

LOCAL GOVERNMENT (No. 3).

No. 74 of 1973.

AN ACT to amend the Local Government Act, 1960-1973.

[Assented to 17th December, 1973.]

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:—

1. (1) This Act may be cited as the *Local Government Act Amendment Act (No. 3), 1973.*

Short title
and
citation.

(2) In this Act the Local Government Act, 1960-1973, is referred to as the principal Act.

Reprinted as
approved
for reprint
3rd May,
1968, and
amended by
Acts Nos.
21 of 1968,
35, 83 and
107 of 1969,
16, 21, 49, 80
and 120 of
1970, 66 of
1971, 46, 81
and 94 of
1972, and 21
of 1973.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1973.

Commence-
ment.

2. This Act or any provision thereof shall come into operation on such date as is or such dates as are, respectively fixed by proclamation.

Section 373
repealed and
re-enacted.

3. Section 373 of the principal Act is repealed and re-enacted as follows—

Application
of this Part.

373. (1) Subject to subsections (2) and (3) of this section the provisions of this Part apply throughout each district in the State.

(2) The Governor may, by Order—

- (a) declare that all or any of the provisions of this Part do not apply to the whole or any part or parts of any district or districts; and
- (b) vary or revoke any Order made under paragraph (a) of this subsection.

(3) The provisions of this Part shall not apply to buildings owned or occupied by, or under the control or management of the Crown in right of the State, or a department, agency, or instrumentality of the Crown in right of the State.

(4) Subject to subsections (2) and (3) of this section, the provisions of this Part, including any by-laws (whether uniform general by-laws or otherwise) apply to a building notwithstanding that its roof or covering has been removed or has fallen in, that the building has not been completed, or, having been completed part of the building has wholly or in part been demolished, removed, or become ruinous or that the building is a building of a type that has not a roof or covering.

Section 374
amended.

4. Subsection (4) of section 374 of the principal Act is repealed.

5. The principal Act is amended by adding after section 374A the following section—

Section 374B
added.

374B. (1) Where by reason of an emergency endangering any person, building or structure any building work must be performed without approval as required by this Act, it shall, notwithstanding any other provision of this Act, be lawful to perform the building work subject to the condition that as soon as practicable after its commencement written notice of the building work is served upon the council.

Performance
of building
work in
emergency.

(2) If the condition referred to in subsection (1) of this section is not complied with the owner of the land on which the building work is performed shall be guilty of an offence and liable to a penalty not exceeding four hundred dollars.

6. The principal Act is amended by adding the following section—

Section 374C
added.

374C. (1) A building erected after the commencement of the Local Government Act Amendment Act (No. 3), 1973 shall have a classification determined in accordance with the by-laws.

Classifica-
tion of
buildings.

(2) The council may assign to any building erected before the commencement of the Local Government Act Amendment Act (No. 3), 1973 a classification that conforms with the by-laws.

(3) Where the council assigns a classification under subsection (2) of this section, the council shall give notice in writing to the owner of the building to which the classification has been assigned, of the classification assigned to the building.

(4) A classification shall not be assigned to a building erected before the commencement of the Local Government Act Amendment Act (No. 3), 1973 if as a result of the classification

being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

(5) The owner of a building shall not use the building, or permit it to be used, otherwise than for purposes appropriate to its classification (if any).

Penalty: Four hundred dollars and in addition a daily penalty of twenty dollars for each day during which the offence continues.

(6) If as a result of any building work, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of this Act for a building of that classification, the council may refuse to approve the building work.

Sections 381,
382 repealed.

7. Sections 381 and 382 of the principal Act are repealed.

Section 433
repealed and
re-enacted.

8. Section 433 of the principal Act is repealed and re-enacted as follows—

By-laws.

433. A council may make by-laws—

(1) for regulating the plans and levels of sites for buildings;

(2) for requiring that buildings generally or a building of any specified class shall not be built nearer to—

(a) a street alignment; or

(b) any boundary of the land on which the building is to be built,

than is prescribed in a by-law or by-laws.

- (3) for limiting, either generally throughout the municipal district of the council or in any particular part thereto, the number of buildings that may be built on a prescribed area of land and the extent to which that area may be built on and by-laws may be made under this paragraph so as to apply to buildings generally or to any class thereof and may discriminate according to the size of buildings or class of buildings;
- (4) for prescribing the minimum area and the minimum depth and the width and frontage of land upon which buildings of a specified class may be erected;
- (5) for requiring that a building of a specified class erected after the coming into operation of this Act has attached to it for the exclusive use of the occupiers of the building a prescribed area of open land and for prescribing the area;
- (6) for prescribing building lines in relation to any public place or public reserve;
- (7) for prohibiting the erection in the district or a specified part of the district of buildings other than buildings of a specified class, whether classified according to size, design, materials used in construction, or classified otherwise;
- (8) for requiring the provision of passenger lifts in buildings used or intended for use for a specified class or specified classes of purpose and having more than two floors above the ground floor;

- (9) for requiring that a building of a specified class erected after the coming into operation of the Local Government Act Amendment Act, 1964, has on the land on which the building is built or on land adjacent thereto, such number of parking spaces, as is prescribed in the by-law or as is in such proportion to the number of persons likely to reside or work in the building as so prescribed;

- (10) for prohibiting the use of buildings or structures for any purpose specified in the by-law or otherwise than for purposes specified in the by-law, but any such by-law shall not prevent—
 - (a) the use of a building or structure existing at the commencement of the by-law for any purpose for which it was lawfully used before the commencement of the by-law; or
 - (b) the alteration of or addition to any such existing building or structure for any such purpose;

- (11) for providing that the council may with the approval of the Minister, declare any portion of the area to be a fire zone;

- (12) for providing that a register of fire zones be kept by the council and made accessible for public inspection;

- (13) for prescribing any requirements with which any building or building work within a fire zone must conform;

- (14) providing for the classification of buildings and the manner in which a dispute as to the classification may be resolved;

- (15) providing for the issue of certificates of classification;
- (16) for prescribing the circumstances in which a number of buildings may or shall be treated, for the purposes of this Part, as constituting a single united building;
- (17) for prescribing that where a building or structure erected or constructed before the commencement of this by-law is demolished, destroyed, or taken down to a prescribed extent it must be rebuilt or reconstructed in complete accordance with the provisions of this Act;
- (18) for prescribing and providing for the payment and recovery of fees and expenses, in connection with any matter arising under this Part;
- (19) for regulating, restricting or prohibiting the use of specified materials for the purpose of building work, and for investing a prescribed person or authority with discretionary power to regulate, restrict or prohibit the use of any materials for the purpose of building work;
- (20) for prescribing and providing for the making of tests of, or relating to, buildings, structures, building work or materials to be used for the purposes of building work;
- (21) for regulating, restricting or prohibiting the performance of building work or the erection or construction of a building or structure within a prescribed distance from a street or other

public place and investing the council with discretion to dispense with compliance with any such by-law and otherwise for regulating the position of any building or structure;

- (22) for prescribing precautions to be taken during the construction or demolition of a building or the performance of any other building work;
- (23) for prescribing the height to which a building may be erected, which height may vary according to the position of the building, the width of any road upon which it abuts, or any other matter;
- (24) for regulating, restricting or prohibiting the erection or construction of buildings or structures, or the performance of building work on, over or under a public place and prescribing standards to which any such building, structure or building work must conform;
- (25) for making any provision, restriction or prohibition that may reduce the likelihood of fire in, or the spread of fire from, any building or structure or conduce to the safety of the building or structure or its occupants in the event of fire;
- (26) for prescribing the maximum loadings, stresses, load factors and deformations permissible in respect of any building or structure or any class of building or structure and investing the building surveyor with discretionary power to prohibit the erection or construction of buildings or structures that may be or become unsafe by reason of excessive loading, stress or deformation;

- (27) for making any provision, restriction or prohibition relating to the construction of foundations, footings, piling, caissons, walls, masonry, floors, roofs and ceilings, and for regulating structural concreting and steelwork, timber construction, veneer-on-timber construction and any other kind of construction;
- (28) for requiring, and prescribing, the method of storm water drainage from a building or any building site;
- (29) for prescribing standards of weather-proofing or damp-proofing with which any building work must conform;
- (30) for prescribing measures to be taken for the prevention of damage to buildings or structures by termites, rodents or other pests;
- (31) for prescribing the minimum number, and types, of rooms which are required to be provided in a building used for residential purposes;
- (32) for prescribing the minimum height or dimensions of rooms or any class of rooms and minimum standards of lighting and ventilation to which they must conform;
- (33) for prescribing standards of sound-proofing in relation to buildings or building work;
- (34) for making such provision as may be necessary or expedient to ensure that the construction of a building will meet prescribed standards of health and amenity;

- (35) for regulating, restricting or prohibiting the installation of lifts, escalators, fire extinguishing sprinklers or other apparatus in any building or structure or class of building or structure;
- (36) for restricting or prohibiting the use or occupation of a building or structure before all building work contemplated by the plans, drawings and specifications approved in relation thereto has been completed or before the satisfaction of such other conditions as may be prescribed;
- (37) for regulating, restricting or prohibiting the affixure or construction of awnings or other attachments to buildings;
- (38) for making any special provision, restriction or prohibition in relation to a prescribed building or structure or prescribed class of building or structure;
- (39) for limiting the times within which buildings must be erected and completed;
- (40) for providing that the council may approve of the plans and specifications of any building work, which would or does not comply with the by-laws, if the council is satisfied that—
 - (a) at some time prior to the submission of the plans and specifications the plans and specifications complied with the by-laws then in force in its district; and
 - (b) no undue delay has been occasioned in the submission of those plans and specifications to the council.

9. Section 433A of the principal Act is repealed and re-enacted as follows—

Section 433A
repealed and
re-enacted.

433A. (1) The Governor may make and publish in the *Gazette* uniform general by-laws for all or any of the purposes for which by-laws may be made by a council under this Part.

Governor
empowered
to make
uniform
general
by-laws.

(2) Subject to subsections (4) and (6) of this section, any uniform general by-law published under subsection (1) of this section shall apply in the whole of each district within the State, and shall have the same force and effect in each district as if it were a by-law made under this Part by the council of the district.

(3) The Governor may from time to time by order declare that any uniform general by-law published under subsection (1) of this section shall not apply to the whole or such part or parts of such district or districts as is or are specified in the order and may from time to time by subsequent order vary or revoke any order made under this subsection.

(4) Where an order is made under subsection (3) of this section neither the uniform general by-law specified in that order nor any uniform general by-law published under subsection (1) of this section by way of amendment thereof or in substitution therefor (whether published before, on, or after the date of the making of the order) shall apply in any district or part of a district so specified until the order is varied so as to allow such application or is revoked.

(5) The Governor may from time to time by order declare that the whole or any part or parts of any district or districts shall be exempt from the operation of uniform general by-laws published under subsection (1) of this section and may from time to time by subsequent order vary or revoke any order made under this subsection.

(6) Where an order is made under subsection (5) of this section no uniform general by-law published under subsection (1) of this section (whether published before, on, or after the date of the making of the order) shall apply in any district or part of a district specified in the order until the order is varied so as to allow such application or is revoked.

(7) Where and to the extent that there is inconsistency between the provisions of a uniform general by-law having force and effect under this section and a by-law made by a council under this Part, the former provisions prevail.

(8) A council may enforce any uniform general by-law that is made and has effect pursuant to this section in its district or part of its district in the same manner as it may enforce a by-law made by it under this Part.
