

South Australia

Planning, Development and Infrastructure (General) (Miscellaneous) 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) (Miscellaneous) Variation Regulations 2021*.

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 *Planning, Development and Infrastructure (General) Regulations 2017*

4—Variation of regulation 19—Incorporation of material (section 71(b))

Regulation 19(ac)—after "Executive" insert:

, in relation to regulation 19A

5—Variation of regulation 31—Verification of application

(1) Regulation 31(2)(b)—delete "that subregulation" and substitute:

subregulation (1)

(2) Regulation 31—after subregulation (2) insert:

(3) If an accredited professional has determined that it is the correct entity to assess the application (or any part of the application) and has provided an appropriate notice in accordance with subregulation (1), the accredited professional is taken to be engaged as the relevant authority in respect of that application (or that part of the application) for the purposes of the Act.

6—Variation of regulation 41—Referrals

Regulation 41—after subregulation (1) insert:

(1a) A referral under section 122(1) of the Act will only relate to whether planning consent should be granted in relation to the proposed development and, if an application for planning consent is referred to a prescribed body in accordance with the requirements of Schedule 9, the relevant authority is not required, subject to subregulation (1b), to refer to that body a further application for any other consent required for the approval of the same proposed development (and no further response is required from that body).

(1b) Subregulation (1a) does not extend to an application which is relevant to a matter that has been reserved for further consideration by the prescribed body.

7—Variation of regulation 47—Performance assessed development and restricted development

Regulation 47(6)—after paragraph (b) insert:

- (ba) in relation to development that falls within a class of development in respect of which the Planning and Design Code provides that such a notice need not be given; or

8—Variation of regulation 53—Time within which decision must be made (section 125(1))

Regulation 53(2)—delete "(d)"

9—Variation of regulation 64A—Access to neighbouring land

Regulation 64A—after its present contents (now to be designated as subregulation (1)) insert:

- (2) For the purposes of section 140(4)(a) of the Act, the prescribed period is 10 business days.

10—Variation of regulation 67—Lapse of consents or approvals (section 126(2))

Regulation 67—after subregulation (2) insert:

- (3) In this regulation—
operative date of a consent or approval means—
(a) the date on which the consent or approval is given; or
(b) if the decision to grant the consent or approval has been the subject of an appeal under the Act, the date on which any appeal is dismissed, struck out or withdrawn, or all questions relating to any appeal have been finally determined (other than as to costs),

whichever is the later.

11—Variation of regulation 76—Advice from Commission

Regulation 76(1)—after "section 102(1)" insert:

- (c) or (d)

12—Insertion of heading to Part 11 Division 1

Before regulation 101 insert:

Division 1—Preliminary

13—Insertion of heading to Part 11 Division 2

Before regulation 102 insert:

Division 2—Classification of buildings

14—Substitution of regulation 103

Regulation 103—delete the regulation and substitute:

Division 3—Certificates of occupancy

103—Exclusions

- (1) Pursuant to section 152(1)(a) of the Act, a certificate of occupancy is not required in respect of—
 - (a) a Class 1a building under the Building Code; or
 - (b) a Class 10 building under the Building Code.
- (2) Subregulation (1)(a) expires on 30 June 2022.

103A—Required documentation

- (1) Pursuant to section 152(3)(b) of the Act, an application for the issuing of a certificate of occupancy relating to a Class 1b to 9 (inclusive) building under the Building Code must be accompanied by the following documentation:
 - (a) a copy of a Statement of Compliance, duly completed in accordance with the requirements of regulation 104, that relates to any relevant building work, together with any documentation required under regulation 57(8)(c);
 - (b) unless already provided—a copy of any certificate of compliance under regulation 94(7) (if relevant);
 - (c) if the development has been approved subject to conditions, such evidence as the council may reasonably require to show that the conditions have been satisfied;
 - (d) if the application relates to the construction or alteration of part of a building and further building work is envisaged in respect of the remainder of the building, such further evidence as the council may reasonably require to show—
 - (i) in the case of a building more than 1 storey—that the requirements of any relevant Ministerial building standard have been complied with; or
 - (ii) in any other case—that the building is suitable for occupation.
- (2) Pursuant to section 152(3)(b) of the Act, an application for the issuing on or after 1 July 2022 of a certificate of occupancy relating to a Class 1a building under the Building Code is only required to be accompanied by the following documentation:
 - (a) a copy of a Statement of Compliance, duly completed in accordance with the requirements of regulation 104, that relates to any relevant building work, together with any documentation required under regulation 57(8)(c);

- (b) if the development has been approved subject to conditions, such evidence as the council may reasonably require to show that any conditions relevant to the suitability of the building for occupation have been satisfied.
- (3) A council may, other than in relation to a designated building on which building work involving the use of a designated building product is carried out after 12 March 2018, dispense with the requirement to provide a Statement of Compliance under subregulation (1)(a) or (2)(a) if—
- (a) the council is satisfied that a person required to complete 1 or both parts of the statement has refused or failed to complete that part and that the person seeking the issuing of the certificate of occupancy has taken reasonable steps to obtain the relevant certification or certifications; and
 - (b) it appears to the council, after undertaking an inspection, that the relevant building is suitable for occupation.

103B—Prescribed requirements

Pursuant to section 152(6) of the Act, on and after 1 July 2022, the requirements set out in a statement of building occupancy requirements for Class 1a buildings under the Building Code published by the Chief Executive on the SA planning portal for the purposes of this regulation are prescribed requirements in respect of Class 1a buildings.

103C—Statement of site suitability

- (1) If—
- (a) a relevant authority grants planning consent in respect of an application to which Schedule 8 clause 2A applies; and
 - (b) remediation on the site to which the application relates (the *relevant site*) is necessary but the required remediation has not been undertaken,
- the following provisions apply:
- (c) a certificate of occupancy must not be granted in relation to a building on the relevant site until a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use;
 - (d) in the case of a building on the relevant site that does not require a certificate of occupancy—a person must not occupy the building for the purpose authorised under the development approval until a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use;

- (e) if the development authorised under the application does not involve building work—a person must not use the relevant site for the purpose authorised under the development approval until a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use.
- (2) A statement of site suitability under subregulation (1) should, so far as is reasonably practicable, be issued by the site contamination consultant or site contamination auditor who prepared the most recent of the following in relation to the application:
- (a) the preliminary site investigation report under Schedule 8 clause 2A;
 - (b) the detailed site investigation report under regulation 32A;
 - (c) the statement of site suitability under regulation 32B.
- (3) A person who fails to comply with subregulation (1)(d) or (e) is guilty of an offence.
- Maximum penalty: \$10 000.
Default penalty: \$100.

103D—Report from fire authority

- (1) If—
- (a) a building is—
 - (i) to be equipped with a booster assembly for use by a fire authority; or
 - (ii) to have installed a fire alarm that transmits a signal to a fire station or to a monitoring service approved by the relevant authority; and
 - (b) facilities for fire detection, fire fighting or the control of smoke must be installed in the building pursuant to an approval under the Act,
- the council must not grant a certificate of occupancy unless or until it has sought a report from the fire authority as to whether those facilities have been installed and operate satisfactorily.
- (2) If a report is not received from the fire authority within 15 business days, the council may presume that the fire authority does not desire to make a report.
- (3) The council must have regard to any report received from a fire authority under subregulation (1) before it issues a certificate of occupancy.

103E—Issue of certificate of occupancy

- (1) Subject to this regulation, pursuant to section 152(8) of the Act, an application for the issue of a certificate of occupancy must be decided—
 - (a) if the council must seek a report from a fire authority under regulation 103D—within 20 business days from the day on which all documentation required by the council under regulation 103A in relation to the class of building is received by the council; or
 - (b) without limiting paragraph (a) if, on receipt of a notification of intended completion of building work under regulation 93(1)(f), the council determines that the building work will be inspected by an authorised officer—
 - (i) where building work or other action relevant to the suitability of the building for occupation is required to be undertaken as a result of the inspection—within 5 business days of completion of that building work or action; or
 - (ii) in any other case—within 5 business days of the day by which the inspection must be carried out under a practice direction issued for the purposes of section 144 of the Act; or
 - (c) in any other case—within 5 business days from the day on which all documentation required by the council under regulation 103A in relation to the class of building is received by the council.
- (2) A council must provide to the entity that will be issuing the certificate of occupancy for the relevant building—
 - (a) notice of a determination to carry out an inspection of building work referred to in subregulation (1)(b) (the *initial inspection*); and
 - (b) —
 - (i) where no building work or other action relevant to the suitability of the building for occupation is required to be undertaken as a result of the initial inspection—notice of the completion of the inspection; or
 - (ii) in any other case—
 - (A) notice that building work or other action relevant to the suitability of the building for occupation is required to be undertaken; and

- (B) notice of the completion of an inspection (a ***subsequent inspection***) after any such building work or other action has been undertaken.
- (3) If a notice under subregulation (2) in respect of a Class 1a building is not received from the council within—
- (a) in the case of a notice under subregulation (2)(a), (b)(i) or (b)(ii)(A)—the timeframe within which an inspection must be carried out under a practice direction issued for the purposes of section 144 of the Act; or
 - (b) in the case of a notice under subregulation (2)(b)(ii)(B)—3 business days of the council receiving notice of the completion of any building work or other action relevant to the suitability of the building for occupation required to be undertaken as a result of the initial (or a subsequent) inspection,
- the entity that will be issuing the certificate of occupancy for the relevant building may presume that—
- (c) in the case of a notice under subregulation (2)(a)—the council has determined not to inspect the building work; or
 - (d) in the case of a notice under subregulation (2)(b)(i) or (b)(ii)(A)—the council has completed the initial inspection and no building work or other action relevant to the suitability of the building for occupation is required; or
 - (e) in the case of a notice under subregulation (2)(b)(ii)(B)—the council has completed a subsequent inspection and no additional building work or other action relevant to the suitability of the building for occupation is required.
- (4) A certificate of occupancy will be in the form determined by the Chief Executive for the purposes of this regulation (being a form published by the Chief Executive on the SA planning portal).
- (5) If a building certifier issues a certificate of occupancy, the building certifier must, within 5 business days after issuing the certificate, provide to the council a copy of the certificate of occupancy, together with a copy of any documentation provided under regulation 103A.
- (6) Subregulation (5) does not apply if the certificate of occupancy is issued via the SA planning portal.

103F—Revocation

Pursuant to section 152(13) of the Act, a council may revoke a certificate of occupancy—

- (a) if—
 - (i) there is a change in the use of the building; or
 - (ii) the classification of the building changes; or

- (iii) building work involving an alteration or extension to the building that will increase the floor area of the building by more than 300 m² is about to commence, or is being or has been carried out; or
 - (iv) the building is about to undergo, or is undergoing or has undergone, major refurbishment,
- and the council considers that in the circumstances the certificate should be revoked and a new certificate sought; or
- (b) if the council considers that the building is no longer suitable for occupation because of building work undertaken, or being undertaken, on the building, or because of some other circumstance; or
 - (c) if a schedule of essential safety provisions has been issued in relation to the building and the owner of the building has failed to comply with the requirements of regulation 94(10); or
 - (d) if the council considers—
 - (i) that a condition attached to a relevant development authorisation has not been met, or has been contravened, and that, in the circumstances, the certificate should be revoked; or
 - (ii) that a condition attached to the certificate of occupancy has not been met, or has been contravened, or is no longer appropriate.

103G—Other matters

- (1) Pursuant to section 152(1)(a) of the Act, if—
 - (a) approval of building work in respect of a Class 1a building under the Building Code was granted under the repealed Act before 19 March 2021; and
 - (b) the building work is to be completed on or after the commencement of the *Planning, Development and Infrastructure (General) (Miscellaneous) Variation Regulations 2021*,a certificate of occupancy is not required in respect of the building.
- (2) Pursuant to section 152(1)(a) of the Act, if—
 - (a) approval of building work in respect of a Class 1a building under the Building Code was or is granted under the Act before 1 July 2022; and
 - (b) the building work is to be completed on or after 1 July 2022,

a certificate of occupancy is not required in respect of the building if notification of intended completion of the building work under regulation 93(1)(f) is given before 1 July 2022 (but a certificate of occupancy is required in respect of the building if such a notification is given on or after that date).

- (3) Pursuant to section 152(1)(a) of the Act and despite regulation 103(1)(a), if—
- (a) approval of building work in respect of a Class 1a building under the Building Code was granted under the Act before the commencement of the *Planning, Development and Infrastructure (General) (Miscellaneous) Variation Regulations 2021*; and
 - (b) notification of intended completion of the building work under regulation 93(1)(f) was given before that commencement,

a certificate of occupancy is required in respect of the building.

- (4) A reference in this Division to a council (other than in regulations 103A(3), 103E(1)(b), (2) and (3) and 103F) will be taken to include a reference to a building certifier acting pursuant to section 154 of the Act.

Division 4—Occupation

103H—Occupation of Class 1a buildings

- (1) This regulation applies to a Class 1a building under the Building Code for which a certificate of occupancy is not required in accordance with these regulations.
- (2) A person must not occupy a Class 1a building under the Building Code (or an addition to a Class 1a building) that has not been fully completed in accordance with a development authorisation insofar as it relates to the performance of building work unless—
 - (a) the building is structurally sound and weatherproof; and
 - (b) all approved health and amenity facilities have been installed in accordance with the requirements of the Building Code; and
 - (c) the building conforms with the relevant requirements of the Building Rules for bushfire protection; and
 - (d) all smoke alarms required under the Building Code have been installed and tested; and
 - (e) all service connections referred to in regulation 104(8) have been made in accordance with the requirements of the relevant service provider and relevant regulating authority.

Maximum penalty: \$10 000.

Expiation fee: \$750.

15—Insertion of heading to Part 11 Division 5

Before regulation 104 insert:

Division 5—Statement of Compliance

16—Variation of regulation 126—Additional expiable offences

Regulation 126—after paragraph (d) insert:

(e) section 213(11)—\$750.

17—Variation of Schedule 6—Relevant authority—Commission

Schedule 6—after clause 15 insert:

16—District Council of Coober Pedy

Development in the area of the District Council of Coober Pedy.

18—Variation of Schedule 6A—Accepted development

Schedule 6A, clause 1—delete the clause

19—Variation of Schedule 8—Plans

(1) Schedule 8, clause 2(1)(a)—after subparagraph (xiii) insert:

(xiv) details of soft landscaping and the percentage of the site that is pervious to water; and

(2) Schedule 8, clause 2(1)(g)(i)—after "Level 1" insert:

, 2, 3 or 4

Editorial 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 16 December 2021

No 190 of 2021