

Practitioners Guide

Practitioners Guide to Correcting Errors in Development Plans
(Section 29 Amendments)

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Version 3



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Department of Planning,
Transport and Infrastructure

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Introduction

This document is one of a suite of Planning Guides prepared by the Department of Planning, Transport and Infrastructure. The guides are designed to assist councils and planning practitioners to compile Development Plans that reflect the council's vision for its area and that implement the State Government's Planning Strategy.

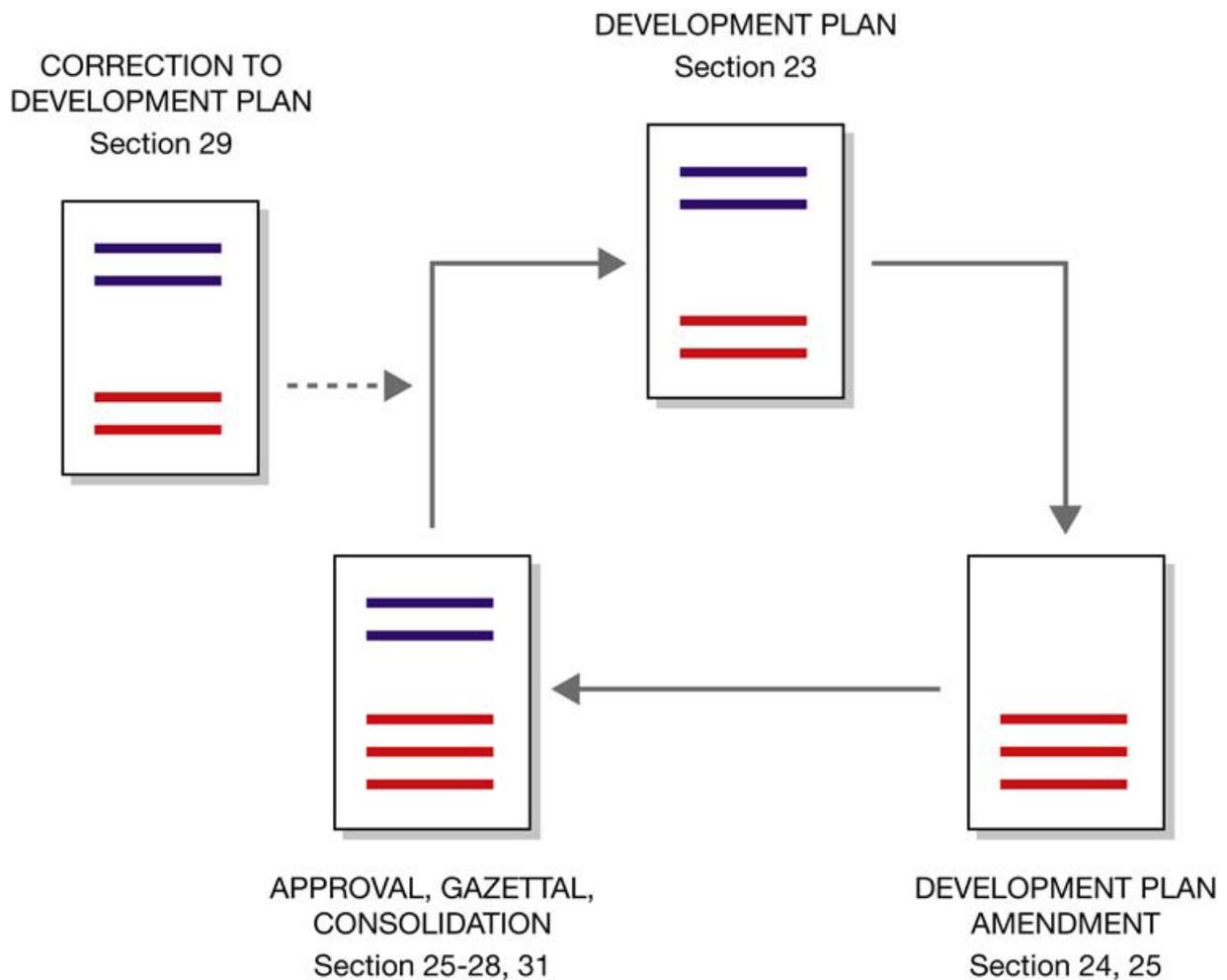
The Guide's purpose is to advise councils of the processes available to the Minister for Planning to correct errors in Development Plans under section 29(2)(b)(ii) of the *Development Act 1993* (the Act). The process is commonly known as a 'section 29 correction'.

The Guide is aimed at planning practitioners who are familiar with the Development Plan Amendment (DPA) process.

Legislative Context

To remain relevant to local development issues and maintain consistency with the Planning Strategy, Development Plans are continually reviewed and updated through DPAs. The legislative element is controlled under sections 23 to 31 of the Act, and is illustrated below:

Diagram 1: Legislative arrangement for Development Plans



In most instances, a DPA is approved and consolidated into a Development Plan without the need for additional changes. Exceptions may however apply when:

- the Environment, Resources and Development Committee of Parliament (ERD Committee) instigates an amendment under section 27
- a DPA on interim effect lapses (after 12 months)
- an error requires correction under section 29.

Section 29 corrections are designed to address unforeseen circumstances and, as they are not subject to scrutiny by the public, agencies, or the ERD Committee, the type of allowable changes is limited.

Practical Considerations

In reviewing a request for a section 29 correction, considerable weight is placed on the approved DPA that was submitted for approval, and in particular the Chief Executive Officer's certification of the amendment (as per schedule 4B of the *Development Regulations 2008*). Indeed, the Minister has no obligation to agree to a section 29 correction because the Chief Executive's certification is a declaration that the DPA is a true and accurate record of the council's intent to change its Development Plan. In making a section 29 request, the onus is on the council to demonstrate that the approved amendment, amendment instructions and attachments met the requirements of the *Technical Guide to Development Plan Amendments* (available on the planning practitioners website www.sa.gov.au/planning/practitionersguide).

As is the case with DPAs, section 29 corrections must be supported by a sufficient level of investigations. This ensures that satisfactory reasoning is provided for the correction and that it can be subsequently examined. As the goal of a correction is to reflect the intent of the policy changes established through the DPA process, it is more difficult to support the use of section 29 where the 'error' was in the public consultation version of the DPA and the council maintained the error in the final version (particularly if the amendment of the error has significant policy implications). This is because affected parties may have made decisions on the basis of the exhibited policies in good faith (eg buying land), and could be adversely affected by a change. In such cases, it is advisable to address such issues in a separate DPA and not through a section 29 correction.

As a general rule, a section 29 request is more likely to be supported if it can be demonstrated that the identified error will have considerable implications for policies affecting development assessment if left uncorrected. If the implications are not serious, the correction may be postponed and addressed in a subsequent DPA.

If the request is considered to meet the requirements of section 29, the change will be made through a Gazette notice and will come into effect as identified in the notice. Following gazettal, a new Development Plan is published.

Examples of errors that may warrant correction include:

- a development listed as both complying and non-complying
- a map appearing in the consultation and approval versions of the DPA but is missing from the consolidated Development Plan
- a policy area being shown on two or more maps with different boundaries
- duplicate policies in a Development Plan
- Development Plan policies that are incorrectly numbered
- cross-referencing discrepancies between the text and mapping
- a map existing for a certain zone but the text for that zone is missing (or vice versa).

Editorial Corrections

Under section 31 of the Act, the Minister is required to publish updated Development Plans that incorporate recently approved DPAs. Occasionally, a typographical, formatting or numbering error is spotted as the new Development Plan is being electronically generated. In cases such as this, it may be possible to undertake an editorial correction to the Development Plan without resorting to the use of section 29. In such instances the correction is made and the Development Plan is republished. This is possible because there are no changes to the authorised Development Plan, only changes to the published consolidation. Where this occurs, the Development Plan will be given a new consolidation date (with the Amendment Record Table showing the time of the editorial correction).

How to Request a Section 29 Correction?

If the council can demonstrate that a correction to the Development Plan meets the above considerations, the Department of Planning, Transport and Infrastructure is able to consider the matter in the first instance.

Requests are made in writing (using the Section 29 Proforma in Appendix 1) but the request is more likely to be considered favourably if the council meets with the Department of Planning, Transport and Infrastructure to discuss the issue before the request is submitted. This enables the Department to provide additional advice if needed (eg the Department may have access to historical records that are not available to the council).

The legislation provides no guarantee that a request for a correction will be implemented as requests are subject to the Minister's discretion and/or limitations within the legislation.

Contact Details

**Statutory Planning / Planning Division
Department of Planning, Transport and Infrastructure**

Level 3, Roma Mitchell House
136 North Terrace
Adelaide

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Adelaide SA 5001

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Appendix 1: Section 29 Proforma

Request to amend a Development Plan
(Pursuant to section 29 of the *Development Act 1993*)

Name of Council: "Council's Name"

Current Development Plan: "Development Plan Title"

Consolidation date: "Development Plan Consolidation Date"

Last Gazetted amendment Date: "Last Development Plan Gazetted Date"

Council reference: Click and type

Council Contact Officer's Name: "Council Contact Officer's Name"

Council Contact Officer's Phone Number: "Council Contact Officer's Phone Number"

Council Contact Officer's Email Address: "Council Contact Officer's Email Address"

INTRODUCTION

Include here a brief chronological summary (2-3 sentences) of the events that caused the error(s) to appear in the Development Plan.

Click and type

DISCUSSION

A cohesive, comprehensive, compact examination of the issue(s) that has caused the section 29 request to be prepared. Relevant matters may include:

- *risk assessment/management*
- *likely sources of support or opposition*
- *financial and/or other implications.*

Click and type

Type of section 29 request

To select the appropriate box, open the "forms" toolbar within the document and click on the padlock symbol to unprotect the document and make the boxes selectable. When you have made your selection, click on padlock symbol again to return to editing the main document.

- Section 29(1)(a)
- Section 29(1)(b)
- Section 29(2)(a)
- Section 29(2)(b)(i)
- Section 29(2)(b)(ii)
- Section 29(2)(c)
- Section 29(3)(a)
- Section 29(3)(ab)
- Section 29(3)(ac)
- Section 29(3)(b)
- Section 29(3)(c)(i)
- Section 29(3)(c)(ii)
- Section 29(5)

At what stage did the error/s take place?

Please select the relevant stage as outlined below

- Public / Agency Consultation
- Authorisation Copy
- Consolidation into Development Plan
- Unknown

Justification for section 29 correction(s) required

Detail justification for correction/s and in particular the development assessment implications of the error, the risk to the council, and land use implications.

Click and type

Does the council have any DPAs in progress or likely to commence soon?

- Yes
- No

If 'Yes', has consideration been given as to whether the correction(s) to the error(s) could be accommodated within the current or proposed DPA without the need for a section 29 amendment?

- Yes
- No

RECOMMENDATION

A statement or series of statements that concisely define what action is deemed appropriate or necessary in order for the section 29 request to be progressed

1. That, pursuant to section 29(X)(X)(X) of the *Development Act 1993*, the Minister correct the error in the "Development Plan Title" dated "Development Plan Consolidation Date" by:

- Click and type

Attachments:

1. Draft Section 29 (x)(x)(x) Gazette Notice
2. Click and type
3. Click and type

Please contact DPLG for a Microsoft Word version of this pro forma

