

South Australia

## **Development (Miscellaneous) Variation Regulations 2017**

under the *Development Act 1993*

---

### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

#### **Part 2—Variation of *Development Regulations 2008***

- 4 Variation of regulation 32—Public notice categories
  - 5 Variation of Schedule 3—Acts and activities that are not development
  - 6 Variation of Schedule 8—Referrals and concurrences
  - 7 Variation of Schedule 10—Decisions by Development Assessment Commission
  - 8 Variation of Schedule 14—State agency development exempt from approval
- 

### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Development (Miscellaneous) Variation Regulations 2017*.

#### **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—Variation of regulation 32—Public notice categories

(1) Regulation 32(1) to (3)—delete subregulations (1) to (3) (inclusive) and substitute:

- (1) This regulation assigns forms of development to categories for the purposes of section 38 of the Act.

**Note—**

Section 38(2a) provides that an assignment cannot extend to a particular development if that development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*.

- (2) Subject to subregulation (3), a form of development specified in Schedule 9 Part 1 is assigned to Category 1.
- (3) The following forms of development are assigned to Category 2:
- (a) a form of development specified in Schedule 9 Part 1 that cannot be assigned to Category 1 because of section 38(2a) of the Act;
  - (b) a form of development that would be assigned to Category 1 by the relevant Development Plan but for section 38(2a) of the Act;
  - (c) a form of development specified in Schedule 9 Part 2.

(2) Regulation 32(5)—delete subregulation (5) and substitute:

- (5) A form of development that comprises 2 or more elements (as set out in the relevant application or as determined by the relevant authority) is assigned as follows:
- (a) subject to paragraph (b)(i), the form of development is assigned to Category 1 if all of the elements are within Schedule 9 Part 1;
  - (b) the form of development is assigned to Category 2—
    - (i) if all the elements are within Schedule 9 Part 1 but the form of development cannot be assigned to Category 1 because of section 38(2a) of the Act; or
    - (ii) if all of the elements are within Schedule 9 Part 1 or Part 2 (with at least 1 element within Part 2).

### 5—Variation of Schedule 3—Acts and activities that are not development

(1) Schedule 3 clause 3—after subclause (1) insert:

- (1a) The grant or acceptance of a lease or licence, or the making of an agreement for a lease or licence, under—
- (a) the *Aboriginal Lands Trust Act 2013*; or

(b) the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; or

(c) the *Maralinga Tjarutja Land Rights Act 1984*,

by virtue of which the Crown (or an agency or instrumentality of the Crown) becomes, or may become, entitled to possession or occupation of part only of an allotment.

(2) Schedule 3—after clause 18 insert:

### **19—Recreation paths**

(1) The following development undertaken by or on behalf of the Crown, a council or other public authority:

(a) the construction, reconstruction, alteration, repair or maintenance of a recreation path (including in a coastal area within the meaning of Schedule 8 clause 1);

(b) any ancillary development in connection with such a path, including—

(i) excavation, importation of fill and other earthworks; and

(ii) footings and other support structures; and

(iii) landscaping; and

(iv) safety features; and

(v) directional signs, information boards, lighting, seating, weather shelters, rubbish bins or other street furniture.

(2) In this clause—

***recreation path*** means a path that—

(a) is under the care, control and management of the Crown, a council or other public authority; and

(b) is open to the public for walking, cycling or similar recreational activities, without payment of a charge,

and includes a boardwalk.

### **6—Variation of Schedule 8—Referrals and concurrences**

(1) Schedule 8 clause 1—after subclause (5) insert:

(5a) Despite the provisions of these regulations, a reference to a class of development in items 24, 25 and 25A of the table in clause 2 does not include a reference to a variation of an application referred to in section 39(4)(a) of the Act if the development has previously—

(a) been referred to the Government Architect or Associate Government Architect under Part 5; or

(b) been given development authorisation under the Act.

- (2) Schedule 8, clause 2, table, item 24, column 1—after "Schedule 10 clause 4B" insert:  
(excluding variations of applications—see clause 1(5a) of this Schedule)

- (3) Schedule 8, clause 2, table, item 25, column 1—delete the contents of column 1 and substitute:

Development that involves the erection or construction of a building that exceeds 4 storeys in height in—

- (a) any part of the area of the following councils defined in the relevant Development Plan as Urban Corridor Zone:
- (i) the City of Burnside;
  - (ii) the Corporation of the City of Norwood Payneham & St Peters;
  - (iii) the City of Prospect;
  - (iv) the Corporation of the City of Unley;
  - (v) the City of West Torrens; or
- (b) that part of the area of the Corporation of the City of Norwood Payneham & St Peters defined in the relevant Development Plan as District Centre (Norwood) Zone; or
- (c) any part of the area of the City of Holdfast Bay defined in the relevant Development Plan as District Centre Zone, Glenelg Policy Area 2 or Residential High Density Zone,

(excluding variations of applications—see clause 1(5a) of this Schedule).

- (4) Schedule 8, clause 2, table, item 25A, column 1—after "Schedule 10 clause 6" insert:  
(excluding variations of applications—see clause 1(5a) of this Schedule)

## **7—Variation of Schedule 10—Decisions by Development Assessment Commission**

- (1) Schedule 10 clause 2—delete clause 2
- (2) Schedule 10 clause 7—delete clause 7 and substitute:

### **7—Mount Lofty Ranges Water Protection Area**

The division of an allotment or allotments outside a township designated in or by a Development Plan in the Mount Lofty Ranges Water Protection Area, as declared under Part 8 of the *Environment Protection Act 1993*, other than where 2 habitable detached dwellings are situated on 1 allotment and the purpose of the division is to divide the allotment into 2 allotments so that each dwelling will be situated on a separate allotment.

- (3) Schedule 10 clause 13—after its present contents now to be redesignated as subclause (1) insert:
- (2) Without limitation, subclause (1) applies to—
- (a) a variation of an application for development referred to in section 39(4)(a) of the Act if the development proposed to be varied has previously been given development authorisation under this clause by the Development Assessment Commission; and
- (b) proposed development that the Development Assessment Commission considers to be ancillary to or in association with development that has previously been given development authorisation under this clause by the Development Assessment Commission,
- but does not apply if—
- (c) the development that was previously given development authorisation is complying development or comprised of a building in relation to which a certificate of occupancy has been issued; or
- (d) in the case of paragraph (a)—the proposed variation is complying development; or
- (e) in the case of paragraph (b)—the proposed development is complying development.
- (4) Schedule 10 clause 14—delete clause 14
- (5) Schedule 10 clause 20—after its present contents now to be redesignated as subclause (1) insert:
- (2) Without limitation, subclause (1) applies to—
- (a) a variation of an application for development referred to in section 39(4)(a) of the Act if the development proposed to be varied has previously been given development authorisation under this clause by the Development Assessment Commission; and
- (b) proposed development that the Development Assessment Commission considers to be ancillary to or in association with development that has previously been given development authorisation under this clause by the Development Assessment Commission,
- but does not apply if—
- (c) the development that was previously given development authorisation is complying development or comprised of a building in relation to which a certificate of occupancy has been issued; or
- (d) in the case of paragraph (a)—the proposed variation is complying development; or

- (e) in the case of paragraph (b)—the proposed development is complying development.

## **8—Variation of Schedule 14—State agency development exempt from approval**

- (1) Schedule 14 clause 1(1)(b)(ii)—after "water filtration tank" insert:  
water storage tank,
- (2) Schedule 14 clause 1(1)(b)—after subparagraph (ii) insert:  
(ia) the construction, reconstruction or alteration of any works or infrastructure that is ancillary to works or infrastructure referred to in subparagraph (ii); or
- (3) Schedule 14 clause 1(1)(b)—after subparagraph (iii) insert:  
(iia) the construction, reconstruction or alteration of a dwelling within an existing township, settlement or camp on—  
(A) Trust land within the meaning of the *Aboriginal Lands Trust Act 2013*; or  
(B) "the lands" within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; or  
(C) "the lands" within the meaning of the *Maralinga Tjarutja Land Rights Act 1984*; or
- (4) Schedule 14 clause 1(1)(b)(vii)—after "outbuilding" insert:  
(or a structure or building that is ancillary to an outbuilding)
- (5) Schedule 14 clause 1(1)—after paragraph (t) insert:  
(u) the construction, reconstruction or alteration of—  
(i) a correctional institution (within the meaning of the *Correctional Services Act 1982*) or training centre (within the meaning of the *Young Offenders Act 1993*); or  
(ii) any works or infrastructure that is ancillary to such a correctional institution or training centre.
- (6) Schedule 14 clause 4(b)(vi)(A)—delete subparagraph (A) and substitute:  
(A) where the work will result in—  
  - the building exceeding 1 storey in height; or
  - the creation of a new access point to or from a public road or the alteration of an existing access point to or from a public road; or
  - fewer carparks on the site; or
- (7) Schedule 14 clause 4(b)(vi)(B)—delete "20" and substitute:  
5
- (8) Schedule 14 clause 4(b)(vi)(D)—delete subparagraph (D)

(9) Schedule 14 clause 4(b)—after subparagraph (vi) insert:

(vii) tree-damaging activity in relation to a regulated tree—

(A) that is on land—

- on which a school, within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*, is located or is proposed to be built; and
- that is under the care, control or management of the Minister responsible for the administration of that Act; or

(B) that is on land—

- on which a road is located or is proposed to be built or widened; and
- that is under the care, control and management of the Commissioner for Highways.

**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 27 January 2017

No 5 of 2017

PLN0025/16CS