

ADVISORY NOTICE LEGISLATION

01/15

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

February 2015

On 12 February 2015 the *Development (Assessment) Variation Regulations 2015* were made. These regulations seek to clarify and remedy some of the consequences from two recent judgements of the Environment, Resources and Development Court.

***Paior v City of Marion (No 3)*, handed down on 18 September 2014**

One of the matters arising out of *Paior* was the court made it clear that where a variation is sought to a development authorisation a new application is required. A head power exists in the *Development Act 1993* (see section 39(7)(b)) which enables regulations to specify circumstances where a relevant authority may accept a minor variation of a development authorisation without requiring a new application. Until now there has been nothing prescribed under this provision. A regulation has now been made (new regulation 47A) that provides that where a variation is sought to a development authorisation the relevant authority may, if the variations are considered minor, not require a new application. Consequential changes have been made to regulations 42, 92, 102 and Schedule 6.

The other significant matters arising out of *Paior* are being considered through a range of Act and regulation changes to be addressed in a bill that is yet to be introduced into Parliament.

***Mileto v City of Port Adelaide Enfield*, handed down on 4 September 2014**

In *Mileto* the court refused development plan consent for a land division proposal to create three allotments for three dwellings which had received development plan consent (privately certified, residential code developments). Private certifiers currently have the power to grant development plan consent for dwellings but not for any associated land division. Regulation variations have been made (new clause 2C of Schedule 4 – Part 1) that make development plan consent for a land division giving effect to an approved residential code dwelling a complying form of development. A consequential change has also been made to regulation 3 to ensure that new clause 2C of schedule 4 is included in the definition of residential code development. Please note that the council is still required to assess the technical requirements for a land division consent under section 33 (1) (c).

Useful Links

[Development Act](#)

[Development Regulations](#)

[Government gazette](#)

Further information

Department of Planning, Transport and Infrastructure
136 North Terrace
GPO Box 1815
ADELAIDE SA 5001
www.sa.gov.au

**Legislation / Information and Strategy Directorate
Development Division**
Telephone: 1800 PLANNING

KNET: 9263660