

South Australia

Development (Planning and Development Review) Amendment Act 2009

An Act to amend the *Development Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Development (Planning and Development Review) Amendment Act 2009*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Development Act 1993*

4—Amendment of section 33—Matters against which development must be assessed

Section 33—after subsection (4) insert:

(4a) The regulations may exclude prescribed classes of development from the operation of paragraph (a) of subsection (1) (so that an assessment against the Development Plan and a development plan consent that would otherwise be required under that paragraph need not be undertaken, sought or obtained).

(4b) If—

(a) a development only requires an assessment under paragraph (b) of subsection (1); and

(b) a council—

(i) is the relevant authority; and

(ii) is to make the assessment under that paragraph; and

(c) the council determines to grant consent under that paragraph,

the council, as the relevant authority, must issue the relevant development approval with the consent.

5—Amendment of section 35—Special provisions relating to assessment against Development Plan

(1) Section 35(1)—after "prescribed by the regulations or the relevant Development Plan" insert:

and subject to any other provision made by this Act or applying under the regulations

(2) Section 35—after subsection (1a) insert:

(1b) A development that is assessed by a relevant authority as being a minor variation from *complying* development may be determined by the relevant authority to be *complying* development (and that determination will then have effect for the purposes of this Act).

(1c) If a proposed development meets all but 1 criteria necessary for the development to be *complying* development, the aspect or aspects of the development that are consistent with the development being *complying* development must be regarded accordingly and the balance of the development will be assessed as *merit* development.

(1d) To avoid doubt, subsection (1c) does not prevent a relevant authority deciding not to grant development plan consent on account of its assessment of the balance of the development under that subsection.

- (1e) Subsection (1c) does not apply if, despite various aspects of the development meeting any criteria for the development to be *complying* development, the development, from an overall perspective, falls within the category of *non-complying* development.

6—Amendment of section 37—Consultation with other authorities or agencies

Section 37(6)—delete subsection (6) and substitute:

- (6) If a relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under this Act, the prescribed body is a respondent to the appeal and the relevant authority may, on application, be joined as a party to the proceedings.
- (7) If a relevant authority is directed by a prescribed body to impose a condition in respect of a development authorisation and the condition is the subject of an appeal under this Act, both the prescribed body and the relevant authority are respondents to the appeal.

7—Amendment of section 38—Public notice and consultation

(1) Section 38(2)—delete subsection (2) and substitute:

- (2) Subject to subsection (2a), the following provisions apply in relation to the assignment of developments to these categories:
- (a) the regulations or a Development Plan may assign a form of development to Category 1 or to Category 2 and if a particular form of development is assigned to a category by both the regulations and a Development Plan—
- (i) if the regulations provide that an assignment by a Development Plan may prevail—the assignment provided by the Development Plan will, to the extent of any inconsistency, prevail (subject to the operation of paragraph (b)); but
- (ii) in any other case—the assignment provided by the regulations will, to the extent of any inconsistency, prevail;
- (b) the regulations may assign a form of development to Category 2A and this will prevail to the extent of any assignment provided by a Development Plan under paragraph (a);
- (c) any development that is not assigned to a category under paragraph (a) or (b) will be taken to be a Category 3 development for the purposes of this section.
- (2) Section 38(2b)—delete subsection (2b)

- (3) Section 38(3)—delete subsection (3) and substitute:
- (3) Where a person applies for a consent in respect of the Development Plan for a Category 1 development—
- (a) the relevant authority must not, on its own initiative, seek the views of the owners or occupiers of adjacent or other land in relation to the granting or refusal of development plan consent; and
- (b) the following provisions of this section do not apply.
- (4) Section 38(3a)—delete subsection (3a) and substitute:
- (3a) Where a person applies for a consent in respect of the Development Plan for a Category 2A development—
- (a) the relevant authority must—
- (i) subject to any exclusion or qualification prescribed by the regulations—give an owner or occupier of each piece of adjoining land; and
- (ii) give any other person of a prescribed class, notice of the application; and
- (b) the relevant authority must—
- (i) give consideration to any representations in writing made in accordance with the regulations by a person who is entitled to be given a notice under paragraph (a); and
- (ii) forward to the applicant a copy of any representations that the relevant authority must consider under subparagraph (i) and allow the applicant an opportunity to respond, in writing, to those representations within the period prescribed by the regulations; and
- (c) if a representation is received under paragraph (b) within the prescribed number of days, the relevant authority may, in its absolute discretion, allow the person who made the representation to appear personally or by representative before it to be heard in support of the representation.

8—Amendment of section 39—Application and provision of information

- (1) Section 39—after subsection (2) insert:
- (2a) If—
- (a) a development is of a kind that is *complying* development; and
- (b) the development falls within a class of development prescribed by the regulations for the purposes of this subsection; and

- (c) the applicant has complied with the requirements of subsection (1)(a), (c) and (d),

then the relevant authority must, in making an assessment as to development plan consent, assess the application without requesting the applicant to provide additional documents or information.

(2b) If—

- (a) a development falls within a class of development prescribed by the regulations for the purposes of this subsection; and
- (b) the applicant has complied with the requirements of subsection (1)(a), (c) and (d),

then—

- (c) the relevant authority may, in making an assessment as to development plan consent, only request the applicant to provide additional documents or information in relation to the application on 1 occasion; and
- (d) the relevant authority must make that request within a period prescribed by the regulations.

(2) Section 39(3)(b)—delete paragraph (b) and substitute:

- (b) if the request is not complied with within the time specified by the regulations, the relevant authority—
 - (i) may, subject to subparagraph (ii), refuse the application; and
 - (ii) must refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is *complying* development).

(3) Section 39—after subsection (5) insert:

(5a) Without limiting subsection (3), if—

- (a) an applicant requests time to address any issue related to the application (including so as to prepare and submit any variation); or
- (b) an applicant requires time to respond to any matter raised by a person or body in connection with the application under this Act,

then, subject to the regulations, the time required by the applicant is not to be included in the time within which the relevant authority is required to decide the application.

9—Amendment of section 41—Time within which decision must be made

(1) Section 41(2)—after "the time prescribed under subsection (1)" insert:

(other than an application that relates to development that is a *complying* development)

(2) Section 41—after subsection (4) insert:

(5) If—

- (a) a relevant authority does not decide an application that relates to development that is a *complying* development within the time prescribed under subsection (1); and
- (b) the applicant gives the relevant authority a notice in accordance with the regulations on the basis that the decision on the application has not been made,

then—

- (c) it will be taken that the relevant authority has, despite section 35(1), refused to grant the application (and the relevant authority will be taken to have given notice of its decision at that time (and will not need to give any notice under section 40)); and
- (d) subject to any exclusion or qualification prescribed by the regulations, the relevant authority must refund the fee received by the relevant authority under section 39(1)(d) in relation to the application.

10—Amendment of section 88—Powers of Court in determining any matter

Section 88(2)(c)—after "Crown" insert:

, a relevant authority applying under section 37,