

Annexure D

Role of Superintendent



DAFI - Development Agreement Formal Instrument

Annexures

-  **A - Development Agreement Standard Conditions**
-  **B - Design and Construction Standards**
-  **C - Work Health Safety and Environmental and Heritage Standards**
-  **D - *Role of Superintendent***
-  **E - Approved Unconditional Undertaking**

1. Background

This document provides guidance to persons who have entered into a Land Development Agreement with SA Water. In carrying out the obligations of the Developer you will be required to ensure that a person is appointed to carry out the role of Superintendent.

This description of the duties of the Superintendent summarises generally accepted practices in the construction industry and specific requirements of SA Water.

2. Duties of Superintendent

2.1. Overview

The Superintendent is a person named in a construction contract by the two parties to that contract, namely, the person wishing to have the work carried out ("the Principal") and the person who has agreed to carry out the work ("the Contractor"). In the Development Agreement the "Principal" is the Developer. The Contractor can be one or more of the civil works contractor, pump station contractor and controls systems contractor.

The Superintendent is required by the contract to carry out a number of functions that are assigned to the Superintendent by the contract. The Superintendent must be competent to carry out the functions and duties described in this Annexure D and be a consultant engineer approved by SA Water who is included in the Consultant Accreditation Rating List published by SA Water on its website located at www.sawater.com.au on the date on which the Developer signs the Formal Instrument.

The contract must empower the Superintendent to:

- assess the construction programme proposed by the Contractor(s) and approve as the contract programme(s);
- report at least monthly to the Principal, and SA Water, of progress against the contract programme(s), including any revision to target Practical Completion date;
- assess the quality of materials and workmanship in accordance with the contract documents;
- assess progress claims and issue progress certificates;
- direct variations to the work under the contract;
- assess claims for extra payments for variations to the contract;
- assess claims for extra payment such as claims relating to latent conditions;
- assess claims for extension of time;

- be first point of escalation in any disputes between the Principal, Contractor(s) and/or SA Water.

2.2. Agent or Certifier

In carrying out these duties the Superintendent will be acting in some circumstances as the agent of the Principal. In these situations the Superintendent need only have regard to the interests of the Principal and the Principal will be bound by the decision of the Superintendent.

On other occasions the Superintendent will be acting as a certifier. When acting in this manner the Superintendent is required to:

- act honestly and fairly;
- act within the time prescribed in the contract,
- or, where no time is prescribed, within a reasonable time, and
- arrive at a reasonable measure or value of work, quantities or time.

For example if the Principal requires additional work to be done, the Superintendent in exercising the power to direct additional work, need only have regard to the interests of the Principal. When assessing the time and cost impact of the direction, the Superintendent is acting as a certifier and is obliged to act honestly and fairly having regard to the interests of both parties.

The various duties allocated by the contract to the Superintendent do not operate to limit or reduce the obligations of the Contractor under the contract to supervise the work, plan the progress of the work and ensure that the quality of the work meets the standard required by the contract.

2.3. Safety

The Contractor(s) retain the primary responsibility for safety on the site and the Principal, as the party commissioning the work retains a complementary responsibility for safety on the site.

The Superintendent should at all times act on the basis that there is a responsibility on his or her part and also, as the representative or agent of the Principal. Accordingly, if the Superintendent witnesses blatant breaches of safety while on site the Superintendent should not overlook that situation but should issue an appropriate instruction.

Similarly, where the work requires a job safety analysis or risk management plan, the role of the Superintendent is to make sure that the Contractor has the required documentation and then, from time to time, to check to make sure that this has not obviously been breached.

2.4. Workmanship and material

While the Superintendent has the power to intervene and direct the Contractor to rectify faulty work or replace defective or substandard materials, the Superintendent's failure to do so does not absolve the Contractor from its obligation to ensure that the work is carried out properly in accordance with the contract.

3. Relationships

The Superintendent is the person who acts as the Developer's representative on site and is the primary point of contact for SA Water when SA Water wishes to discuss any practical issue relating to the Development Works.

The Land Development Agreement provides that during the defects liability period notice of defects is to be given by SA Water both to the Developer and to the Superintendent.

4. SA Water Contract Surveillance

SA Water appoints Construction Services Technical Officers to undertake audit compliance, quality checks and inspections of the Development Works.

These Officers are not authorised to carry out the role of Superintendent either on behalf of the Principal or on behalf of SA Water. Their role is to monitor the progress and quality of the Development Works and to report their findings to SA Water and the Superintendent.

If a Contract Audit Officer observes a safety, environmental or quality issue while on site, he or she is authorised by SA Water to report the same to the Superintendent or, in the absence of the Superintendent, to a representative of the Contractor(s). Any such action by an audit officer does not limit or reduce the safety, environmental or quality obligations of the Developer and the Contractor(s). Any such report made by a Construction Services Technical Officer to the Contractor(s) must be copied to the Superintendent, and vice versa.