

South Australia

Planning, Development and Infrastructure (General) (HomeBuilder) Variation Regulations 2021

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 (General) (HomeBuilder) Variation Regulations 2021*.

2—Commencement

These regulations come into operation on the day on which Schedule 6 Part 2 of the *Planning, Development and Infrastructure Act 2016* 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 *Planning, Development and Infrastructure (General) Regulations 2017*

4—Variation of regulation 3—Interpretation

Regulation 3(1)—after the definition of *home activity* insert:

HomeBuilder development means development that complies with the requirements in regulation 3A(1a);

5—Variation of regulation 3A—Application of Act (section 8)

(1) Regulation 3A—after subregulation (1) insert:

- (1a) In accordance with section 8(2) of the Act, section 102(1)(a) of the Act does not apply in respect of development if—
- (a) the development is within the ambit of Schedule 6B; and
 - (b) the development is within a designated area; and
 - (c) an application has been made to the Commissioner of State Taxation for a HomeBuilder grant in respect of the development in accordance with the *First Home and Housing Construction Grants Act 2000* on or before the prescribed day; and
 - (d) the statutory declaration referred to in Schedule 8 clause 16 accompanies the application for development authorisation under section 102(1) of the Act in respect of the development.

(2) Regulation 3A—after subregulation (3a) insert:

(3b) Subregulation (1a) will expire on the relevant day.

(3) Regulation 3A(4)—before the definition of *designated day* insert:

designated area means an area designated as a "HomeBuilder declared area" in the maps titled "HomeBuilder declared areas" published by the Chief Executive on the SA planning portal, but does not include an area or place within the Local Heritage Place Overlay or State Heritage Place Overlay under the Planning and Design Code;

(4) Regulation 3A(4)—after the definition of *designated day* insert:

HomeBuilder grant means a grant provided for by the National Partnership Agreement;

National Partnership Agreement means the National Partnership Agreement on HomeBuilder executed on behalf of the Commonwealth on 12 June 2020 (as varied or substituted from time to time with the agreement of the State of South Australia);

prescribed day means the later of the following days:

- (a) 14 April 2021;

- (b) the day fixed by the Minister by notice in the Gazette as the prescribed day;
- (5) Regulation 3A(4)—after the definition of *prescribed separation distance* insert:
 - relevant day* means the later of the following days:
 - (a) 1 July 2021;
 - (b) the day fixed by the Minister by notice in the Gazette as the relevant day;

6—Insertion of Schedule 6B

Before Schedule 7 insert:

Schedule 6B—HomeBuilder development

1—Single storey additions and alterations

- (1) 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, 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 alteration or addition will not result in the dwelling or any part of the dwelling being—
 - (i) nearer to an existing boundary of the primary street for the dwelling than the existing dwelling on the allotment; or
 - (ii) subject to subparagraph (i), nearer to an existing boundary of the primary street for the dwelling than any distance that applies in respect of setbacks under the Planning and Design Code in relation to any road or portion of a road that constitutes the primary street frontage; or
 - (iii) subject to subparagraph (i), more than 1 m 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

- (iv) within 900 mm 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 mm, the distance of that dwelling from the boundary with the secondary street (being, if relevant, the lesser of the 2 distances); or
 - (v) if the size of the allotment is 300 m² or less—within 3 m of the rear boundary of the allotment (measured from the closest solid wall); or
 - (vi) if the size of the allotment exceeds 300 m²—within 4 m of the rear boundary of the allotment (measured from the closest solid wall); and
- (c) if any side wall of the dwelling will exceed 3 m 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 mm from the boundary plus a distance equal to one-third of the extent to which the height of the wall exceeds 3 m 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 m in height when measured from the top of the footings; and
 - (ii) the wall will not exceed 8 m in length; and
 - (iii) the wall, when its length is added to the length of any other relevant walls or structures located on that boundary—
 - (A) will not result in all such relevant walls and structures exceeding a length equal to 45% of the length of the boundary; and
 - (B) will not be within 3 m of any other relevant wall or structure located along the boundary, unless on an adjacent site on that boundary there is an existing wall of a building that would be adjacent to or abut a proposed relevant wall or structure (in which case this subsubparagraph does not apply); and
- (e) the dwelling is not being altered or added to so that—
- (i) any part of the dwelling will exceed 9 m in height when measured from the top of the footings; or
 - (ii) any wall height will exceed 6 m when measured from the top of the footings; and

- (f) 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 501 m ²	80 m ²	24 m ²
between 301 m ² and 501 m ² (inclusive)	60 m ²	24 m ²
less than 301 m ²	24 m ²	24 m ²

- (g) the development will not result in any dwelling wall not having a setback of at least 900 mm on at least 1 side boundary of the allotment; and
- (h) 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 m 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; and
 - (iii) will not have an opening or openings for vehicle access facing a street frontage that exceed, in total, 7 m 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 m wide along the boundary of the allotment; and
 - (v) is located so that vehicle access—
 - (A) 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 or the repealed Act has been granted as part of an application for the division of land; or
 - (B) will use a driveway that—
 - is not located within 6 m of an intersection of 2 or more roads or a pedestrian actuated crossing; and

and if the development involves both excavation and filling, the total combined excavation and filling must not exceed a vertical height of 2 m; and

- (1) the development will not be built, or will not encroach, on an area that is, or will be, required for a wastewater system which complies with the requirements of the *South Australian Public Health Act 2011*.
- (2) 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) 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 m; and
 - (iii) any balcony must have a width of at least 2 m; and
 - (b) the primary street in relation to an existing or proposed building on a site is—
 - (i) in the case of a site that has a frontage to only 1 road—that road; or
 - (ii) in the case of a site that has a frontage to 2 roads—
 - (A) if a corner allotment containing an existing building continues, following a division of that allotment, to be a corner allotment containing that building—the same primary street as applied immediately before that division; or
 - (B) subject to subparagraph (A), if the frontages are identical in length—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*; or
 - (C) subject to subparagraph (A), if the frontages are different lengths—the road in relation to which the site has a shorter frontage; or

- (iii) in any other case—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).
- (3) In this clause—
 - 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;

building line, in relation to a building on a site, means a line drawn parallel to the wall on the building closest to the boundary of the site that faces the primary street (and any existing projection from the building such as a carport, verandah, porch or bay window is not to be taken to form part of the building for the purposes of determining the relevant wall of the building);

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;

relevant wall or structure means any wall or structure that is due to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence or retaining wall 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.

2—New dwellings

- (1) If in connection with the relevant application for development authorisation—
 - (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 in the vicinity of the land, other than if the previous use or activity was for residential purposes; 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 or in the vicinity of the land, other than if the previous use or activity was for residential purposes,

this clause will not apply unless—

- (c) the applicant is able to furnish, or the relevant authority is in possession of, a site contamination audit report under Part 10A of the *Environment Protection Act 1993* to the effect—
 - (i) that site contamination does not exist (or no longer exists) at the allotment; or
 - (ii) 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; or
 - (d) consent under the Act or the repealed Act was granted on or after 1 September 2009 in relation the division of the land.
- (2) Insofar as this clause applies to a site that does not comprise an entire allotment—
- (a) the minimum site area and any minimum frontage requirements specified in the Planning and Design Code apply in relation to the site and any balance of the allotment (and if the relevant requirement in the Planning and Design Code 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
 - (b) if there is an existing dwelling on the allotment (which will remain on the allotment after completion of the development)—
 - (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 501 m ²	80 m ²	24 m ²
between 301 m ² and 501 m ² (inclusive)	60 m ²	24 m ²
less than 301 m ²	24 m ²	24 m ²

- (ii) in the case of—
- (A) 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 subparagraph (iii) in relation to garages and carports; or
 - (B) 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—
 - 1 or more must be, or must be able to be, enclosed or covered and must comply with the requirements set out in subparagraph (iii) in relation to garages and carports; and
 - 1 may comprise a driveway, provided that it complies with the requirements set out in subparagraph (iii) (except subparagraph (A) and (B)) as if it were a garage or carport; and
- (iii) in relation to any proposed garage or carport, the garage or carport—
- (A) will be set back at least 5.5 m from the primary street; and
 - (B) 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; and
 - (C) will not have an opening or openings for vehicle access that exceed, in total, 7 m in width; and
 - (D) 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 m wide along the boundary of the allotment; and
 - (E) is located so that vehicle access—

- will use an existing driveway or a driveway authorised under section 221 of the *Local Government Act 1999* (including a driveway for which consent under the Act or the repealed 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 m 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
- (F) 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 1:4 on average.
- (3) Construction of or in relation to a new 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 construction will not result in the dwelling or any part of the dwelling being—
 - (i) nearer to an existing boundary of the primary street for the dwelling than any distance that applies in respect of setbacks under the Planning and Design Code in relation to any road or portion of a road that constitutes the primary street frontage; or
 - (ii) more than 1 m 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
 - (iii) within 900 mm 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 mm, the distance of that dwelling from the boundary with the secondary street (being, if relevant, the lesser of the 2 distances); or
 - (iv) if the size of the site is less than 301 m²—
 - (A) in relation to the ground floor of the dwelling—within 3 m of the rear boundary of the site (measured from the closest solid wall); or
 - (B) in relation to any other storey of the dwelling—within 5 m of the rear boundary of the site; or
 - (v) if the size of the site is 301 m² or more—
 - (A) in relation to the ground floor of the dwelling—within 4 m of the rear boundary of the site (measured from the closest solid wall); or
 - (B) in relation to any other storey of the dwelling—within 6 m of the rear boundary of the site; and
- (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 m in height when measured from the top of the footings—the wall will be set back at least 900 mm 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 m from the top of the footings;
 - (ii) in relation to any dwelling wall to be located on a side boundary of the site associated with the development—
 - (A) the wall will not exceed 3 m in height when measured from the top of the footings; and

- (B) the wall will not exceed 8 m 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 m 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 m; or
 - (ii) in any other case—at least 1 m from the side wall; and
- (d) the dwelling is not constructed so that—
 - (i) any part of the dwelling will exceed 9 m in height when measured from the top of the footings; or
 - (ii) any wall height will exceed 6 m when measured from the top of the footings; and
- (e) 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 501 m ²	80 m ²	24 m ²
between 301 m ² and 501 m ² (inclusive)	60 m ²	24 m ²
less than 301 m ²	24 m ²	24 m ²

- (f) a dwelling wall will have a setback of at least 900 mm on at least 1 side boundary of the site; and

- (g) 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 (including any road reserve) or a reserve (including any land held as open space) that has a width exceeding 15 m—
 - (i) the sill height will be at least 1.5 m above the finished floor level; or
 - (ii) the window will have permanently obscure glazing in any part of the window below 1.5 m above the finished floor level and, if it is capable of being opened, the window will not be capable of being opened more than 200 mm; and
- (h) the dwelling will not have a balcony or terrace on an upper storey, other than where the longest side of that balcony or terrace will face a road (including any road reserve), or reserve (including any land held as open space), that is at least 15 m wide at all places to be faced by the dwelling; and
- (i) in relation to any proposed garage or carport, the garage or carport—
 - (i) will be set back at least 5.5 m 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; and
 - (iii) will not have an opening or openings for vehicle access facing a street frontage that exceed, in total, 7 m 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 m wide along the boundary of the allotment; and
 - (v) is located so that vehicle access—
 - (A) will use an existing driveway or a driveway authorised under section 221 of the *Local Government Act 1999* (including a driveway for which consent under the Act or the repealed Act has been granted as part of an application for the division of land); or
 - (B) will use a driveway that—
 - is not located within 6 m of an intersection of 2 or more roads or a pedestrian actuated crossing; and

- (n) in relation to the site—that the site is, for the purposes of a dwelling, capable of being connected to a wastewater system (being a system which complies with the requirements of the *South Australian Public Health Act 2011*); and
 - (o) the development will not be built, or will not encroach, on an area that is, or will be, required for a wastewater system which complies with the requirements of the *South Australian Public Health Act 2011*.
- (4) 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 or any existing dwelling on the site will not be included; and
 - (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 m; and
 - (iii) any balcony must have a width of at least 2 m; 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 an existing or proposed building on a site is—
 - (i) in the case of a site that has a frontage to only 1 road—that road; or
 - (ii) in the case of a site that has a frontage to 2 roads—
 - (A) if a corner allotment containing an existing building continues, following a division of that allotment, to be a corner allotment containing that building—the same primary street as applied immediately before that land division; or

- (B) subject to subparagraph (A), if the frontages are identical in length—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*; or
- (C) subject to subparagraph (A), if the frontages are different lengths—the road in relation to which the site has a shorter frontage; or
- (iii) in any other case—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
- (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.

(5) In this clause—

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;

building line, in relation to a building on a site, means a line drawn parallel to the wall on the building closest to the boundary of the site that faces the primary street (and any existing projection from the building such as a carport, verandah, porch or bay window is not to be taken to form part of the building for the purposes of determining the relevant wall of the building);

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;

relevant wall or structure means any wall or structure that is due to development that has occurred, or is proposed to occur, on the relevant allotment but does not include any fence or retaining wall 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;

south means true south.

7—Variation of Schedule 8—Plans

Schedule 8—after clause 15 insert:

16—Additional requirements for HomeBuilder development

An application for development authorisation under section 102(1) of the Act that identifies the development as HomeBuilder development must be accompanied by a statutory declaration by the applicant for the development authorisation declaring that the applicant has applied for a HomeBuilder grant in respect of the development in accordance with the *First Home and Housing Construction Grants Act 2000* on or before the prescribed day (within the meaning of regulation 3A).

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 March 2021

No 28 of 2021