

LOCAL GOVERNMENT ACT 1995

CITY OF FREMANTLE

PREVENTION AND ABATEMENT OF SAND DRIFT LOCAL LAW

Under the powers conferred by the Local Government Act 1995 and by all other powers, the Council of Fremantle resolved to make the following Local Law on the 16th day of September 2002.

Amended gazetted 04.10.2005 (amended at Ordinary Meeting of Council 24.08.2005)

PART 1 – DEFINITION AND OPERATION

Operation

1. This Local Law will come into operation on the fourteenth day after the day on which it is published in the Government Gazette.

Interpretation

2. (a) In this Local Law, unless the context otherwise requires:

“Act” means the Local Government Act 1995;

“district” means the district of the City of Fremantle and includes any area placed under the jurisdiction of the Council pursuant to any Act or Regulation;

“Council” means the City of Fremantle;

“land” includes any building or other structure on the land;

“occupier” includes any person who, at the time the notice is served, is in control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor;

“sand” means any granular or particulate material consisting of small eroded fragments of rocks finer than gravel, and includes dust and organic matter;

- (b) Where in this Local Law a duty, obligation or liability is imposed on an “owner or occupier” the duty shall be deemed to be imposed jointly and severally on every owner and occupier.

- (c) Where, under this Local Law, an act is required to be done or forbidden to be done in relation to any land, the owner or occupier of the land has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.

- (d) Where this Local Law refers to the giving of a notice, other than the giving of an infringement notice, no particular form is prescribed and it will be sufficient that the notice be in writing giving sufficient details to enable the owner or occupier to know the offence committed and the measures required to be taken or conditions to be complied with, as the case may be.

PART 2 – APPLICATION OF LOCAL LAW

- 3. This Local Law applies to all land in the district.

PART 3 – PROHIBITED ACTIVITIES

- 4. An owner or occupier of land must take effective measures to:
 - (a) stabilise sand on such land; and
 - (b) ensure no sand is released or escapes from the land whether by means of wind, water or any other cause.

- 5. (1) Where the Council forms the opinion that:
 - (a) an owner or occupier has not complied with sub-section 4(a); or
 - (b) sand has escaped from land and is such as to cause a nuisance, risk to health, hazard or environmental damage,

the Council may serve on the owner or occupier of the land a notice requiring the owner or occupier to:

- (c) comply with sub-section 4(a); or
 - (d) clean up and make good any damage resulting from the release or escape; and
 - (e) take effective measures to stop any further release or escape of sand.
- (2) The requirements set out in a notice issued under sub-section 5(1) must be complied with by the time or date specified in the notice.

6. Where the Council is of the opinion that, as a result of an activity being carried on, or likely to be carried on from any land, sand may be released or escape, the Council may give to the owner or occupier a notice providing that the activity can only be carried on subject to conditions and specifying the conditions.
7. Where an owner or occupier:
 - (a) fails to comply with a notice issued pursuant to section 5;
or
 - (b) fails to comply with any conditions specified in a notice issued pursuant to section 6,the Council may undertake or cause to be undertaken the requirement not complied with.
8.
 - (a) Where the Council proposes to undertake or cause to be undertaken any work pursuant to section 7, it shall give to the owner or occupier of the land written notice at least 24 hours prior specifying the purpose for which entry is required with such entry made at a reasonable time.
 - (b) Where Council undertakes or causes to be undertaken any work pursuant to section 7, it shall give to the owner or occupier of the land written notice of the amount expended by the Council in carrying out that work.
 - (c) The amount specified in the notice must be paid to Council within 14 days of the service of the notice.
 - (d) If the amount specified is not paid to the Council within 14 days from the giving of the notice, the Council may recover it, as well as the costs of proceedings, and interest thereof, in a court of competent jurisdiction.

PART 4 – MISCELLANEOUS

9. Where a notice is given to the owner or occupier of any land and the owner or occupier satisfies the Council within 14 days from the date of the giving of the notice that:
 - (a) it was not responsible for the conduct in respect of which the notice was given pursuant to section 5, or the activity in respect of which conditions were imposed pursuant to section 6 as the case may be; and
 - (b) it took all reasonable precautions to prevent the conduct or all reasonable steps to comply with, or cause the conditions to be complied with, as the case may be; and

- (c) where another person was responsible for the conduct, it identifies the person responsible for the conduct sufficiently to enable the notice to be issued to that person;

the Council may cancel the notice.

10. The Council may delegate any of its powers, functions and duties under this Local Law to an authorised person.

11. (a) A person who:

- (i) fails to comply with a notice given under section 5, or.;
(ii) carries on an activity without complying with a notice given under section 6,

commits an offence, in respect of which the Council may issue an infringement notice.

- (b) A person who commits an offence under sub-section 11(a) is liable to:

- (i) a penalty which is not more than \$5,000.00 and not less than:

- (a) in the case of a first such offence, \$500.00;
(b) in the case of a second such offence, \$2,500.00; and
(c) in the case of a third or subsequent such offence, \$5,000.00, and

- (ii) if the offence is of a continuing nature, a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day for which the offence continues.

12. (a) An offence against any provision of this Local Law is a prescribed offence for the purposes of Section 9.16(1) of the Act.

- (b) The amount of the modified penalty for an offence against any provision of this Local Law is \$200.00.

PART 5 – INFRINGEMENT NOTICES

13. An infringement notice in respect of an offence prescribed in this Local Law may be given under Section 9.16 of the Act and shall be in or to the effect of Form 1 of the Schedule provided that no error or misdescription will invalidate the notice if its meaning is otherwise clear.

- (1) Name of owner or occupier.

- (2) Address of owner or occupier.

- (3) Date when offence committed. If the offence relates to a failure to take remedial action within the time specified, a notice will be sufficient if the final time for compliance is specified.

- (4) Specify land or premises.
- (5) Give details of the offence. If insufficient space provide details by way of an annexure.
- (6) Insert relevant section.
- (7) The authorised person for the purpose of (7) must be a different person to the person authorised by the City of Fremantle to receive payment.

Dated this 18th day of October 2002.

The Common Seal of the City of Fremantle was hereunto affixed by authority of a resolution of Council in the presence of:

P. Tagliaferri
Mayor

R. Glickman
Chief Executive Officer

Schedule

Form 1

Local Government Act 1995

INFRINGEMENT NOTICE

Serial No: _____

Date: _____ / _____ / _____

City of Fremantle

To: (1) _____

(2) _____

It is alleged that on or about _____ (3)

at (4) _____

you committed the following offence (5):

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contrary to section (6) _____ of the Prevention and Abatement of Sand Drift Local Law. The modified penalty for the offence is \$200.00. If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty must be paid to the City of Fremantle at 8 William Street, Fremantle. Western Australia 6160 or by mail to the City of Fremantle, PO Box 807, Fremantle WA 6959 within a period of 28 days after the giving of this notice.

Name and title of authorised person giving notice (7):

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Signature —