

House of Assembly—No 138

As laid on the table and read a first time, 28 September 2011

South Australia

Character Preservation (McLaren Vale) Bill 2011

A BILL FOR

An Act to provide measures to protect and enhance the special character of the McLaren Vale region; to make related amendments to the *Development Act 1993*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Character Preservation (McLaren Vale) Act 2011*.

2—Commencement

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

3—Interpretation

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

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

10 *district* means the area defined as the McLaren Vale district by the plan deposited in the General Registry Office at Adelaide and numbered GP 33 of 2011 (being the plan as it exists on the prescribed day) but does not include the areas marked as townships on the deposited plan;

district objectives—see section 6;

15 *industrial development* includes development for the purposes of constructing or extending any infrastructure, equipment, structures, works and other facilities used in or in connection with industry, but does not include public infrastructure within the meaning of section 49 of 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;

25 *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;

30 *township* means an area marked as a township in the plan deposited in the General Registry Office at Adelaide and numbered GP 33 of 2011 (being the plan as it exists on the prescribed day);

township objectives—see section 6.

35 (2) A reference in this Act to the *special character* of the district is a reference to the identity of the district, having regard to its land use configuration (including agriculture, viticulture and other primary industries), physical characteristics, environmental and heritage values and its identity as a recreation, tourism and hospitality destination.

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 *Development Act 1993*, this Act is a character preservation law.

Part 2—Objects of Act and statutory objectives

5—Objects

The objects of this Act are—

- (a) to ensure that reasonable and practicable measures are taken to protect the district in recognition of its importance to the South Australian community and its unique value from environmental, economic and social perspectives; and
- (b) to ensure that decisions taken under Acts are consistent with the protection of the special character of the district while at the same time providing for the economic, social and physical well being of the community; and
- (c) 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
- (d) to ensure that future development of the townships does not detract from the special character of the district; and
- (e) otherwise to ensure the preservation of the special character, and to recognise the importance, of the district.

6—Objectives

- (1) The objectives set out in Schedule 1 will apply in connection with the operation of this Act and will be collectively known as the *district objectives*.
- (2) The objectives set out in Schedule 2 will apply in connection with the operation of this Act and will be collectively known as the *township objectives*.

7—Administration of Acts to achieve objects and objectives

- (1) A person or body involved in the administration of an Act must, in exercising powers and functions in relation to the district, act consistently with and seek to further—
 - (a) the objects of this Act; and
 - (b) the district objectives.
- (2) A person or body involved in the administration of an Act must, in exercising powers and functions in relation to a township, act consistently with, and seek to further—
 - (a) the objects of this Act; and
 - (b) the township objectives.

8—Review of Development Plans

- 5 (1) The Minister responsible for the administration of the *Development Act 1993* must 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 commencement of this section for the purpose of determining whether any amendments should be made to the Development Plans to promote the objects of this Act, the district objectives and the township objectives.
- 10 (2) After the commencement of this section—
- (a) Development Plans under the *Development Act 1993* are to be read and construed so as to be consistent with the objects of this Act, the district objectives and the township objectives; and
 - (b) any provisions of those Plans that are inconsistent with those objects and objectives are to be disregarded to the extent of the inconsistency.

Part 3—Special provisions relating to district

15 9—Interaction of Part with other Acts

This Part has effect despite the provisions of any other Act.

10 10—Major project provisions not to apply

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

20 11—Limitations on land division in district

- 25 (1) This section applies to a proposed development in the district that involves the division of land under the *Development Act 1993*.
- (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 will create additional allotments to be used, wholly or partly, for—
- (a) residential development; or
 - (b) industrial development that would be detrimental to the special character of the district or is otherwise inconsistent with the district objectives,
- the relevant authority must refuse to grant development authorisation in relation to the proposed development (if the application for the development authorisation was made after the commencement of this section).
- 35 (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 (5) 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 development of a kind specified in subsection (3)(a) or (b) (if the application for the development authorisation was made after the commencement of this section).

Part 4—Miscellaneous

12—Power to require information

- 10 (1) A person or body involved in the administration of an Act (the *relevant Act*) may, by notice in writing to—

- 15 (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).

- 20 (2) In this section—

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

13—Review of Act

- 25 (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, the district objectives and the township objectives 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.

14—Regulations

- 30 (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—
35 (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
40 (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); 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;
- 5 (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—District objectives

1—Objectives—section 6(1)

- 10 For the purposes of section 6(1), the district objectives are—
- (a) the general district objectives; and
- (b) the built form objectives; and
- (c) the primary industry objectives; and
- (d) the recreation, tourism and hospitality objectives,
- 15 as specified in this Schedule.

2—General district objectives

- (1) The *general district objectives* are—
- (a) the special character of the district will be protected and enhanced;
- 20 (b) the landform and land use characteristics of the district will be promoted and carefully managed (consistently with paragraph (a));
- (c) the rural visual amenity of the district and its containment by the southern Mount Lofty Ranges will be maintained;
- (d) the heritage, character and cultural values of the district will inform land use management decisions in order to protect and enhance the district's amenity and identity as a working landscape containing a variety of uses;
- 25 (e) any change of land use that will be detrimental to the special character of the district will not be permitted;
- (f) any change of land use that has the potential (either on its own or in combination with other existing or proposed land uses in the area) to be detrimental to the special character of the district will be strongly discouraged;
- 30 (g) development in the district should be sustainable and should protect and enhance the high value environmental attributes of the district;
- (h) the impact of potential pollutants within the district will be minimised;
- 35 (i) food security issues will be taken into account in relation to activities in the district;

(j) bureaucratic barriers to developments and activities that will enhance the special character of the district will be minimised and such developments and activities facilitated in appropriate locations;

(k) community engagement will instil a sense of ownership of the special character of the district.

(2) For the purposes of subclause (1)(e) and (f), land uses that will be detrimental, or have the potential to be detrimental, to the special character of the district will be taken to include (without limitation):

(a) residential development;

(b) large scale retail development (other than development of a kind referred to in clause 5(c))

(c) fast food franchises;

(d) hobby-farming.

(3) In relation to proposed residential development on any land in the district, the existence of a separate title to that land is not, of itself, a relevant consideration in determining whether the land should be the subject of residential development.

3—Built form objectives

The *built form objectives* are—

(a) the built form of developments in the district should not be detrimental to the special character of the district;

(b) developments with a built form that may be detrimental to the special character of the district will be strongly discouraged.

4—Primary industry objectives

The *primary industry objectives* are—

(a) sustainable primary and related economic production systems will be supported within an integrated regional landscape;

(b) there is to be a positive operating environment which encourages innovation;

(c) primary industry activities in the district should not be unreasonably hampered by their proximity to residential areas;

(d) primary industries in the district are to be able to scale up or down in an agricultural land market in accordance with the general district objectives;

(e) primary industry activities that will enhance the special character of the district will be facilitated in appropriate locations.

5—Recreation, tourism and hospitality objectives

The *recreation, tourism and hospitality objectives* are—

(a) the factors within the district that constitute, or contribute to, the visitor amenity, appeal and experience of the district as a recreation, tourism and hospitality destination are to be protected and enhanced;

- (b) the provision of appropriate support infrastructure for recreation, tourism and hospitality will be encouraged in accordance with the general district objectives;
- (c) recreation, tourism and hospitality related developments and activities (such as accommodation, restaurants, attractions and specialty retail) that will enhance the special character of the district will be facilitated in appropriate locations.

Schedule 2—Township objectives

1—Objectives—section 6(2)

(1) For the purposes of section 6(2), the township objectives are—

- (a) the townships should not detract from the special character of the district;
- (b) the heritage, character and cultural values of the townships and the district will inform land use management decisions in order to protect and enhance the district's amenity and identity as a working landscape containing a variety of uses;
- (c) any change of land use in townships that will be detrimental to the special character of the district will not be permitted;
- (d) any change of land use in townships that has the potential (either on its own or in combination with other existing or proposed land uses in the area) to be detrimental to the special character of the district will be strongly discouraged;
- (e) the impact on the district of potential pollutants emanating from townships will be minimised;
- (f) bureaucratic barriers to developments and activities in townships that will enhance the special character of the district will be minimised and such developments and activities facilitated in appropriate locations;
- (g) the built form of developments in the townships must not be detrimental to the special character of the district (but may include appropriate high density residential development);
- (h) the factors within townships that constitute, or contribute to, the visitor amenity, appeal and experience of the district as a recreation, tourism and hospitality destination are to be protected and enhanced;
- (i) the provision of appropriate support infrastructure for recreation, tourism and hospitality will be encouraged in accordance with the other provisions of these objectives;
- (j) recreation, tourism and hospitality related developments and activities (such as accommodation, restaurants, attractions and specialty retail) that will enhance the special character of the district will be facilitated in appropriate locations.

(2) For the purposes of subclause (1)(c) and (d), land uses in townships that will be detrimental, or have the potential to be detrimental, to the special character of the district will be taken to include (without limitation):

(a) large scale retail development (other than development of a kind referred to in subclause (1)(j))

(b) fast food franchises.

Schedule 3—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Development Act 1993*

2—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *business day* insert:

character preservation law means an Act that specifies that it is a character preservation law for the purposes of this Act;

3—Amendment of section 22—The Planning Strategy

Section 22(3a)—after paragraph (c) insert:

and

(ca) the objects, district objectives and township objectives under a character preservation law,

4—Amendment of section 24—Council or Minister may amend a Development Plan

(1) Section 24(1)—after paragraph (fba) insert:

(fbb) where the purpose of the amendment is to promote the objects, district objectives or township objectives under a character preservation law—by the Minister; or

(2) Section 24(3)—after paragraph (c) insert:

or

(d) relates to any part of the district or a township, within the meaning of a character preservation law—the Minister must consult with and have regard to the views of the Minister responsible for the administration of the character preservation law.

5—Amendment of section 34—Determination of relevant authority

Section 34(1)(b)—after subparagraph (ix) insert:

or

- 5 (x) the Minister, acting at the request of the Minister responsible for
the administration of a character preservation law, declares, by
notice in writing served personally or by post on the proponent,
that the Development Assessment Commission should act as the
relevant authority in relation to the proposed development in
substitution for the council or the regional development
assessment panel (as the case may be) because, in the opinion of
the Minister making the request, the proposed development may
10 have a significant impact on an aspect of the district or a
township within the meaning of the relevant character
preservation law,