

South Australia

Development (Brush Fences) Variation Regulations 2007

under the *Development Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Development (Brush Fences) Variation Regulations 2007*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Development Regulations 1993*

4—Variation of regulation 5—Application of Act

Regulation 5—after subregulation (1) insert:

- (1a) Pursuant to section 7(3) of the Act, section 33(1)(a) of the Act does not apply to development if, or to the extent to which, the development constitutes development within the ambit of Schedule 1A.

5—Insertion of regulation 76C

After regulation 76B insert:

76C—Fire safety requirements—Brush fences

- (1) This regulation applies to—
 - (a) the construction of a brush fence closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*; or
 - (b) the construction of a Class 1 or 2 building under the *Building Code* closer than 3 metres to an existing or proposed brush fence.

Note—

This regulation does not apply if the relevant application for building rules consent has been made before the commencement of this regulation—see section 53(1) of the Act.

- (2) For the purposes of subregulation (1), the distance of 3 metres will be measured from any part of an existing or proposed brush fence and from any part of an existing or proposed external wall of the relevant building.
- (3) In a case where this regulation applies, the Class 1 or 2 building must comply with Minister's Specification SA 76C.
- (4) Minister's Specification SA 76C may specify encroachments that are permitted despite the operation of subregulation (3).
- (5) In this regulation—

brush means—

- (a) Broombrush (*Melaleuca uncinata*); and
- (b) any other form of dried vegetation material—
 - (i) that has similar fire characteristics to Broombrush; and
 - (ii) that is brought within the ambit of this definition by Minister's Specification SA 76C;

brush fence includes—

- (a) a fence that is predominantly constituted by brush;

- (b) a gate that is predominantly constituted by brush;

construction—

- (a) in relation to a brush fence—includes an alteration of, or addition to, a brush fence but does not include the repair of an existing brush fence that does not enlarge or extend the brush fence;
- (b) in relation to a Class 1 or 2 building—means building or re-building, erecting or re-erecting, or extending or altering, the building;

encroachment means a part of a building, including fittings or attachments, that may occur between an external wall and, for the purposes of this regulation, a brush fence;

external wall means an external wall within the meaning of the *Building Code*.

6—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Development that does not require development plan consent

1—Preliminary

The following acts or activities are within the ambit of this Schedule.

2—Brush fences

- (1) The construction or alteration of, or addition to, a brush fence that constitutes development by virtue of (and only by virtue of) the operation of—
- (a) Schedule 3 clause 4(1)(e)(v) or (ea)(v); or
- (b) Schedule 3A clause 4(1)(e)(v).
- (2) In this clause—

brush fence has the same meaning as the meaning that applies for the purposes of a clause referred to in subclause (1).

7—Variation of Schedule 3—Acts and activities which are not development

- (1) Schedule 3, clause 4(1)(e)—after subparagraph (iv) insert:
- (v) a brush fence that is (or is to be) closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*, with the distance to be measured from any part of the brush fence and from any part of an external wall of the building (being an external wall within the meaning of the *Building Code*) and with this subparagraph not extending to a repair of an existing brush fence that does not enlarge or extend the brush fence; or

(2) Schedule 3, clause 4(1)(ea)—after subparagraph (iv) insert:

- (v) a brush fence that is (or is to be) closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*, with the distance to be measured from any part of the brush fence and from any part of an external wall of the building (being an external wall within the meaning of the *Building Code*) and with this subparagraph not extending to a repair of an existing brush fence that does not enlarge or extend the brush fence; or

(3) Schedule 3, clause 4(7)—before the definition of *swimming pool* insert:

brush means—

- (a) Broombrush (*Melaleuca uncinata*); and
- (b) any other form of dried vegetation material that constitutes *brush* for the purposes of regulation 76C;

brush fence includes—

- (a) a fence that is predominantly constituted by brush;
- (b) a gate that is predominantly constituted by brush;

8—Variation of Schedule 3A—Colonel Light Gardens State Heritage Area

(1) Schedule 3A, clause 4(1)(e)—after subparagraph (iv) insert:

- (v) a brush fence that is (or is to be) closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*, with the distance to be measured from any part of the brush fence and from any part of an external wall of the building (being an external wall within the meaning of the *Building Code*) and with this subparagraph not extending to a repair of an existing brush fence that does not enlarge or extend the brush fence; or

(2) Schedule 3A, clause 4(8)—before the definition of *swimming pool* insert:

brush means—

- (a) Broombrush (*Melaleuca uncinata*); and
- (b) any other form of dried vegetation material that constitutes *brush* for the purposes of regulation 76C;

brush fence includes—

- (a) a fence that is predominantly constituted by brush;
- (b) a gate that is predominantly constituted by brush;

9—Variation of Schedule 4—Complying development

(1) Schedule 4, clause 14(b)—delete paragraph (b) and substitute:

- (b) a fence not exceeding 2 metres in height, or 1 metre in the case of a masonry fence (both measured from the lower of the 2 adjoining finished ground levels), other than—

- (i) a safety fence for a swimming pool which is approved for construction, or requires approval for construction, on or after 1 July 1993; or
 - (ii) a brush fence that is (or is to be) closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*, with the distance to be measured from any part of the brush fence and from any part of an external wall of the building (being an external wall within the meaning of the *Building Code*) and with this subparagraph not extending to a repair of an existing brush fence that does not enlarge or extend the brush fence; or
- (2) Schedule 4, clause 14—after its present contents as amended by this regulation (now to be designated as subclause (1)) insert:
- (2) In this clause—
 - brush* means—
 - (a) Broombrush (*Melaleuca uncinata*); and
 - (b) any other form of dried vegetation material that constitutes *brush* for the purposes of regulation 76C;
 - brush fence* includes—
 - (a) a fence that is predominantly constituted by brush;
 - (b) a gate that is predominantly constituted by brush.

10—Variation of Schedule 5—Requirements as to plans and specifications

Schedule 5, clause 1—after subclause (4) insert:

- (5) If a development involves—
 - (a) the construction of a fence closer than 3 metres to an existing or proposed Class 1 or 2 building under the *Building Code*; or
 - (b) the construction of a Class 1 or 2 building under the *Building Code* closer than 3 metres to an existing or proposed fence,at least 1 plan or other document provided for the purposes of a preceding subclause must describe or indicate the material that makes up, or is proposed to make up, the fence (as the case requires).
- (6) For the purposes of subclause (5), the distance of 3 metres will be measured from any part of an existing or proposed fence and from any part of an existing or proposed external wall of the relevant building (being an external wall within the meaning of the *Building Code*).

(7) In subclause (5)—

construction—

- (a) in relation to a fence—includes an alteration of, or addition to, a fence but does not include the repair of an existing fence that does not enlarge or extend the fence;
- (b) in relation to a Class 1 or 2 building—means building or re-building, erecting or re-erecting, or extending or altering, the building.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 29 November 2007

No 277 of 2007

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