

South Australia

Planning, Development and Infrastructure (Transitional Provisions) (Code) Variation Regulations 2019

under the *Planning, Development and Infrastructure Act 2016*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Planning, Development and Infrastructure (Transitional Provisions) (Code) Variation Regulations 2019*.

2—Commencement

These regulations come into operation on 1 July 2019.

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 *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*

4—Insertion of heading

Before regulation 1 insert:

Part 1—Preliminary

5—Insertion of heading

After regulation 3 insert:

Part 2—Initial provisions

6—Insertion of Parts 3 and 4

After regulation 6 insert:

Part 3—Development plan amendments

7—Interpretation

In this Part—

DPA means a Development Plan Amendment under section 25 of the repealed Act;

PDI Act means the *Planning, Development and Infrastructure Act 2016*.

8—Adoption of DPAs

- (1) In addition to clause 9 of Schedule 8 of the PDI Act, if—
 - (a) a DPA has been prepared by a council under section 25 of the repealed Act; and
 - (b) the requirements of section 25 of the repealed Act relating to public consultation have been completed and a report prepared under section 25(13) of that Act (whether before or after the commencement of this regulation); and
 - (c) the council applies to the Minister under this subregulation in accordance with any requirements determined by the Minister,the Minister may, after consultation with the Commission—
 - (d) adopt an amendment proposed in the report; or
 - (e) alter an amendment proposed in the report and then proceed to adopt the amendment as altered; or
 - (f) decline to adopt an amendment proposed in the report.

- (2) If the Minister adopts an amendment (or an amendment as altered) under subregulation (1), the Minister may, by notice in the Gazette, amend the Planning and Design Code to give effect to the amendment, subject to such modifications as may, in the opinion of the Minister, be necessary on account of the amendment being adopted as an amendment to the Planning and Design Code rather than as an amendment to a Development Plan.
- (3) An amendment made to the Planning and Design Code under subregulation (2)—
 - (a) does not have effect until it is published on the SA planning portal; and
 - (b) may take effect from the date of publication under paragraph (a), or from a later date specified by the Minister.
- (4) Subject to subregulation (5), the Minister may act under this regulation even if the relevant Development Plan has been revoked by the Minister under clause 9 of Schedule 8 of the PDI Act.
- (5) A council may not make an application under this regulation more than 3 months after the date on which the Development Plan to which the DPA relates has been revoked by the Minister.

Part 4—Staged commencement of development assessment under Act

9—Interpretation

In this Part—

PDI Act means the *Planning, Development and Infrastructure Act 2016*;

relevant day means the relevant day, as applying under regulation 10(1)(a) in relation to a particular area of the State.

10—General scheme for staged commencement

- (1) On and after the commencement of Part 7 of the PDI Act the following provisions will apply:
 - (a) if or when the Minister, acting under clause 9(7) of Schedule 8 of the PDI Act, has revoked or revokes a Development Plan (with the revocation to take effect on or after the commencement of Part 7 of the PDI Act), development within the area of the State to which the Development Plan related will be assessed in all respects under the PDI Act, on and from the day on which the revocation takes effect (the *relevant day*);
 - (b) until the Minister revokes a particular Development Plan acting under clause 9(7) of Schedule 8 of the PDI Act—

- (i) development within the area of the State in relation to which the Development Plan relates will continue to be assessed against the provisions of the Development Plan rather than the provisions of the Planning and Design Code; and
 - (ii) the repealed Act (and the regulations under that Act) will continue to apply in relation to development within the area of the State in relation to which the Development Plan relates.
- (2) Subregulation (1) applies subject to regulation 11.

11—Related provisions

- (1) The following provisions apply in conjunction with regulation 10.
- (2) An application made to a relevant authority under section 39 of the repealed Act with respect to a proposed development within an area of the State that is subject to the revocation of the relevant Development Plan that has not been finally determined before the relevant day in relation to that area may be continued and completed under the provisions of the repealed Act, except that—
 - (a) notice of a decision on the application will be in the form that applies under section 126 of the PDI Act rather than the form that applies under section 40 of the repealed Act; and
 - (b) section 127 of the PDI Act will apply in relation to the application rather than section 42 of the repealed Act; and
 - (c) a decision on the application will, once given, be taken to be a decision given under the PDI Act (and the PDI Act will apply in relation to the relevant development authorisation).
- (3) The repealed Act will continue to apply to and in relation to a proposed development or project that is the subject of a declaration made under section 46 of the repealed Act before the relevant day in relation to the area within which the development or project would be undertaken (and that has not been the subject of a decision of the Governor under section 48 of the repealed Act before the relevant day), except that section 48 of the repealed Act will, on or after the relevant day, apply in relation to the development or project as if a reference to the Governor were a reference to the Minister (and a decision of the Minister in relation to the development or project will have effect as if it were a decision of the Minister under section 115 of the PDI Act).
- (4) An application lodged under section 49 or 49A of the repealed Act that has not been finally determined before the relevant day in relation to which the relevant development would be undertaken may be continued and completed under the provisions of the repealed Act, except that a decision on the application will, once given, be taken to be a decision given under the PDI Act (and the PDI Act will apply in relation to the relevant development authorisation).

- (5) If development is proposed to be undertaken partly within an area of the State in relation to which regulation 10(1)(a) applies and partly within an area of the State in relation to which regulation 10(1)(b) applies, then—
- (a) an application for a development authorisation in relation to the development made after the relevant day will be assessed in all respects as if regulation 10(1)(a) applied in relation to the development; and
 - (b) the Commission will be the relevant authority.
- (6) If—
- (a) regulation 10(1)(a) applies in relation to an area of the State; and
 - (b) the Planning and Design Code, in applying under that regulation, overlaps with the area to which a Development Plan continues to apply by virtue of the operation of regulation 10(1)(b),
- then—
- (c) any development that would, but for this subregulation, be subject to the Planning and Design Code and to a Development Plan by virtue of the overlap will be assessed in all respects as if regulation 10(1)(a) applied in relation to the development; and
 - (d) the Commission will be the relevant authority.

12—Local heritage

- (1) On the relevant day in relation to an area of the State, a place designated as a place of local heritage value by a Development Plan that has been revoked by the Minister will be taken to be designated as a place of local heritage value by the Planning and Design Code.
- (2) The Minister may, by notice in the Gazette, amend the Planning and Design Code in order to include a place of local heritage value in the Planning and Design Code by virtue of the operation of subregulation (1).
- (3) Subregulations (1) and (2) do not limit the ability to make a later amendment to the Planning and Design Code in relation to a place to which subregulation (1) applies.
- (4) Section 202(1)(a) of the PDI Act does not apply to or in relation to the designation of a place of local heritage value under the PDI Act by operation of subregulation (1) or on account of the inclusion of a place of local heritage value in the Planning and Design Code under subregulation (2).

13—Significant trees

- (1) On the relevant day in relation to an area of the State, a significant tree by virtue of the operation of a Development Plan that has been revoked by the Minister will be taken to be a significant tree under the Planning and Design Code.
- (2) The Minister may, by notice in the Gazette, amend the Planning and Design Code in order to include a significant tree in the Planning and Design Code by virtue of the operation of subregulation (1).
- (3) Subregulations (1) and (2) do not limit the ability to make a later amendment to the Planning and Design Code in relation to a tree to which subregulation (1) applies.

14—Appeals

A right of appeal under sections 38 and 86(1)(b) of the repealed Act may be exercised in relation to an application made to a relevant authority under section 39 of the repealed Act that has not been finally determined before the relevant day in relation to the area within which the development would be undertaken even if the process under section 38 of the repealed Act had not been commenced (or completed) before the relevant day.

Made by the Governor

with the advice and consent of the Executive Council
on 28 February 2019

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