

South Australia

Development (Private Certification) Variation Regulations 2013

under the *Development Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Development (Private Certification) Variation Regulations 2013*.

2—Commencement

- (1) Subject to subregulation (2), these regulations will come into operation on the day on which the *Development (Private Certification) Amendment Act 2012* comes into operation.
- (2) Regulation 10(4) will come into operation on 1 January 2014.

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 15—Application to relevant authority

Regulation 15—after subregulation (7) insert:

- (7a) If an application is lodged with a private certifier for the purposes of obtaining a development plan consent from the private certifier, the private certifier must forward to the council in whose area the development is situated (or, if the proposed development is to be undertaken in a part of the State that is not within the area of a council, to the Development Assessment Commission)—
- (a) a copy of the application; and
 - (b) notification as to the date on which the application was received by the private certifier; and
 - (c) the base amount of the Lodgement Fee payable under Schedule 6,
- within 2 business days after their receipt by the private certifier.
- (7b) A council (or, if the case requires, the Development Assessment Commission) must, within 2 business days of receipt of a copy of an application under subregulation (7a), furnish to the private certifier—
- (a) the Development Assessment number assigned to the development proposed under the application; and
 - (b) if the private certifier, at the time of forwarding a copy of an application under subregulation (7a), requests advice on the matters set out in subparagraphs (i) and (ii), and if such advice is relevant—
 - (i) advice about any site contamination that is believed to exist at the site where the development would be undertaken; and
 - (ii) advice about the likely need for approval to alter a public road under section 221 of the *Local Government Act 1999* in order to establish a new access point.
- (7c) If a private certifier requests advice under subregulation (7b)(b), the private certifier may not give a certificate under section 89 of the Act in relation to the development to which the request relates until—
- (a) at least 2 business days after the making of the request; or
 - (b) the receipt of the advice from the council (or, if the case requires, the Development Assessment Commission),
- whichever occurs earlier.

5—Variation of regulation 42—Notification of decision to applicant (including conditions)

Regulation 42(5)—after "in respect of" insert:

the development plan consent or

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

(1) Regulation 89(1)—before paragraph (a) insert:

(aa) the assessment of residential code development and the granting of development plan consent (but not an approval) under section 33(1)(a) of the Act in relation to such development;

(aaa) in relation to an assessment under paragraph (aa) (if relevant)—the power of a relevant authority under section 35(1b) of the Act;

(2) Regulation 89(1)(d)—after "against" insert:

a Development Plan or

(3) Regulation 89(1)(e)—after "against" insert:

a Development Plan or

(4) Regulation 89(1)(g)—after "grants" insert:

a development plan consent or

(5) Regulation 89(3)—after "grants" insert:

a development plan consent or

7—Variation of regulation 90—Engagement of private certifier

(1) Regulation 90(2)—delete subregulation (2) and substitute:

(2) If a person who is not the owner of land where a development is proposed to be undertaken proposes to engage a private certifier for the purposes of obtaining a development plan consent or a building rules consent, the person must, before engaging the private certifier, notify the owner of the land of his or her intention to engage a private certifier.

(2) Regulation 90(3)—after "involves" insert:

a proposed building rules consent in relation to

8—Variation of regulation 91—Qualifications

(1) Regulation 91—before subregulation (1) insert:

(a1) For the purposes of section 91(1)(a) or (b) of the Act, the prescribed qualifications and experience in relation to an assessment or consent that are relevant to development plan consent, or any related matter, are—

(a) the qualifications that apply under subregulation (1)(a); or

- (b) corporate membership of the Urban and Regional Planning Chapter of the Planning Institute of Australia Incorporated; or
 - (c) such qualifications or experience in urban and regional planning, environmental management or a related discipline as are in the opinion of the Minister appropriate.
- (2) Regulation 91(1)—after "the prescribed qualifications and experience" insert:
 - in relation to an assessment or consent that is relevant to building rules consent, certification or any related matter,
- (3) Regulation 91(1)(b)—delete "this regulation" and substitute:
 - this subregulation

9—Variation of regulation 92—Provision of information

- (1) Regulation 92(1)—after "grant" insert:
 - a development plan consent or
- (2) Regulation 92(2)—after paragraph (a) insert:
 - (ab) 1 copy of any certificate, opinion or other document submitted to the private certifier in connection with the application; and
- (3) Regulation 92(2)(e)—delete "the building rules consent" and substitute:
 - any building rules consent

10—Variation of regulation 98—Register of applications

- (1) Regulation 98(2)(g)—after "a council," insert:
 - a private certifier,
- (2) Regulation 98(2)—after paragraph (g) insert:
 - (ga) in the case of an application lodged with a private certifier—
 - (i) the name of the private certifier; and
 - (ii) the date on which the application was received by the private certifier (as notified under regulation 15); and
 - (iii) if relevant—a note about the provision of advice under regulation 15(7b);
- (3) Regulation 98—after subregulation (2) insert:
 - (2a) Subregulation (2) (other than paragraphs (c) and (i)) extends to applications lodged with a private certifier (and, insofar as may be relevant, a relevant authority may rely on information provided by a private certifier for the purposes of recording matters under this regulation).

- (4) Regulation 98—after subregulation (3) insert:
- (3a) A relevant authority to which subregulation (1) applies must also publish the register on the Internet (updating the information on the register published on the Internet within a reasonable time after it is updated under subregulations (1) and (2)).

11—Variation of regulation 101—Documents to be preserved by a council

- (1) Regulation 101—before subregulation (1) insert:
- (a1) A council must retain a copy of each document provided to the council by a private certifier in relation to any application for a development plan consent assessed by the private certifier.
- (2) Regulation 101—after subregulation (1) insert:
- (1a) The council must preserve any document referred to in subregulation (a1) for a period of at least 10 years.
- (3) Regulation 101(4)—delete subregulation (4) and substitute:
- (4) A person may, subject to subregulation (5)—
- (a) inspect at the offices of the council during its normal office hours any document retained by the council under subregulation (a1) or (1) (without charge); and
- (b) on payment of a reasonable fee fixed by the council, obtain a copy of any document retained by the council under subregulation (a1) or (1).
- (4) Regulation 101(5)—delete subregulation (5) and substitute:
- (5) A council is not required to make available any plans, drawings, specifications or other documents or information—
- (a) for inspection under subregulation (4)(a) if to do so would—
- (i) in the opinion of the council, unreasonably jeopardise the present or future security of a building; or
- (ii) constitute a breach of any other law; or
- (b) for copying under subregulation (4)(b) if to do so would—
- (i) in the opinion of the council, unreasonably jeopardise the present or future security of a building; or
- (ii) involve an infringement of copyright in matter contained in a document; or
- (iii) constitute a breach of any other law.

12—Variation of regulation 102—Documents to be provided by private certifier

- (1) Regulation 102(c)—after "an application for" insert:
- a development plan consent or

- (2) Regulation 102(d)—after "an application for" insert:
a development plan consent or
- (3) Regulation 102—after its present contents as varied by this regulation (and now to be designated as subregulation (1)) insert:
- (2) A private certifier must produce to a council within a reasonable period, on request, a copy of any document that has been submitted to the private certifier for the purposes of an application for development plan consent (and that is not already held by the council under these regulations) so that the council can respond to a request from a member of the public for access to such a document.
- (3) A private certifier is not required to make available any document under subregulation (2) if to do so would—
- (a) in the opinion of the private certifier, unreasonably jeopardise the present or future security of a building; or
- (b) involve an infringement of copyright in matter contained in a document; or
- (c) constitute a breach of any other law.

13—Variation of regulation 103—Complaints relating to development plan or building work assessment

Regulation 103(2)—before paragraph (a) insert:

- (aa) that the private certifier or council has failed to comply with, or acting in contravention of, the Act, these regulations or a Development Plan with respect to any matter associated with any assessment, decision, permission, consent, approval, authorisation, certificate or process that relates to the assessment of any proposed residential code development; or

14—Insertion of regulation 103AB

After regulation 103A insert:

103AB—Development plan assessment audits

- (1) For the purposes of paragraph (b) of the definition of *development assessment auditor* in section 56C(1) of the Act—
- (a) the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act is a prescribed body; and
- (b) the qualifications or experience in development plan assessment auditing or a related discipline as are in the opinion of the Minister appropriate are prescribed.
- (2) For the purposes of the definition of *relevant Development Plan assessment* in section 56C(1) of the Act, residential code development is development of a prescribed kind.

- (3) For the purposes of section 56C(4)(a) and (4)(b)(i) of the Act, the prescribed period is the period that results in 30 June 2016 being the date by which the first audit must be completed.
- (4) For the purposes of section 56C(4)(b)(ii), (5) and (8) of the Act, the prescribed period is 3 years.

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 11 April 2013

No 27 of 2013