

South Australia

Planning, Development and Infrastructure (General) (Phase 3 of Code) 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) (Phase 3 of Code) 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 3A—Application of Act (section 8)

(1) Regulation 3A(3a)—delete subregulation (3a) and substitute:

(3a) Pursuant to section 8(2)(b) of the Act, section 215 of the Act applies with the following prescribed variation during the period from the commencement of this subregulation until the designated day:

Section 215—after subsection (4) insert:

- (5) Subsection (4) does not apply to prevent—
- (a) a person who operates a shop used primarily for the sale of foodstuffs by retail from loading or unloading goods at the shop at any time; or
 - (b) a person who owns, controls or operates premises of a kind specified by the Minister by notice published on the SA planning portal from loading or unloading goods at the premises at any time.

(2) Regulation 3A(4), definition of *designated day*—delete the definition and substitute:

designated day means the earlier of the following days:

- (a) the day designated by the Minister by notice in the Gazette;
- (b) 31 May 2021;

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

Regulation 19—after paragraph (ab) insert:

- (ac) the Chief Executive;

6—Insertion of regulation 19A

After regulation 19 insert:

19A—Building envelope plans

- (1) A designated authority may, on application, approve a building envelope plan if the building envelope plan is prepared in accordance with, and is consistent with the criteria set out in, a practice direction issued for the purposes of this regulation by the Commission.

- (2) A designated authority may, on application by a person or body that prepared a building envelope plan approved under this regulation, vary the building envelope plan (and an application for a variation of a building envelope plan will be treated as an application for approval of the building envelope plan under subregulation (1)).
- (3) A building envelope plan, or a variation to a building envelope plan, does not have effect for the purposes of the Planning and Design Code until the building envelope plan, or the varied building envelope plan—
 - (a) is submitted to the Chief Executive; and
 - (b) is published by the Chief Executive on the SA planning portal.

Note—

Under section 71(b) of the Act, the Planning and Design Code may refer to or incorporate wholly or partially and with or without modification, a policy or other document published by a prescribed body.

- (4) The Chief Executive is not required to publish a building envelope plan, or a varied building envelope plan, on the SA planning portal if the Chief Executive considers that the building envelope plan, or the varied building envelope plan, is inconsistent with the practice direction referred to in subregulation (1).
- (5) In this regulation—

building envelope plan means a plan that is prepared for the purposes of a division of land (whether the land has been or is to be divided) within a master planned zone and that provides for matters relating to buildings to be constructed on allotments created by the division of land, including—

- (a) building setbacks and envelopes, building heights and floor levels; and
- (b) other criteria relevant to determining whether such buildings fall within a particular class of development;

designated authority, in relation to a building envelope plan, means—

- (a) if the relevant authority for the application for development authorisation for the division of land under section 102(1)(c) or (d) of the Act (the ***division of land authority***) relating to the building envelope plan is the Commission—the Commission; or
- (b) if the division of land authority relating to the building envelope plan is an assessment panel appointed by a joint planning board—the assessment manager appointed by the joint planning board; or

- (c) if the division of land authority relating to the building envelope plan is a regional assessment panel appointed by the Minister—the assessment manager appointed by the Chief Executive for the panel; or
- (d) in any other case—the assessment manager appointed by the chief executive of the council in whose area the building envelope plan is to apply;

master planned zone means—

- (a) the Master Planned Neighbourhood Zone, Master Planned Township Zone or Master Planned Renewal Zone under the Planning and Design Code; or
- (b) any other zone identified by the Commission in a practice direction issued for the purposes of this regulation and published on the SA planning portal.

7—Variation of regulation 21—Minor or operational amendments (section 76)

Regulation 21—after paragraph (e) insert:

- (ea) the Metropolitan Adelaide Road Widening Plan under the *Metropolitan Adelaide Road Widening Plan Act 1972*;
- (eb) a lease, licence or native title mining agreement under the *Mining Act 1971*;

8—Variation of regulation 27—Impact assessed development—categorisation

Regulation 27—before subregulation (1) insert:

- (a1) For the purposes of section 108(1)(b) of the Act, development that involves the establishment of—
 - (a) a wind farm located in marine waters; or
 - (b) a marina of more than 100 berths,is classified as impact assessed development.

9—Variation of regulation 31—Verification of application

Regulation 31(3)—delete subregulation (3)

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

(1) Regulation 53(1)—after paragraph (j) insert:

- (ja) if a prescribed outage occurs in the SA planning portal during a period applying to an application under this subregulation, an additional period equal to the duration of the prescribed outage (as published in a notice under subregulation (8)) must be added to the period that applies under paragraph (a), (b), (c), (d) or (e) (as the case may be) (and, if relevant, paragraph (f)); and

(2) Regulation 53—after subregulation (7) insert:

- (8) If a prescribed outage occurs in the SA planning portal, the Chief Executive must, as soon as is reasonably practicable after the prescribed outage, publish a notice on the SA planning portal that specifies—
 - (a) the date of commencement of the prescribed outage; and
 - (b) the duration of the prescribed outage (expressed in a number of whole business days, excluding any fraction).
- (9) In this regulation—

prescribed outage, in relation to the SA planning portal, means a consecutive period of 24 hours or more on 1 business day or consecutive business days during which the SA planning portal is not operating or accessible to users.
- (10) For the purposes of the definition of *prescribed outage*, business days will be regarded as consecutive regardless of whether they are separated by 1 or more days that are not business days.

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

Regulation 67(1)—after "regulation" insert:

(or any extension granted under section 126(3) of the Act)

12—Variation of regulation 103—Certificates of occupancy

Regulation 103—after subregulation (1) insert:

- (1a) 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 the commencement of this subregulation; and
 - (b) the building work is to be completed on or after that commencement,

a certificate of occupancy is not required in respect of the building.

13—Insertion of regulation 106A

After regulation 106 insert:

106A—Development in Riverbank Zone

For the purposes of section 131(28)(b) of the Act, the part of the *Institutional District* of the City of Adelaide constituted by the whole of the Riverbank Zone is identified.

Note—

Section 131(30) of the Act provides that a regulation under section 131(28)(b) cannot apply with respect to any part of the *Institutional District* of the City of Adelaide that is under the care, control or management of The Corporation of the City of Adelaide.

14—Variation of regulation 120—Record of applications

- (1) Regulation 120(1)(b)—delete "and address"
- (2) Regulation 120(2)(a)—delete "and address"

15—Variation of Schedule 4—Exclusions from definition of development—general

- (1) Schedule 4, clause 2(1)—after paragraph (f) insert:
 - (fa) a shade sail that does not exceed 5 m in height in a Recreation Zone under the Planning and Design Code; or
- (2) Schedule 4, clause 2(1)—after paragraph (h) insert:

or

 - (i) the repair or maintenance of a jetty or boat landing facility and associated pontoons, provided that there is no increase in the size of the jetty, facility or pontoons.
- (3) Schedule 4, clause 4(1)(d)—after subparagraph (ii) insert:
 - (iia) a fence in the Historic Area Overlay under the Planning and Design Code—
 - (A) if there is no adjacent building facing the same road on to which the building faces—that is situated between the building line of the main face of a building and the road on to which the building faces; or
 - (B) if there is an adjacent building facing the same road on to which the building faces—that is situated between a notional line drawn between the nearest front corner of each building to the other building and the road on to which the buildings face,

(and for the purposes of this subparagraph buildings separated only by a laneway will still be taken to be adjacent); or
- (4) Schedule 4, clause 4(1)—after paragraph (d) insert:
 - (da) a dog fence established under the *Dog Fence Act 1946*;
- (5) Schedule 4, clause 5(2)—after paragraph (d) insert:
 - (da) the keeping of native animals pursuant to a permit for the rescue or rehabilitation of the animals under the *National Parks and Wildlife Act 1972* if it is ancillary to the primary use of the land;
- (6) Schedule 4, clause 9(c)—delete paragraph (c) and substitute:
 - (c) within 500 m of a road maintained by the State or Federal Government according to the South Australian Property and Planning Atlas; or
- (7) Schedule 4, clause 13(1)(a)(ii)(A)—delete "a zone, subzone or overlay primarily designated for residential use" and substitute:

a neighbourhood-type zone

- (8) Schedule 4, clause 13(4)—after the definition of *building* insert:

neighbourhood-type zone has the same meaning as in the Planning and Design Code;

16—Variation of Schedule 8—Plans

- (1) Schedule 8, clause 1(a)—after subparagraph (viii) insert:

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

- (2) Schedule 8, clause 2(a)(xi)—delete "and connection type" and substitute:

, the connection type, the total roof area to be connected to the tank and the proportion of the tank to be used for retention or detention

- (3) Schedule 8, clause 2(a)(xii)—delete "and the minimum and maximum driveway widths" and substitute:

, the minimum and maximum driveway widths and the location of any street furniture, infrastructure or tree within the road reserve abutting the property

- (4) Schedule 8, clause 2(a)—after subparagraph (xii) insert:

(xiii) the location and species of any tree to be planted and any tree to be retained on the site; and

- (5) Schedule 8, clause 2(d)—delete paragraph (d) and substitute:

(d) in the case of an application that involves a change of use of the land to a more sensitive use on land at which site contamination exists or may exist—a report and written statement in accordance with the relevant practice direction; and

- (6) Schedule 8, clause 2(f)—delete "not connected to an approved common waste water disposal service but which is serviced by an on-site wastewater treatment system—evidence that the wastewater treatment" and substitute:

serviced by an on-site wastewater treatment system, including where a connection to a community wastewater management system is required—evidence that the wastewater treatment or management

- (7) Schedule 8, clause 2—after its present contents as varied by this regulation (now to be designated as subclause (1)) insert:

- (2) In this clause—

more sensitive use means a change of use of the land that constitutes a change to a more sensitive use in accordance with a determination of the Commission applying under the relevant practice direction;

relevant practice direction means the State Planning Commission *Practice Direction 14—Site Contamination Assessment* or any subsequent practice direction made under the Act that replaces that practice direction.

- (8) Schedule 8, clause 14—delete "in a bushfire prone area identified" and substitute:
within a Hazards (Bushfire—General Risk) Overlay, Hazards (Bushfire—High Risk) Overlay, Hazards (Bushfire—Medium Risk) Overlay, Hazards (Bushfire—Outback) Overlay, Hazards (Bushfire—Regional) Overlay or Hazards (Bushfire—Urban Interface) Overlay
- (9) Schedule 8, clause 14—after "or drawings" insert:
detailing any additional requirements
- (10) Schedule 8, clause 14—after "building standard" insert:
or the Planning and Design Code

17—Variation of Schedule 9—Referrals

- (1) Schedule 9, clause 3, table, Part A, item 9(b)(i)—after "Mount Lofty Ranges" wherever occurring insert:
Water Supply
- (2) Schedule 9, clause 3, table, Part A—after item 9 insert:

9A—Site contamination

Development that is specified by the Planning and Design Code as development of a class to which this item applies.	Environment Protection Authority	Direction	30 business days
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9B—Gas and Liquid Petroleum Pipelines Overlay and Gas and Liquid Petroleum Pipelines (Facilities) Overlay

Development that is—	Chief Executive of the Department of the Minister responsible for the administration of the <i>Petroleum and Geothermal Energy Act 2000</i>	Direction	30 business days
(a) in the Gas and Liquid Petroleum Pipelines Overlay or Gas and Liquid Petroleum Pipelines (Facilities) Overlay under the Planning and Design Code; and			
(b) specified by the Planning and Design Code as development of a class to which this item applies.			

- (3) Schedule 9, clause 3, table, Part B, item 22, column 2—after "Government Architect" insert:
or Associate Government Architect

18—Variation of Schedule 13—State agency development exempt from approval

- (1) Schedule 13, clause 2(1)(b)(xv)—after subparagraph (C) insert:
(D) where the building work would exceed 150 m² in additional floor area; or

- (2) Schedule 13, clause 2(1)—after paragraph (w) insert:
- (x) the construction, reconstruction or alteration of a nesting platform or breeding structure for endangered species (as defined in the *National Parks and Wildlife Act 1972* or the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth).
- (3) Schedule 13, clause 2(2)—delete "and (c)" and substitute:
- , (c) and (x)

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

being satisfied that regulation 106A of the *Planning, Development and Infrastructure (General) Regulations 2017* (as inserted into those regulations by regulation 13 of these regulations) is substantially the same as regulation 67A of the *Development Regulations 2008* (as in force immediately before the commencement of these regulations) and with the advice and consent of the Executive Council
on 4 March 2021

No 23 of 2021