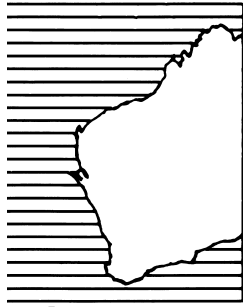


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WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041



PERTH, TUESDAY, 6 MARCH 2012 No. 32

SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.30 PM

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LOCAL GOVERNMENT ACT 1995

TOWN OF BASSENDEAN

**DUST AND SAND
LOCAL LAW 2011**

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DUST AND SAND LOCAL LAW 2011

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LOCAL GOVERNMENT ACT 1995**TOWN OF BASSENDEAN****DUST AND SAND LOCAL LAW 2011**

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Town of Bassendean resolved on 13th September 2011 to make the following local law.

PART 1 — INTRODUCTORY AND ADMINISTRATIVE MATTERS**1.1 Citation**

This Local Law may be cited as the '*Town of Bassendean Dust and Sand Local Law 2011*'.

1.2 Commencement

This local law will come into operation 14 days after publication in the *Government Gazette*.

1.3 Interpretation

(1) In these local laws, unless the context specifies otherwise—

Act means the *Local Government Act 1995*;

Air Quality Management Plan means a written strategy for minimising the negative impact of dust and smoke upon local air quality, incorporating the principles within the latest version of the publication '*A guideline for managing the impacts of dust and associated contaminants from land Development sites, contaminated sites, remediation and other related activities*', first published by the Western Australian Department of Environmental and Conservation in January 2011;

AS means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

authorised person means a person appointed by the Council, pursuant to the provisions of Section 9.10(1) of the Act, for purposes of administration and enforcement of this local law;

builder means the person or persons or firm or corporation who or which shall be the holder of any building licence issued in respect of building works on a building site, and shall also include any person or persons or firm or corporation who or which shall be in effective control of such building site whether or not such person or persons or firm or corporation shall be the holder of such licence;

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

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

- (a) the current building licence 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 Council but other than that specified within these local laws, is in place;

bush has the same meaning as is given to it in the *Bush Fires Act 1954*;

Chief Executive Officer means the Chief Executive Officer of the Town;

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

Council means the Council of the Town;

development site means and includes any lot or lots of land upon which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place, whether or not such works are subject to a development or subdivision approval;

district means the district of the Town;

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

Erosion Management Plan means a written strategy for minimising the likelihood of carriage by water or sand off any lot or lots of land, incorporating the principles within the latest version of the *Erosion and Sediment Control Policy and Guidelines for Local Government* prepared by the Eastern Metropolitan Regional Council;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

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 without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor;

person includes persons, businesses, companies, firms, corporations and other commercial entities;

Town means the Town of Bassendean, and includes its authorised person;

street means any highway or thoroughfare which the public are entitled to use, and includes every part of the highway or thoroughfare, including the verge and other things including bridges and culverts appurtenant to it;

(2) Any other expression used in this local law and not defined shall have the meaning given to it in the Act.

(3) 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.

(4) Where under this local law the Town is empowered to carry out actions 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.

1.4 Objections and appeals

When the Council makes a decision under this local law and/or gives a person notice, the affected person may lodge an objection under the provisions of Part 9 Division 1 of the Act and Regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply.

1.5 Notices

(1) Where a notice other than an infringement notice is given under this local law, the notice must be in writing and set out—

- (a) details of the offence committed;
- (b) measures required to be taken;
- (c) conditions which must be followed; and
- (d) a deadline, if any, for compliance.

(2) Where an authorised person serves a notice based on an opinion held by that person, the notice must also be accompanied by a written memorandum that—

- (a) is signed by the authorised person;
- (b) sets out the opinion reached by the authorised person; and
- (c) includes the reasons for why the opinion is held.

(3) Where an authorised person serves a notice based on an opinion or decision of the Council, the notice should also be accompanied by an extract of the minutes of the Council meeting at which the opinion or decision was formed.

(4) An extract provided under subclause (3) must show a sufficient record of the forming of the opinion or decision on which the notice is based.

(5) An extract provided under subclause (3) must be certified as a true and accurate copy by—

- (a) the CEO; or
- (b) another officer of Council who has been delegated or authorised to do so.

1.6 Application of this local law

This local law applies throughout the district.

1.7 Forms

For the purposes of this local law—

- (a) the form of the infringement notice given under Section 9.17 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*.

PART 2 — SAND DRIFT AND DUST**2.1 Air Quality Management Plans**

(1) When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust are intended, whether or not that work or those works are subject to a development or subdivision approval, the owner or occupier shall submit to the Town for its approval an Air Quality Management Plan (AQMP).

(2) The Air Quality Management Plan shall be accompanied by a face sheet in the form of Schedule 1 so as to be aligned with relevant DEC guidelines for dust management. AQMP shall include information on the following areas—

- (a) introduction (program scope and objectives);
- (b) background (contextual information);
- (c) proposed work and potential impacts;
- (d) controls, triggers and contingencies;
- (e) monitoring program and design.

(3) When deemed appropriate by the Town, a bond, to be used for funding the cost of rectification by the Town if required and calculated on the basis of an assessment of the particular site, shall be lodged prior to approval of an Air Quality Management Plan.

(4) The Town may—

- (a) approve the Air Quality Management Plan;
- (b) approve the Air Quality Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality issues and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality Management Plan.

(5) An owner or occupier shall not commence any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust or sand without the Town having approved an Air Quality Management Plan.

(6) An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works when the Town has approved an Air Quality Management Plan shall comply with the provisions of that Plan and any conditions imposed thereon at all times.

2.2 Prevention of erosion

An owner or occupier of any land shall take all practicable measures to ensure that—

- (a) no sand or dust is carried by water—
 - (i) off the particular lot or lots of land; or
 - (ii) directly or indirectly into any creek, stream, river or any other natural water course; and
- (b) no sand or dust is released from or escapes from the particular lot or lots, whether by means of wind or any other cause.

2.3 Escape of sand or dust

(1) Where it appears to an authorised person that sand or dust is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land, the authorised person may, by notice in writing, direct the owner or occupier to, within a time specified in the notice—

- (a) submit to the Town for its approval an Air Quality and/or Erosion Management Plan; or
- (b) take such other actions as the authorised person considers necessary to prevent or minimise the escape, release or carriage of sand or dust from the land.

(2) The Air Quality and/or Erosion Management Plans to which reference is made in subclause (1) (a) shall be accompanied by a face sheet in the form of Schedule 1.

(3) The Town may—

- (a) approve the Air Quality and/or Erosion Management Plan;
- (b) approve the Air Quality and/or Erosion Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality or erosion issues, whichever may be the case, and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality and/or Erosion Management Plan.

(4) A person who has been required to submit to the Town an Air Quality and/or Erosion Management Plan pursuant to subclause(1)(a) shall not continue or commence any works on the land without the Town having approved the Air Quality and/or Erosion Management Plan.

2.4 Sand or dust which has escaped to be cleaned up

When any sand and dust has been released, escaped or been carried from any land onto or through another person's land, an authorised person may, by notice in writing, direct the owner or occupier of the land from which the sand or dust has been released, escaped or been carried, within a time specified in the notice, clean up the sand and dust and make good any damage resulting from that release or escape.

PART 3 — OFFENCES AND PENALTIES**3.1 Offences**

Any person who—

- (a) fails to comply with a notice issued under this local law;
- (b) fails to do anything required or directed to be done under this local law;
- (c) does anything which under this local law is prohibited from doing; or
- (d) contravenes any provisions of this local law,

commits an offence.

3.2 Penalties

Any person who commits an offence under this local law shall be liable to—

- (a) a penalty not exceeding \$5,000.00 and not less than—
 - (i) in the case of first such offence, \$500.00
 - (ii) in the case of subsequent offences, \$3,000.00, and
- (b) If the offence continues, an additional penalty may be applied from the day of the first such offence not exceeding \$500.00 for each day or part of a day for the duration of which the offence continues.

Schedule 1

**AIR QUALITY/EROSION MANAGEMENT PLAN
FACE SHEET**

(Clause 2.1 & 2.3)

AIR QUALITY/EROSION MANAGEMENT PLAN

(Delete whichever is not applicable)

DETAILS OF LAND

Street		Lot No.	
Locality			

OWNER DETAILS

Name	
Address	
Telephone No.	Office/Home
	Mobile

CONTRACTORS/ DETAIL

Contractor Name	
Address	
Office Telephone No.	
	Fax No.
	Email

Supervisor Name

Mobile Telephone No.	
	Fax No.
	Email

After Hours Contact Details (for rectification works if necessary)

Name	
Telephone No.	Home
	Mobile

Complaints Contact Details

Name	Lot No.
Mobile Telephone No.	
	Email

Schedule 2
PRESCRIBED OFFENCES AND MODIFIED PENALTIES

Clause	Description	Modified Penalty (\$)
2.1 (5)	Commencement of site works without the Town having approved an Air Quality Management Plan	250
2.1 (6)	Failure to comply with the approved Air Quality Management Plan and or related approval conditions	250
2.3 (1)	Failure to comply with a notice served by an authorised officer	250

Dated: 7 December 2011.

The Common Seal of the Town of Bassendean was affixed by authority of a resolution of the Council in the presence of—

Cr JOHN GANGELL, Mayor.
Mr BOB JARVIS, Chief Executive Officer.
