

Local Government Act 1995

**TOWN OF CLAREMONT
SITE EROSION AND SAND DRIFT
LOCAL LAW 2016**

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LOCAL GOVERNMENT ACT 1995
TOWN OF CLAREMONT
SITE EROSION AND SAND DRIFT LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Claremont resolved on 20 September 2016 make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Claremont Site Erosion and Sand Drift 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 so as to protect the amenity of the area.

1.4 Application

This local law applies throughout the district.

1.5 Interpretation

(1) 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;

builder means

- (a) Any person who holds, or will hold, a building permit issued in respect of building works on a building site, or
- (b) Any person who has, or will have, effective control of a building site;

Building Code means the latest edition of the Building Code of Australia published by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published within the code;

building site means any lot of land for which a building permit is current, but does not include a lot upon which there exists a commercial, industrial or residential building and-

- (a) the current building permit is issued in respect only of a pergola, patio, shed or other Class 10 building as classified by the Building Code; and
 - (b) means of collection and removal of rubbish, satisfactory to the local government but other than that specified within these local laws, is in place;
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CEO means the chief executive officer of the local government;

construction work means any work involving the placement, fitting together, manufacture or erection of the components of a building or incidental structure, and includes pouring of footings and slabs and placement of stumps or other floor supports;

Council means the council 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 Town of Claremont;

occupier means 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 includes a builder or contractor;

Schedule means a schedule to this local law.

- (2) Any other expression used in this local law and not defined shall have the meaning given to it in the Act.
 - (3) Where, under 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 owner and occupier.
 - (4) 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.
 - (5) Where under this local law the local government is empowered to carry out actions, undertake or cause to be undertaken works as a consequence of the failure of any person to comply with the terms of a notice or other conduct, the right to enter land is at all times subject to the provisions of Part 3, Division 3 of the Act.
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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 reasonably practicable 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 erosion and the escape of dust or sand

(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 to, within a time specified in the notice:

- (c) 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) shall comply with the requirements of the notice within the time specified in the notice.

PART 3 - MISCELLANEOUS PROVISIONS

3.1 Authorised person

- (1) A person must not prevent or impede a duly authorised officer or employee of the local government from carrying out his or her duties under this local law.
 - (2) The local government may delegate any of its powers, functions and duties under this local law to the CEO or an authorised person, not including its powers of delegation.
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PART 4 - OBJECTIONS AND REVIEW

4.1 Objections and review

When the local government or an authorised person gives a person a notice under clause 2.2(1), the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply.

PART 5 – OFFENCES AND PENALTIES

5.1 Offences

(1) Any person who:

- (a) fails to comply with a notice issued under clause 2.2(1);
- (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, upon conviction, to a penalty not exceeding \$5000 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 had continued.

5.2 Prescribed Offences

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

PART 6—INFRINGEMENT NOTICE

6.1 Form of notices

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

[Clause 5.2]

PRESCRIBED OFFENCES

Item No.	Clause	Description	Modified Penalty
1.	5.1(1)(a)	Failure to comply with a notice served by local government or authorised person	\$500

Dated 28 September 2016

The Common Seal of the)
Town of Claremont was affixed by)
authority of a resolution)
of the Council in the)
presence of -)

Ms Elizabeth Joan Ledger
Acting Chief Executive Officer
Town of Claremont

Mr John Gilbert Barker
Mayor
Town of Claremont