurisdiction
- 2.2 Application for Licence
- 2.3 Application shall include
- 2.4 Land in Irrigation Area or Water Supply Catchment
- 2.5 Additional Information
- 2.6 Applicant to advertise proposal

**PART 3—ASSESSMENT OF APPLICATION**

- 3.1 Determination of Application
- 3.2 Compliance with Local Law
- 3.3 Third Party Approval
- 3.4 Annual Licence Fee
- 3.5 Conditions of Approval
- 3.6 Period of Licence
- 3.7 Dangerous Excavations—Requirement to Fence
- 3.8 Prescribed Route

**PART 4—RENEWAL, CANCELLATION, CESSATION, TRANSFER OF LICENCE**

- 4.1 Renewal of Licence
- 4.2 Cancellation of Licence
- 4.3 Notice of cessation of operations
- 4.4 Transfer of Licence

**PART 5—BREACH OF LOCAL LAW**

- 5.1 Penalties
- 5.2 Cancellation

**PART 6—LIMITATIONS AND GUIDELINES**

- 6.1 Excavation Setbacks
- 6.2 Excavation Operation and Management
- 6.3 Prohibitions and Limitations
- 6.4 Blasting
- 6.5 Rehabilitation

**PART 7—GENERAL PROVISIONS**

- 7.1 Public Liability
- 7.2 *Occupational Safety and Health Act 1984*
- 7.3 *Environmental Protection Act 1986*
- 7.4 *Mines Safety and Inspection Act 1994*
- 7.5 Damage to Roads and Prescribed Route

**PART 8—OBJECTIONS AND APPEALS**

- 8.1 Dispute between Licensee and Local government

**PART 9—MODIFIED PENALTIES**

- 9.1 Prescribed Offences
- 9.2 Modified Penalties
- 9.3 Forms

**SCHEDULE**

## LOCAL GOVERNMENT ACT 2005

## SHIRE OF MORAWA

## EXTRACTIVE INDUSTRIES LOCAL LAW 2008

Under the powers conferred on it by the *Local Government Act 1995* and all other powers enabling it, the Local government of the Shire of Morawa resolved on 19 June 2008 to make the following local law.

## PART 1—PRELIMINARY

## Definitions

1.1 In this local law, unless the context otherwise requires—

- “**Act**” means the *Local Government Act 1995* and words and expressions have the same meanings as they have in the Act;
- “**AHD**” means the Australian Height Datum;
- “**arterial road**” means any road under the control of Main Roads Western Australia or the Shire of Morawa that provides direct access between two localities of significance;
- “**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand, and other material;
- “**CEO**” means the Chief Executive Officer of the local government;
- “**district**” means the district of the local government;
- “**EPA**” means Environmental Protection Authority of Western Australia;
- “**excavation**” includes quarry;
- “**extractive industry**” means quarrying and excavating for any stone, gravel, sands, clay, limestone, loam or other material;
- “**infrastructure**” means any building, treatment works, screening device, tank or structure;
- “**land**”, unless the context otherwise requires, means that the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;
- “**licence**” means a licence issued under this local law;
- “**licensee**” means the person named in the licence as the licensee;
- “**local government**” means the Shire of Morawa;
- “**local road**” means a road under the control of the Shire of Morawa that provides access from individual properties to arterial roads or localities;
- “**occupier**” has the same meaning as defined in the Act;
- “**overburden**” means that material removed from the surface to access wanted material;
- “**owner**” has the same meaning as defined in the Act;
- “**person**” does not include the local government;
- “**secured sum**” means that amount required to be paid as cash, a bond, guarantee or security under this local law;
- “**site**” means the land specified by the local government in a licence;
- “**stockpile**” means a deposit of excavated material stored for whatever purpose.

## Citation

1.2 This local law may be cited as the *Shire of Morawa Extractive Industries Local Law 2008*.

## Application

1.1 (1) The provisions of this local law—

- (a) subject to paragraphs (b), (c), (d) and (e);
  - (i) apply and have force and effect throughout the whole of the district; and
  - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;
- (b) do not apply to the extraction of minerals under the *Mining Act 1978*;
- (c) do not apply to the carrying on of an extractive industry on Crown land;

- (d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land; and
  - (e) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law.
- (2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).
- (3) Nothing in this local law shall be construed to limit, diminish or restrict any provisions of a Local Planning Scheme made under the *Planning and Development Act 2005* as amended, and in the case of any inconsistency the provisions of such a Scheme shall prevail.

### Repeal

1.2 The local laws of the Shire of Morawa relating to Extractive Industries published in the *Government Gazette* on 20 October 1998, are repealed.

## PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

### Extractive Industries Prohibited Without Licence

2.1 A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

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

### Application for Licence

2.2 A licence mentioned in subclause 2.1(1) of this local law, is not required where the proposed creation, or enlargement of an excavation is—

- (a) For the recovery of stone, gravel, sands, clay, limestone, loam or other material for the use on the property by the owner or occupier of the property and not for disposal or sale outside the property; and not less than fifty (50) metres distant from any boundary of the property or from any public road;
- (b) Except where the operation is on a commercial basis, for the recovery of any such materials for the purpose of road construction or maintenance; of a volume not greater than a total of three thousand (3000) cubic metres inclusive of all adjacent excavations which have not been rehabilitated and not less than fifty (50) metres distant from any boundary of the property or from any public road; or
- (c) For agricultural purposes on agricultural land; and not less than fifty (50) metres distant from any boundary of the property or from any public road; and
- (d) Where, by subclauses 2.2(1) (a) and (b) of this local law a licence is not required, irrespective of the manner of its ceasing, on the cessation of any excavation work, the local government may require the owner or occupier to ensure that—
  - (i) the excavation is filled to the satisfaction of the local government or rehabilitated to the satisfaction of local government or its representative in accordance with clause 6.5 of this local law; and
  - (ii) any face permitted to remain in the excavation is left safe with all loose material removed therefrom; and the floor level is graded to an even surface and the sides sloped to an even batter sufficient to prevent subsidence of the surrounding area.

### Application shall include

2.3 (1) Pursuant to clause 2.1(2) of this local law, a person, seeking the issue of a licence in respect of any land, must apply in the form determined by the local government from time to time, and must forward the application duly completed and signed by both the applicant and the owner of the land to the CEO of the local government.

(2) Subject to clause 2.3 (4), the application shall—

- (a) be in writing; and
- (b) be accompanied by three (3) copies of a plan of the excavation site to a scale of between 1:500 and 1:2000, showing the existing and proposed land contours based on the AHD and plotted at 1m contour intervals.

(3) Subject to clause 2.3(4), the plan shall have—

- (a) a description of the land shown clearly on a locality plan on which the excavation site is to be located;
- (b) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
- (c) the external surface dimension of the land;
- (d) the location and depth of the existing and proposed excavation of the land;
- (e) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (f) location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;

- (g) the level of filling for rehabilitation, upon completion of excavation operations;
  - (h) the location of buildings, treatment plant, tank and other improvements and developments existing on, approved for or proposed in respect of the land;
  - (i) state the proposals, if any, for the future development of the land upon completion of excavation operations and any proposed rehabilitation;
  - (j) the location of existing and proposed roads or other means of vehicle access to and egress from the land and to public roads in the vicinity of the land, including an indication of what public roads the licensee intends to use;
  - (k) an excavation management and closure plan in accordance with clause 6.2 of this local law;
  - (l) the location and description of existing and proposed fences, gates and warning signs around the land; and
  - (m) copies of any planning approvals required under any planning legislation.
- (4) Where in relation to a proposed excavation—
- (a) the surface area is not to exceed two thousand square metres (2000m<sup>2</sup>); and
  - (b) the extracted material is not to exceed two thousand cubic metres (2000m<sup>3</sup>);

the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of subclause (1).

#### **Land in Irrigation Area or Water Supply Catchment**

2.4 Where the land the subject of an application for a licence to excavate is situated within an irrigation area constituted under the *Rights in Water and Irrigation Act 1914* as amended, or within a drainage or catchment district constituted under the *Land Drainage Act 1925* as amended, the following provisions shall apply—

- (a) The plan or any amended plan of the excavation, when submitted to the local government for approval, shall clearly and legibly disclose that the land represented therein is situated within an irrigation district or within a drainage or catchment district, as the case may be, and give the name of such district;
- (b) The local government shall, on receipt of the plan or amended plan and before considering whether or not it shall be approved, refer the plan or amended plan to the Water and Rivers Commission or Water Corporation (as the case may be) in which the land represented in such plan or amended plan is situated, for examination, consideration and report to the local government;
- (c) The Water and Rivers Commission or Water Corporation (as the case may be) may advise in writing to the local government, the conditions if any, that should be imposed in the granting of a licence,
- (d) When the local government has received from the Water and Rivers Commission or Water Corporation concerned, the notification provided for in subclause (3), the local government may proceed to examine and consider the plan or amended plan of excavation together with other provisions of the Act and this local law and to determine whether or not the local government should approve of the issue of a licence.

#### **Additional Information**

2.5 An applicant for a licence to excavate shall give to the local government such additional information concerning the proposed excavation, as the local government may reasonably require.

#### **Applicant to advertise proposal**

2.6 An intending applicant for a licence to excavate shall—

- (1) Except in the case of an application in respect of an excavation in existence at the time of the coming into operation of this local law, by arrangement with the Local Government, publish in a newspaper circulating in the area, a notice of intention to submit the application, specifying that any person interested may, within fourteen (14) days after the date of publication, object to the granting of the licence, by written notice given to the local government;
- (2) Supply to the local government for posting on its notice board, a copy of the notice, which the local government shall exhibit on the notice board for at least seven (7) days;
- (3) The local government, at the cost to the applicant, shall forward by mail a notice, in the form determined by the local government from time to time to—
  - (a) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence, advising of the application and specifying that they may, within twenty-one (21) days of date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government;
  - (b) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(3)(b) and (f) and within five hundred (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

- (4) As soon as practical after complying with the requirements of subclause (3), the local government on behalf of the applicant shall publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

**PART 3—ASSESSMENT OF APPLICATION****Determination of Application**

3.1 The local government may, in respect of any application for a licence—

- (1) refuse the application; or
- (2) approve the application—
  - (a) over the whole or part of the land specified in the application; and
  - (b) on such terms and conditions as it sees fit.
- (3) The terms and conditions of approvals referred to in subclause (2) of this clause shall not be limited to those items herein contained and the extent of those terms and conditions shall not be limited.

**Compliance with Local Law**

3.2 All applications shall be in the form prescribed in clause 2.3 of this local law and shall contain all information specified therein and will undertake the necessary advertising as specified in clause 2.6 of this Local Law.

**Third Party Approval**

3.3 Where an application is subject to the approval of another authority, a licence shall not be granted until all such approvals are granted and conditions of such approvals complied with clause 2.4 of this Local Law.

**Annual Licence Fee**

3.4 The maximum annual fee payable to the local government for a licence shall be determined by local government from time to time, but the local government may vary the fee in respect of an excavation or undertaking deemed by it to be small in area or depth or excessively large in area depth or production.

**Conditions of Approval**

3.5 Secured sum for roadworks—

- (1) The local government may, before granting any licence under this local law, require the applicant—
  - (i) to enter into an agreement for the payment to the local government of a secured sum of money, being the expense estimated by the local government as likely to be incurred by it, in repairing and maintaining roads under its control in the neighbourhood of the proposed excavation by reason of extraordinary damage, as a result of heavy or extraordinary traffic conducted by the licensee or any person acting on his behalf in the exercise of the licence, if granted; and any such agreement shall be deemed to have been entered into under the provisions of sections 84 and 85 of the *Road Traffic Act, 1974* as amended;
  - (ii) the due observance of any agreement entered into by the applicant; pursuant to paragraph (i) of this subclause be a condition of the granting and holding of the licence.
- (2) An applicant for a licence under the provisions of this local law 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 not exceeding twenty five thousand dollars (\$25,000), as the local government may, by resolution, determine, to be retained by the local government for the duration of the licence and until the licensee shall have complied with clause 6.5 of this local law.
- (3) Where a licensee, or person whose licence has expired, is convicted of a breach of any of the provisions of clause 6.5 of this local law, the local government may cause the necessary work, or so much of that work as remains undone, to be carried out and the licensee must 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.
- (4) Upon the expiration of the licence and the carrying out of the prescribed works, the deposit (if any) or the balance of the deposit shall be repaid to the licensee.
- (5) Any cash deposit paid to a local government under this local law shall be placed in the local government's Trust Fund, and lodged in a Savings Bank; with all interest derived therefrom shall be added to the deposit, and credited to the licensee.

**Period of Licence**

3.6 A licence shall be valid for the expected life of the excavation, as determined by the local government, subject to the payment of the prescribed annual fee.

**Dangerous Excavations—Requirement to Fence**

3.7 (1) The provisions of clause 6 of Schedule 9.1 of the Act and Regulation 11 of the *Local Government (Uniform Local Provisions) Regulations 1996* shall apply to this local law as if set out herein

(2) Where the local government considers it to be necessary as a safety precaution, a licensee may be required to fence, to the satisfaction of the local government, the area proposed to be excavated, prior to the commencement of the work.

Penalty \$1,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

**Prescribed Route**

3.8 The local government may, as it so determines, specify a route for transportation of materials from the site to an arterial road or other destination through the local road system, and if required place limitations as to the tonnage to be carted along a particular route.

**PART 4—RENEWAL, CANCELLATION, CESSATION, TRANSFER OF LICENCE****Renewal of Licence**

4.1 (1) A licensee who wishes to renew a licence must apply in writing to the local government at least forty-five (45) days prior to the expiry of the licence and must submit with the application for renewal—

- (a) The fee as so determined by local government from time to time;
- (b) A copy of the current licence;
- (c) If so determined by local government those things referred to in clauses 2.3 and 2.4 of this local law;
- (d) Details of works to date including excavations, rehabilitation, stages reached or other things referred to in the original application.

(2) Upon Receipt of an application for renewal the local government may—

- (a) Refuse the application or
- (b) Approve the application on such terms and conditions as it sees fit.

**Cancellation of Licence**

4.2 If a licensee fails to comply with—

- (1) Any of the terms of any agreement entered into with the local government, relative to the excavating of stone, gravel, sands, clay, limestone, loam or other material;
- (2) Any of the clauses of this local law; and
- (3) the default continues after the expiration of fourteen (14) days from service on the licensee of written notice from the local government to remedy the fault, then, the local government may, cancel the licence of the defaulting licensee subject to the provisions of clause 8.1 of this local law.
- (4) The local government shall give to the licensee at least seven (7) days written notice of its intention to cancel a licence.

**Notice of cessation of operations**

4.3 (1) Where a licensee intends to cease carrying on an extractive industry temporarily for a period in excess of twelve (12) months; or permanently, the licensee must, as well as complying with clause 6.5, give the local government written notice of the cessation not later than one (1) week after those operations have ceased.

(2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence is deemed to have expired on the date such cessation is so notified.

(3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

**Transfer of Licence**

4.4 (1) A licence may be transferred to another applicant and the application must be—

- (a) in writing;
- (b) be signed by the licensee and the proposed transferee of the licence;
- (c) be accompanied by a copy of the current licence;
- (d) include any additional information that the local government may require;
- (e) if granted prior to the coming into existence of this local law may be required to comply with the conditions of clause 2.3 of this local law.

(2) Upon receipt of an application to transfer a licence the local government may—

- (a) refuse the application; or
- (b) approve the application subject to any terms and conditions as it sees fit.

(3) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

**PART 5—BREACH OF LOCAL LAW****Penalties**

5.1 Any person who, either by act or omission, contravenes this local law or being the owner or occupier of property within the district, knowingly permits any act or omission on any property owned or occupied by them in contravention of this local law is guilty of an offence and is liable to a penalty of a maximum of five thousand dollars (\$5,000) and in addition to a daily penalty of a maximum of five hundred dollars (\$500) for each day during which the offence continues after his conviction. This clause applies unless the penalty is otherwise stipulated in this local law.



**Cancellation**

5.2 Where an offence has occurred under clause 5.1 of this local law the provisions of clause 4.2(4) of this local law may apply as deemed necessary by local government.

**PART 6—LIMITATIONS AND GUIDELINES****Excavation Setbacks**

6.1 (1) Subject to the provisions of clause 2.2 of this local law, a person shall not excavate within—

- (a) Twenty (20) metres of the boundary of any land subject to an extractive industry licence, except by agreement of the owner of the adjoining land, verified to the satisfaction of the local government;
- (b) A distance of forty (40) metres of any road, unless the local government approves of excavation within a lesser distance, under the provisions of subclause 6.1(5) of this local law;
- (c) Twenty (20) metres of any land affected by an easement or other encumbrance; and
- (d) Forty (40) metres of any watercourse, dam or soak not wholly contained within the property.

Penalty \$2,000.

(2) Where a proposed excavation is not to be lower than the level of the nearest road and reinstatement of the area excavated for its existing use is possible, the local government may permit a licensee to excavate to a specified distance within forty (40) metres of that road.

(3) The local government may, in any particular case, having regard to any Local Planning Scheme or any land usage local law implemented by the local government and to any regulation or order issued under the provisions of the *Planning and Development Act 2005* as amended, limit any excavation to such greater distance as is so specified.

(4) Any person shall not, within forty (40) metres of the boundary of any road or of any land owned by the local government or such lesser distance as may be permitted under the provisions of subclause 6.1(5) of these local laws, remove natural trees or scrub on land in respect of which a licence to excavate has been granted, except for the purpose of constructing access roads or erecting buildings for use in connection with the excavation.

Penalty \$3,000

**Excavation Operation and Management**

6.2 Excavation Management and Closure Plan—

- (1) The applicant shall, when requested to do so by the local government, supply three (3) copies of an excavation management plan for all proposals where the estimated total volume of the excavation or material removed from the site will exceed ten thousand (10,000m<sup>3</sup>) cubic metres and will as a minimum include—
  - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
  - (ii) the estimated quantities to be extracted from the site, in total, monthly and weekly quantities;
  - (iii) the distance from adjacent dwellings, reserves, settlements, environmentally sensitive areas, recreational facilities and if there is line of sight connection between the sites;
  - (iv) prevailing wind speed and direction;
  - (v) proposed volumes and areas to be mined at any one time;
  - (vi) proposed stockpile sites and volumes to be stored and methods for preventing the escape of material into any stream, watercourse or drain, that is not wholly situated within land owned or occupied by the applicant;
  - (vii) the method of cartage of excavated materials and the proposed route for access to an arterial road or other destination;
  - (viii) staging and timing of excavation works including hours and days of operation, proposed staged development of site including rehabilitation of exhausted areas;
  - (ix) method of excavation and on-site processing works and related compliance with EPA regulations as imposed in accordance with clause 7.3 of this local law but as a minimum shall address noise, visual, air and water pollution;
  - (x) method of removal and re-establishment of vegetation, topsoil and overburden and rehabilitation works in accordance with clause 6.5 of this local law;
  - (xi) a description of site drainage and erosion control measures to be implemented to restrict water and contaminants entering watercourses or streams not wholly contained on the site;
  - (xii) an assessment of the existing flora and fauna and methods of conserving these resources and rehabilitating upon cessation of works;
  - (xiii) where required, the method of screening the site from surrounding areas or otherwise minimizing adverse visual impact on surrounding areas; and
  - (xiv) develop a safety plan for operations in accordance with clause 7.2 of this local law and other relevant legislation and regulations.

**Prohibitions and Limitations**

6.3 Having regard to the nature of the material being excavated, the method of working and the equipment used, the height of the face of an excavation shall be determined by a qualified geotechnical engineer as one that can be safely worked, and should there be any dispute between the local government and the licensee as to the height of any such face, then the matter shall be resolved in accordance with clause 8. 1.

**Blasting**

6.4 A person must not carry out or permit to be carried out any blasting in the course of excavating unless—

- (1) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;  
Penalty \$5,000
- (2) the blasting is carried out in strict accordance with AS2187 SAA Explosives Code, *the Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986* and all relevant local laws of the local government and any statute of the State of Western Australia or the Commonwealth of Australia;
- (3) subject to subclause (1), the blasting takes place only between the hours of 8 a.m. and 5 p.m. or as determined by the local government, on Mondays to Fridays inclusive; and 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;
  - (iii) the methods of detonation and blasting;
  - (iv) the types of explosives to be used; and
  - (v) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.

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

- (4) A person must not carry out or permit to be carried out any blasting on a Saturday, Sunday or Public Holiday except with the prior approval of the local government.  
Penalty \$2,000.

**Rehabilitation**

6.5 Irrespective of the manner of its ceasing, on the cessation of any excavation work, the licensee shall ensure that—

- (1) The excavation is filled or rehabilitated in accordance with the plan referred to in clause 6.2 of this local law;
- (2) Any face permitted to remain in the excavation is left safe with all loose material removed there from;
- (3) Retaining walls, where considered necessary by the local government to prevent subsidence of the surrounding area, are constructed in such manner as may be agreed upon between the local government and the licensee;
- (4) The agreed floor level of the excavated area, where retaining walls are not required under the provisions of this clause, is graded to an even surface and the sides sloped to a batter sufficient to prevent subsidence of the surrounding area;
- (5) All dumps of stone, sand or other material are so left that no portion of that material can escape into any stream, watercourse or drain, that is not wholly situated within land owned or occupied by the licensee;
- (6) All topsoil previously removed from the site, is to be spread over the site;
- (7) The area to be seeded with a mixture of seeds from species typical of the area as specified by the local government, or alternatively that area shall be planted with seedlings of a similar variety, the number or amount to be determined by the local government or returned to pasture or cropping as approved by the local government; and
- (8) Where deemed necessary by the local government an area may need artificial rejuvenation by means of irrigating and fertilisation to ensure satisfactory rehabilitation.

**PART 7—GENERAL PROVISIONS****Public Liability**

7.1 (1) A licensee shall have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum not less than ten million dollars (\$10,000,000) in respect of any one claim relating to any of the excavation operations.

(2) The licensee shall provide to the local government a copy of the policy taken out under subclause (1), within fourteen (14) days after the issue of that policy and shall provide to the local government evidence of renewal within fourteen (14) days of each renewal date.

**Occupational Safety and Health Act 1984**

7.2 All works shall be in accordance with the provisions of the *Occupational Safety and Health Act 1984* and regulations, as amended.

***Environmental Protection Act 1986***

7.3 (1) In any case where 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 must—

- (a) comply with all applicable provisions of the *Environmental Protection Act 1986*; and
- (b) provide to the local government within fourteen (14) days full particulars of any inspection or report made under the *Environmental Protection Act 1986* in accordance with clause 6.2(1)(x) of this local law.

(2) In this clause, the *Environmental Protection Act 1986* includes all subsidiary legislation made under the *Environmental Protection Act 1986*.

***Mines Safety and Inspection Act 1994***

7.4 (1) In any case where the *Mines Safety and Inspection Act 1994* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site must—

- (a) comply with all applicable provisions of the *Mines Safety and Inspection Act 1994*; and
- (b) provide to the local government within fourteen (14) days full particulars of any inspection or report made under the *Mines Safety and Inspection Act 1994*; in accordance with clause 6.2(1)(x) of this local law.

(2) In this clause, the *Mines Safety and Inspection Act 1994* includes all subsidiary legislation made under the *Mines Safety and Inspection Act 1994*.

***Damage to Roads and Prescribed Route***

7.5 (1) Where deemed appropriate under clause 3.8 the local government may prescribe a route for the transportation of material from the site to its destination or to an arterial road, and where a prescribed route exists the licensee may be liable for the cost to maintain or reinstate the road to its original state, under the provisions of clause 3.5 of this local law.

(2) In the event of any roads on a prescribed route being inadequate in construction standard, the local government may require the licensee, as part of an approval, to contribute towards the upgrade of the road or roads to a standard as specified by the local government.

**PART 8—OBJECTIONS AND APPEALS**

8.1 When the local government makes a decision as to whether it will—

- (a) grant a person a licence under this local law; or
- (b) renew, vary, or cancel a licence that a person has under this local law,

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

**PART 9—MODIFIED PENALTIES**

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

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

**Forms**

9.3 For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule  
**PRESCRIBED OFFENCES**

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
2.1	Carry on Extractive Industry without licence or in breach of terms and conditions .....	300
3.7 (2)	Fencing not erected before commencement of excavation .....	300
6.1(1)	Excavate near boundary.....	200
6.1(3)	Remove tree or shrubs near boundary without approval .....	250
6.4(1)	Blasting without approval of local government .....	500
6.4(3)	Blasting outside times authorised or in breach of conditions imposed.....	500
6.4(4)	Blasting without approval on Saturday, Sunday or public holiday .....	200

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Dated this 19th day of June 2008.

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

J. F. COOK, Shire President.

G. R. TREASURE, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1998****SHIRE OF MORAWA****LOCAL LAWS RELATING TO FENCING 2008****ARRANGEMENTS****PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Repeal
- 1.3 Application of Local Laws
- 1.4 Interpretation

**PART 2—SUFFICIENT FENCES**

- 2.1 Sufficient Fences

**PART 3—GENERAL**

- 3.1 Fences Within Front Setback Areas
- 3.2 Fences on a Rural Lot
- 3.3 Maintenance of Fences
- 3.4 General Discretion of the Local Government

**PART 4—FENCING MATERIALS**

- 4.1 Fencing Materials
- 4.2 Barbed Wire and Broken Glass Fences

**PART 5—ELECTRIFIED AND RAZOR WIRE FENCES**

- 5.1 Requirements for a Licence
- 5.2 Transfer of a Licence
- 5.3 Cancellation of a Licence

**PART 6—NOTICES OF BREACH**

- 6.1 Notices of Breach

**PART 7—OFFENCES**

- 7.1 Offences and Penalties
- 7.2 Modified Penalties
- 7.3 Form of Notices

**FIRST SCHEDULE****SECOND SCHEDULE****THIRD SCHEDULE**

## LOCAL GOVERNMENT ACT 1998

## SHIRE OF MORAWA

## LOCAL LAWS RELATING TO FENCING 2008

Under the powers conferred on it by the *Local Government Act 1995* and all other powers enabling it, the Council of the Shire of Morawa resolved on 19 June 2008 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Citation**

These Local Laws may be cited as the *Shire of Morawa Local Laws Relating to Fencing 2008*.

**1.2 Repeal**

The Local Law of the Shire of Morawa relating to Fencing published in the *Government Gazette* on 8 May 1981, and as amended and published in the *Government Gazette* on 8 July 1994, are repealed.

**1.3 Application of Local Laws**

These Local Laws apply throughout the district.

**1.4 Interpretation**

In these Local Laws, unless the context requires otherwise—

“**Act**” means the *Dividing Fences Act 1961*;

“**AS**” means an Australian Standard published by the Standards Association of Australia;

“**boundary fence**” has the meaning given to it for the purposes of the Act;

“**Building Surveyor**” means a Building Surveyor of the local government;

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

“**Commercial Lot**” means a lot where a commercial use—

(a) is or may be permitted under the town planning scheme; and

(b) is or will be the predominant use of the lot;

“**dangerous**” in relation to any fence means—

(a) an electrified fence other than a fence in respect of which a licence under Part 5 of these Local Laws has been issued and is current;

(b) a fence containing barbed wire other than a fence erected and maintained in accordance with these Local Laws;

(c) a fence containing exposed broken glass, asbestos fibre, razor wire 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 to it in and for the purposes of the Act;

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

“**fence**” means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

“**frontage**” means the boundary line between a lot and the thoroughfare upon which that lot abuts;

“**height**” in relation to a fence means the vertical distance between—

(a) the top of the fence at any point; and

(b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

“**Industrial Lot**” means a lot where an industrial use—

(a) is or may be permitted under the town planning scheme; and

(b) is or will be the predominant use of the lot;

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

“**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 6.1;

“**Residential Lot**” means a lot where a residential use—

- (a) is or may be permitted under the town planning scheme; and
- (b) is or will be the predominant use of the lot;

“**retaining wall**” means any structure which 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 where a rural use—

- (a) is or may be permitted under the town planning scheme; and
- (b) is or will be the predominant use of the lot;

“**Schedule**” means a Schedule to these Local Laws;

“**setback area**” has the meaning given to it for the purposes of the town planning scheme;

“**Special Rural Lot**” means a lot where a special rural use—

- (a) is or may be permitted under the town planning scheme; and
- (b) is or will be the predominant use of the lot;

“**sufficient fence**” means a fence described in clause 2.1; and

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

### 1.5 Licence Fees and Charges

All licence fees and charges applicable under these Local Laws shall be as determined by the local government from time to time in accordance with section 6.16 of the *Local Government Act 1995*.

## PART 2—SUFFICIENT FENCES

### 2.1 Sufficient Fences

(1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence unless all owners of land which adjoins the relevant boundary agree to erect a fence which though different does not fail to comply with the requirements of a sufficient fence.

(2) Subject to sub-clauses (3) and (4), a sufficient fence—

- (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule.
- (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule;

(3) Where a fence is erected on or near the boundary between—

- (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) a Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule;
- (d) a Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule; and
- (e) a Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule.

(4) Unless the Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.

(5) Notwithstanding any other provisions in these Local Laws, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where—

- (a) it is greater than 1800mm in height; or
- (b) the Building Surveyor so requires.

## PART 3—GENERAL

### 3.1 Fences Within Front Setback Areas

(1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1200mm in height, within the front set-back area of a Residential Lot within the district.

(2) The Building Surveyor may approve the erection of a fence of a height greater than 1200mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of sub-clause (2) shall not apply to a fence—

- (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
- (b) that does not adjoin a footpath.

### **3.2 Fences on a Rural Lot**

A person shall not without the written consent of the Building Surveyor, erect a fence on a Rural Lot, within 7.5m of a thoroughfare of a height exceeding 1500mm.

### **3.3 Maintenance of Fences**

An owner or occupier of a lot on which a fence is erected shall maintain the fence in good condition and so as to prevent it from becoming dangerous, dilapidated, or unsightly.

### **3.4 General Discretion of the Local Government**

(1) Notwithstanding clause 2.1, the local government may consent to the erection or repair of a fence which does not comply with the requirements of these Local Laws.

(2) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on—

- (a) the safe or convenient use of any land; or
- (b) the safety or convenience of any person.

## **PART 4—FENCING MATERIALS**

### **4.1 Fencing Materials**

(1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only those materials specified for a sufficient fence in respect of such lot in the First or Second Schedule or some other material approved by the Building Surveyor.

(2) Where the Building Surveyor approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant for approval painting or treating the pre-used material as directed by the Building Surveyor.

### **4.2 Barbed Wire and Broken Glass Fences**

(1) This clause does not apply to a fence constructed wholly or partly of razor wire.

(2) An owner or occupier of a Residential Lot or a Commercial Lot shall not erect or affix to any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the Building Surveyor has been obtained.

(3) An owner or occupier of an Industrial Lot shall not erect or affix on any fence bounding that Lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is set back 150mm from the face of the fence and is not nearer than 2000mm from 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 on adjoining land.

(5) An owner or occupier of a lot shall not affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.

(6) An owner or occupier of a Rural 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 side of the fence posts furthest from the thoroughfare or other public place.

## **PART 5—ELECTRIFIED AND RAZOR WIRE FENCES**

### **5.1 Requirements for a Licence**

(1) An owner or occupier of a lot, other than a Rural Lot, shall not—

- (a) have and use an electrified fence on that lot without first obtaining a licence under subclause (2); or
- (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (3).

(2) A licence to have and use an electrified fence shall not be issued—

- (a) in respect of a lot which is or which abuts a Residential Lot;
- (b) unless the fence complies with AS/NZS 3016:1994; and
- (c) 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 erected.



- (3) A licence to have a fence constructed wholly or partly of razor wire shall not be issued—
- (a) if the fence is within 3m of the boundary of the lot;
  - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a licence referred to in subclauses (2) or (3) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.
- (5) An application for a licence referred to in subclauses (2) or (3) may be—
- (a) approved by the local government;
  - (b) approved by the local government subject to such conditions as it thinks fit; or
  - (c) refused by the local government.

### 5.2 Transfer of a Licence

A licence referred to in clause 5.1 shall transfer with the land to any new occupier or owner of the lot.

### 5.3 Cancellation of a Licence

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel a licence issued under this Part if—

- (a) the fence no longer satisfies the requirements specified in clause 5.1(2) or 5.1 (3) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

## PART 6—NOTICES OF BREACH

### 6.1 Notices of Breach

(1) Where a breach of any provision of these Local Laws has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot (“notice of breach”).

(2) A notice of breach shall—

- (a) specify the provision of these Local Laws which has been breached;
- (b) specify the particulars of the breach; and
- (c) state that the owner of the lot is required to remedy the breach within 28 days from the giving of the notice.

(3) Should an owner fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot, as the case may be, in a court of competent jurisdiction.

## PART 7—OFFENCES

### 7.1 Offences and Penalties

(1) An owner who fails to comply with a notice of breach issued under clause 6.1 commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

(2) A person who fails to comply with or who contravenes any provision of these Local Laws commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

### 7.2 Modified Penalties

(1) An offence against any provision of these Local Laws is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.

(2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of these Local Laws is \$125.

### 7.3 Form of Notices

For the purposes of these Local Laws—

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

*First Schedule*

Clause 2.1(2)(a)

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

Each of the following is a "sufficient fence" on a Residential Lot—

- A. A picket timber fence which satisfies the following specifications—
- (a) corner posts to be 125mm x 125mm x 2400mm 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 two bays of fencing double railed or bolted to each post with joints staggered;
  - (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail; and
  - (g) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting 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;
  - (c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and
  - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications—
- (a) footings of minimum 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;
  - (c) expansion joints in accordance with the manufacturer's written instructions; and
  - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- D. A composite fence having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1, which satisfies the following specifications for the brick construction—
- (1)
    - (a) brick piers of minimum 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
    - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm 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; or
  - (2)
    - (a) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base wall; and
    - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

*Second Schedule*

Clause 2.1(2)(b)

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND AN INDUSTRIAL LOT**

Each of the following is a "sufficient fence" on a Commercial Lot and an Industrial Lot—

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
- (a) corner posts to be minimum 50mm normal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
  - (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
  - (c) 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;
  - (d) 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;
  - (e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 4.2(3) of these Local Laws; and
  - (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. Vehicle entry gates shall provide an opening of not less than 3.6m 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. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800mm but no greater than 2400mm.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

*Third Schedule*

Clause 2.1(2)(c)

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT**

(1) In the case of a non-electrified fence, a sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are—

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 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—
  - timber impregnated with a termite and fungicidal preservative;
  - standard iron star pickets; or
  - concrete;
 cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum 600mm in the ground and 1200mm above the ground; and
- (c) strainer posts shall be not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.

(2) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).

Dated this 19th day of June 2008.

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

J. F. COOK, Shire President.  
G. R. TREASURE, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF MORAWA

**REPEAL LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995*, and all other powers enabling it, the Council of the Shire of Morawa resolved on 19 June 2008 to repeal old and obsolete by-laws as follows.

**1. Citation**

This Local Law may be cited as the *Shire of Morawa Repeal Local Law 2007*.

**2. Operation**

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

**3. Repeal**

The following local laws are repealed—

By-laws relating to—

Management and Use of the Town Hall, published in the *Government Gazette* of 21 December 1979 and as amended and published in the *Government Gazette* of 9 October 1981 and 8 July 1994;

Hawkers, published in the *Government Gazette* of 21 December 1979; and Stallholders and Trading as published in the *Government Gazette* of 31 March 1994;

Control and Management of Recreation Grounds, published in the *Government Gazette* of 16 October 1953, and as amended and published in the *Government Gazette* of 21 May 1968 and 8 July 1994; and

Control and Management of Morawa Olympic Swimming Pool, published in the *Government Gazette* of 5 May 1967, and as amended and published in the *Government Gazette* of 31 March 1994 and 8 July 1994.

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Dated this 19th day of June 2008.

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

J. F. COOK, Shire President.  
G. R. TREASURE, Chief Executive Officer.

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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

**MANAGEMENT AND CONTROL OF MORAWA CEMETERY  
LOCAL LAW 2008**

ARRANGEMENT

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Interpretation
- 1.3 Repeal

**PART 2—ADMINISTRATION**

- 2.1 Powers and Functions of Chief Executive Officer.

**PART 3—APPLICATION FOR FUNERALS**

- 3.1 Application for Burial
- 3.2 Applications to be Accompanied by Certificates etc
- 3.3 Certificate of Identification
- 3.4 Minimum Notice Required

**PART 4—FUNERAL DIRECTORS**

- 4.1 Funeral Director's Licence Expiry
- 4.2 Single Funeral Permits
- 4.3 Application Refusal

**PART 5—FUNERALS**

*Division 1—General*

- 5.1 Requirements for Funerals and Coffins
- 5.2 Funeral Processions
- 5.3 Vehicle Entry Restricted
- 5.4 Vehicle Access and Speed Limitations
- 5.5 Offenders may be Expelled
- 5.6 Conduct of Funeral by Board

*Division 2—Placement of Ashes*

- 5.7 Disposal of Ashes

**PART 6—BURIALS**

- 6.1 Depth of Graves

**PART 7—MEMORIALS AND OTHER WORK**

*Division 1—General*

- 7.1 Application for Monumental Work
- 7.2 Placement of Monumental Work
- 7.3 Removal of Rubbish
- 7.4 Operation of Work
- 7.5 Removal of Sand, Soil or Loam
- 7.6 Hours of Work
- 7.7 Unfinished Work
- 7.8 Use of Wood
- 7.9 Plants and Trees
- 7.10 Supervision
- 7.11 Australian War Graves
- 7.12 Placing of Glass Domes and Vases

*Division 2—Memorial Plaque Section*

## 7.13 Requirements of a Memorial Plaque

*Division 3—Licensing of Monumental Masons*

## 7.14 Monumental Mason's Licence

## 7.15 Expiry Date, Non-Transferability

## 7.16 Carrying out Monumental Work

## 7.17 Responsibilities of the Holder of a Monumental Mason's Licence

## 7.18 Cancellation of a Monumental Mason's Licence

**PART 8—GENERAL**

## 8.1 Animals

## 8.2 Guide Dogs

## 8.3 Damaging and Removing of Objects

## 8.4 Withered Flowers

## 8.5 Littering and Vandalism

## 8.6 Advertising

## 8.7 Obeying Signs and Directions

## 8.8 Removal from the Cemetery

**PART 9—OFFENCES AND MODIFIED PENALTIES**

## 9.1 General

## 9.2 Modified Penalties

**FIRST SCHEDULE—Modified Penalties****SECOND SCHEDULE—Infringement Notice****THIRD SCHEDULE—Withdrawal of Infringement Notice**

**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

**MANAGEMENT AND CONTROL OF MORAWA CEMETERY  
LOCAL LAW 2008**

Under the powers conferred on it by the *Cemeteries Act 1986* and all other powers enabling it, the Council of the Shire of Morawa resolved on 19 June 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Morawa Management and Control of Morawa Cemetery Local Law 2008*.

**1.2 Interpretation**

In this local law unless the context otherwise requires—

“**Act**” means the *Cemeteries Act 1986*;

“**ashes**” means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

“**authorised officer**” means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this Local Law;

“**Board**” means the Shire of Morawa;

“**CEO**” means the chief executive officer for the time being, of the Board;

“**Funeral Director**” means a person holding a current funeral director’s licence;

“**monumental mason**” means a person holding a current monumental mason’s licence;

“**personal representative**” means the administrator or executor of an estate of a deceased person;

“**set fee**” refers to fees and charges set by a resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

“**single funeral permit**” means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit;

“**vault**” means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board.

**1.3 Repeal**

The local law of the Shire of Morawa relating to the Morawa Public Cemetery Reserve No. 20650 published in the *Government Gazette* on 1 December 1970, and as amended and published in the *Government Gazette* on 15 April 1976, 30 April 1976, 2 April 1993 and 3 September 1993 are repealed.

**PART 2—ADMINISTRATION**

**2.1 Powers and Functions of Chief Executive Officer.**

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

**PART 3—APPLICATION FOR FUNERALS**

**3.1 Application for Burial**

(1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.

(2) An application under subclause (1) is to be accompanied by the set fee.

### 3.2 Applications to be Accompanied by Certificates etc

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate or death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

### 3.3 Certificate of Identification

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.

(2) Where—

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body,

then the Funeral Director shall complete a certificate in the form determined by the Board from time to time.

### 3.4 Minimum Notice Required

All bookings to hold a funeral shall be made with the Board at least 24 hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

## PART 4—FUNERAL DIRECTORS

### 4.1 Funeral Director's Licence Expiry

A funeral director's licence shall expire on the 30th day of June in each year.

### 4.2 Single Funeral Permits

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

### 4.3 Application Refusal

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

## PART 5—FUNERALS

### *Division 1—General*

### 5.1 Requirements for Funerals and Coffins

A person shall not bring a dead body into the cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this Local Law;
- (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10mm in height.

### 5.2 Funeral Processions

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

### 5.3 Vehicle Entry Restricted

- (1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

### 5.4 Vehicle Access and Speed Limitations

Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed of 25km per hour.

### 5.5 Offenders may be Expelled

A person committing an offence under clause 5.4 may be expelled from the cemetery by the CEO or an authorised officer.

### 5.6 Conduct of Funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;



- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this Local Law;
- (f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

#### *Division 2—Placement of Ashes*

##### **5.7 Disposal of Ashes**

(1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the Board may grant permission for the ashes to be disposed of by one of the following methods—

- Niche Wall
- Memorial Wall
- Garden of Remembrance
- Ground Niche
- Memorial Rose, Tree or Shrub
- Family Shrub
- Memorial Desk
- Granite Seat
- Family Grave
- Book of Remembrance
- Scattering to the Winds
- Memorial Gardens
- Other memorials approved by the Board

(2) Subject to sub-clauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.

(3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—

- (a) the person requesting the placement of the ashes has the permission of the Board; and
- (b) the ashes are placed within an area set aside for that purpose by the Board.

(4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

#### **PART 6—BURIALS**

##### **6.1 Depth of Graves**

(1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is—

- (a) subject to paragraph (b), less than 750mm, unless that person has the permission of an authorised officer; or
- (b) in any circumstances less than 600mm.

(2) The permission of the authorised officer in sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

#### **PART 7—MEMORIALS AND OTHER WORK**

##### *Division 1—General*

##### **7.1 Application for Monumental Work**

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

##### **7.2 Placement of Monumental Work**

Every memorial shall be placed on proper and substantial foundations.

##### **7.3 Removal of Rubbish**

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

##### **7.4 Operation of Work**

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

**7.5 Removal of Sand, Soil or Loam**

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

**7.6 Hours of Work**

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

**7.7 Unfinished Work**

Should any work by masons or others be not completed before 6pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

**7.8 Use of Wood**

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

**7.9 Plants and Trees**

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the Chief Executive Officer.

**7.10 Supervision**

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

**7.11 Australian War Graves**

Notwithstanding anything in this Local Law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

**7.12 Placing of Glass Domes and Vases**

A person shall not place glass domes, vases or other grave ornaments—

- (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act; or
- (b) in an area set aside by the Board as a memorial plaque section.

*Division 2—Memorial Plaque Section*

**7.13 Requirements of a Memorial Plaque**

(1) All memorial plaques placed in a memorial plaque section of the cemetery shall—

- (a) be made of admiralty bronze or any other material approved by the Board; and
- (b) not be less than the dimensions 380mm x 280mm, nor more than 560mm x 305mm; and

(2) All memorial plaques made of admiralty bronze shall—

- (a) not exceed 20mm in thickness; and
- (b) be placed upon a base mounting approved by the Board.

(3) All memorial plaques made of stone shall—

- (a) not exceed 50mm in thickness placed upon a base mounting approved by the Board; or
- (b) not be less than 100mm in thickness if it is not to be placed upon a base mounting.

**7.14 Monumental Mason's Licence**

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under sub-clause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this Local Law and such conditions as the Board shall specify upon the issue of that licence.

**7.15 Expiry Date, Non-Transferability**

A monumental mason's licence—

- (a) shall, subject to clause 7.18, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

**7.16 Carrying out Monumental Work**

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.14 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

**7.17 Responsibilities of the Holder of a Monumental Mason's Licence**

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this Local Law, the Act and any other written law which may affect the carrying out of monumental works.

**7.18 Cancellation of a Monumental Mason's Licence**

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this Local Law, the Act or any other written law which may affect the carrying out of monumental works;
- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.

(2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

(3) An aggrieved person whose licence has been terminated under subclause (1) may appeal to a Local Court against a decision of the Board under this clause in the manner stated in section 19 (3) of the Act.

**PART 8—GENERAL****8.1 Animals**

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

**8.2 Guide Dogs**

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

**8.3 Damaging and Removing of Objects**

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

**8.4 Withered Flowers**

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

**8.5 Littering and Vandalism**

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

**8.6 Advertising**

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted subject to such conditions as the Board thinks fit.

**8.7 Obeying Signs and Directions**

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

**8.8 Removal from the Cemetery**

Any person failing to comply with any provisions of this Local Law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this Local Law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

**PART 9—OFFENCES AND MODIFIED PENALTIES****9.1 General**

A person who commits a breach of any provisions of this Local Law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

**9.2 Modified Penalties**

(1) The offences specified in the First Schedule are offences which may be dealt with under section 63 of the Act.

(2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.

(3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.

(4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

—————

**First Schedule**

*Cemeteries Act 1986*

Shire of Morawa

Management and Control of Morawa Cemetery Local Law 2008

**MODIFIED PENALTIES**

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4	Excessive speed	\$50.00
2	5.4	Unauthorised use—driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

—————

**Second Schedule**

*Cemeteries Act 1986*

Shire of Morawa

Management and Control of Morawa Cemetery Local Law 2008

**INFRINGEMENT NOTICE**

TO: .....

(Name)

.....

(Address)

.....

It is alleged that at ..... : .....hours on.....day

of.....20.....at .....

you committed the offence indicated below by an (x) in breach of clause ..... of the Management and Control of Morawa Cemetery.

.....  
(Authorised Person)

Offence

Animal at large

Dumping rubbish

Excessive speed in vehicle

Leaving uncompleted works in an untidy or unsafe condition

Non removal of rubbish

Unauthorised advertising or trading

Unauthorised vehicle use

Disobeying sign or lawful direction

Other Offence.....

\$.....

You may dispose of this matter—

By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Morawa at Lot 143 Prater Street Morawa, between the hours of 8.30am to 4.30pm Monday to Friday.

Please make cheques payable to Shire of Morawa. Payments by mail should be addressed to—  
The Chief Executive Officer  
Shire of Morawa  
PO Box 14  
Morawa WA 6623

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

\_\_\_\_\_  
**Third Schedule**  
*Cemeteries Act 1986*  
Shire of Morawa

Management and Control of Morawa Cemetery Local Law 2008

**WITHDRAWAL OF INFRINGEMENT NOTICE**

No. ....

.....Date...../...../.....

To (1) .....

Infringement Notice No. ....dated...../...../.....for the alleged offence of (2)  
.....

Penalty (3) \$......is withdrawn.  
(Delete whichever does not apply)  
\*No further action will be taken.  
\*It is proposed to institute court proceedings for the alleged offence.

- \_\_\_\_\_  
(1) Insert name and address of alleged offender.  
(2) Insert short particulars of offence alleged.  
(3) Insert amount of penalty prescribed.  
.....  
(Authorised Person)

Dated this 19th day of June 2008.  
The Common Seal of the Shire of Morawa was affixed by authority of a resolution of the Council in the presence of—

J. F. COOK, Shire President.  
G. R. TREASURE, Chief Executive Officer.

\_\_\_\_\_

**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

**DOGS LOCAL LAW 2008**

**ARRANGEMENT**

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Repeal
- 1.3 Definitions
- 1.4 Application

**PART 2—IMPOUNDING OF DOGS**

- 2.1 Charges and Costs
- 2.2 Attendance of Pound Keeper at Pound
- 2.3 Release of Impounded Dog
- 2.4 No Breaking into or Destruction of Pound

**PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS**

- 3.1 Dogs to Be Confined
- 3.2 Limitation on the Number of Dogs

**PART 4—APPROVED KENNEL ESTABLISHMENTS**

- 4.1 Interpretation
- 4.2 Application for Licence for Approved Kennel Establishment
- 4.3 Notice of Proposed Use
- 4.4 Exemption from Notice Requirements
- 4.5 When Application Can Be Determined
- 4.6 Determination of Application
- 4.7 Where Application Cannot Be Approved
- 4.8 Conditions of Approval
- 4.9 Compliance with Conditions of Approval
- 4.10 Fees
- 4.11 Form of Licence
- 4.12 Period of Licence
- 4.13 Variation or Cancellation of Licence
- 4.14 Transfer
- 4.15 Notification
- 4.16 Inspection of Kennel

**PART 5—DOGS IN PUBLIC PLACES**

- 5.1 Places Where Dogs Are Prohibited Absolutely
- 5.2 Places Which Are Dog Exercise Areas

**PART 6—MISCELLANEOUS**

- 6.1 Offence to Excrete

**PART 7—ENFORCEMENT**

- 7.1 Interpretation
- 7.2 Modified Penalties
- 7.3 Issue of Infringement Notice
- 7.4 Failure to Pay Modified Penalty
- 7.5 Payment of Modified Penalty
- 7.6 Withdrawal of Infringement Notice
- 7.7 Service

**SCHEDULE 1**

**SCHEDULE 2**

**SCHEDULE 3**

**DOG ACT 1976**  
**LOCAL GOVERNMENT ACT 1995**

SHIRE OF MORAWA

**DOGS LOCAL LAW 2008**

Under the powers conferred by the *Dog Act 1976*, and under all other powers enabling it, the Council of the Shire of Morawa resolved on 19 June 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Morawa Dogs Local Law 2008*.

**1.2 Repeal**

The local law of the Shire of Morawa Relating to Dogs, published in the *Government Gazette* on 28 September 1979, and as amended and published in the *Government Gazette* on 17 September 1993 and 20 October 1998, is repealed.

**1.3 Definitions**

In this local law unless the context otherwise requires—

“**Act**” means the *Dog Act 1976*;

“**authorized person**” means a person authorized by the local government to perform all or any of the functions conferred on an authorized person under this local law;

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

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

“**pound keeper**” means a person authorized by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law;

“**Regulations**” means the *Dog Regulations 1976*;

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

“**town planning scheme**” means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district.

**1.4 Application**

This local law applies throughout the district.

**PART 2—IMPOUNDING OF DOGS**

**2.1 Charges and costs**

The following are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*—

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

**2.2 Attendance of pound keeper at pound**

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the Chief Executive Officer.

**2.3 Release of impounded dog**

(1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the Chief Executive Officer.

(2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence —

- (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

#### **2.4 No breaking into or destruction of pound**

A person who—

- (a) unless he or she is the pound keeper or a person authorized to do so, releases or attempts to release a dog from a pound; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof—
  - (i) any pound; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,

commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

### **PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS**

#### **3.1 Dogs to be confined**

(1) An occupier of premises on which a dog is kept must—

- (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
- (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
- (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;
- (d) maintain the fence and all gates and doors in the fence in good order and condition; and
- (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

(2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

**Penalty:** Where the dog kept is a dangerous dog, \$2,000; otherwise \$1,000.

#### **3.2 Limitation on the number of dogs**

(1) This clause does not apply to premises which have been—

- (a) licensed under Part 4 as an approved kennel establishment; or
- (b) granted an exemption under section 26(3) of the Act.

(2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—

- (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
- (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

### **PART 4—APPROVED KENNEL ESTABLISHMENTS**

#### **4.1 Interpretation**

In this Part and in Schedule 2—

“**licence**” means a licence to keep an approved kennel establishment on premises;

“**licensee**” means the holder of a licence;

“**premises**”, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

“**transferee**” means a person who applies for the transfer of a licence to her or him under clause 4.14.

#### **4.2 Application for licence for approved kennel establishment**

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).



#### 4.3 Notice of proposed use

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that—

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### 4.4 Exemption from notice requirements

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### 4.5 When application can be determined

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

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

#### 4.6 Determination of application

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### 4.7 Where application cannot be approved

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

#### 4.8 Conditions of approval

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### 4.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

**Penalty:** Where a dog involved in the contravention is a dangerous dog, \$2,000 and a daily penalty of \$200; otherwise \$1,000 and a daily penalty of \$100.

#### 4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*.

#### 4.11 Form of licence

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### 4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### 4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
  - (a) on the request of the licensee;
  - (b) following a breach of the Act, the Regulations or this local law; or
  - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of—
  - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### 4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
  - (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with—
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### 4.15 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### 4.16 Inspection of kennel

With the consent of the occupier, an authorized person may inspect an approved kennel establishment at any time.

## PART 5—DOGS IN PUBLIC PLACES

### 5.1 Places where dogs are prohibited absolutely

(1) Subject to section 8 of the Act and section 66J of the *Equal Opportunity Act 1984*, dogs are prohibited absolutely from entering or being in any of the following places—

- (a) a public building, unless permitted by a sign;
- (b) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*; and
- (c) a public swimming pool.

(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

### 5.2 Places which are dog exercise areas

(1) Subject to clause 5.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act, the following are dog exercise areas—

- (a) Morawa Aerial Land Ground—Reserve 31414;
- (b) Morawa Sports Ground—Reserve 31415; and
- (c) Morawa Golf Course—Reserve 31416.

(2) Subclause (1) does not apply to—

- (a) land which has been set apart as a children's playground;
- (b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or
- (c) a car park.

## PART 6—MISCELLANEOUS

### 6.1 Offence to excrete

(1) A dog must not excrete on—

- (a) any thoroughfare or other public place; or
- (b) any land which is not a public place without the consent of the occupier.

(2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.

**Penalty:** \$200.

(3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

## PART 7—ENFORCEMENT

### 7.1 Interpretation

In this Part—

“**infringement notice**” means the notice referred to in clause 7.3; and

“**notice of withdrawal**” means the notice referred to in clause 7.6(1).

### 7.2 Modified penalties

(1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—

- (a) the dog is not a dangerous dog; or
- (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.

(3) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

### 7.3 Issue of infringement notice

Where an authorized person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 7 of the First Schedule of the Regulations.

### 7.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

### 7.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

**7.6 Withdrawal of infringement notice**

(1) Whether or not the modified penalty has been paid, an authorized person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.

(2) A person authorized to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

**7.7 Service**

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

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**Schedule 1**

(clause 4.2)

Local laws relating to dogs

**APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT**

I/we (full name) .....

of (postal address) .....

(telephone number) .....

(facsimile number) .....

(E-mail address) . .....

Apply for a licence for an approved kennel establishment at (address of premises) .....

.....

For (number and breed of dogs) .....

\* (insert name of person) ..... will be residing at the premises on and from (insert date) .....

\* (insert name of person) ..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at ..... (insert address of residence)

on and from ..... (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside—
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

Signature of Applicant .....

Date .....

\* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27.5 of the Dog Act.

OFFICE USE ONLY

Application fee paid on *[insert date]*.

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**Schedule 2**

(clause 4.8(1))

**CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT**

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
  - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and

- (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
  - (i) at least 100mm above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
  - (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorized person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
  - (i) at the premises; or
  - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

*Schedule 3*

(clause 7.2)

**OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES**

<b>Offence</b>	<b>Nature of offence</b>	<b>Modified penalty \$</b>	<b>Dangerous Dog Modified Penalty \$</b>
2.4(a)	Attempting to or causing the unauthorized release of a dog from a pound	200	400
2.4(b)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	200	
3.1	Failing to provide means for effectively confining a dog	50	200
4.9	Failing to comply with the conditions of a licence	100	200
5.1(2)	Dog in place from which prohibited absolutely	200	400
6.1(2)	Dog excreting in prohibited place	40	

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Dated this 19th day of June 2008.

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

J. F. COOK, Shire President.

G. R. TREASURE, Chief Executive Officer.

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