

**TOWN PLANNING AND  
DEVELOPMENT.**

5° Elizabeth II., No. LXXIX.

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No. 79 of 1956.

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**AN ACT to amend the Town Planning and  
Development Act, 1928-1955.**

[Assented to 17th January, 1957.]

**BE** it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Town Planning and Development Act Amendment Act, 1956*.

(2) In this Act the Town Planning and Development Act, 1928-1955,

See Reprinted  
Acts,  
Vol. 4, 1951.

Act No. 39 of 1928 as reprinted with amendments to and including Act No. 29 of 1947 incorporated pursuant to the provisions of the Amendments

Incorporation Act, 1938, and as further amended by Acts Nos. 79 of 1953, No. 73 of 1954, and No. 63 of 1955,

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act, 1928-1956.

2. Section two of the principal Act is amended by adding after the interpretation of "local authority" an interpretation as follows—

S. 2  
amended

"lot" means a defined portion of land—

depicted on a plan or diagram publicly exhibited in the public office of the Department of Lands and Surveys, or deposited in the Office of Titles or Registry of Deeds and for which a separate Crown Grant or Certificate of Title has been or can be issued; or

depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but which is, whether before or after the coming into operation of the Town Planning and Development Act Amendment Act, 1956, approved by the Board.

3. Subsection (3) of section seven A of the principal Act is amended by substituting for the word, "fifty-six" in line six of paragraph (a) the word, "fifty-seven".

S. 7A  
amended.

4. Section twelve of the principal Act is amended by adding after subsection (2) a new subsection as follows:—

S. 12  
amended.

(2a) (a) In this subsection, unless the context otherwise requires, the expression—

"appointed day" means the day on which the Town Planning and Development Act Amendment Act, 1956, comes into operation;

“land” includes any building or structure on land;

“non-conforming use” means a use of land which, though lawful immediately prior to the coming into operation of a town planning scheme, is not in conformity with any provision of that scheme which deals with a matter specified in clause ten of the First Schedule to this Act;

“public purpose” means a purpose which serves or is intended to serve the interests of the public or a section of the public and includes a public work within the meaning of the expression “public work” in the Public Works Act, 1902.

(b) Subject to the provisions of paragraph (c) of this subsection, land shall not be deemed to be injuriously affected by reason of any provision of a town planning scheme which comes into force on or after the appointed day, and which deals with any of the matters specified in clause ten of the First Schedule to this Act, unless the scheme

(i) permits development on that land for no purpose other than a public purpose;

or

(ii) prohibits wholly or partially the continuance of any non-conforming use of that land or the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the land, which, but for that prohibition, would not have been an unlawful erection, alteration or extension under the laws of the State or the by-laws of the local authority within whose district the land is situated.

(c) Notwithstanding the provisions of paragraph (b) of this subsection a provision of a town planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building shall not be deemed to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of a non-conforming use.

(d) Where a town planning scheme, which comes into operation on or after the appointed day, wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme, does not comprise

- (i) the lot or lots on which the non-conforming use is in fact being carried on;

or

if the prohibition relates to a building or buildings standing on one lot,

- (ii) the lot on which the building stands or the buildings stand; or

if the prohibition relates to a building or buildings standing on more than one lot,

- (iii) the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorised by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.

(e) Notwithstanding the provisions of section eleven of this Act, if any question arises under paragraph (d) of this subsection as to whether, at any particular date, any land does or does not comprise the lot or lots on which a non-conforming use is being carried on, or is or is not being used for any purpose authorised by a scheme, or is or is not reasonably required for the purpose for which any building is being used that question shall, on the application of the claimant or the responsible authority be determined by arbitration under and in accordance with the Arbitration Act, 1895, unless the parties agree on some other method of determination.

S. 20  
amended.

5. Section twenty of the principal Act is amended by substituting for subsection (1) the following subsection:—

(1) After the coming into operation of the Town Planning and Development Act Amendment Act, 1956, a person shall not lay out, grant, or convey a street, road, or way, or subdivide, lease for any term exceeding ten years, or sell land, except as a lot or as lots; but where after payment of consideration for any transaction relating to any land, it is found that the transaction cannot be completed because that land cannot be dealt with as a lot or as lots, the person who paid the consideration is entitled to a refund of the consideration from the person to whom it was paid.

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