

South Australia

Development (Residential Code) Variation Regulations 2016

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 2016*.

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 2008*

4—Substitution of regulation 8A

Regulation 8A—delete the regulation and substitute:

8A—Complying development—development plan consent

- (1) The following provisions apply for the purposes of sections 33(1) and 35 of the Act (subject to subregulation (2)):
 - (a) a proposed development lodged with a relevant authority for assessment against a development plan is declared to constitute "a *complying* development under the regulations and relevant development plan" for the purposes of section 35(1) of the Act (and accordingly constitutes *development plan consent* within the meaning of section 33(1)(a) of the Act) if—
 - (i) in the case of a proposed development lodged for assessment as residential code development—the development is assessed by the relevant authority as being in a form described in Schedule 4 clause 1(2) or (3), 2A, 2B or 2C (including a form specified or provided for in a relevant Development Plan referred to in Schedule 4 clause 1(2) or (3), 2A, 2B or 2C); or
 - (ii) in any other case—the development is assessed by the relevant authority as being in a form described in Schedule 4 Part 1 (including a form specified or provided for in a relevant Development Plan referred to in Schedule 4 Part 1);
 - (b) for the purposes of section 35(1b) of the Act—
 - (i) a reference to "*complying* development" (first occurring in section 35(1b)) includes a reference to *complying* development of a kind declared under paragraph (a); and
 - (ii) a reference to "a minor variation from *complying* development" is a reference to a variation from *complying* development (including *complying* development as declared under paragraph (a)) that is, in the opinion of the relevant authority, minor; and
 - (iii) nothing in the Act or these regulations prevents a relevant authority from determining that 2 or more minor variations, when taken together, constitute a "minor variation from *complying* development".

- (2) If a private certifier has been engaged in relation to a proposed development lodged for assessment as residential code development (with the certifier having authority to make such an assessment pursuant to regulation 89(1)(aaa) and (aa))—
- (a) the following assessments must be made by that private certifier (subject to the certifier's right to refer a matter under Part 12 of the Act):
 - (i) an assessment of whether the proposed development is in the form of *complying* development as referred to in subregulation (1)(a)(i);
 - (ii) an assessment of whether any departure in the proposed development from the form of *complying* development as referred to in subregulation (1)(a)(i) constitutes a "minor variation from *complying* development" referred to in section 35(1b) of the Act and subregulation (1)(b) (thus enabling the certifier to determine that the development is *complying* development under section 35(1b)); and
 - (b) the private certifier may, following the certifier's assessment of the matters referred to in paragraph (a), certify that the proposed development complies with the provisions of the appropriate development plan (and accordingly, section 35(6) of the Act will apply in relation to the certification).
- (3) However—
- (a) subregulation (1) does not apply in relation to—
 - (i) development that affects a State heritage place; or
 - (ii) development in the River Murray Flood Zone or the River Murray Zone (other than the Primary Production Policy Area within that zone); or
 - (iii) development to the extent excluded under a provision of Schedule 4 Part 1; and
 - (b) a provision in a development plan cannot affect the classification of a form of development as *complying* development under these regulations.

8B—Complying building work—building rules

- (1) For the purposes of section 36(1) of the Act, building work assessed by a relevant authority as being in a form specified in Schedule 4 Part 2 (including a form specified or provided for in the *Building Code* referred to in Schedule 4 Part 2) is declared to comply with the building rules.
- (2) However, subregulation (1) does not apply in relation to—
- (a) building work that affects a State heritage place; or

- (b) building work to the extent excluded under a provision of Schedule 4 Part 2.

5—Variation of regulation 15—Application to relevant authority

- (1) Regulation 15(3)—before paragraph (a) insert:
 - (aa) if an application seeks only development plan consent, the fee must not exceed the base amount (within the meaning of Schedule 6 item 1(1));
- (2) Regulation 15(3)(a)—after paragraph (a) insert:
 - (ab) an applicant must not be required to comply with a requirement under Schedule 5 or Schedule 6 unless the requirement is directly relevant to the application;
- (3) Regulation 15(7a)(a)—after "the application" insert:

form (excluding any accompanying plans, drawings, specifications or other documents or information referred to in subregulation (1)(c))
- (4) Regulation 15(7b)—delete "an application" wherever occurring and substitute in each case:

an application form
- (5) Regulation 15(7b)(b)—after subparagraph (ii) insert:
 - (iii) advice about whether the relevant development plan specifies any requirements relating to finished floor levels (expressed by reference to AHD or ARI) in relation to the site where the development would be undertaken.
- (6) Regulation 15(11) and (12)—delete subregulations (11) and (12) and substitute:
 - (11) The relevant authority may modify the requirements of Schedule 5 in relation to a particular application, subject to the following qualifications:
 - (a) in the case of an application that is lodged with a relevant authority for assessment as *residential code* development—the requirements of Schedule 5 may not be modified in any way by the relevant authority assessing the application (whether so as to require more or less information), except on authority of the Minister under section 39(1)(a) of the Act;
 - (b) in any other case, the relevant authority must not, when requiring plans, drawings, specifications and other documents in relation to the application, require the applicant to provide more information than that specified under Schedule 5 (subject to section 39 of the Act).
 - (12) The relevant authority may, in exercising its discretion under section 39(4)(b) of the Act, dispense with the requirements of Schedule 5 in relation to a particular application.

(13) In this regulation—

AHD, in relation to the potential for inundation, means *Australian height datum*;

ARI means average recurrence interval of a flood event.

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

Regulation 42(2)—delete subregulation (2) and substitute:

(2) A notice under subregulation (1) must be given—

(a) if—

(i) a private certifier has been engaged in respect of the development application; and

(ii) the relevant authority receives certification from the private certifier that the proposed development complies with the provisions of the appropriate development plan (including certification from the private certifier for the purposes of section 33(1)(a) of the Act assessing the development as *complying* development under Schedule 4 Part 1 in accordance with section 35(1) of the Act and regulation 8A); and

(iii) the proposed development has been granted building rules consent (insofar as may be relevant to the particular development),

within 2 business days of receipt by the council of the certification; or

(b) in any other case—within 5 business days after the decision is made on the application.

7—Variation of regulation 47A—Minor variations of development authorisations

Regulation 47A—after its present contents (now to be designated as subregulation (1)) insert:

(2) Nothing in subregulation (1) prevents a person seeking more than 1 variation of a development authorisation of a kind referred to in that subregulation (whether simultaneously or at different times).

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

(1) Regulation 89(1)(aaa)—delete "(but not an approval)"

(2) Regulation 89(1)(aa)—delete paragraph (aa) and substitute:

(aa) in relation to an assessment under paragraph (aaa), the powers and duties of a relevant authority under—

(i) regulation 8A; or

- (ii) regulation 16; or
- (iii) section 35(1b) of the Act;
- (3) Regulation 89(1)(a)—delete "(but not an approval)"
- (4) Regulation 89(1)—after paragraph (a) insert:
 - (ab) in relation to an assessment under paragraph (a), the powers and duties of a relevant authority under regulation 8B;

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

- (1) Schedule 1A clause 1(3)(a)(ii)(B)—delete "in any other case" and substitute:
 - if the frontages are different lengths
- (2) Schedule 1A clause 3(1)(g)(iii)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
 - will be via a kerb that is designed to allow
- (3) Schedule 1A clause 4(1)(g)(iii)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
 - will be via a kerb that is designed to allow

10—Variation of Schedule 4—Complying development

- (1) Schedule 4, heading to Part 1—delete the heading and substitute:

Part 1—Complying development—development plan consent (sections 33(1)(a) and 35 of Act and regulation 8A)

Note—

Development that is assessed by a relevant authority as being in a form described in this Part (including development that is assessed as being a minor variation from such a form), is declared to constitute "a *complying* development under the regulations and relevant development plan" (see sections 33(1)(a) and 35 of the Act and regulation 8A).

However, certain development will not be taken to be *complying* development, namely:

- (a) development that affects a State heritage place; or
 - (b) development in the River Murray Flood Zone or the River Murray Zone (other than the Primary Production Policy Area within that zone); or
 - (c) development to the extent excluded under a provision of this Part.
- (2) Schedule 4 clause A1—delete clause A1
 - (3) Schedule 4 clause 1(2)(g)(iii)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
 - will be via a kerb that is designed to allow

- (4) Schedule 4 clause 1(2a)(a)(ii)—delete "prescribes" and substitute:
specifies
- (5) Schedule 4 clause 1(3)(g)(iii)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
will be via a kerb that is designed to allow
- (6) Schedule 4 clause 1(4)(a)(ii)—delete "prescribes" and substitute:
specifies
- (7) Schedule 4 clause 1(10a)(a)(ii)(B)—delete "in any other case" and substitute:
if the frontages are different lengths
- (8) Schedule 4 clause 2A(1a)(a)(ii)—delete "prescribes" and substitute:
specifies
- (9) Schedule 4 clause 2A(2)(b)—delete "the dwelling is not being altered or added to so that any part of the dwelling will be" and substitute:
the alteration or addition will not result in the dwelling or any part of the dwelling being
- (10) Schedule 4 clause 2A(2)(b)(i)—delete subparagraph (i) and substitute:
 - (i) 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
 - (ia) more than 1 metre in front of—
 - (A) the average setbacks of any existing dwellings on any adjoining allotments with the same primary street frontage (or, if there is only 1 such dwelling, the setback of that dwelling); or
 - (B) if, on any adjoining allotments with the same primary street frontage, there are only existing buildings other than dwellings—the average setbacks of the buildings (or, if there is only 1 such building, the setback of that building); or
- (11) Schedule 4 clause 2A(2)(b)(iii)—delete "does not exceed 300 square metres" and substitute:
is 300 square metres or less
- (12) Schedule 4 clause 2A(2)(e)(ii)—delete subparagraph (ii)
- (13) Schedule 4 clause 2A(2)(g)—delete paragraph (g) and substitute:
 - (g) the alteration or addition will not result in a contravention of the following minimum private open space requirements in respect of the site (with the site area including the area occupied by the relevant dwelling, any existing dwellings and any outbuildings or carports):

Site area	Minimum area of private open space in site area	Minimum area of private open space at rear or side of relevant dwelling
more than 501m ²	80m ²	24m ²
between 301m ² and 501m ² (inclusive)	60m ²	24m ²
less than 301m ²	24m ²	24m ²

- (14) Schedule 4 clause 2A(2)(h)—delete "the dwelling" and substitute:
any dwelling wall
- (15) Schedule 4 clause 2A(2)(i)(v)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
will be via a kerb that is designed to allow
- (16) Schedule 4 clause 2A(2)(j)(ii)—delete paragraph (ii) and substitute:
- (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 of which—
 - (A) 1 or more—
 - must be, or must be able to be, enclosed or covered; and
 - must comply with the requirements set out in paragraph (i) in relation to garages and carports; and
 - (B) 1 may consist of a driveway, provided that it complies with the requirements set out in paragraph (i) (except subparagraphs (i) and (ii) of that paragraph) as if it were a garage or carport;
- (17) Schedule 4 clause 2A(2)(l)—delete paragraph (l)
- (18) Schedule 4 clause 2A(3)(a)(ii)—delete subparagraph (ii) and substitute:
- (ii) in the case of private open space at ground level—
 - (A) the area of any verandah, pergola, patio or any other covered outdoor area may comprise up to 50% of the private open space; and
 - (B) each private open space area (other than an area referred to in subparagraph (A)) must have a width of at least 2.5 metres; and
- (19) Schedule 4 clause 2A(3)(b)(ii)(B)—delete "in any other case" and substitute:
if the frontages are different lengths

(20) Schedule 4 clause 2B(1)—delete subclause (1) and substitute:

- (1) Subject to subclause (3)—
 - (a) 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; and
 - (b) the development to which this clause applies includes—
 - (i) the construction of a new dwelling; and
 - (ii) remedial or additional construction required for the purpose of achieving compliance with an earlier development authorisation relating to a new dwelling.

(21) Schedule 4 clause 2B(2)—delete "subclause (1)" and substitute:
subclause (1)(a)

(22) Schedule 4 clause 2B(3)(b)—delete "in—" and substitute:
if the relevant dwelling is or is proposed to be in—

(23) Schedule 4 clause 2B(3)(b)(iii)(A), second dot point—delete "prescribes" and substitute:
specifies

(24) Schedule 4 clause 2B(5)(a)—delete paragraph (a) and substitute:

- (a) the minimum site area and any minimum frontage requirements specified in the relevant Development Plan apply in relation to the site and any balance of the allotment (and if the relevant Development Plan specifies different minimum site areas and minimum frontage requirements for detached and semi-detached dwellings respectively, the areas and frontage requirements that are lesser in size are to be taken to be the minimum site area and minimum frontage requirements for the purposes of this paragraph); and

(25) Schedule 4 clause 2B(5)(b)(i)—delete subparagraph (i) and substitute:

- (i) the construction will not result in a contravention of the following minimum private open space requirements in respect of the site (with the site area including the area occupied by the relevant dwelling, any existing dwellings and any outbuildings or carports):

Site area	Minimum area of private open space in site area	Minimum area of private open space at rear or side of relevant dwelling
more than 501m ²	80m ²	24m ²
between 301m ² and 501m ² (inclusive)	60m ²	24m ²
less than 301m ²	24m ²	24m ²

- (26) Schedule 4 clause 2B(5)(b)(iii)(E)—delete subsubparagraph (E) and substitute:
- (E) 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*, including a driveway or access point for which consent under the Act has been granted as part of an application for the division of land; or
 - will use a driveway that is not located within 6 metres of an intersection of 2 or more roads or a pedestrian actuated crossing and will not interfere with an item of street furniture (including directional signs, lighting, seating and weather shelters), other infrastructure, or a tree; or
 - will be via a kerb that is designed to allow a vehicle to roll over it; and
- (27) Schedule 4 clause 2B(6)—delete "The construction of a new detached" and substitute:
- Construction of or in relation to a new detached
- (28) Schedule 4 clause 2B(6)(a)—delete "the dwelling is not being constructed so that any part of the dwelling will be" and substitute:
- the construction will not result in the dwelling or any part of the dwelling being
- (29) Schedule 4 clause 2B(6)(a)(i)—delete subparagraph (i) and substitute:
- (i) 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
- (ia) more than 1 metre in front of—
- (A) the average setbacks of any existing dwellings on any adjoining allotments with the same primary street frontage (or, if there is only 1 such dwelling, the setback of that dwelling); or
- (B) if, on any adjoining allotments with the same primary street frontage, there are only existing buildings other than dwellings—the average setbacks of the buildings (or, if there is only 1 such building, the setback of that building); or
- (30) Schedule 4 clause 2B(6)(a)(iii)—delete "does not exceed 300 square metres" and substitute:
- is 300 square metres or less

- (31) Schedule 4 clause 2B(6)(b) to (d)—delete paragraphs (b) to (d) inclusive and substitute:
- (b) the following provisions apply in relation to dwelling setback, and dwelling wall height, on a side boundary unless the side boundary itself is or is to be comprised of a wall of a building on an adjoining allotment (in which case this paragraph does not apply):
 - (i) 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;
 - (ii) in relation to any dwelling wall to be located near a side boundary of the site associated with the development—
 - (A) the wall will not exceed 3 metres in height when measured from the top of the footings; and
 - (B) the wall will not exceed 8 metres in length; and
 - (C) the wall, when its length is added to the length of any other relevant dwelling walls or structures located on that boundary—
 - will not result in all such walls and structures exceeding a length equal to 45% of the length of the boundary; and
 - will not be within 3 metres of any other relevant wall or structure located along the boundary; 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, the setback of any upper storey component is to be—
 - (i) if paragraph (b)(i) applies—at least the same as the setback required under that provision plus 1 metre; or
 - (ii) in any other case—at least 1 metre from the side wall; and
- (32) Schedule 4 clause 2B(6)(g)—delete paragraph (g) and substitute:
- (g) the construction will not result in a contravention of the following minimum private open space requirements in respect of the site (with the site area including the area occupied by the relevant dwelling, any existing dwellings and any outbuildings or carports):

Site area	Minimum area of private open space in site area	Minimum area of private open space at rear or side of relevant dwelling
more than 501m ²	80m ²	24m ²
between 301m ² and 501m ² (inclusive)	60m ²	24m ²
less than 301m ²	24m ²	24m ²

- (33) Schedule 4 clause 2B(6)(h)—delete "the dwelling" and substitute:
a dwelling wall
- (34) Schedule 4 clause 2B(6)(k)(v)(C)—delete "will not require a driveway because the kerbing is formed in a manner that allows" and substitute:
will be via a kerb that is designed to allow
- (35) Schedule 4 clause 2B(6)(l)(ii)—delete subparagraph (ii) and substitute:
- (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 of which—
- (A) 1 or more—
- must be, or must be able to be, enclosed or covered; and
 - must comply with the requirements set out in paragraph (k) in relation to garages and carports; and
- (B) 1 may comprise a driveway, provided that it complies with the requirements set out in paragraph (k) (except paragraph (k)(i) and (ii)) as if it were a garage or carport;
- (36) Schedule 4 clause 2B(7)(b)(i)—after "the proposed dwelling" insert:
or any existing dwelling on the site
- (37) Schedule 4 clause 2B(7)(b)(ii)—delete subparagraph (ii) and substitute:
- (ii) in the case of private open space at ground level—
- (A) the area of any verandah, pergola, patio or any other covered outdoor area may comprise up to 50% of the private open space; and
- (B) each private open space area (other than an area referred to in subparagraph (A)) must have a width of at least 2.5 metres; and
- (38) Schedule 4 clause 2B(7)(d)(ii)(B)—delete "in any other case" and substitute:
if the frontages are different lengths

(39) Schedule 4, heading to Part 2—delete the heading and substitute:

Part 2—Complying building work—building rules consent (sections 33(1)(b) and 36 of Act and regulation 8B)

Note—

Building work that is assessed by a relevant authority as being in a form described in this Part is declared to comply with the building rules (see sections 33(1) and 36 of the Act and regulation 8B).

However, certain building work will not be regarded as so complying, namely:

- (a) development that affects a State heritage place; or
- (b) development to the extent excluded under a provision of this Part.

(40) Schedule 4 Part 2 clause 5—delete clause 5

11—Substitution of heading to Schedule 5

Heading to Schedule 5—delete the heading and substitute:

Schedule 5—Application to relevant authority

Note—

- 1 This Schedule sets out what is required (under regulation 15), by way of plans, drawings, specifications and other documents and information, to accompany an application under section 32 or 33 of the Act.
- 2 A relevant authority may only require an applicant to comply with this Schedule to the extent directly relevant to the application (see regulation 15(3)), with the Act and regulations giving the relevant authority the power to modify or dispense with the requirements in certain circumstances (see section 39(4)(b) of the Act and regulation 15(11) and (12)).

12—Variation of Schedule 5—Application to relevant authority

- (1) Schedule 5 clause A1(a)—delete "bar and"
- (2) Schedule 5 clause A1(a)(ii)—delete "and dimensions"
- (3) Schedule 5 clause A1(a)(iii)—delete subparagraph (iii)
- (4) Schedule 5 clause A1(b)—delete paragraph (b)
- (5) Schedule 5 clause A1(c)—delete "bar and"
- (6) Schedule 5 clause A1(d)—delete "if relevant—"
- (7) Schedule 5 clause A2(a)—delete "bar and"
- (8) Schedule 5 clause A2(a)(vii)—delete "true"
- (9) Schedule 5 clause A2(b)—delete paragraph (b)
- (10) Schedule 5 clause A2(d)—delete "bar and"

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 8 December 2016

No 273 of 2016

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