

South Australia

Planning, Development and Infrastructure (General) (Miscellaneous) Amendment Regulations 2023

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) Amendment Regulations 2023*.

2—Commencement

These regulations come into operation on the day on which they are made.

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

3—Amendment of regulation 3—Interpretation

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

bushfire prone area means an area—

- (a) defined as a designated bushfire prone area in a Ministerial building standard; or
- (b) identified as a designated bushfire prone area under the Planning and Design Code;

- (2) Regulation 3(1)—after the definition of *HomeBuilder development* insert:

independent technical expert means a person who, in relation to building work—

- (a) is not the building owner or an employee of the building owner; and
- (b) has not—
 - (i) been involved in any aspect of the relevant development (other than through the provision of preliminary advice of a general nature); or
 - (ii) had a direct or indirect pecuniary interest in any aspect of the relevant development or any body associated with any aspect of the relevant development; and
- (c) has engineering or other qualifications that the relevant authority is satisfied, on the basis of advice received from the accreditation authority under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*, a relevant professional association, or another relevant registration or accreditation authority, qualify the person to act as a technical expert for the purposes of these regulations;

4—Amendment of regulation 25—Accredited professionals (section 97)

Regulation 25(7)—delete subregulation (7)

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5—Amendment of regulation 34—Period for additional information and other matters

Regulation 34(1)—after "longer period" insert:

(which must not exceed 1 year from the date of the request)

6—Amendment of regulation 35—Amended applications

Regulation 35(1)—after "day" insert:

(and, if an action under Division 2 or 3 is required to be repeated in respect of the application as varied, a time period applying under regulation 53 in relation to the action is to be included in the time within which the relevant authority is required to decide the application under these regulations)

7—Amendment of regulation 36—Certification of building indemnity insurance

Regulation 36(2)—delete "owner of land on which domestic building work is to be performed" and substitute:

applicant for building consent in respect of domestic building work to be performed

8—Insertion of regulation 41A

After regulation 41 insert:

41A—Delegation by prescribed bodies

- (1) A prescribed body (being a body prescribed for the purposes of section 122 of the Act) may delegate to a person (including a person for the time being holding or acting in a specified office or position) a function of the prescribed body under the Act or these regulations.
- (2) A delegation under this regulation—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the prescribed body to act in any matter; and
 - (d) is revocable at will.
- (3) A function delegated under this regulation may, if the instrument of delegation so provides, be further delegated.

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

- (1) Regulation 53(1)(i)—delete "paragraph (c)" and substitute:

paragraph (d)

- (2) Regulation 53(1)(ja)—delete "subregulation (8)" and substitute:

subregulation (9)

- (3) Regulation 53(8) to (10)—delete subregulations (8) to (10) (inclusive) and substitute:
- (8) The Chief Executive may, if satisfied that the SA planning portal is (or was) not operating or accessible to users for a period of time considered substantial by the Chief Executive, determine that an outage has occurred for the purposes of this regulation (a *prescribed outage*).
 - (9) The Chief Executive must, as soon as is reasonably practicable after the conclusion of a 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).

10—Amendment of regulation 61—Certificate of independent technical expert in certain cases

Regulation 61(4)—delete subregulation (4)

11—Amendment of regulation 62—Requirement to up-grade building in certain cases

Regulation 62(4), definition of *bushfire prone area*—delete the definition

12—Amendment of regulation 65—Variation of authorisation (section 128)

Regulation 65—after subregulation (3) insert:

- (4) For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a condition of a development authorisation previously given under the Act (a *fresh application*)—
 - (a) in respect of a building on which building work was carried out and following which a certificate of occupancy was issued for the building; and
 - (b) where the Commission was, in accordance with section 94(1) of the Act, the relevant authority that granted the development authorisation,

the Commission will not be the relevant authority in respect of the fresh application (and the relevant authority will be determined in accordance with Part 6 Division 5 of the Act).

13—Amendment of regulation 67—Lapse of consents or approvals (section 126(2))

Regulation 67(3), definition of *operative date*, (b)—after "appeal" wherever occurring insert:

or review

14—Amendment of regulation 73—Notification of decision

- (1) Regulation 73(1) and (2)—delete subregulations (1) and (2) and substitute:
- (1) Notification of the outcome of a decision on a proposed development under Part 7 Division 2 Subdivision 4 of the Act must be given to—
 - (a) the council for the relevant area; and
 - (b) the applicant for the proposed development.
 - (2) A notification under subregulation (1) must be given by—
 - (a) in the case of a decision under section 110 of the Act—the Commission; and
 - (b) in any other case—the Minister.
 - (2a) If a decision under Part 7 Division 2 Subdivision 4 of the Act relates to a development or project that involves or is for the purposes of a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the Environment Protection Authority must be given notification of the decision by—
 - (a) in the case of a decision under section 110 of the Act—the Commission; and
 - (b) in any other case—the Minister.
- (2) Regulation 73(3)(b)—after "the Minister" insert:
or Commission (as the case requires)

15—Amendment of regulation 79—Assessment requirements—water and sewerage

- (1) Regulation 79(1) and (2)—delete subregulations (1) and (2) and substitute:
- (1) For the purposes of section 102(1)(c)(iii) and (1)(d)(vii) of the Act—
 - (a) the South Australian Water Corporation (being a water industry entity under the *Water Industry Act 2012*) is identified in relation to all proposed divisions of land; and
 - (b) if the water supply or sewerage services (or both) are to be provided by another water industry entity under the *Water Industry Act 2012*—that water industry entity is identified.
 - (2) For the purposes of section 102(1)(c)(iii) and (1)(d)(vii) of the Act, an entity or entities identified under subregulation (1) may make and provide an assessment of their requirements in relation to the provision of water supply and sewerage services (as relevant) to land that is proposed to be divided.
- (2) Regulation 79(6)—delete "the Corporation" and substitute:
an entity or entities

16—Amendment of regulation 94—Essential safety provisions

- (1) Regulation 94(4)—delete "(being a form published by the Chief Executive on the SA planning portal)" and substitute:

and published on the SA planning portal
- (2) Regulation 94(11)—after "subregulation" second occurring insert:

and published on the SA planning portal

17—Amendment of regulation 104—Statement of Compliance

- (1) Regulation 104(3)—delete "(being a form published by the Chief Executive on the SA planning portal)" and substitute:

and published on the SA planning portal
- (2) Regulation 104(5)—delete "at the time that the relevant building consent was given" and substitute:

under regulation 57(8)(c)

18—Insertion of Part 11A

After Part 11 insert:

Part 11A—Essential infrastructure

104A—Essential infrastructure—alternative assessment process

- (1) For the purposes of section 130(1) of the Act, infrastructure, equipment, structures, works and other facilities used in or in connection with—
 - (a) the generation of electricity; or
 - (b) the distribution or supply of electricity,

(*electricity infrastructure*), other than excluded infrastructure, is prescribed, provided that the proponent in relation to the electricity infrastructure is a prescribed person (within the meaning of regulation 3CA).
- (2) An application under section 130(2) of the Act must be in a form determined by the Minister.
- (3) For the purposes of section 130(3) of the Act, the prescribed particulars are—
 - (a) a description of the nature of the proposed development; and
 - (b) details of the location, siting, layout and appearance of the proposed work; and

- (c) if the proposed development is for the purposes of the provision of electricity generating plant with a generating capacity of more than 5 MW that is to be connected to the State's power system—a certificate from the Technical Regulator certifying that the proposed development complies with the requirements of the Technical Regulator in relation to the security and stability of the State's power system.
- (4) A notice under section 130(5) of the Act must be given to the council within 3 business days after the relevant application is lodged with the Commission.
- (5) For the purposes of section 130(9) of the Act, if an application relates to development of a class prescribed under Schedule 9, the Commission must refer the application, together with a copy of any relevant information provided by the proponent, to the relevant body under that Schedule for comment and report within the period of 30 business days (and this period will also be the period that applies under section 130(11) of the Act).
- (6) For the purposes of section 130(16) of the Act, the period of 60 business days is prescribed.
- (7) For the purposes of section 130(21)(b) of the Act, the following are prescribed criteria when considering a variance with the Building Rules—
 - (a) that the provisions of the Building Rules are inappropriate to the particular building or building work, or that the proposed building work fails to conform with the Building Rules only in minor respects;
 - (b) that the variance is justifiable having regard to the performance requirements of the Building Code and would achieve the objects of the Act as effectively, or more effectively, than if the variance were not to be allowed.
- (8) Despite subregulation (7), if in considering a matter under section 130(21) of the Act an inconsistency exists between the Building Rules and the Planning and Design Code in relation to a State heritage place or a local heritage place—
 - (a) the Planning and Design Code prevails and the Building Rules must not be applied to the extent of the inconsistency; but
 - (b) the person acting under that subsection must ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved that are as good as can reasonably be achieved in the circumstances.

- (9) For the purposes of this regulation, a reference to ***electricity generating plant*** is a reference to electricity generating plant within the ambit of paragraph (a) of the definition of electricity infrastructure in section 4(1) of the *Electricity Act 1996*.
- (10) In this regulation—
- excluded infrastructure*** means—
- (a) electricity generating plant with a generating capacity of more than 30 MW; or
 - (b) a section of powerlines (within the meaning of the *Electricity Act 1996*) of more than 5 km in length designed to convey electricity at more than 66 kV;
- power system*** has the same meaning as in the *Electricity Act 1996*.

104B—Lapse of approval

- (1) Subject to this regulation, an approval under section 130 of the Act (whether subject to conditions or not) will lapse at the expiration of—
 - (a) subject to the operation of paragraph (b)—12 months from the date of the approval; or
 - (b) if the relevant development has been lawfully commenced by substantial work on the site of the development within 12 months from the date of the approval—3 years from the date of the approval, unless the development has been substantially or fully completed within those 3 years (in which case the approval will not lapse).
- (2) Subject to this regulation, an approval under section 130 of the Act for the proposed division of land will lapse at the expiration of 3 years from the date of the approval.
- (3) A period prescribed under subregulation (1) or (2) may be extended by the Minister—
 - (a) when the relevant approval is given; or
 - (b) at such later time as may be appropriate.

19—Amendment of regulation 111—Register of land management agreements (section 193)

Regulation 111(8), definition of ***operative date***, (b)—after "appeal" wherever occurring insert:

or review

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20—Amendment of regulation 116—Rights of review and appeal

Regulation 116—after its present contents (now to be designated as subregulation (1)) insert:

- (2) An applicant to an assessment panel for a review of a prescribed matter must be given an opportunity to provide the assessment panel with the applicant's submissions in relation to the review (and, if the assessment panel determines to hold a hearing, must be given written notice of the date of the hearing and an opportunity to appear and make submissions at the hearing in person).

21—Amendment of regulation 120—Record of applications

- (1) Regulation 120(1)(1)—after "appeal" wherever occurring insert:
or review
- (2) Regulation 120(2) and (3)—delete subregulations (2) and (3)

22—Amendment of Schedule 4—Exclusions from definition of development—general

Schedule 4, clause 2(4)(c)—after "services" insert:
or support public health services

23—Amendment of Schedule 6—Relevant authority—Commission

- (1) Schedule 6, clause 1—after subclause (2) insert:
 - (3) Development situated in the areas of 2 or more councils, other than in a case where a regional assessment panel has been constituted in relation to the area in which the development is situated.
- (2) Schedule 6, clause 3(2) and (3)—delete subclauses (2) and (3)
- (3) Schedule 6, clause 4(2) and (3)—delete subclauses (2) and (3)
- (4) Schedule 6, clause 4A(2) and (3)—delete subclauses (2) and (3)
- (5) Schedule 6—after clause 4A insert:

4B—Corporation of Town of Walkerville—buildings exceeding 4 storeys

Development in the area of The Corporation of the Town of Walkerville that involves the erection or construction of a building that exceeds 4 storeys in height and is in the Design Overlay under the Planning and Design Code.

- (6) Schedule 6, clause 5(2) and (3)—delete subclauses (2) and (3)

- (7) Schedule 6—after clause 16 insert:

17—Variations of authorisations

Development, other than development involving a building in relation to which a certificate of occupancy has been issued—

- (a) under an application to vary a development authorisation given by the Commission under this Schedule; or
- (b) which, in the opinion of the Commission, is ancillary to or in association with a development the subject of an authorisation given by the Commission under this Schedule.

24—Amendment of Schedule 8—Plans

- (1) Schedule 8, clause 2(1)(e)—delete "designated"
- (2) Schedule 8—after clause 8 insert:

8A—Information with respect to unit or lot under *Strata Titles Act 1988* or *Community Titles Act 1996*

An application for development relating to a unit within a strata scheme under the *Strata Titles Act 1988* or a strata lot within a strata scheme under the *Community Titles Act 1996* must be accompanied by—

- (a) in all cases—evidence that the applicant has given written notice of the application to the strata corporation or community corporation (as the case requires); and
- (b) in the case of an application that involves prescribed work required to be authorised under section 29 of the *Strata Titles Act 1988* (other than where all of the units comprised in the strata scheme consist of non-residential premises)—evidence that the strata corporation has authorised the carrying out of the prescribed work; and
- (c) in the case of an application that involves prescribed work required to be authorised under section 102 of the *Community Titles Act 1996* (other than where each of the lots comprised in the strata scheme is used, or is intended to be used, solely or predominantly for non-residential purposes)—evidence that the community corporation has authorised the carrying out of the prescribed work.

25—Amendment of Schedule 9—Referrals

- Schedule 9, clause 3, table, Part A, item 9AB(b)(ii)—delete "or class 3"

26—Amendment of Schedule 13—State agency development exempt from approval

- (1) Schedule 13, clause 2(1)(b)—after subparagraph (ix) insert:
- (ixa) development involving the construction, installation or provision of facilities or services for the purposes of recreational activities on land owned by, or under the care, control and management of, the South Australian Water Corporation, other than if the development will involve the creation of a new access point or modification of an existing access point to a public road; or
- (2) Schedule 13, clause 2(1)(b)(xii)—after subparagraph (C) insert:
- (D) where the building work will result in the total floor area of the outbuilding exceeding 50 m²; or
- (3) Schedule 13, clause 2(1)(b)(xiii)—delete subparagraph (xiii) and substitute:
- (xiii) the construction, reconstruction or alteration of, or addition to, a classroom within the area of an existing school, other than—
- (A) where—
- in the case of a classroom that exceeds 1 storey in height—the work will result in an increase in the height of the classroom; or
- Note—**
- An increase in the height of a classroom would include where a structure or fitting is altered or added to a classroom such that the highest point of the structure or fitting is higher than the highest point of the classroom (including any structures or fittings) before the alteration or addition.
- in any other case—the work will result in the classroom exceeding 1 storey in height; or
- (B) where the classroom is not being constructed, added to or altered so that any part of the classroom is situated within the setback distance of the area (of the school) prescribed under the Planning and Design Code (or, if no setback distance is so prescribed, within 900 mm of a boundary of the area); or
- (C) where the work would affect a local heritage place; or
- (D) where the total area of the classroom would exceed 150 m²; or
- (xiiia) the construction, reconstruction or alteration of, or addition to, a covered outdoor educational area within the area of an existing school, other than—
- (A) where the work will result in the covered outdoor educational area exceeding 7.5 m in height; or

- (B) where the covered outdoor educational area is not being constructed, added to or altered so that any part of the covered outdoor educational area is situated within the setback distance of the area (of the school) prescribed under the Planning and Design Code (or, if no setback distance is so prescribed, within 5 m of a boundary of the area); or
- (C) where the work would affect a local heritage place; or
- (D) where the total area of the covered outdoor educational area would exceed 500 m²; or
- (4) Schedule 13, clause 2(1)(b)(xiv)—after "school" insert:
(other than a classroom or covered outdoor educational area)
- (5) Schedule 13, clause 2(1)(b)(xiv)(A), first dot point—delete the first dot point and substitute:
- in the case of a building that exceeds 1 storey in height, an increase in the height of the building, or, in any other case, the building exceeding 1 storey in height; or
- Note—**
- An increase in the height of a building would include where a structure or fitting is altered or added to a building such that the highest point of the structure or fitting is higher than the highest point of the building (including any structures or fittings) before the alteration or addition.
- (6) Schedule 13, clause 2(1)(b)(xiv)—after subparagraph (C) insert:
- (D) where the building work would exceed 150 m² in additional floor area; or
- (7) Schedule 13, clause 2(1)(b)(xv)(A)—delete subparagraph (A) and substitute:
- (A) where—
- in the case of a building that exceeds 1 storey in height—the work will result in an increase in the height of the building; or
- Note—**
- An increase in the height of a building would include where a structure or fitting is altered or added to a building such that the highest point of the structure or fitting is higher than the highest point of the building (including any structures or fittings) before the alteration or addition.
- in any other case—the work will result in the building exceeding 1 storey in height; or
- (8) Schedule 13, clause 2(1)(b)(xvi)—after subparagraph (B) insert:
- (C) structures ancillary to a wall or a spillway of an existing dam; or
- (9) Schedule 13, clause 2(1)(d)(iii)—after "services" insert:
or support public health services

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Planning, Development and Infrastructure (General) (Miscellaneous) Amendment Regulations 2023 Amendment of *Planning, Development and Infrastructure (General) Regulations 2017*—Part 2

- (10) Schedule 13, clause 2(1)(r)—after subparagraph (iv) insert:
- (v) public art installations;
- (11) Schedule 13, clause 2(1)(u)(ii)(A) and (B)—after "chain" wherever occurring insert:
or weld
- (12) Schedule 13, clause 2(1)(v)—delete paragraph (v) and substitute:
- (v) the construction, reconstruction or alteration of—
 - (i) a building or structure situated within the perimeter security fence of an existing correctional institution (within the meaning of the *Correctional Services Act 1982*) or training centre (within the meaning of the *Young Offenders Act 1993*); or
 - (ii) any works or infrastructure that is ancillary to a building or structure of a kind referred to in subparagraph (i);
- (13) Schedule 13, clause 2(2)—after "(vi)," insert:
- (b)(ixa),

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments 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
No of 2023