

South Australia

Character Preservation (McLaren Vale) Act 2012

An Act to provide measures to protect and enhance the special character of the McLaren Vale region; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Character Preservation (McLaren Vale) Act 2012*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

development authorisation has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

district means the area defined as the McLaren Vale district by the plan deposited in the General Registry Office at Adelaide and numbered GP 3 of 2012 (being the plan as it exists on 26 June 2012);

relevant authority, in relation to a proposed development, means the body determined to be the relevant authority under the *Planning, Development and Infrastructure Act 2016* for the purpose of an application made under the *Planning, Development and Infrastructure Act 2016* in relation to the proposed development;

relevant council means a council whose area includes part of the district;

residential development means development primarily for residential purposes but does not include—

- (a) the use of land for the purposes of a hotel or motel or to provide any other form of temporary residential accommodation for valuable consideration; or
- (b) a dwelling for residential purposes on land used primarily for primary production purposes;

rural area means the area of the district not including townships;

township means an area marked as a township in the plan deposited in the General Registry Office at Adelaide and numbered GP 3 of 2012 (being the plan as it exists on 26 June 2012).

- (2) A reference in this Act to the **special character** of the district is a reference to the identity and characteristics of the district and locations within the district, having regard to any relevant provisions of a state planning policy under the *Planning, Development and Infrastructure Act 2016* and the character values of the district.

4—Interaction with other Acts

- (1) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.
- (2) For the purposes of the *Planning, Development and Infrastructure Act 2016*, this Act is a character preservation law.

5—Administration of Act

This Act is to be administered by the Minister responsible for the administration of the *Planning, Development and Infrastructure Act 2016*.

6—Objects

- (1) The objects of this Act are—
 - (a) to recognise, protect and enhance the special character of the district while at the same time providing for the economic, social and physical well being of the community; and
 - (b) to ensure that activities that are unacceptable in view of their adverse effects on the special character of the district are prevented from proceeding; and
 - (c) to ensure that future development does not detract from the special character of the district; and
 - (d) otherwise to ensure the preservation of the special character of the district.
- (2) A person or body involved in the administration of an Act must, in exercising powers and functions in relation to the district, have regard to and seek to further the objects of this Act.

7—Character values of district

- (1) The following character values of the district are recognised:
 - (a) the rural and natural landscape and visual amenity of the district;

- (b) the heritage attributes of the district;
 - (c) the built form of the townships as they relate to the district;
 - (d) the viticultural, agricultural and associated industries of the district;
 - (e) the scenic and tourism attributes of the district.
- (2) The character values of the district are relevant to—
- (a) assessing the special character of the district; and
 - (b) the policies to be developed and applied by any state planning policy and the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* in relation to the district.

8—Limitations on land division in district

- (1) This section applies to a proposed development in the rural area that involves a division of land under the *Planning, Development and Infrastructure Act 2016* that would create 1 or more additional allotments.
- (2) A relevant authority (other than the State Planning Commission) must not grant development authorisation to a development to which this section applies unless the State Planning Commission concurs in the granting of the authorisation.
- (3) If the State Planning Commission is the relevant authority, the State Planning Commission must not grant development authorisation to a development to which this section applies unless the council for the area where the proposed development is situated concurs in the granting of the authorisation.
- (4) No appeal under the *Planning, Development and Infrastructure Act 2016* lies against a refusal by a relevant authority to grant development authorisation to a development to which this section applies or a refusal by the State Planning Commission or a council to concur in the granting of such an authorisation.
- (5) If a proposed development to which this section applies will create additional allotments to be used for residential development, the relevant authority must refuse to grant development authorisation in relation to the proposed development (if the application for the development authorisation for the division of land was made after the commencement of this section).
- (6) If the relevant authority determines an application in respect of a development authorisation on the basis of subsection (5), the relevant authority must notify the applicant of that fact.
- (7) A development authorisation granted in relation to a proposed development to which this section applies will be taken to be subject to the condition that the additional allotments created will not be used for residential development (if the application for the development authorisation for the division of land was made after the commencement of this section).

9—Power to require information

- (1) A person or body responsible for issuing statutory authorisations under an Act (the *relevant Act*) may, by notice in writing to—
 - (a) an applicant for such a statutory authorisation that relates to, or would otherwise affect, the district; or

(b) a government or local government authority,

request that specified information be provided to the person or body to enable the person or body to consider any matter relevant to the objects of this Act in relation to the statutory authorisation (and the applicant or authority of whom the request is made must not, without reasonable excuse, fail to comply with a request under this section).

(2) In this section—

statutory authorisation means an approval, consent, licence, permit or other authorisation granted or required under an Act.

10—Review of Act

- (1) The Minister must, within 5 years after the commencement of this Act, undertake a review of this Act.
- (2) In conducting the review, the Minister must (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils.
- (3) The review must include an assessment of—
 - (a) the state of the district, especially taking into account the objects of this Act; and
 - (b) the family, social, economic and environmental impacts of this Act; and
 - (c) the impact of this Act on local government in the district; and
 - (d) any steps that have been taken or strategies that have been implemented to address any negative impacts of this Act,and may include such other matters as the Minister thinks fit.
- (4) The Minister must cause a report on the outcome of the review to be tabled in both Houses of Parliament within 12 sitting days after its completion.

11—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
 - (a) make provision in relation to the referral of any application for development authorisation to the State Planning Commission for the purposes of section 8(2); and
 - (b) prescribe fees in respect of any matter under this Act and provide for their payment, recovery or waiver; and
 - (c) prohibit or restrict the undertaking of a specified activity, or an activity of a specified class, in the district, or in a specified part of the district (despite any other Act or law); and
 - (d) provide that a person undertaking a specified activity, or an activity of a specified class, or proposing to undertake a specified activity, or an activity of a specified class, in the district, or in a specified part of the district, comply with any prescribed requirement or condition (despite any other Act or law); and

- (e) prescribe fines, not exceeding \$10 000, for offences against the regulations.
- (3) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors; and
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body.
- (4) Before a regulation is made under this Act, the Minister must (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils.

Schedule 1—Transitional provisions

Part 3—Transitional provisions

8—Transitional provisions

The Minister must—

- (a) take steps to comply with subsection (3aa) of section 22 of the *Development Act 1993*, as enacted by this Act, in relation to the district under this Act within 6 months after the commencement of this clause; and
- (b) ensure that any Development Plan under that Act that relates to the district, or part of the district, is reviewed within 6 months after the alterations to the Planning Strategy under paragraph (a) have been made for the purpose of determining whether any amendments should be made to the Development Plans on account of the provisions of the Planning Strategy as altered under paragraph (a) or on account of any other provisions that are relevant to the operation and effect of this Act; and
- (c) (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils in relation to the matters specified in paragraphs (a) and (b).

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Character Preservation (McLaren Vale) Act 2012* amended the following:

Development Act 1993

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2012	39	<i>Character Preservation (McLaren Vale) Act 2012</i>	8.11.2012	18.1.2013 (<i>Gazette 17.1.2013 p75</i>)
2016	14	<i>Planning, Development and Infrastructure Act 2016</i>	21.4.2016	Sch 6 (cll 10 to 16)—19.3.2021 (<i>Gazette 4.3.2021 p822</i>)

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	19.3.2021
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	19.3.2021
s 3		
s 3(1)		
development authorisation	amended by 14/2016 Sch 6 cl 10(1)	19.3.2021
<i>Planning Strategy</i>	<i>deleted by 14/2016 Sch 6 cl 10(2)</i>	19.3.2021
relevant authority	amended by 14/2016 Sch 6 cl 10(3)	19.3.2021
s 3(2)	amended by 14/2016 Sch 6 cl 10(4)	19.3.2021
s 4		
s 4(2)	amended by 14/2016 Sch 6 cl 11	19.3.2021
s 5	amended by 14/2016 Sch 6 cl 12	19.3.2021
s 7		
s 7(2)	amended by 14/2016 Sch 6 cl 13	19.3.2021
s 8		
s 8(1)	amended by 14/2016 Sch 6 cl 14(1)	19.3.2021
s 8(2)	amended by 14/2016 Sch 6 cl 14(2)	19.3.2021
s 8(3)	amended by 14/2016 Sch 6 cl 14(2)	19.3.2021

s 8(4)	amended by 14/2016 Sch 6 cl 14(1), (2)	19.3.2021
s 10		
s 10(3)	amended by 14/2016 Sch 6 cl 15	19.3.2021
s 11		
s 11(2)	amended by 14/2016 Sch 6 cl 16	19.3.2021
Sch 1		
<i>Pts 1 and 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>19.3.2021</i>