

Local Government Act 1995

CITY OF WANNEROO

**SITE EROSION AND SAND DRIFT PREVENTION
LOCAL LAW 2016**

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TABLE OF CONTENTS

Part 1 - Preliminary	1
1.1 Title	1
1.2 Commencement	1
1.3 Purpose.....	1
1.4 Repeal.....	1
1.5 Application.....	1
1.6 Terms used	1
1.7 Interpretation	2
Part 2 - Site erosion and dust	3
2.1 Prevention of erosion and the escape of sand and dust	3
2.2 Notice may require specified action to prevent	3
Part 3 - Objections and review	3
3.1 Objections and review	3
Part 4 - Offences and penalties.....	4
4.1 Offences.....	4
4.2 Prescribed offences.....	4
4.3 Form of notices.....	4
Schedule 1 – Prescribed offences	5

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SITE EROSION AND SAND DRIFT PREVENTION LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the City of Wanneroo resolved on 28 June 2016 to make the following local law.

Part 1 - Preliminary

1.1 Title

This is the *City of Wanneroo Site Erosion and Sand Drift Prevention Local Law 2016*.

1.2 Commencement

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

1.3 Purpose

The purpose of this local law is to provide for the regulation, control and management of site erosion, sand and dust on land within the district.

1.4 Repeal

Clause 12.1 and Part 12 of Schedule 5 of the *City of Wanneroo Private Property Local Law 2001* as published in the *Government Gazette* on 30 April 2002 is repealed.

1.5 Application

This local law applies throughout the district.

1.6 Terms used

In this local law, unless the context otherwise requires –

Act means the Local Government Act 1995;

authorised person means a person appointed by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

CEO means the chief executive officer of the local government;

district means the district of the local government;

dust and sand means granules or particles of rock, earth, clay, loam, silt and any other granular, or airborne particle or like material, and includes gravel;

land includes any building or structures on the land;

local government means the City of Wanneroo;

occupier means any person who, at the time a 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 includes a builder or contractor;

penalty unit has the meaning given to it in the City of Wanneroo Penalty Units Local Law 2015; and

Regulations means the Local Government (Functions and General) Regulations 1996.

1.7 Interpretation

- (1) A term used in this local law that is not defined in clause 1.5 is to have the meaning given to it in the Act.
- (2) Where, under this local law a duty, obligation or liability is imposed on an 'owner or occupier', the duty is taken to be imposed jointly and severally on each owner and occupier.
- (3) Where under this local law an act is required to be done or forbidden to be done in relation to any land, an owner or occupier of the land has the duty of causing to be done the act so required to be done, or preventing from being done the act forbidden to be done.
- (4) 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 is sufficient if the notice is in writing giving sufficient details to enable the owner or occupier to know the offence (if any) committed and the measures required to be taken or conditions to be complied with, as the case may be.

Under section 3.7 of the Act, this local law is inoperative to the extent that it is inconsistent with the Act or any other written law, including a local planning scheme made under the *Planning and Development Act 2005*.

Part 8 of the City's District Planning Scheme No 2 provides that:

Clause 8.2.2

No land, building or appliance shall be used in such a manner as to permit the escape therefrom of smoke, dust, fumes, odour, noise, glare, vibration or waste products in such quantity or extent or in such a manner as will create or be a nuisance to any inhabitant, or to traffic or persons using any land or roads in the vicinity.

Clauses 8.2.3 provides that breaches of clause 8.2.2 may be dealt with by the service of a notice on the owner of a property to make good the breach in the manner and within the time stated in the notice; clause 8.2.4 allows a notice recipient to appeal under Part 14 of the Scheme and, where any such appeal is lodged the effect of the notice shall be suspended until a decision to uphold, quash or vary the notice has been made on the appeal or the appeal has been withdrawn.

Clause 8.2.5 provides that failure to comply with a notice under this clause shall be a breach of the provisions of the Scheme; for which a person may be prosecuted.

Finally, Part 13 of the *Planning and Development Act 2005* (in particular sections 226

to 235) provide that regulations may prescribe an offence under the Act, or under any regulations made under this Act, to be an offence for which an infringement notice may be issued. In this regard, regulation 42 of the Planning and Development Regulations 2009 prescribes that amongst other things a modified penalty (ie an on the spot fine) can be issued for a contravention of s218(a) of the Planning and Development Act, which in this case would be for a contravention of the provisions of a local planning scheme – which in this case would be clause 8.2.2 of the City’s District Planning Scheme No 2. The amount of the modified penalty is currently \$500.00.

The City also has in place Planning Policy 3.3.15 – Bulk Earthworks to minimise sand drift and dust problems during subdivisional works.

Part 2 - Site erosion and dust

2.1 Prevention of erosion and the escape of sand and dust

An owner or occupier of land must take reasonable measures to –

- (a) stabilise sand on the land; and
- (b) ensure no sand or dust is released from or escapes from the land, whether by means of wind, water or any other cause.

2.2 Notice may require specified action to prevent

- (1) Where the local government or an authorised person is satisfied that –
 - (a) an owner or occupier of land has not complied with clause 2.1; or
 - (b) sand or dust is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land,the local government or an authorised person may, by notice in writing, direct the owner or occupier, within a time specified in the notice –
 - (c) to comply with clause 2.1;
 - (d) clean up and make good any damage resulting from the release or escape of dust or sand from the land; or
 - (e) take such other actions or comply with such other conditions as the local government or authorised person considers necessary to prevent or stop the escape, release or carriage of sand or dust from the land, as stipulated in the notice.
- (2) An owner or occupier of land to whom a notice is issued under subclause (1) must comply with the requirements of the notice within the time specified in the notice.

Part 3 - Objections and review

3.1 Objections and review

If the local government or an authorised person gives a person notice under clause 2.2(1), Division 1 of Part 9 of the Act and regulation 33 of the Regulations are to apply.

Part 4 - Offences and penalties

4.1 Offences

- (1) Any person who –
 - (a) fails to comply with a notice under clause 2.2(2);
 - (b) fails to do anything required or directed to be done under this local law; or
 - (c) does anything which under this local law that person is prohibited from doing,commits an offence.
- (2) Any person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and not exceeding \$5,000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

4.2 Prescribed offences

- (1) An offence against a clause specified in the Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The number of modified penalty units for a prescribed offence is the number specified adjacent to the clause in the Schedule 1.

4.3 Form of notices

- (1) The form of the infringement notice give under section 9.16 of the Act is Form 2 in Schedule 1 of the Regulations.
- (2) The form of the infringement withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1 – Prescribed offences

[clause 4.2]

Item No	Clause	Description	Penalty Unit
1	4.1(1)(a)	Failure to comply with a notice	20
2	4.1(1)(b)	Failure to comply with a direction given	20
3	4.1(1)(c)	Prohibited action under local law	20

Note: Penalty Units are prescribed in the City of Wanneroo Penalty Units Local Law 2015. As at 30 October 2015 when the local laws was gazetted one penalty unit was \$10.00.

Dated 11 July 2016.

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

T ROBERTS, MAYOR
D SIMMS, CHIEF EXECUTIVE OFFICER