

South Australia

# **Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016**

under the *Natural Resources Management Act 2004*

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

### **Part 2—Variation of *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007***

- 4 Insertion of regulation 7
    - 7 Application and modification of section 164N of Act—eligible applicants
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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016*.

### **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.

**Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016**

Part 2—Variation of *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007*

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**Part 2—Variation of *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007*****4—Insertion of regulation 7**

After regulation 6 insert:

**7—Application and modification of section 164N of Act—eligible applicants**

- (1) Section 164N of the Act applies in relation to the Central Adelaide Prescribed Wells Area as if that section were modified to the following effect:

**164N—Allocation on declaration of prescribed wells in Central Adelaide Prescribed Wells Area**

- (1) An eligible applicant in relation to water from a prescribed well declared under regulation 4 of the *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007*—
  - (a) may, subject to a restriction or prohibition under section 132, if the applicant applies for any necessary water management authorisation (depending on the circumstances of the particular case) within the prescribed CAPWA extended application period, continue to use water without a water management authorisation until the application has been granted or refused; and
  - (b) is, subject to subsection (3), entitled to be granted, without the payment of any purchase price, the necessary water management authorisation, subject to any determination by the Minister under subsections (2) and (2a) after consultation with the applicant.
- (2) Subject to subsection (2a), the water access entitlement that applies under subsection (1)(b) will be the share of a consumptive pool that will, in the opinion of the Minister, meet any 1 or more of the future requirements of the applicant as follows:
  - (a) the future requirements based on the reasonable requirements of the applicant during the establishment period;

- (b) the future requirements for water for a development, project or other undertaking to which the applicant was legally committed or in respect of which the applicant had committed significant financial or other resources during the establishment period;
    - (c) in the case of a person who is an eligible applicant by virtue of paragraph (b) of the definition of *eligible applicant* (due to being a successor in title to land or to an interest in land)—the future requirements for water for a development, project or other undertaking to which a predecessor had been legally committed, or in respect of which a predecessor had committed significant financial or other resources, during the establishment period.
  - (2a) Despite subsection (2), the Minister may grant the applicant a lesser water access entitlement than the entitlement that would have been granted under subsection (2) (but for this subsection) on 1 or more of the following grounds:
    - (a) on the ground that the Minister considers it appropriate to grant a lesser entitlement based on the activities conducted at the time of the application on the land to which the application relates;
    - (b) on the ground that the Minister considers it appropriate to grant a lesser entitlement because—
      - (i) the future requirements of the applicant relate to land that has been divided; and
      - (ii) the application relates to a portion of that land;
    - (c) on such other ground as the Minister thinks fit.
- (3) If, at the expiration of the prescribed CAPWA extended period, the aggregate of water access entitlements—
  - (a) assigned under section 164N(1) and (2) of the unmodified Act, to existing users (within the meaning of section 164N(10) of the unmodified Act) of water in a prescribed well in the CAPWA; and

**Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016**

Part 2—Variation of *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007*

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- (b) assigned under subsections (1) and (2) of this section, to eligible applicants in relation to the CAPWA;

exceeds, in the opinion of the Minister, the capacity of the resource, the Minister may reduce each water access entitlement either proportionately or pursuant to a scheme set out in the regulations.

- (4) Before determining the capacity of the resource, the Minister must prepare a report assessing the need for water of ecosystems that depend on the resource for water.
- (5) The Minister must make the report publicly available.
- (6) An eligible applicant in relation to the CAPWA may appeal to the ERD Court against a determination or decision of the Minister under subsection (1), (2) or (2a).
- (8) If the quantity of water available for allocation exceeds the aggregate of water access entitlements referred to in subsection (3), the Minister may allocate the excess in accordance with the unmodified Act and the relevant water allocation plan.
- (9) An entitlement under subsection (1)(b) will, for the purposes of section 164N(9) of the unmodified Act, be taken to be an entitlement under section 164N(1)(b) of the unmodified Act.

- (10) In this section—

**CAPWA** means the Central Adelaide Prescribed Wells Area within the meaning of the *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Regulations 2007*;

**eligible applicant**, in relation to the CAPWA, means, subject to subsection (11)—

- (a) a person who would have been an existing user within the meaning of section 164N(10) of the unmodified Act of water in a prescribed well in the CAPWA, but for the operation of section 164N(11) of the unmodified Act;

- (b) a person who satisfies the Minister that they are a successor in title to land, or to an interest in land, of a person referred to in paragraph (a) (being the land, or the interest in land, giving rise to the rights of existing user),

but does not include a person whose application for the necessary water management authorisation in the CAPWA (whether or not under the unmodified Act) has been refused;

***establishment period*** has the same meaning as in section 164N of the unmodified Act;

***prescribed CAPWA extended application period*** means—

- (a) the period of 6 months commencing on the commencement of regulation 4 of the *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016*; or
- (b) if the Minister determines that exceptional circumstances exist in a particular case that justify a longer period—such longer period as the Minister may determine;

***unmodified Act*** means the *Natural Resources Management Act 2004* without the modifications to section 164N referred to in regulation 4 of the *Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation Regulations 2016*.

- (11) A person ceases to be an eligible applicant in relation to the CAPWA if the person does not make the necessary applications under subsection (1) before the expiration of the prescribed CAPWA extended application period.
- (2) Where a provision of section 164N of the Act (without the modifications under subregulation (1)) is inconsistent with section 164N of the Act as modified under subregulation (1), the latter prevails to the extent of the inconsistency.

**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.

**Natural Resources Management (Central Adelaide—Prescribed Wells Area) Variation  
Regulations 2016**

Part 2—Variation of *Natural Resources Management (Central Adelaide—Prescribed Wells Area)  
Regulations 2007*

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**Made by the Governor**

with the advice and consent of the Executive Council  
on

No            of 2016

16MSECCS029