

**Legislative Council—No 53**

As received from the House of Assembly and read a first time, 15 May 2012

South Australia

**Character Preservation (Barossa Valley) Bill 2012**

A BILL FOR

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

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## The Parliament of South Australia enacts as follows:

### 1—Short title

This Act may be cited as the *Character Preservation (Barossa Valley) Act 2012*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 5 3—Interpretation

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

*designated area* means an area marked as a designated area in the plan deposited in the General Registry Office at Adelaide and numbered GP 4 of 2012 (being the plan as it exists on the prescribed day);

10 *development authorisation* has the same meaning as in the *Development Act 1993*;

*district* means the area defined as the Barossa Valley district by the plan deposited in the General Registry Office at Adelaide and numbered GP 4 of 2012 (being the plan as it exists on the prescribed day) but does not include the areas marked as townships on the deposited plan;

15 *Planning Strategy* means the Planning Strategy under the *Development Act 1993*;

*prescribed day* means the day on which this Act was introduced into the House of Assembly;

20 *relevant authority*, in relation to a proposed development, means the body determined to be the relevant authority under the *Development Act 1993* or a provision of this Act for the purpose of an application made under the *Development Act 1993* in relation to the proposed development;

*residential development* means development of dwellings to be used primarily for residential purposes but does not include 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;

5 *township* means an area marked as a township in the plan deposited in the General Registry Office at Adelaide and numbered GP 4 of 2012 (being the plan as it exists on the prescribed day).

(2) A reference in this Act to the *special character* of the district is a reference to the identity and characteristics of the district, having regard to any relevant provisions of the Planning Strategy 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.

15 (2) For the purposes of the *Development Act 1993*, this Act is a character preservation law.

#### 5—Objects

(1) The objects of this Act are—

20 (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

25 (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.

#### 6—Character values of district

30 (1) The following character values of the district are recognised:

(a) the rural 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;

35 (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 under the Planning Strategy and any Development Plan under the *Development Act 1993* that relates to the district or a township under this Act.

### 7—Major project provisions not to apply

5 Part 4 Division 2 of the *Development Act 1993* does not apply in relation to developments or projects in the district.

### 8—Limitations on land division in district

- (1) This section applies to a proposed development in the district that involves the division of land under the *Development Act 1993*.
- 10 (2) The Development Assessment Commission is the relevant authority for the purpose of an application made under the *Development Act 1993* after the commencement of this section in relation to a proposed development to which this section applies.
- (3) If a proposed development to which this section applies—
  - (a) is located in a part of the district other than a designated area; and
  - 15 (b) will create additional allotments to be used, wholly or partly, 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 the land was made after the commencement of this section).

- 20 (4) If the relevant authority determines an application in respect of a development authorisation on the basis of subsection (3), the relevant authority must notify the applicant of that fact.
- (5) If a proposed development to which this section applies—
  - (a) is located within a designated area; and
  - 25 (b) will create additional allotments to be used, wholly or partly, for residential development,

the provisions of the relevant Development Plan relating to the minimum size of allotments that are in force on the prescribed day (after the commencement of the operation of any amendments to that Development Plan that are made on that day) will apply in relation to the proposed development (if the application for the division of land was made after the commencement of this section) and, in so applying, this subsection will prevail despite any subsequent amendment of the Development Plan (to the extent of any inconsistency) and despite section 53(2) of the *Development Act 1993*.

- 35 (6) A development authorisation granted in relation to a proposed development to which this section applies (other than within a designated area) 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 involved in the administration of an Act (the *relevant Act*) may, by notice in writing to—
- 5 (a) an applicant for a statutory authorisation under the relevant Act 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 obligations imposed on the person or body under this Act (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) The review must include an assessment of the state of the district, especially taking into account the objects of this Act and any relevant provisions of the Planning Strategy and may include other matters determined by the Minister to be relevant to a review of this Act.
- (3) 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—
- 30 (a) 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
- (b) 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);
- 35 and
- (c) 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;

- (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.

## Schedule 1—Transitional provisions

### 5 1—Transitional provisions

The Minister responsible for the administration of the *Development Act 1993* must—

- (a) take steps to comply with subsection (3aa) of section 22 of that Act in relation to the district under this Act within 6 months after the commencement of this clause; and
- 10 (b) ensure that any Development Plan under that Act that relates to the district or a township, or part of the district or a township, 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
- 15 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.