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LOCAL GOVERNMENT ACT 1995

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**CITY OF SWAN**

**LOCAL LAW RELATING TO  
PREVENTION AND  
ABATEMENT OF SAND DRIFT**



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ABATEMENT OF SAND DRIFT**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the Council of the City of Swan resolved to make the following Local Law—Local Law Relating to Prevention and Abatement of Sand Drift—on the 28<sup>th</sup> day of June 2000.

**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 Swan and includes any area placed under the jurisdiction of the City pursuant to any Act or Regulation;

“City” means the City of Swan;

“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 each of the 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. (a) Where the City forms the opinion that—

(i) an owner or occupier has not complied with sub-section 4(a); or

(ii) sand has been released from or escaped from land and is such as to cause a nuisance, risk to health, hazard or environmental damage,

the City may serve on the owner or occupier of the land a notice requiring the owner or occupier to—

(iii) comply with sub-section 4(a); or

(iv) clean up and make good any damage resulting from the release or escape; or

(v) take effective measures to stop any further release or escape of sand.

(b) The requirements set out in a notice issued under sub-section 5(a) must be complied with by the time or date specified in the notice.

6. Where the City 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 City 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 City may undertake or cause to be undertaken the requirements not complied with.

8. (a) Where the City undertakes or causes to be undertaken any work pursuant to section 7, it may give to the owner or occupier of the land written notice of the amount expended by the City in carrying out that work.

(b) The amount specified in the notice must be paid to the City within 14 days of the service of the notice.

(c) The amount expended by the City in carrying out the work shall be a charge against the land to which it relates, and the City shall be entitled to lodge an absolute Caveat against the certificate of title to the relevant land to secure repayment of the amount.

(d) If the amount specified is not paid to the City within 14 days from the giving of the notice, the City may recover it, as well as the costs of proceedings, and interest thereon, 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 City 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 City may cancel the notice.

10. (a) The City may lawfully enter upon any land for the purpose of giving effect to, or carrying out, any provision of this Local Law.

(b) A person must not prevent or impede a duly authorised officer or employee of the City from carrying out his or her duties under this Local Law.

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

12. (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; or
- (iii) contravenes sub-section 10(b),

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

(b) A person who commits an offence under sub-section 12(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.

13. (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**

14. 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.

**Schedule**

Form 1

LOCAL GOVERNMENT ACT 1995

**INFRINGEMENT NOTICE**

Serial No. ....

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

**City of Swan**

To: (1) .....

(2) .....

It is alleged that on or about (3) .....

at (4) .....

you committed the following offence (5)—

.....  
.....  
.....  
.....

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 (7) ..... an authorised person at (8) ..... within a period of 28 days after the giving of this notice.

Name and title of authorised person giving notice (9)—

.....

Signature .....

- (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) Specify the authorised person to whom the penalty must be paid.
- (8) Specify the address to whom the payment is to be sent or where payment is to be made.
- (9) The authorised person for the purpose of (9) must be a different person from the person authorised for the purposes of (7).

Dated this 28<sup>th</sup> day of June 2000.

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

C. M. GREGORINI, OAM JP, Mayor.  
E. W. T. LUMSDEN, Chief Executive Officer.

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