

Legislative Council—No 68A

As divided in Committee pursuant to Instruction, reported with an amended Title and report adopted, 19 September 2005

South Australia

Development (Sustainable Development) Amendment Bill (No. 1) 2005

A BILL FOR

An Act to amend the *Development Act 1993*; and to make related amendments to the *Natural Resources Management Act 2004* and the *River Murray Act 2003*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Development Act 1993*

- 4 Amendment of section 17—Staff
- 5 Insertion of Part 2 Division 5
Division 5—Codes of conduct
 - 21A Codes of conduct
- 6 Amendment of section 41—Time within which decision must be made
- 7 Amendment of section 45—Offences relating specifically to building work
- 8 Amendment of section 50—Open space contribution scheme
- 9 Amendment of section 55—Action if development not completed
- 10 Amendment of section 56—Completion of work
- 11 Insertion of section 56B
 - 56B Building Rules assessment audits
- 12 Insertion of section 57A
 - 57A Land management agreements—development applications
- 13 Amendment of section 71A—Building inspection policies
- 14 Amendment of section 92—Circumstances in which a private certifier may not act
- 15 Amendment of section 108—Regulations
- 16 Substitution of heading

Schedule 1—Related amendments

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Natural Resources Management Act 2004*

- 2 Amendment of section 29—Functions of boards
- 3 Amendment of section 75—Regional NRM plans
- 4 Amendment of section 76—Preparation of water allocation plans
- 5 Amendment of section 78—Concept statement
- 6 Amendment of section 79—Preparation of plans and consultation
- 7 Amendment of section 80—Submission of plan to Minister

Part 3—Amendment of *River Murray Act 2003*

- 8 Amendment of section 22—Development of related policies and consideration of activities
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Development (Sustainable Development) Amendment Act (No. 1) 2005*.

2—Commencement

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

3—Amendment provisions

In this Act, 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*

4—Amendment of section 17—Staff

Section 17(2)—delete subsection (2) and substitute:

- (2) A secretary or other member of staff referred to in subsection (1) will be Public Service employees.

5—Insertion of Part 2 Division 5

Part 2—after Division 4 insert:

Division 5—Codes of conduct

21A—Codes of conduct

- (1) The Minister may adopt—
 - (a) a code of conduct to be observed by members of the Development Assessment Commission; and
 - (b) a code of conduct to be observed by members of regional development assessment panels; and
 - (c) a code of conduct to be observed by members of council development assessment panels established by councils; and
 - (d) a code of conduct to be observed by officers of relevant authorities or other agencies who are acting under delegations under this Act.
- (2) The Minister may vary a code of conduct, or adopt a new code of conduct in substitution for an existing code of conduct, in operation under subsection (1).

- (3) Before the Minister adopts or varies a code of conduct under this section, the Minister must take reasonable steps to consult with—
- (a) the Environment, Resources and Development Committee of the Parliament; and
 - (b) the LGA.
- (4) If the Minister adopts or varies a code of conduct under this section, the Minister must—
- (a) publish a notice of the adoption or variation in the Gazette; and
 - (b) ensure that a copy of the code of conduct (as adopted or varied) is kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations.

6—Amendment of section 41—Time within which decision must be made

Section 41(3)—delete subsection (3) and substitute:

- (3) If the Court makes an order under subsection (2), the Court should also order the relevant authority to pay the applicant's costs of the proceedings unless the Court is satisfied—
- (a) that the delay is not attributable to an act or omission of the relevant authority; or
 - (b) that the delay is attributable to a decision of the relevant authority not to deal with the application within the relevant time because—
 - (i) it appeared to the relevant authority that there had been a failure to comply with a requirement prescribed by or under this Act; or
 - (ii) the relevant authority was not provided with appropriate documentation or information relevant to making a decision under this Act; or
 - (iii) the relevant authority believed, on other reasonable grounds, that it was not appropriate to decide the matter in the particular circumstances; or
 - (c) that an order for costs should not be made for some other reason.

7—Amendment of section 45—Offences relating specifically to building work

(1) Section 45—after subsection (2) insert:

- (2a) If—
- (a) any item or materials incorporated into any building through the performance of any building work do not comply with the Building Rules (as modified under this Act and subject to any variation allowed under section 36); and

(b) the failure to comply is attributable (wholly or in part) to an act or omission of a person who designed, manufactured, supplied or installed the item or materials, being an act or omission occurring where it was reasonably foreseeable that the item or materials would be required to comply with the Building Rules,

then that person will be guilty of an offence.

Penalty: Division 4 fine.

(2b) The fact that a person may have (or has) committed an offence against subsection (2a) does not affect the requirements imposed on a person by subsections (1) and (2).

(2) Section 45—after subsection (3) insert:

(4) In this section—

item includes any component, fitting, connection, mounting or accessory.

8—Amendment of section 50—Open space contribution scheme

(1) Section 50(1)(d)—delete paragraph (d) and substitute:

(d) that the applicant make the contribution prescribed by the regulations in accordance with the requirements of this section; or

(2) Section 50(1)—before "and, in so acting" insert:

according to the determination and specification of the council or the Development Assessment Commission

(3) Section 50(2)(b)—delete "by strata plan"

(4) Section 50(2)(c)—delete paragraph (c) and substitute:

(c) the Development Assessment Commission may require the applicant to pay to the Development Assessment Commission the contribution prescribed by the regulations in accordance with the requirements of this section; or

(5) Section 50—after subsection (3) insert:

(3a) Where an application under this Part provides for the undertaking of development of a prescribed class in prescribed circumstances (being development that does not fall within the ambit of subsection (1) or (2)), the Development Assessment Commission may require—

(a) that an area not exceeding the prescribed percentage of the total area of the site of the development be kept as open space or in some other form that allows for active or passive recreation (as determined by the Development Assessment Commission), with some or all of this area to be vested in the Crown or, with the concurrence of the council, a council; or

(b) that the applicant pay the contribution prescribed by the regulations to the Development Assessment Commission; or

- (c) that certain land be kept in the manner contemplated by paragraph (a) and that the applicant will make a contribution to the Development Assessment Commission under this section.

5 (6) Section 50(4)(a)—delete "or (2)" and substitute:

, (2) or (3a)

(7) Section 50(5) and (6)—delete subsections (5) and (6) and substitute:

- (5) Without limiting the operation of any other provision of this Act, the regulations prescribing rates of contribution for the purposes of this section may make different provisions according to designated parts of the State delineated by zone maps in Development Plans.

10

(8) Section 50(7)—delete "the rate of contribution prescribed by subsection (5)" and substitute:

the rate of contribution prescribed by the regulations for each new allotment or strata lot within the relevant part of the State that do not exceed 1 hectare in area

15

(9) Section 50(10)(b)—after "the Fund" insert:

or, in the case of money received under subsection (3a), dealt with in any other manner prescribed by the regulations

20 **9—Amendment of section 55—Action if development not completed**

(1) Section 55(1)(b)—delete paragraph (b) and substitute:

(b) —

- (i) the development to which the approval relates has been commenced but not substantially completed within the period prescribed by the regulations for the lapse of the approval; or
- (ii) in the case of a development that is envisaged to be undertaken in stages—the development is not undertaken or completed in the manner or within the period contemplated by the approval,

25

30

(2) Section 55(3)—after paragraph (c) insert:

(ca) require the performance of any work;

(cb) require the making of any application for an appropriate development authorisation under this Act;

35

(3) Section 55(5)—delete "(a) or (b)" and substitute:

(a), (b) or (ca)

(4) Section 55(7), definition of *relevant authority*—delete the definition and substitute:

relevant authority means—

(a) a council; or

(b) a regional development assessment panel; or

40

- (c) the Development Assessment Commission; or
- (d) the Minister.

10—Amendment of section 56—Completion of work

Section 56(7), definition of *relevant authority*—delete the definition and substitute:

relevant authority means—

- (a) a council; or
- (b) a regional development assessment panel; or
- (c) the Development Assessment Commission; or
- (d) the Minister.

11—Insertion of section 56B

After section 56A insert:

56B—Building Rules assessment audits

- (1) In this section—

building assessment auditor means—

- (a) a person of a class prescribed by the regulations; or
 - (b) a person employed or engaged by a body prescribed by the regulations who holds qualifications prescribed by the regulations.
- (2) Any council or private certifier undertaking the assessment of proposed developments against the provisions of the Building Rules under this Part must have its, his or her activities in relation to such assessments audited by a building assessment auditor in accordance with the requirements of this section.
- (3) The purposes of an audit under this section are—
- (a) to check whether the processes and procedures associated with the assessment of proposed developments against the provisions of the Building Rules, and with the granting of any relevant building rules consents or the provision of certificates of compliance with the provisions of the Building Rules, have been undertaken in accordance with the requirements of this Act (including requirements prescribed by the regulations) and, in particular, whether the matters prescribed by the regulations have been satisfied; and
 - (b) to the extent that the auditor thinks that it is appropriate to do so—to allow an auditor to check technical aspects of assessments of proposed developments against the provisions of the Building Rules; and

- (c) to examine and, if appropriate, report on any other aspect of the work of the council or the private certifier prescribed by the regulations for the purposes of this section.
- (4) The first audit under this section must be completed as follows:
- 5 (a) in relation to a council—within the prescribed period after the commencement of this section;
- (b) in relation to a private certifier—
- 10 (i) if the private certifier is carrying on business as a private certifier on the commencement of this section—within the prescribed period after the commencement of this section;
- (ii) if the private certifier commences business as a private certifier after the commencement of this section—within the prescribed period after the date
- 15 on which the private certifier commences business.
- (5) Thereafter, a council or private certifier must ensure that an audit is completed at least once in every prescribed period.
- (6) A private certifier must, when renewing any registration as a private certifier under the regulations (including in a case where the private certifier is only required to pay an annual registration fee and lodge an annual return), provide, in a manner determined by the Minister, evidence of compliance with this section (insofar as may be relevant).
- 20 (7) It will be grounds for the cancellation of the registration of a private certifier if—
- 25 (a) the private certifier has not complied with subsection (6); or
- (b) the registration authority considers that the private certifier has not adequately addressed any matter identified by an auditor during the course of an audit under this section.
- 30 (8) An audit conducted under this section will relate to an antecedent period, not exceeding the prescribed period, determined to be appropriate by the auditor.
- (9) An audit under this section may be conducted by—
- 35 (a) analysing processes and procedures that have been employed by the council or private certifier to ensure compliance with the requirements of this Act; and
- (b) examining random or selective samples of documents or other records to check on processes and procedures or to ascertain any other relevant matter; and
- 40 (c) conducting interviews of persons who may be able to provide information relevant to the audit; and
- (d) taking such other steps or making such other inquiries as the auditor thinks fit.

- 5
- (10) An auditor must report to the Minister any contravention or failure on the part of a council or private certifier (as the case may be) to comply with the requirements of this Act (including those prescribed by the regulations) or the Building Rules in a significant respect or to a significant degree in undertaking the assessment of proposed developments against the provisions of the Building Rules under this Part identified by the auditor during the course of an audit.
- 10
- (11) If an auditor provides a report to the Minister under subsection (10), the Minister may, after taking such action as the Minister thinks fit—
- 15
- (a) make recommendations to the council or private certifier (as the case may be);
- (b) if the Minister considers that the council or private certifier (as the case may be) has contravened or failed to comply with the requirements of this Act (including those prescribed by the regulations) or the Building Rules in a significant respect or to a significant degree, give directions to the council or private certifier to rectify the matter, or to take specified action with a view to preventing a recurrence of any act, failure or irregularity;
- 20
- (c) in the case of a private certifier—disqualify the person from acting as a private certifier by notice in the Gazette.
- (12) The Minister may, in taking action under subsection (11), if the Minister thinks fit, appoint an investigator or investigators to carry out an investigation under section 45A as if a ground had been made out for the purposes of subsection (1) of that section (and may then act under subsection (11)(a), (b) or (c) on the basis of a report presented to the Minister at the conclusion of the investigation).
- 25
- (13) The Minister must, before taking action under subsection (11), give the council or private certifier a reasonable opportunity to make submissions in relation to the matter.
- 30
- (14) If—
- (a) the Minister makes a recommendation to a council or private certifier under subsection (11)(a); and
- 35
- (b) the Minister subsequently considers that the council or private certifier has not, within a reasonable period, taken appropriate action in view of the recommendation,
- the Minister may, after consultation with the council or private certifier, give directions to the council or private certifier.
- (15) A council or private certifier must comply with a direction under subsection (11) or (14).
- 40
- Maximum penalty: Division 4 fine.
- (16) No action in defamation lies in respect of the contents of a report under this section.

- 5
- (17) An auditor must, in acting under this section, take into account any guidelines issued by the Minister for the purposes of this section.
- (18) A person must not act as a building assessment auditor in relation to a particular council or private certifier if he or she is disqualified from so acting under the regulations.
- 10
- (19) Nothing in this section limits or affects the operation of—
- (a) section 45A; or
 - (b) Chapter 13 Part 3 of the *Local Government Act 1999*,
(but subject to any direction under this or any other provision, including under the *Local Government Act 1999*, a council is not prevented from acting under this Act on account of a failure to ensure that an audit is conducted in accordance with the requirements of this section).
- 15
- (20) Nothing in this section limits or affects any other provision made by or under this Act with respect to the registration or activities of private certifiers.

12—Insertion of section 57A

After section 57 insert:

57A—Land management agreements—development applications

- 20
- (1) Subject to this section, a designated authority may enter into an agreement under this section with a person who is applying for a development authorisation under this Act that will, in the event that the relevant development is approved, bind—
- 25
- (a) the person; and
 - (b) any other person who has the benefit of the development authorisation; and
 - (c) the owner of the relevant land (if he or she is not within the ambit of paragraph (a) or (b) and if the other requirements of this section are satisfied).
- 30
- (2) An agreement under this section may relate to any matter that, in the opinion of the designated authority, is relevant to the proposed development (including a matter that is not necessarily relevant to the assessment of the development under this Act).
- 35
- (3) However, the designated authority must, in considering whether to enter into an agreement under this section and, if such an agreement is to be entered into, in considering the terms of the agreement, have regard to—
- (a) the provisions of the appropriate Development Plan; and

- (b) the principle that the entering into of an agreement under this section by the designated authority should not be used as a substitute to proceeding with an amendment to a Development Plan under this Act.
- 5 (4) Agreements entered into under this section must be registered in accordance with the regulations.
- (5) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- 10 (6) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (4).
- (7) If an agreement is entered into under this section in connection with an application for a development authorisation with respect to a Category 2A, Category 2 or Category 3 development, a note of the existence of the agreement must be included on the notice of the relevant authority's decision under this Act.
- 15 (8) A development to which an agreement under this section relates cannot be commenced pursuant to the relevant development approval unless or until the agreement has effect under this section.
- Penalty: Division 3 fine.
- 20 Additional penalty.
Default penalty: \$500.
- (9) An agreement under this section does not have effect unless or until it is noted against the relevant instrument of title or land under this section.
- 25 (10) If an owner of the land is not a party to an agreement, an application to note the agreement against the relevant instrument of title or the land cannot be made without the consent of the owner (and the owner has a discretion as to whether or not to give his or her consent under this subsection).
- 30 (11) An owner of land must not enter into an agreement, or give a consent under subsection (10), unless all other persons with a legal interest in the land consent.
- (12) A consent must be given in a manner and form determined by the Registrar-General.
- 35 (13) If the Registrar-General is satisfied that the requirements of this section have been satisfied, the Registrar-General must, on an application of a party to an agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- 40 (14) Where a note has been entered under subsection (13), the agreement is binding on the current owner of the land whether or not the owner was an initial party to the agreement or the person who gave any consent for the purposes of subsection (10), and notwithstanding the provisions of the *Real Property Act 1886*.

(15) However, an owner who is not a party to the agreement is only subject to the operation of subsection (14) if or when the development to which the agreement relates has been commenced by the performance of substantial work on the relevant site.

5 (16) The Registrar-General must, if satisfied on the application of a party to the agreement, the Minister, or any owner of the relevant land, that an agreement under this section has been rescinded or amended, enter a note of the rescission or agreement against the instrument of title, or against the land.

10 (17) The fact that the Minister or a council is a party to an agreement under this section does not prevent the Development Assessment Commission or the council (or a delegate of the Development Assessment Commission or the council) from acting as a relevant authority under this Act in relation to the proposed development.

15 (18) If an agreement under this section does not have effect under this section (see subsection (9)) within the period prescribed by the regulations, the relevant authority may, by notice given in accordance with the regulations, lapse the relevant development approval (and the agreement will then be rescinded by force of this subsection).

20 (19) Despite a preceding subsection, an agreement under this section cannot make provision with respect to any matter excluded from the ambit of this section by the regulations.

(20) Nothing in this section affects or limits the operation of section 57.

25 (21) In this section—

designated authority means—

(a) the Minister; or

(b) another Minister designated by the Governor, by notice in the Gazette, as being a designated authority for the purposes of this section; or

(c) a council.

13—Amendment of section 71A—Building inspection policies

Section 71A—after subsection (4) insert:

35 (4a) A building inspection policy must comply with any regulation prescribing a minimum level of inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12).

40 (4b) A regulation under subsection (4a) may prescribe different levels for different classes of buildings.

14—Amendment of section 92—Circumstances in which a private certifier may not act

Section 92(1)—after paragraph (c) insert:

- (d) if he or she is excluded from acting pursuant to the regulations.

15—Amendment of section 108—Regulations

- (1) Section 108(2)—delete "the Schedule" and substitute:

Schedule 1

- (2) Section 108(7)—delete subsection (7) and substitute:

- (7) The regulations may provide for the effect of failing to comply with any time limit or requirement prescribed by the regulations, including by providing that any action taken after the expiration of any such time limit or in a manner inconsistent with any such requirement will not have effect under this Act.

16—Substitution of heading

Schedule—delete the heading to the Schedule and substitute:

Schedule 1—Regulations

Schedule 1—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 *Natural Resources Management Act 2004*

2—Amendment of section 29—Functions of boards

Section 29(1)—after paragraph (e) insert:

- (ea) to undertake an active role in ensuring—
- (i) that any Development Plan under the *Development Act 1993* that applies within its region promotes the objects of this Act; and
- (ii) insofar as is reasonably practicable, that those Development Plans and the board's regional NRM plan form a coherent set of policies,

and, in so doing, when a Development Plan Amendment under the *Development Act 1993* that is relevant to the activities of the board is under consideration under that Act, to work with—

- (iii) in the case of a Development Plan Amendment proposed by a council—the council; or
- (iv) in the case of a Development Plan Amendment proposed by a Minister—that Minister's department;

5 **3—Amendment of section 75—Regional NRM plans**

Section 75(3)(f)—delete paragraph (f) and substitute:

- (f) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to promote the objects of this Act or to improve the relationship between the policies in the Development Plan and the policies reflected in the board's plan; and
- (fa) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation) to promote the objects of this Act and, insofar as the plan may apply within a part of the Murray-Darling Basin, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act;

20 **4—Amendment of section 76—Preparation of water allocation plans**

Section 76(4)(h)(ii)—delete subparagraph (ii) and substitute:

- (ii) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to improve the relationship in the policies in the Development Plan and the policies reflected in the water allocation plan; and
- (iii) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation);

30 **5—Amendment of section 78—Concept statement**

Section 78(4)(a)—delete paragraph (a)

6—Amendment of section 79—Preparation of plans and consultation

(1) Section 79(2), (3), (4) and (5)—delete subsections (2), (3), (4) and (5) and substitute:

- (2) The board must, during the preparation of the draft plan, take into account any relevant submissions made to the board in relation to the matter.

(2) Section 79(6)(a)(ii)—delete subparagraph (ii)

7—Amendment of section 80—Submission of plan to Minister

Section 80(17), (18), (19) and (20)—delete subsections (17), (18), (19) and (20)

Part 3—Amendment of *River Murray Act 2003*

**8—Amendment of section 22—Development of related policies and
consideration of activities**

Section 22(3)—delete subsection (3)