

South Australia

Planning, Development and Infrastructure (General) (Site Contamination) Variation Regulations 2021

under the *Planning, Development and Infrastructure Act 2016*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Planning, Development and Infrastructure (General) Regulations 2017*

- 4 Variation of regulation 3—Interpretation
 - 5 Insertion of regulations 32A and 32B
 - 32A Site contamination—detailed site investigation report
 - 32B Site contamination—statement of site suitability
 - 6 Variation of regulation 89—General provisions
 - 7 Variation of regulation 103—Certificates of occupancy
 - 8 Variation of Schedule 8—Plans
 - 9 Variation of Schedule 9—Referrals
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Planning, Development and Infrastructure (General) (Site Contamination) Variation Regulations 2021*.

2—Commencement

These regulations come into operation on 19 March 2021 immediately after the *Planning, Development and Infrastructure (General) (Phase 3 of Code) Variation Regulations 2021* come 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

- (1) Regulation 3(1)—after the definition of *Act* insert:

class 1, 2 or 3 activity means an activity specified as a class 1, 2 or 3 activity under the site contamination practice direction;

- (2) Regulation 3(1)—after the definition of *fire authority* insert:

groundwater prohibition area means an area where the Environment Protection Authority has prohibited the taking of groundwater under section 103S of the *Environment Protection Act 1993* (as shown on the South Australia Property and Planning Atlas);

- (3) Regulation 3(1)—after the definition of *Metropolitan Adelaide* insert:

more sensitive use means a change in the use of land that is determined to constitute a change to a more sensitive use of the land in accordance with the site contamination practice direction;

- (4) Regulation 3(1)—after the definition of *private bushfire shelter* insert:

remediation has the same meaning as in the *Environment Protection Act 1993*;

sensitive use means a use described in item 1 or 2 of the land use sensitivity hierarchy table in the site contamination practice direction unless, in accordance with that practice direction, the use is not to be regarded as a sensitive use in the particular circumstances;

site contamination, site contamination audit, site contamination auditor, site contamination audit report, site contamination consultant have the same respective meanings as in the *Environment Protection Act 1993*;

site contamination practice direction means a practice direction issued by the Commission relating to the assessment of development involving site contamination or potential site contamination on land;

- (5) Regulation 3—after subregulation (5) insert:

- (6) For the purposes of these regulations, a statement of site suitability provided to a relevant authority in connection with an application for development authorisation—

- (a) must comply with any requirements specified by the Commission; and
- (b) must be issued by a site contamination consultant or a site contamination auditor (and the relevant authority cannot require that the statement only be prepared by a site contamination auditor unless the Environment Protection Authority directs the relevant authority to do so in relation to a particular application); and

- (c) must be in the form determined by the Commission for the purposes of this subregulation and published in the site contamination practice direction or another instrument published by the Commission on the SA planning portal.

5—Insertion of regulations 32A and 32B

After regulation 32 insert:

32A—Site contamination—detailed site investigation report

- (1) For the purposes of section 119(3)(d) of the Act, a relevant authority may, in relation to an application to which Schedule 8 clause 2A applies, request the applicant to provide a detailed site investigation report if—
 - (a) the preliminary site investigation report indicates that site contamination is present, or is likely to be present, at the site of the proposed development; and
 - (b) the relevant authority considers that there is insufficient information to determine that the site is suitable for its intended use, having regard to—
 - (i) site contamination; and
 - (ii) if remediation is required, the extent of that remediation; and
 - (c) the application is not required to be referred to the Environment Protection Authority under item 9A or 9AB of the table in Schedule 9 clause 3.
- (2) A detailed site investigation report must be prepared by a site contamination consultant or site contamination auditor (and the relevant authority cannot request that the report be prepared only by a site contamination auditor unless the Environment Protection Authority directs the relevant authority to do so in relation to a particular application).
- (3) A detailed site investigation report must, in relation to the relevant land, relate to an investigation, conducted in accordance with the National Environment Protection (Assessment of Site Contamination) Measure and any relevant guidelines issued from time to time by the Environment Protection Authority, into—
 - (a) the nature and extent of any site contamination present or remaining on or below the surface of the land; and
 - (b) the suitability of the land for the proposed use; and
 - (c) what remediation (if any) is necessary for the proposed use.
- (4) A detailed site investigation report must comply with requirements specified by the Commission in the site contamination practice direction or another instrument published by the Commission on the SA planning portal.

- (5) In this regulation—

National Environment Protection (Assessment of Site Contamination) Measure means the *National Environment Protection (Assessment of Site Contamination) Measure 1999* prepared under the *National Environment Protection Council Act 1994* of the Commonwealth (as in force from time to time).

32B—Site contamination—statement of site suitability

For the purposes of section 119(3)(d) of the Act, a relevant authority may, in relation to an application to which Schedule 8 clause 2A applies, require the applicant to provide a statement of site suitability that confirms that the site is suitable for its intended use before the relevant authority issues a planning consent in relation to the application.

6—Variation of regulation 89—General provisions

Regulation 89(2)—after paragraph (b) insert:

- (c) in the case of an application to which Schedule 8 clause 2A applies where remediation on the site to which the application relates is necessary but the required remediation has not been undertaken—that a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use.

7—Variation of regulation 103—Certificates of occupancy

Regulation 103—after subregulation (3) insert:

- (3a) 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.
- (3b) A statement of site suitability under subregulation (3a) 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.
- (3c) A person who fails to comply with subregulation (3a)(d) or (e) is guilty of an offence.
- Maximum penalty: \$10 000.
Default penalty: \$100.

8—Variation of Schedule 8—Plans

- (1) Schedule 8, clause 2(1)(d)—delete paragraph (d)
- (2) Schedule 8, clause 2(2)—delete subclause (2)
- (3) Schedule 8—after clause 2 insert:

2A—Site contamination reports required for certain applications

- (1) This clause applies to an application for planning consent if—
 - (a) unless paragraph (b) applies, the application proposes a change in the use of land to a more sensitive use; or
 - (b) in the case of land division—the application proposes a sensitive use.
- (2) Subject to this clause, an application to which this clause applies must be accompanied by—
 - (a) a site contamination declaration form; and
 - (b) a preliminary site investigation report; and
 - (c) a copy of the certificate of title in relation to the land; and
 - (d) any site contamination audit report that has been prepared in relation to the land.

- (3) A preliminary site investigation report is not required to accompany an application to which this clause applies if—
- (a) a site contamination audit report has been prepared in relation to the land within the previous 5 years which states that—
 - (i) site contamination does not exist (or no longer exists) at the land; or
 - (ii) the land is suitable for the proposed use or uses (without the need for any further remediation); or
 - (iii) where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been undertaken or will be undertaken, and the applicant has provided a written undertaking that the remediation works will be undertaken in association with the development; and
 - (b) no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as declared in the site contamination declaration form); and
 - (c) the application is accompanied by a copy of the site contamination audit report.
- (4) A site contamination declaration form and preliminary site investigation report—
- (a) must comply with any requirements specified by the Commission; and
 - (b) must be prepared by a site contamination consultant or a site contamination auditor (and the relevant authority cannot require that the form or report only be prepared by a site contamination auditor); and
 - (c) in the case of a site contamination declaration form—must be in the form determined by the Commission for the purposes of this clause.
- (5) Any requirements specified by the Commission under subclause (4)(a) and the form determined under subclause (4)(c) must be published in the site contamination practice direction or another instrument published by the Commission on the SA planning portal.

9—Variation of Schedule 9—Referrals

- (1) Schedule 9, clause 1—after subclause (3) insert:
 - (4) Item 9AB of the table in clause 3 does not apply in relation to a development involving the division of land if—
 - (a) a site contamination audit report has been prepared in relation to the land within the previous 5 years which states that—
 - (i) site contamination does not exist (or no longer exists) at the land; or
 - (ii) the land is suitable for the proposed use or uses (without the need for any further remediation); or
 - (iii) where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been undertaken or will be undertaken, and the applicant has provided a written undertaking that the remediation works will be undertaken in association with the development; and
 - (b) no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as declared in the site contamination declaration form); and
 - (c) the application is accompanied by a copy of the site contamination audit report.
- (2) Schedule 9, clause 3, table, Part A—after item 9A insert:

9AB—Site contamination—land division

Subject to clause 1(4) (of this Schedule), development involving the division of land if—

	Environment Protection Authority	Direction	30 business days
--	----------------------------------	-----------	------------------

- (a) Schedule 8 clause 2A(1)(b) applies to the application in respect of the development; and
- (b) site contamination exists or may exist at the land because of 1 or more of the following circumstances:
 - (i) a class 1 activity has been conducted on the land or on adjacent land;
 - (ii) a class 2 or class 3 activity has been conducted on the land;
 - (iii) the land or adjacent land is the subject of a section 83A notification under the *Environment Protection Act 1993* that appears on the South Australian Property and Planning Atlas;
 - (iv) the land is within a groundwater prohibition area;
 - (v) the land is the subject of a notation on the certificate of title for the land under section 103P of the *Environment Protection Act 1993* that a site contamination audit report has been prepared.

Planning, Development and Infrastructure (General) (Site Contamination) Variation Regulations 2021
Variation of *Planning, Development and Infrastructure (General) Regulations 2017*—Part 2

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 18 March 2021

No 33 of 2021