

South Australia

Development (Residential Code) Variation Regulations 2009

under the *Development Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Development (Residential Code) Variation Regulations 2009*.

2—Commencement

These regulations will come into operation on the day on which the *Development (Planning and Development Review) Amendment Act 2009* comes into operation.

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 2008*

4—Variation of regulation 3—Interpretation

Regulation 3—after subregulation (3) insert:

- (4) Unless the contrary intention appears, a reference in a Schedule, other than Schedule 1, to a particular category of zone will be taken to include a reference to any zone of that category that has an additional designation or specification¹.

Example—

- 1 For example, an additional designation or specification may be a street name, a distinguishing letter of the alphabet or a distinguishing number, or the name of an area.

- (5) A reference in a Schedule, other than Schedule 1, to the natural surface of the ground, in relation to a proposed development, is a reference to existing ground level before the development is undertaken (disregarding any preparatory or related work that has been (or is to be) undertaken for the purposes of the development).
- (6) In these regulations—
residential code development means any development that is *complying* development under clause 1(2) or (3), 2A or 2B of Schedule 4.

5—Variation of regulation 5—Application of Act

Regulation 5(2)—delete subregulation (2)

6—Insertion of regulation 5AA

After regulation 5A insert:

5AA—Exclusion of certain classes of development from requirement to obtain development plan consent

Pursuant to section 33(4a) of the Act, the classes of development within the ambit of Schedule 1A are excluded from the operation of paragraph (a) of section 33(1).

7—Insertion of regulation 18A

After regulation 18 insert:

18A—Application and provision of information

- (1) For the purposes of section 39(2a)(b) of the Act, *residential code* development is prescribed.

- (2) For the purposes of section 39(2b)(a) of the Act, the following classes of development are prescribed:
 - (a) any development that is *complying* development (other than *residential code* development);
 - (b) any development that is *merit* development.
- (3) For the purposes of section 39(2b)(d) of the Act, the period of 15 business days from the date of the receipt of the application by the relevant authority is prescribed.

8—Substitution of regulation 19

Regulation 19—delete the regulation and substitute:

19—Period for additional information and other matters

- (1) Pursuant to section 39(3)(b) of the Act, if a request is made by a relevant authority under section 39(2) of the Act, the request must be complied with by the applicant as follows:
 - (a) in the case of a request in respect of development that falls within a class of development prescribed by these regulations for the purposes of section 39(2b)(a) of the Act—within the period of 30 days from the date of the request;
 - (b) in any other case—within the period of 3 months from the date of the request.
- (2) For the purposes of section 39(5a) of the Act—
 - (a) if an applicant requests time to address any issue related to an application (including so as to prepare and submit any variation), any period of time in excess of 10 business days required by the applicant is to be included in the time within which the relevant authority is required to decide the application; and
 - (b) if an applicant requires time to respond to any matter raised by a person or body in connection with an application under the Act, any period of time in excess of 30 days required by the applicant is to be included in the time within which the relevant authority is required to decide the application.

9—Variation of regulation 32—Public notice categories

Regulation 32—after subregulation (5) insert:

- (6) In the case of *residential code* development, the assignment of a form of that development to a category by Schedule 9 prevails to the extent of any inconsistency with a Development Plan but in any other case an assignment by a Development Plan will prevail.

10—Variation of regulation 41—Time within which decision must be made

Regulation 41—after subregulation (3) insert:

- (4) For the purposes of section 41(5)(b) of the Act, a notice must be signed and dated by the applicant and must state—
 - (a) that it is a notice given under section 41(5)(b) of the Act; and
 - (b) the development application number; and
 - (c) the name and address of the applicant.

11—Variation of regulation 89—Private certification—authorised functions

Regulation 89(2)(a)—after "regulations" insert:

(excluding *residential code* development)

12—Variation of regulation 92—Provision of information

Regulation 92—after subregulation (2) insert:

- (2a) A certificate under subregulation (2)(e) must be in the form set out in Schedule 22A.

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

- (1) Schedule 1A, clause 1—delete "acts or activities" and substitute:

classes of development
- (2) Schedule 1A, clause 1—after its present contents as varied by this regulation (now to be designated as subregulation (1)) insert:
 - (2) In this Schedule—

attributable walls or structures means any walls or structures that are attributable to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence between the relevant allotment and an adjoining allotment;

Flood Management Zone/Area means a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan, or any other zone or area shown as being subject to flooding or inundation in the relevant Development Plan;

Historic Conservation Zone/Area means a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Residential Historic (Conservation) Zone, a Historic Conservation Area or a Historic Township Zone;

River Murray Zone means the River Murray Flood Zone or the River Murray Zone with the exception of the Primary Production Policy Area within that zone;

road has the same meaning as in the *Local Government Act 1999*.

- (3) For the purposes of this Schedule—
 - (a) the primary street in relation to a building is the road that forms part of the street address of the building, as determined by the council for the relevant area when it is allocating numbers to buildings and allotments under section 220 of the *Local Government Act 1999*; and
 - (b) a secondary street in relation to a building is any road, other than the primary street, that shares a boundary with the allotment on which the building is situated.
 - (4) Clauses 3 to 12 (inclusive) of this Schedule do not apply if—
 - (a) the development is in relation to a site where a State heritage place or a local heritage place is situated; or
 - (b) the development falls within a class of development prescribed under Schedule 8; or
 - (c) the development would be contrary to the regulations prescribed for the purposes of section 86 of the *Electricity Act 1996*.
- (3) Schedule 1A—after clause 2 insert:

3—Outbuildings

The construction or alteration of, or addition to, an outbuilding, other than where the outbuilding is in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, a River Murray Zone, the Golden Grove Residential Zone or Golden Grove Residential D Zone, or Policy Area 4 or Policy Area 5 in the Residential Zone in the City of Charles Sturt, in which human activity is secondary, and which—

- (a) is detached from and ancillary to a dwelling erected on the site; and
- (b) is not being constructed, added to or altered so that any part of the outbuilding is situated—
 - (i) in front of any part of the building line of the building to which it is ancillary that faces the primary street; or
 - (ii) within 900 millimetres of a boundary of the allotment with a secondary street (if the land has boundaries on 2 or more roads); and
- (c) in the case of a garage—is set back at least 5.5 metres from the primary street; and
- (d) complies with the following requirements as to dimensions:
 - (i) a total floor area not exceeding 40 square metres;

- (ii) a wall height not exceeding 3 metres (measured as a height above the natural surface of the ground and not including a gable end);
 - (iii) a roof height where no part of the roof is more than 5 metres above the natural surface of the ground;
 - (iv) if situated on a boundary of the allotment—a length not exceeding 8 metres; and
- (e) if situated on a side boundary of the allotment—
 - (i) will not result in all attributable walls or structures located along the boundary exceeding 50% of the length of the boundary, disregarding the distance of any front setback; and
 - (ii) will not be within 3 metres of any other attributable wall or structure located along the boundary; and
- (f) if ancillary to—
 - (i) a detached or semi-detached dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 60% of the area of the allotment; or
 - (ii) any other kind of dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 70% of the area of the allotment; and
- (g) in the case of a garage—
 - (i) will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and
 - (ii) is not designed or located so as to provide vehicle access from an alley, lane or right of way that is less than 6.2 metres wide along the boundary of the allotment; and
 - (iii) is located so that vehicle access will use an existing or authorised driveway or access point under section 221 of the *Local Government Act 1999*; and
 - (iv) is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the garage when the work is completed is not steeper than 1:5 in any place and 1:8 on average; and
- (h) if clad in sheet metal—is pre-colour treated or painted in a non-reflective colour; and
- (i) does not involve any excavation or filling exceeding a vertical height of 1 metre overall.

4—Carports and verandahs

The construction or alteration of, or addition to, a carport or verandah (a *designated structure*), other than in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, or a River Murray Zone, which—

- (a) is ancillary to a dwelling erected on the site; and
- (b) is not being constructed, added to or altered so that any part of the designated structure is situated in front of any part of the building line of the building to which it is ancillary that faces the primary street; and
- (c) is set back at least 5.5 metres from the primary street; and
- (d) complies with the following requirements as to dimensions:
 - (i) a total floor area not exceeding 40 square metres;
 - (ii) if situated so as to abut, or to have any part of the designated structure on, a boundary of the allotment, or so as to have any part of the designated structure within 900 millimetres of a boundary of the allotment—a height for any posts or other parts of the designated structure (other than the roof) not exceeding 3 metres (measured as a height above the natural surface of the ground);
 - (iii) a roof height where no part of the roof is more than 5 metres above the natural surface of the ground;
 - (iv) if situated so as to abut, or to have any part of the designated structure on, a boundary of the allotment—a length not exceeding 8 metres; and
- (e) if situated so as to abut, or to have any part of the designated structure on, a side boundary of the allotment—will not result in all attributable walls or structures located along the boundary exceeding 50% of the length of the boundary, disregarding the distance of any front setback; and
- (f) if ancillary to—
 - (i) a detached or semi-detached dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 60% of the area of the allotment; or
 - (ii) any other kind of dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 70% of the area of the allotment; and
- (g) in the case of a carport—
 - (i) will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and

- (ii) is not designed or located so as to provide vehicle access from an alley, lane or right of way that is less than 6.2 metres wide along the boundary of the allotment; and
- (iii) is located so that vehicle access will use an existing or authorised driveway or access point under section 221 of the *Local Government Act 1999*; and
- (iv) is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the carport when the work is completed is not steeper than 1:5 in any place and 1:8 on average; and
- (v) if any part involves cladding in sheet metal—will have cladding which is pre-colour treated or painted in a non-reflective colour.

5—Swimming pools

The construction or alteration of, or addition to, a swimming pool, other than in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, or a River Murray Zone, which—

- (a) is ancillary to a dwelling erected on the site; and
- (b) is not being constructed, added to or altered so that any part of the pool is within 1 metre of a boundary of the allotment; and
- (c) is not being constructed, added to or altered so that any part of the pool is situated in front of any part of the building line of the building to which it is ancillary that faces the primary street; and
- (d) does not have a filtration system located—
 - (i) in the case of a filtration system enclosed in a solid structure that will have a material impact on the transmission of noise—within 5 metres of a dwelling located on an adjoining allotment; or
 - (ii) in any other case—within 12 metres of a dwelling located on an adjoining allotment.

6—Spa pools

The construction or alteration of, or addition to, a spa pool, other than in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, or a River Murray Zone, which—

- (a) is ancillary to a dwelling erected on the site; and
- (b) is not being constructed, added to or altered so that any part of the spa pool is within 1 metre of a boundary of the allotment; and

- (c) is not being constructed, added to or altered so that any part of the spa pool is situated in front of any part of the building line of the building to which it is ancillary that faces the primary street; and
- (d) does not have a filtration system located—
 - (i) in the case of a filtration system enclosed in a solid structure that will have a material impact on the transmission of noise—within 5 metres of a dwelling located on an adjoining allotment; or
 - (ii) in any other case—within 12 metres of a dwelling located on an adjoining allotment.

7—Shade sails

The construction of a shade sail, other than in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, or a River Murray Zone, if—

- (a) the shade sail is to consist of permeable material; and
- (b) the area of the sail will not exceed 40 square metres; and
- (c) no part of the sail will be—
 - (i) 3 metres above ground or floor level (depending on where it is situated) at any place within 900 millimetres of a boundary of the allotment; or
 - (ii) 5 metres above ground or floor level (depending on where it is situated) within any other part of the allotment; and
- (d) no part of the sail will be in front of any part of the building line of the building to which it is ancillary that faces the primary street; and
- (e) in a case where any part of the sail will be situated on a boundary of the allotment—the length of the sail along the boundary will not exceed 8 metres; and
- (f) in a case where any part of the sail or a supporting structure will be situated on a side boundary of the allotment—the length of the sail and any such supporting structure together with all attributable walls or structures located along the boundary will not exceed 50% of the length of the boundary, disregarding the distance of any front setback.

8—Water tanks (above ground)

The construction or alteration of, or an addition to, a water tank (and any supporting structure), other than in a Historic Conservation Zone/Area, the Hills Face Zone, a Flood Management Zone/Area, or a River Murray Zone, if—

- (a) the tank is part of a roof drainage system; and

- (b) the tank has a total floor area not exceeding 15 square metres; and
- (c) the tank is located wholly above ground; and
- (d) no part of the tank is higher than 4 metres above the natural surface of the ground; and
- (e) no part of the tank will be in front of any part of the building line of the building to which it is ancillary that faces the primary street; and
- (f) in the case of a tank made of metal—the tank is pre-colour treated or painted in a non-reflective colour.

9—Water tanks (underground)

The construction or alteration of, or addition to, a water tank (and any associated pump) if—

- (a) the tank is ancillary to a dwelling erected on the site; and
- (b) the tank (and any associated pump) is located wholly below the level of the ground.

10—Solar photovoltaic panels

The installation, alteration, repair or maintenance of a system comprising solar photovoltaic panels on the roof of a building (after taking into account the operation of clause 15 of Schedule 3) if—

- (a) the panels (and any associated components) do not overhang any part of the roof; and
- (b) the panels are fitted parallel to the roof with the underside surface of the panels being not more than 100 millimetres above the surface of the roof; and
- (c) if the building is in a Historic Conservation Zone/Area—no part of the system, when installed, will be able to be seen by a person standing at ground level in a public street.

11—Internal building work

- (1) Work undertaken within a building, other than in a Historic Conservation Zone/Area, a Flood Management Zone/Area, a River Murray Zone, or the area of The Corporation of the City of Adelaide, if—
 - (a) there will be no increase in the total floor area of the building; and
 - (b) there will be no alteration to the external appearance of the building to any significant degree.
- (2) Work undertaken within a building in a Historic Conservation Zone/Area if—
 - (a) there will be no increase in the total floor area of the building; and

- (b) there will be no alteration to the external appearance of the building.

12—Demolition

- (1) The partial or total demolition of a building and associated structures, other than in—
 - (a) a Historic Conservation Zone/Area; or
 - (b) the area of The Corporation of the City of Adelaide; or
 - (c) a designated area under subclause (3).
- (2) Any demolition for the purposes of any *complying* development within a designated area under subclause (3) will not be within the ambit of subclause (1)(c).
- (3) For the purposes of subclause (1)(c), a designated area is an area declared by the Minister on the application of the relevant council to be a designated area.
- (4) The Minister may declare the whole, or a part, of the area of a council to be a designated area under subclause (3).
- (5) The Minister must not make a declaration under subclause (3) unless the Minister is satisfied that the declaration is appropriate in order to introduce or enhance planning objectives and principles relating to residential building design and neighbourhood character and amenity.
- (6) A declaration of the Minister under subclause (3) must be made by notice in the Gazette.
- (7) A declaration may be made subject to such conditions as the Minister thinks fit (and specifies in the notice of declaration published in the Gazette).
- (8) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under subclause (3) or a condition under subclause (7).
- (9) However, before taking action under subclause (8), the Minister must give the relevant council a notice in writing—
 - (a) stating the proposed course of action; and
 - (b) stating the reasons for the proposed course of action; and
 - (c) inviting the council to show, within a specified time (of at least 1 month), why the proposed course of action should not be taken.
- (10) Subclause (9) does not apply to a variation or revocation made at the request of the relevant council.

14—Variation of Schedule 4—Complying development

- (1) Schedule 4, clause 1—after "Historic (Conservation) Zone," insert:
a Historic Conservation Area, a Historic Township Zone,

- (2) Schedule 4, clause 1(1)(b) and (c)—delete paragraphs (b) and (c)
- (3) Schedule 4, clause 1(1)(d)(i)(A)—delete "a Historic (Conservation) Zone, a Historic (Conservation) Policy Area,"
- (4) Schedule 4, clause 1(1)(d)(i)—after subparagraph (D) insert:
 - (E) a Streetscape (Built Form) Zone in the area of The Corporation of the City of Unley if the fence is situated between the building line of the main face of a building and the road on to which the building faces; or
- (5) Schedule 4, clause 1(2) to (9) (inclusive)—delete subclauses (2) to (9) and substitute:
 - (2) Other than in relation to a local heritage place, in the Hills Face Zone, in a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Residential Historic (Conservation) Zone, a Historic Conservation Area or a Historic Township Zone, or in a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan or any other zone or area shown as being subject to flooding or inundation in the relevant Development Plan, the construction or alteration of, or addition to, an outbuilding, in which human activity is secondary, if—
 - (a) the outbuilding is detached from and ancillary to a dwelling erected on the site; and
 - (b) the outbuilding is not being constructed, added to or altered so that any part of the outbuilding is situated—
 - (i) in front of any part of the building line of the building to which it is ancillary that faces the primary street; or
 - (ii) within 900 millimetres of a boundary of the allotment with a secondary street (if the land has boundaries on 2 or more roads); and
 - (c) in the case of a garage—the garage is set back at least 5.5 metres from the primary street; and
 - (d) the outbuilding complies with the following requirements as to dimensions:
 - (i) a total floor area not exceeding 60 square metres;
 - (ii) a wall height not exceeding 3 metres (measured as a height above the natural surface of the ground and not including a gable end);
 - (iii) a roof height where no part of the roof is more than 5 metres above the natural surface of the ground;
 - (iv) if situated on a boundary of the allotment (not being a boundary with a primary street or a secondary street)—a length not exceeding 8 metres; and
 - (e) if situated on a boundary of the allotment (not being a boundary with a primary street or a secondary street)—

- (i) the development will not result in all attributable walls or structures located along the boundary exceeding 50% of the length of the boundary, disregarding (in the case of a side boundary) the distance of any front setback; and
 - (ii) will not be within 3 metres of any other attributable wall or structure located along the boundary; and
- (f) in the case of an outbuilding that is ancillary to—
 - (i) a detached or semi-detached dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 60% of the area of the allotment; or
 - (ii) any other kind of dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 70% of the area of the allotment; and
- (g) in the case of a garage—
 - (i) if facing the primary street—the garage will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and
 - (ii) if designed or located so as to provide vehicle access from an alley, lane or right of way—the alley, lane or right of way is at least 6.2 metres wide along the boundary with the allotment; and
 - (iii) the garage is located so that vehicle access will use an existing or authorised access point under section 221 of the *Local Government Act 1999*; and
 - (iv) the garage is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the garage when the work is completed is not steeper than 1:5 in any place and 1:8 on average; and
- (h) the outbuilding, if clad in sheet metal, is pre-colour treated or painted in a non-reflective colour; and
- (i) any excavation or filling associated with the development does not exceed a vertical height of 1 metre overall.

- (3) Other than in relation to a local heritage place, in the Hills Face Zone, in a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Residential Historic (Conservation) Zone, a Historic Conservation Area or a Historic Township Zone, or in a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan or any other zone or area shown as being subject to flooding or inundation in the relevant Development Plan, the construction or alteration of, or addition to, a carport or verandah (a *designated structure*) if—
- (a) the designated structure is ancillary to a dwelling erected on the site; and
 - (b) the designated structure is not being constructed, added to or altered so that any part of the designated structure is situated—
 - (i) in front of any part of the building line of the building to which it is ancillary that faces the primary street; or
 - (ii) within 900 millimetres of a boundary of the allotment with a secondary street (if the land has boundaries on 2 or more roads); and
 - (c) in the case of a carport—the carport is set back at least 5.5 metres from the primary street; and
 - (d) the designated structure complies with the following requirements as to dimensions:
 - (i) a total floor area not exceeding 60 square metres;
 - (ii) a height for any posts or other parts of the designated structure (other than the roof) not exceeding 3 metres (measured as a height above the natural surface of the ground); and
 - (iii) a roof height where no part of the roof is more than 5 metres above the natural surface of the ground; and
 - (iv) if situated so as to abut, or to have any part of the designated structure on, a boundary of the allotment (not being a boundary with a primary street or a secondary street)—a length not exceeding 8 metres; and
 - (e) if situated so as to abut a boundary of the allotment (not being a boundary with a primary street or a secondary street)—the development will not result in all attributable walls or structures located along the boundary exceeding 50% of the length of the boundary, disregarding (in the case of a side boundary) the distance of any front setback; and
 - (f) in the case of a designated structure that is ancillary to—

- (i) a detached or semi-detached dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 60% of the area of the allotment; or
 - (ii) any other kind of dwelling—the circumstances are such that the total roofed area of all existing or proposed buildings on the allotment will not exceed 70% of the area of the allotment; and
 - (g) in the case of a carport—
 - (i) if facing the primary street—the carport will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and
 - (ii) if designed or located so as to provide vehicle access from an alley, lane or right of way—the alley, lane or right of way is at least 6.2 metres wide along the boundary with the allotment; and
 - (iii) the carport is located so that vehicle access will use an existing or authorised access point under section 221 of the *Local Government Act 1999*; and
 - (iv) the carport is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the carport when the work is completed is not steeper than 1:5 in any place and 1:8 on average; and
 - (h) any excavation or filling associated with the development does not exceed a vertical height of 1 metre overall.
- (6) Schedule 4, clause 1—after subclause (10) insert:
 - (10a) For the purposes of this clause—
 - (a) the primary street in relation to a building is the road that forms part of the street address of the building, as determined by the council for the relevant area when it is allocating numbers to buildings and allotments under section 220 of the *Local Government Act 1999*; and
 - (b) a secondary street in relation to a building is any road, other than the primary street, that shares a boundary with the allotment on which the building is situated.
- (7) Schedule 4, clause 1(11)—before the definition of *swimming pool* insert:

attributable walls or structures means any walls or structures that are attributable to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence between the relevant allotment and an adjoining allotment;

road has the same meaning as in the *Local Government Act 1999* but does not include an alley, lane or right of way.

- (8) Schedule 4, after clause 2—insert:

2A—Single storey additions and alterations

- (1) This clause does not apply to any development in relation to a local heritage place or in a Historic Conservation Zone/Area, the Hills Face Zone, or a Flood Management Zone/Area.
- (2) The alteration of, or addition to, an existing detached or semi-detached dwelling, other than where the dwelling is situated on a battle-axe allotment (or as indicated in subclause (1)), if—
 - (a) the alteration or addition is at, or relates to, the ground floor level of the dwelling and does not involve the construction or alteration of a mezzanine floor or a second or subsequent storey; and
 - (b) the dwelling is not being altered or added to so that any part of the dwelling will be—
 - (i) —
 - (A) nearer to an existing boundary of the primary street for the dwelling than any distance that applies in respect of setbacks under the relevant Development Plan in relation to any road or portion of a road that constitutes the primary street frontage; or
 - (B) in front of the average setbacks of any existing dwellings on any adjoining allotments with the same primary street (or, if there is only 1 such dwelling, the setback of that dwelling),
whichever provides the lesser of the 2 distances; or
 - (ii) within 900 millimetres of a boundary of the allotment with a secondary street or, if a dwelling on any adjoining allotment is closer to the secondary street than 900 millimetres, the distance of that dwelling from the boundary with the secondary street (being, if relevant, the lesser of the 2 distances); or
 - (iii) if the size of the allotment does not exceed 300 square metres—within 3 metres of the rear boundary of the allotment (measured from the closest solid wall);
 - (iv) if the size of the allotment exceeds 300 square metres—within 4 metres of the rear boundary of the allotment (measured from the closest solid wall);

- (c) if any side wall of the dwelling will exceed 3 metres in height when measured from the top of the footings as a result of the development—the wall will be set back at least 900 millimetres from the boundary plus a distance equal to one-third of the extent to which the height of the wall exceeds 3 metres from the top of the footings; and
- (d) in relation to any wall located on a side boundary associated with the development—
 - (i) the wall will not exceed 3 metres in height when measured from the top of the footings; and
 - (ii) the wall will not exceed 8 metres in length; and
 - (iii) the wall, when its length is added to the length of any other attributable walls or structures located on that boundary—
 - (A) will not result in all such attributable walls and structures exceeding a length equal to 50% of the length of the boundary, disregarding the distance of any front setback; and
 - (B) will not be within 3 metres of any other attributable wall or structure located along the boundary; and
- (e) the dwelling is not being altered or added to so that—
 - (i) any part of the dwelling will exceed 9 metres in height when measured from the top of the footings; or
 - (ii) any part of the dwelling will not exceed the height of any part of the dwelling before the commencement of the development; or
 - (iii) any wall height will exceed 6 metres when measured from the top of the footings; and
- (f) any finished floor level associated with the development will not be below a level equal to 300 millimetres above any 1:100 year ARI shown in the relevant Development Plan (if such an ARI is shown and is relevant to the location of the dwelling); and
- (g) the following minimum private open space requirements apply after the development has been completed (after including the areas of the dwelling and any outbuildings, carports or verandahs on the allotment):

Allotment size	Minimum area of private open space	Minimum dimension
> 500m ²	80m ²	4m
300—500m ²	60m ²	4m
< 300m ²	24m ²	3m

and in any event at least 24 square metres of private open space at the rear or side of the dwelling with access directly from a habitable room within the dwelling must be provided; and

- (h) the development will not result in the dwelling not having a setback of at least 900 millimetres on at least 1 side boundary of the allotment; and
- (i) if the development involves or incorporates the construction or alteration of a garage or carport, the garage or carport—
 - (i) is or will be set back at least 5.5 metres from the primary street; and
 - (ii) is or will be situated so that no part of the garage or carport will be in front of any part of the building line of the dwelling that faces the primary street; and
 - (iii) will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and
 - (iv) is not designed or located so as to provide vehicle access from an alley, lane or right of way that is less than 6.2 metres wide along the boundary of the allotment; and
 - (v) is located so that vehicle access will use an existing or authorised driveway or access point under section 221 of the *Local Government Act 1999*; and
 - (vi) is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the garage or carport when the work is completed is not steeper than 1:5 in any place and 1:8 on average; and
- (j) the development will not result in the removal of a place for the parking of a car or cars unless—
 - (i) in the case of a dwelling that will only have (or continue to have) 1 bedroom at the completion of the development—the dwelling will have at least 1 car parking space that is enclosed or covered, or able to be enclosed or covered, and that complies with the requirements set out in paragraph (i) in relation to garages and carports;

- (ii) in the case of a dwelling that will have (or continue to have) 2 or more bedrooms at the completion of the development—the dwelling will have at least 2 car parking spaces, 1 of which is enclosed or covered, or able to be enclosed or covered, and both of which comply with the requirements set out in paragraph (i) in relation to garages and carports; and
 - (k) the circumstances are such that the total roofed area of buildings on the allotment will not exceed 60% of the total area of the allotment; and
 - (l) the development will not alter the external appearance of the building when viewed from the primary street; and
 - (m) any excavation or filling associated with the development does not exceed a vertical height of 1 metre overall.
- (3) For the purposes of this clause—
 - (a) in calculating private open space—
 - (i) any area at ground level at the front of the dwelling will not be included; and
 - (ii) each area at ground level must have a width of at least 2.5 metres; and
 - (iii) any balcony must have a width of at least 2 metres; and
 - (b) the primary street in relation to a building is the road that forms part of the street address of the building, as determined by the council for the relevant area when it is allocating numbers to buildings and allotments under section 220 of the *Local Government Act 1999*; and
 - (c) a secondary street in relation to a building is any road, other than the primary street, that shares a boundary with the allotment on which the building is situated (or to be situated).

- (4) In this clause—

ARI means the *average recurrence interval* of a flood event;

attributable walls or structures means any walls or structures that are attributable to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence between the relevant allotment and an adjoining allotment;

battle-axe allotment means an allotment or site that comprises—

- (a) a driveway (and any related open space) that leads back from a road to the balance of the allotment or site; and

- (b) a balance of the allotment or site that is the principal part of the allotment or site and that does not have a boundary with a road;

Flood Management Zone/Area means a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan, or any other zone or area shown as being subject to flooding or inundation in the relevant Development Plan;

habitable room means a room used for domestic activities but does not include a bathroom, laundry, hallway, lobby or other service or access area or space that is not occupied for extended periods;

Historic Conservation Zone/Area means a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Residential Historic (Conservation) Zone, a Historic Conservation Area or a Historic Township Zone;

road has the same meaning as in the *Local Government Act 1999* but does not include an alley, lane or right of way.

2B—New dwellings

- (1) Subject to subclause (3), this clause applies in relation to any area determined by the Minister for the purposes of this clause and identified by notice in the Gazette.
- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke a determination under subclause (1).
- (3) Despite any determination under subclause (1), this clause does not apply to any development—
 - (a) in relation to a local heritage place; or
 - (b) in—
 - (i) a Historic Conservation Zone/Area; or
 - (ii) the Hills Face Zone; or
 - (iii) a Flood Management Zone/Area.
- (4) If in connection with the relevant application for development plan consent—
 - (a) the applicant has indicated that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land; or
 - (b) the relevant authority has reason to believe that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land,

this clause will not apply unless the applicant is able to furnish a site contamination audit report under Part 10A of the *Environment Protection Act 1993* to the effect—

- (c) that site contamination does not exist (or no longer exists) at the allotment; or
 - (d) that any site contamination at the allotment has been cleared or addressed to the extent necessary to enable the allotment to be suitable for unrestricted residential use.
- (5) Insofar as this clause applies to a site that does not comprise an entire allotment, the site, and any balance of the allotment, must each at least meet the minimum site area and any minimum frontage requirements prescribed in the relevant Development Plan.
- (6) The construction of a new detached or new semi-detached dwelling, other than where the dwelling is to be situated on a battle-axe allotment (or as indicated in a preceding subclause), if—
- (a) the dwelling is not being constructed so that any part of the dwelling will be—
 - (i) —
 - (A) nearer to an existing boundary of the primary street for the dwelling than any distance that applies in respect of setbacks under the relevant Development Plan in relation to any road or portion of a road that constitutes the primary street frontage; or
 - (B) in front of the average setbacks of any existing dwellings on any adjoining allotments with the same primary street (or, if there is only 1 such dwelling, the setback of that dwelling),whichever provides the lesser of 2 distances; or
 - (ii) within 900 millimetres of a boundary of the allotment with a secondary street or, if a dwelling on any adjoining allotment is closer to the secondary street than 900 millimetres, the distance of that dwelling from the boundary with the secondary street (being, if relevant, the lesser of the 2 distances); or
 - (iii) if the size of the site does not exceed 300 square metres—
 - (A) in relation to the ground floor of the dwelling—within 3 metres of the rear boundary of the site (measured from the closest solid wall);
 - (B) in relation to any other storey of the dwelling—within 5 metres of the rear boundary of the site; or

- (iv) if the size of the site exceeds 300 square metres—
 - (A) in relation to the ground floor of the dwelling—within 4 metres of the rear boundary of the site (measured from the closest solid wall);
 - (B) in relation to any other storey of the dwelling—within 6 metres of the rear boundary of the site; and
- (b) if any side wall of the dwelling will exceed 3 metres in height when measured from the top of the footings—the wall will be set back at least 900 millimetres from the boundary of the site plus a distance equal to one-third of the extent to which the height of the wall exceeds 3 metres from the top of the footings; and
- (c) if any side wall of the dwelling that faces south and the development includes building work in relation to an upper storey, other than where the boundary on that side of the building is with a secondary street—any upper storey component is to be set back at least to the distance required under paragraph (b) plus 1 metre; and
- (d) in relation to any wall to be located on a side boundary of the site associated with the development—
 - (i) the wall will not exceed 3 metres in height when measured from the top of the footings; and
 - (ii) the wall will not exceed 8 metres in length; and
 - (iii) the wall, when its length is added to the length of any other attributable walls or structures located on that boundary—
 - (A) will not result in all such attributable walls and structures exceeding a length equal to 50% of the length of the boundary, disregarding the distance of any front setback; and
 - (B) will not be within 3 metres of any other attributable wall or structure located along the boundary; and
- (e) the dwelling is not constructed so that—
 - (i) any part of the dwelling will exceed 9 metres in height when measured from the top of the footings; or
 - (ii) any wall height will exceed 6 metres when measured from the top of the footings; and

- (f) no part of the dwelling will have a finished floor level below a level equal to 300 millimetres above any 1:100 year ARI shown in the relevant Development Plan (if such an ARI is shown and is relevant to the location of the dwelling); and
- (g) the following minimum private open space requirements will apply in relation to the site after the development has been completed (after including the areas of the dwelling and any outbuildings, carports or verandahs on the site):

Site size	Minimum area of private open space	Minimum dimension
> 500m ²	80m ²	4m
300—500m ²	60m ²	4m
< 300m ²	24m ²	3m

and in any event at least 24 square metres of private open space at the rear or side of the dwelling with access directly from a habitable room within the dwelling must be provided; and

- (h) the dwelling will have a setback of at least 900 millimetres on at least 1 side boundary of the site; and
- (i) in relation to any upper storey window that will face a side or rear boundary of the site, other than in relation to any such boundary that adjoins a road or a reserve that has a width exceeding 15 metres—
 - (i) the sill height will be at least 1.5 metres above the finished floor level; or
 - (ii) the window will have permanently obscure glazing in any part of the window below 1.5 metres above the finished floor level and, if it is capable of being opened, the window will be an awning window hinged at the top and will not be capable of being opened more than 200 millimetres; and
- (j) the dwelling will not have a balcony or terrace on an upper storey, other than where that balcony or terrace will face a road, or reserve, that is at least 15 metres wide at all places to be faced by the dwelling; and
- (k) in relation to any proposed garage or carport, the garage or carport—
 - (i) will be set back at least 5.5 metres from the primary street; and
 - (ii) is or will be situated so that no part of the garage or carport will be in front of any part of the building line of the dwelling that faces the primary street; and

- (iii) will not have an opening or openings for vehicle access that exceed, in total, 7 metres in width; and
 - (iv) is not designed or located so as to provide vehicle access from an alley, lane or right of way that is less than 6.2 metres wide along the boundary of the allotment; and
 - (v) is located so that vehicle access will use an existing or authorised driveway or access point under section 221 of the *Local Government Act 1999*; and
 - (vi) is located so that the gradient from the place of access on the boundary of the allotment to the finished floor level at the front of the garage or carport when work is completed is not steeper than 1:5 in any place and 1:8 on average; and
- (l) in the case of—
- (i) a dwelling that will only have 1 bedroom at the completion of the development—the dwelling will have at least 1 car parking space that is enclosed or covered, or able to be enclosed or covered, and that complies with the requirements set out in paragraph (k) in relation to garages and carports;
 - (ii) a dwelling that will have 2 or more bedrooms at the completion of the development—the dwelling will have at least 2 car parking spaces, 1 of which is enclosed or covered, or able to be enclosed or covered, and both of which comply with the requirements set out in paragraph (k) in relation to garages and carports; and
- (m) the dwelling will have at least 1 habitable room window facing the primary street; and
- (n) the development will not result in the total roofed area of all buildings on the allotment exceeding 60% of the total area of the allotment; and
- (o) any excavation or filling associated with the development does not exceed a vertical height of 1 metre overall; and
- (p) in relation to the site—there already exists, for the purposes of a dwelling, at least to a point immediately adjacent to the allotment, the availability of connections to—
- (i) a permanent water supply for potable water; and
 - (ii) a sewage system or a waste control system which complies with the requirements of the *Public and Environmental Health Act 1987* and which is installed in a manner approved by the council or an appropriate government agency or instrumentality; and

- (iii) a permanent electricity supply.
- (7) For the purposes of this clause—
- (a) a side wall faces south if the wall has an axis perpendicular to its surface orientated south 30° west to south 20° east; and
 - (b) in calculating private open space—
 - (i) any area at ground level at the front of the proposed dwelling will not be included; and
 - (ii) each area at ground level must have a width of at least 2.5 metres; and
 - (iii) any balcony must have a width of at least 2 metres; and
 - (c) the placing of a transportable dwelling will be taken to constitute the construction of a new dwelling; and
 - (d) the primary street in relation to a dwelling is the road that forms part of the street address of the dwelling, as determined by the council for the relevant area when it is allocating numbers to buildings and allotments under section 220 of the *Local Government Act 1999*; and
 - (e) a secondary street in relation to a dwelling is any road, other than the primary street, that shares a boundary with the allotment on which the dwelling is to be situated.

- (8) In this clause—

ARI means *average recurrence interval* of a flood event;

attributable walls or structures means any walls or structures that are attributable to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence between the relevant allotment and an adjoining allotment;

battle-axe allotment means an allotment or site that comprises—

- (a) a driveway (and any related open space) that leads back from a road to the balance of the allotment or site; and
- (b) a balance of the allotment or site that is the principal part of the allotment or site and that does not have a boundary with a road;

Flood Management Zone/Area means a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan, or any other zone or area shown as being subject to flooding or inundation in the relevant Development Plan;

habitable room means a room used for domestic purposes but does not include a bathroom, laundry, hallway, lobby or other service or access area or space that is not occupied for extended periods;

Historic Conservation Zone/Area means a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Residential Historic (Conservation) Zone, a Historic Conservation Area or a Historic Township Zone;

road has the same meaning as in the *Local Government Act 1999* but does not include an alley, lane or right of way;

south means true south.

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

- (1) Schedule 5, before clause 1 insert:

A1—Plans for certain classes of *complying* development

An application for development plan consent that relates to an outbuilding, carport or verandah that is *complying* development under Schedule 4, clause 1(2) or (3) must be accompanied by—

- (a) a site plan, drawn to a scale of not less than 1:200, showing—
 - (i) the boundaries and dimensions of the site; and
 - (ii) the position and dimensions of any existing or proposed building and its distance and relationship to the boundaries of the site; and
 - (iii) existing and proposed finished floor levels and site levels; and
 - (iv) the location of any significant tree on the site or on adjoining land that might be affected by the work, or that might affect the work, proposed to be performed; and
 - (v) the purpose for which any existing building on the site is used and for which any proposed building on the site is intended to be used; and
 - (vi) if the proposed building is to be a garage or carport—the location and gradient of any driveway or proposed driveway and its location in relation to an existing or proposed vehicle access point under section 221 of the *Local Government Act 1999*; and
 - (vii) the amount and location of the private open space to remain on the site; and
 - (viii) the approximate north point; and
- (b) if a vehicle access point is to be established—documentary evidence that it has been authorised under section 221 of the *Local Government Act 1999*; and
- (c) elevation drawings to a scale of not less than 1:100 of any relevant or proposed building including showing wall, post and building heights; and

- (d) if relevant—a schedule of colours for any cladding; and
- (e) a copy of the certificate of title, deposited plan or other instrument evidencing title in relation to the land.

**A2—Plans for alterations, additions and new dwellings—
complying development**

An application for development plan consent that relates to *complying* development under Schedule 4, clause 2A or 2B must be accompanied by—

- (a) a site plan, drawn to a scale of not less than 1:200, showing—
 - (i) the boundaries and dimensions of the site; and
 - (ii) the position and dimensions of any existing or proposed building and its distance and relationship to the boundaries of the site; and
 - (iii) the location of any significant tree on the site or on adjoining land that might be affected by the work, or that might affect the work, proposed to be performed; and
 - (iv) the purpose for which any existing building on the site is used (if relevant) and the purpose for which any proposed building on the site is intended to be used; and
 - (v) the location and dimension of car parking spaces before and after completion of the proposed development; and
 - (vi) if a proposed building is to be or incorporate a garage or carport—the location and gradient of any driveway or proposed driveway and its location in relation to an existing or proposed vehicle access point under section 221 of the *Local Government Act 1999*; and
 - (vii) the amount and location of the private open space to remain on the site; and
 - (viii) finished floor levels; and
 - (ix) the true north point; and
- (b) if a vehicle access point is to be established—documentary evidence that it has been authorised under section 221 of the *Local Government Act 1999*; and
- (c) if relevant under clause 2A and in all cases under clause 2B—a floor plan to a scale of not less than 1:100 showing the number and location of bedrooms and other habitable rooms at the completion of the development; and

- (d) elevation drawings to a scale of not less than 1:100 of any relevant or proposed building including showing wall, post and building heights; and
 - (e) drawings showing how the proposed development relates to buildings on adjoining sites (other than any site to the rear of the site of the proposed development); and
 - (f) in the case of an application within the ambit of Schedule 4, clause 2B—
 - (i) a declaration by or on behalf of the applicant indicating whether or not, to the best of his or her knowledge and belief, the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land; and
 - (ii) if the indication is that the allotment is or may have been so subject to site contamination—a report that complies with the requirements of Schedule 4, clause 2B(4); and
 - (g) in the case of an application within the ambit of Schedule 4, clause 2B—a declaration by or on behalf of the applicant, or other evidence that confirms, that there already exists, for the purposes of a dwelling, the connections referred to in clause 2B(6)(p) of that Schedule; and
 - (h) a copy of the certificate of title, deposited plan or other instrument evidencing title in relation to the land.
- (2) Schedule 5, clause 1(1)(a)—after subparagraph (v) insert:
- (va) if the building work is within the ambit of Schedule 1A, clause 3 or 4 and involves a garage or carport—the location and gradient of any driveway or proposed driveway and its location in relation to an existing or proposed vehicle access point under section 221 of the *Local Government Act 1999*; and
 - (vb) the amount and location of the private open space to remain on the site; and
 - (vc) the location of any significant tree on the site or on adjoining land; and
- (3) Schedule 5, clause 1(1)—after paragraph (e) insert:
- and
- (f) if the building work is within the ambit of Schedule 1A, clause 3 or 4—
 - (i) if a vehicle access point is to be established—documentary evidence that it has been authorised under section 221 of the *Local Government Act 1999*; and
 - (ii) information about the material and colour of any cladding that is to be used; and

- (iii) a copy of the certificate of title, deposited plan or other instrument evidencing title in relation to the land.

16—Variation of Schedule 6—Fees

- (1) Schedule 6, item 1(2)(a)—after "Development Plan" insert:

, other than if the development is *complying* development under Schedule 4, clause 1(2) or (3), 2A or 2B

- (2) Schedule 6, item 1—after component (11) insert:

(12) If— \$40.25

(a) a council is the relevant authority with respect to a particular development; and

(b) the application is within the ambit of Schedule 1A, other than clause 2,

(being a fee due and payable to the council).

17—Variation of Schedule 7—Provisions regulating distribution of fees between authorities

Schedule 7, clause 2—after paragraph (d) insert:

- (e) pay to the Development Assessment Commission 5% of fees received by the council under component (12) of item 1 of Schedule 6.

18—Variation of Schedule 9—Public notice categories

Schedule 9, Part 3—delete Part 3

19—Insertion of Schedule 22A

After Schedule 22 insert:

Schedule 22A—Certificate of consistency

Certificate of consistency

I verify that I have examined carefully a copy of the development plan consent (including any conditions and notes) described below, together with a copy of the plans approved and endorsed pursuant to regulation 42(4) of the *Development Regulations 2008* for that consent.

The plans and supporting documentation submitted for building rules consent have been assessed for compliance with the Building Rules, while the development plan consent plans have been reviewed to ensure that all buildings and structures included in the building rules assessment are consistent with the development plan consent.

I hereby certify in accordance with regulation 92(2)(e) of the *Development Regulations 2008* that the building rules consent issued on _____ (date) for _____ (description of project as described in the development plan consent) at _____ (location of proposed development) is consistent with the following development authorisation (including any conditions and notes) giving development plan consent _____ (application number) issued on _____ (date) by _____ (relevant authority) subject only to the variations specified below in the Table of Variations to meet Regulatory Requirements, attached for the purposes of section 93(2) of the *Development Act 1993*, which are necessary for compliance with the Building Rules or any other legislation specified therein.

Registered private certifier:

Registration number:

Date:

Table of variations to meet regulatory requirements—pursuant to section 93(2) of the *Development Act 1993*

Item	Legislation/Regulation/Code	Reason for variation

Registered private certifier:

Registration number:

Date:

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 26 February 2009

No 20 of 2009