

South Australia

Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017

under the *Planning, Development and Infrastructure Act 2016*

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation

Part 2—Initial provisions

- 4 Greater Adelaide
- 5 Transitional provisions relating to extension of operation of section 7 under repealed Act
- 6 Transitional provisions relating to development assessment panels under repealed Act

Part 3—Development plan amendments

- 7 Interpretation
- 8 Adoption of DPAs

Part 4—Staged commencement of development assessment under Act

- 9 Interpretation
- 10 General scheme for staged commencement
- 11 Related provisions
- 11A Special provision relating to existing authorisations of major developments
- 12 Local heritage
- 13 Significant trees
- 14 Appeals
- 15 References to provisions and instruments

Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Planning, Development and Infrastructure Act 2016*.

Part 2—Initial provisions

4—Greater Adelaide

Until the first proclamation is made under section 5 of the Act, a reference to Greater Adelaide in the Act will be taken to be a reference to Greater Adelaide as described in section 5(2) of the Act.

5—Transitional provisions relating to extension of operation of section 7 under repealed Act

- (1) For the purposes of clause 5(4)(d) of Schedule 8 of the Act, the following transitional provisions will apply on account of the commencement of section 7 of the Act on 1 April 2017 and in relation to the application of section 7 as if it formed part of the repealed Act:
 - (a) a reference in section 7 to a relevant authority will be taken to be a reference to a relevant authority under the repealed Act;
 - (b) a reference in section 7 to a development authorisation will be taken to be a reference to a development authorisation under the repealed Act;
 - (c) a reference to the Commission being a relevant authority will be taken to be a reference to the Development Assessment Commission, subject to the operation of clause 6 of Schedule 8 of the Act.
- (2) Schedule 7 of the Act will apply in relation to the operation of section 7 of the Act as it applies under the repealed Act on account of the commencement of that section and the operation of clause 5(4)(c) of Schedule 8 of the Act.
- (3) In connection with the operation of subregulation (2), a reference in Schedule 7 of the Act to a development authorisation will be taken to include a reference to a development authorisation under the repealed Act.

6—Transitional provisions relating to development assessment panels under repealed Act

- (1) Subject to subregulation (2), on and after 1 October 2017 (being the designated day for the purposes of clauses 12 and 13 of Schedule 8 of the Act), a council development assessment panel or a regional development assessment panel constituted under the repealed Act (and in existence immediately before 1 October 2017) will no longer act under the repealed Act.
- (2) If a council has not, immediately before 1 October 2017, appointed an assessment panel envisaged by clause 12(1) of Schedule 8 of the Act, the council's development assessment panel constituted under the repealed Act may continue to act until the Minister constitutes a local assessment panel under clause 12(3) of Schedule 8 of the Act.

Part 3—Development plan amendments

7—Interpretation

In this Part—

DPA means a Development Plan Amendment under section 25 of the repealed Act;

PDI Act means the *Planning, Development and Infrastructure Act 2016*.

8—Adoption of DPAs

- (1) In addition to clause 9 of Schedule 8 of the PDI Act, if—
- (a) a DPA has been prepared by a council under section 25 of the repealed Act; and
 - (b) the requirements of section 25 of the repealed Act relating to public consultation have been completed and a report prepared under section 25(13) of that Act (whether before or after the commencement of this regulation); and
 - (c) the council applies to the Minister under this subregulation in accordance with any requirements determined by the Minister,
- the Minister may, after consultation with the Commission—
- (d) adopt an amendment proposed in the report; or
 - (e) alter an amendment proposed in the report and then proceed to adopt the amendment as altered; or
 - (f) decline to adopt an amendment proposed in the report.
- (1a) In addition to clause 9 of Schedule 8 of the PDI Act, if—
- (a) a DPA has been prepared by the Minister under section 26 of the repealed Act; and
 - (b) the requirements of section 26(5)(d)(ii), (5a)(b) or (5b)(b) of the repealed Act relating to public consultation have been completed (whether before or after the commencement of this subregulation),
- the Minister may, after consultation with the Commission—
- (c) approve the relevant amendment; or
 - (d) alter the relevant amendment and approve the amendment as altered.
- (2) If the Minister adopts an amendment (or an amendment as altered) under subregulation (1), the Minister may, by notice in the Gazette, amend the Planning and Design Code to give effect to the amendment, subject to such modifications as may, in the opinion of the Minister, be necessary on account of the amendment being adopted as an amendment to the Planning and Design Code rather than as an amendment to a Development Plan.

- (2a) If the Minister approves an amendment (or an amendment as altered) under subregulation (1a), the Minister may, by notice in the Gazette, amend the Planning and Design Code to give effect to the amendment, subject to such modifications as may, in the opinion of the Minister, be necessary on account of the amendment being approved as an amendment to the Planning and Design Code rather than as an amendment to a Development Plan.
- (3) An amendment made to the Planning and Design Code under subregulation (2) or subregulation (2a)—
 - (a) does not have effect until it is published on the SA planning portal; and
 - (b) may take effect from the date of publication under paragraph (a), or from a later date specified by the Minister.
- (4) Subject to subregulation (5), the Minister may act under this regulation even if the relevant Development Plan has been revoked by the Minister under clause 9 of Schedule 8 of the PDI Act.
- (5) A council may not make an application under this regulation—
 - (a) in the case of an application that relates to an amendment designating 1 or more places as places of local heritage value under section 23(4) of the repealed Act (and not relating to any other matter)—after 1 July 2021; and
 - (b) in any other case—3 months after the date on which the Development Plan to which the DPA relates has been revoked by the Minister.

Part 4—Staged commencement of development assessment under Act

9—Interpretation

In this Part—

PDI Act means the *Planning, Development and Infrastructure Act 2016*;

relevant day means the relevant day, as applying under regulation 10(1)(a) in relation to a particular area of the State.

10—General scheme for staged commencement

- (1) On and after the commencement of Part 7 of the PDI Act the following provisions will apply:
 - (a) if or when the Minister, acting under clause 9(7) of Schedule 8 of the PDI Act, has revoked or revokes a Development Plan (with the revocation to take effect on or after the commencement of Part 7 of the PDI Act), development within the area of the State to which the Development Plan related will be assessed in all respects under the PDI Act, on and from the day on which the revocation takes effect (the *relevant day*);
 - (b) until the Minister revokes a particular Development Plan acting under clause 9(7) of Schedule 8 of the PDI Act—

- (i) development within the area of the State in relation to which the Development Plan relates will continue to be assessed against the provisions of the Development Plan rather than the provisions of the Planning and Design Code; and
 - (ii) the repealed Act (and the regulations under that Act) will continue to apply in relation to development within the area of the State in relation to which the Development Plan relates.
- (2) Subregulation (1) applies subject to regulation 11.

11—Related provisions

- (1) The following provisions apply in conjunction with regulation 10.
- (2) An application made to a relevant authority under section 39 of the repealed Act with respect to a proposed development within an area of the State that is subject to the revocation of the relevant Development Plan that has not been finally determined before the relevant day in relation to that area may be continued and completed under the provisions of the repealed Act, except that—
- (a) notice of a decision on the application will be in the form that applies under section 126 of the PDI Act rather than the form that applies under section 40 of the repealed Act; and
 - (b) section 127 of the PDI Act will apply in relation to the application rather than section 42 of the repealed Act; and
 - (c) a decision on the application will, once given, be taken to be a decision given under the PDI Act (and the PDI Act will apply in relation to the relevant development authorisation).
- (3) The repealed Act will continue to apply to and in relation to a proposed development or project that is the subject of a declaration made under section 46 of the repealed Act before the relevant day in relation to the area within which the development or project would be undertaken (and that has not been the subject of a decision of the Governor under section 48 of the repealed Act before the relevant day), except that—
- (a) section 48 of the repealed Act will, on or after the relevant day, apply in relation to the development or project as if a reference to the Governor were a reference to the Minister (and a decision of the Minister in relation to the development or project will have effect as if it were a decision of the Minister under section 115 of the PDI Act); and
 - (b) sections 46B(9) to (12), 46C(9) to (12), 46D(8) to (10) and 47(3) of the repealed Act will, on or after the relevant day, apply in relation to the development or project as if a reference to the Minister were a reference to the Commission (and the Commission may adopt any findings or determinations of the Minister under those subsections made before the relevant day to give effect to this subregulation).
- (3a) To avoid doubt, if a development or project of a kind referred to in subregulation (3) is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(a) applies and partly within an area of the State in relation to which regulation 10(1)(b) applies, subregulation (3) applies in respect of the assessment of the development or project (even though it is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(b) applies).

- (4) An application—
- (a) lodged under section 49 or 49A of the repealed Act with respect to a proposed development within an area of the State that is subject to the revocation of the relevant Development Plan; and
 - (b) that has not been finally determined before the relevant day in relation to that area,
- may be continued and completed under the provisions of the repealed Act, except that a decision on the application will, once given, be taken to be a decision given under the PDI Act (and the PDI Act will apply in relation to the relevant development authorisation).
- (4a) To avoid doubt, if development of a kind referred to in subregulation (4) is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(a) applies and partly within an area of the State in relation to which regulation 10(1)(b) applies, subregulation (4) applies to the assessment of the development (even though it is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(b) applies).
- (5) If development is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(a) applies and partly within an area of the State in relation to which regulation 10(1)(b) applies, then—
- (a) an application for a development authorisation in relation to the development made after the relevant day will be assessed in all respects as if regulation 10(1)(a) applied in relation to the development; and
 - (b) —
 - (i) in the case of an application to which section 111 of the PDI Act applies or an application lodged under section 131 of the PDI Act—the Minister will be the relevant authority; or
 - (ii) in any other case—the Commission will be the relevant authority.
- (6) If—
- (a) regulation 10(1)(a) applies in relation to an area of the State; and
 - (b) the Planning and Design Code, in applying under that regulation, overlaps with the area to which a Development Plan continues to apply by virtue of the operation of regulation 10(1)(b),
- then—
- (c) any development that would, but for this subregulation, be subject to the Planning and Design Code and to a Development Plan by virtue of the overlap will be assessed in all respects as if regulation 10(1)(a) applied in relation to the development; and
 - (d) —
 - (i) in the case of an application to which section 111 of the PDI Act applies or an application lodged under section 131 of the PDI Act—the Minister will be the relevant authority; or
 - (ii) in any other case—the Commission will be the relevant authority.

- (7) In relation to the operation of Schedule 8 clause 4 of the PDI Act—
- (a) the clause will not apply in relation to development within an area of the State to which a Development Plan relates until development in that area is to be assessed under the PDI Act; and
 - (b) the designated day under that clause in relation to development within that area will be taken to be the relevant day applying under regulation 10(1)(a) in relation to that area.
- (8) In addition to Schedule 8 clause 16 of the PDI Act:
- (a) a member of an assessment panel does not need to be an accredited professional under the PDI Act (or under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*) until the relevant day under regulation 10(1)(a) applies in relation to the area of the State in relation to which the assessment panel is constituted; and
 - (b) an assessment manager for an assessment panel does not need to be an accredited professional under the PDI Act (or under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*) until the relevant day under regulation 10(1)(a) applies in relation to the area of the State in relation to which the assessment panel is constituted.

11A—Special provision relating to existing authorisations of major developments

- (1) For the avoidance of doubt, the following provisions apply in relation to an existing major development authorisation:
- (a) section 115 of the Act applies to the existing major development authorisation (and the authorisation may be varied or cancelled in accordance with that section);
 - (b) a declaration under section 46 of the repealed Act (or, in the case of a declaration made before 2 January 1997, section 48 of the repealed Act) on the basis of which the decision to grant the existing major development authorisation was made will be taken to be a declaration made by the Minister under section 108(1)(c) of the Act (and may be varied or revoked in accordance with section 108(6));
 - (c) the EIS, PER or DR prepared under the repealed Act in connection with the development approved by the existing major development authorisation will be taken to be an EIS for the purposes of the Act (and may be amended in accordance with section 114);
 - (d) the Assessment Report prepared under the repealed Act in connection with the development approved by the existing major development authorisation will be taken to be an Assessment Report for the purposes of the Act (and may be amended in accordance with section 114).

(2) In this regulation—

existing major development authorisation means—

- (a) a development authorisation granted under section 48 of the repealed Act that is taken to be a development authorisation under the Act pursuant to Schedule 8 clause 3 of the Act; or
- (b) a development authorisation granted under section 48 of the repealed Act in accordance with regulation 11(3).

12—Local heritage

- (1) On the relevant day in relation to an area of the State, a place designated as a place of local heritage value by a Development Plan that has been revoked by the Minister will be taken to be designated as a place of local heritage value by the Planning and Design Code.
- (2) The Minister may, by notice in the Gazette, amend the Planning and Design Code in order to include a place of local heritage value in the Planning and Design Code by virtue of the operation of subregulation (1).
- (3) Subregulations (1) and (2) do not limit the ability to make a later amendment to the Planning and Design Code in relation to a place to which subregulation (1) applies.
- (4) Section 202(1)(a) of the PDI Act does not apply to or in relation to the designation of a place of local heritage value under the PDI Act by operation of subregulation (1) or on account of the inclusion of a place of local heritage value in the Planning and Design Code under subregulation (2).

13—Significant trees

- (1) On the relevant day in relation to an area of the State, a significant tree by virtue of the operation of a Development Plan that has been revoked by the Minister will be taken to be a significant tree under the Planning and Design Code.
- (2) The Minister may, by notice in the Gazette, amend the Planning and Design Code in order to include a significant tree in the Planning and Design Code by virtue of the operation of subregulation (1).
- (3) Subregulations (1) and (2) do not limit the ability to make a later amendment to the Planning and Design Code in relation to a tree to which subregulation (1) applies.

14—Appeals

A right of appeal under sections 38 and 86(1)(b) of the repealed Act may be exercised in relation to an application made to a relevant authority under section 39 of the repealed Act that has not been finally determined before the relevant day in relation to the area within which the development would be undertaken even if the process under section 38 of the repealed Act had not been commenced (or completed) before the relevant day.

15—References to provisions and instruments

- (1) A reference in any Act, statutory instrument or other document or instrument to a provision of the *Development Act 1993*, or a regulation made under the *Development Act 1993*, will, before the *Development Act 1993* is repealed, unless the context otherwise requires, be taken to include a reference to a corresponding provision in the PDI Act, or a corresponding regulation made under the PDI Act (as the case may be).
- (2) A reference in any Act, statutory instrument or other document or instrument to the Planning Strategy or a Development Plan will, unless the context otherwise requires, be taken to include a reference to a state planning policy or the Planning and Design Code (as the case may be).

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2017	25	<i>Gazette 28.3.2017 p979</i>	1.4.2017: r 2
2017	210	<i>Gazette 1.8.2017 p3058</i>	1.10.2017: r 2
2019	17	<i>Gazette 28.2.2019 p713</i>	1.7.2019: r 2
2019	174	<i>Gazette 27.6.2019 p2550</i>	1.7.2019 immediately after 17/2019: r 2
2020	217	<i>Gazette 18.6.2020 p3443</i>	18.6.2020: r 2
2021	191	<i>Gazette 16.12.2021 p4431</i>	16.12.2021: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
heading	inserted by 17/2019 r 4	1.7.2019
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.10.2017</i>
Pt 2		
heading	inserted by 17/2019 r 5	1.7.2019
r 6	inserted by 210/2017 r 4	1.10.2017
Pt 3	inserted by 17/2019 r 6	1.7.2019
r 8		
r 8(1a)	inserted by 174/2019 r 4(1)	1.7.2019
r 8(2a)	inserted by 174/2019 r 4(2)	1.7.2019
r 8(3)	varied by 174/2019 r 4(3)	1.7.2019
r 8(5)	substituted by 174/2019 r 4(4)	1.7.2019
	varied by 217/2020 r 4	18.6.2020
Pt 4	inserted by 17/2019 r 6	1.7.2019
r 11		

r 11(3)	varied by 217/2020 r 5(1)	18.6.2020
r 11(3a)	inserted by 217/2020 r 5(2)	18.6.2020
r 11(4)	substituted by 217/2020 r 5(3)	18.6.2020
r 11(4a)	inserted by 217/2020 r 5(4)	18.6.2020
r 11(5)	varied by 217/2020 r 5(5)	18.6.2020
r 11(6)	varied by 217/2020 r 5(6)	18.6.2020
r 11(7) and (8)	inserted by 174/2019 r 5	1.7.2019
r 11A	inserted by 191/2021 r 4	16.12.2021
r 15	inserted by 174/2019 r 6	1.7.2019

Historical versions

1.10.2017
1.7.2019
18.6.2020