

House of Assembly—No 155

As received from the Legislative Council and read a first time, 15 October 2009

South Australia

Willunga Basin Protection Bill 2009

A BILL FOR

An Act to provide special planning and development procedures to protect the amenity of the Willunga Basin; 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 *Willunga Basin Protection Act 2009*.

2—Commencement

5 This Act will come into operation 2 months after the date of assent.

3—Interpretation

In this Act, unless the contrary intention appears—

Committee means the Willunga Basin Protection Committee established under section 4;

10 *Basin Plan*—see section 14;

council means a council constituted under the *Local Government Act 1999*;

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

GRO means the General Registry Office at Adelaide;

LGA means the Local Government Association of South Australia;

15 *relevant authority* has the same meaning as in the *Development Act 1993*;

Willunga Basin means the geographical area that is defined as the Willunga Basin in a plan deposited in the GRO by the Minister for the purposes of the Act.

Part 2—Willunga Basin Protection Committee

4—Willunga Basin Protection Committee

20 (1) The *Willunga Basin Protection Committee* is established.

(2) The Committee is a body corporate.

(3) The Committee may—

(a) enter into any form of contract, agreement or arrangement; and

25 (b) acquire, hold, deal with and dispose of real and personal property or any interest in real or personal property; and

(c) seek expert, technical or other advice on any matter from any person or such terms and conditions as the Committee thinks fit.

(4) The Committee consists of the following members appointed by the Governor:

(a) a person nominated by the City of Onkaparinga Council;

30 (b) a person with relevant experience in urban planning and development nominated by the Minister;

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- (c) 2 persons nominated by the McLaren Vale Grape Wine & Tourism Industry Association Incorporated, of whom a least 1 must be nominated as a representative of tourism interests;
- (d) a person nominated by the Minister for Aboriginal Affairs to represent indigenous interests in the Willunga Basin;
- (e) a person nominated by the Southern Community Coalition;
- (f) a person nominated by the Minister as a representative of food producers in the Willunga Basin;
- 10 (g) a person nominated by the Minister as a representative of local trade associations;
- (h) a person nominated by the Southern Adelaide Economic Development Board;
- (i) a person nominated by the Minister for Environment and Heritage as a person having suitable expertise in local natural resource management;
- 15 (j) a person nominated by the Minister as a representative of local environmental groups.
- (5) At least 1 member of the Committee must be a woman and at least 1 member must be a man.

5—Functions of Committee

The Committee has the following functions:

- 20 (a) to develop the Basin Plan;
- (b) to make recommendations on matters referred to the Committee under the *Development Act 1993*;
- (c) to provide advice to the Minister and to councils in relation to strategic planning and development in the Willunga Basin;
- 25 (d) to provide information and advice to the public in relation to planning and development in the Willunga Basin;
- (e) to carry out any other functions assigned to the Committee under this or any other Act.

6—Terms and conditions of office

- 30 (1) A member of the Committee will be appointed on conditions determined by the Governor for a term, not exceeding 2 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the Committee from office—
- 35 (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the Committee becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or

- (c) resigns by written notice to the Minister; or
 - (d) is removed from office under subclause (2).
- (4) On the office of a member of the Committee becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

5 **7—Remuneration**

A member of the Committee is entitled to remuneration, allowances and expenses determined by the Governor.

8—Validity of acts

10 An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

9—Proceedings of Committee

- (1) A quorum of the Committee consists of 6 members.
- (2) The member appointed as the presiding member of the Committee will preside at meetings of the Committee or, in the absence of that member, a member chosen by those present will preside.
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- (3) The Minister may appoint a suitable person to be the deputy of a member of the Committee and any such person will, while acting in the absence of that member, be taken to be a member of the Committee with all the powers, authorities, duties and obligations of a member of the Committee.
- (4) A decision carried by a majority of the votes cast by the members present at a meeting of the Committee is a decision of the Committee.
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- (5) Each member present at a meeting of the Committee has 1 vote on any question arising for decision.
- (6) A conference by telephone or other electronic means between the members of the Committee will, for the purposes of this clause, be taken to be a meeting of the Committee at which the participating members are present if—
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 - (a) notice of the conference is given to all members in the manner determined by the Committee for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
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- (7) A proposed resolution of the Committee becomes a valid decision of the Committee despite the fact that it is not voted on at a meeting of the Committee if—
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 - (a) notice of the proposed resolution is given to all members of the Committee in accordance with procedures determined by the Committee; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.
- (8) The Committee must have accurate minutes kept of its meetings.
- (9) Subject to this section, the Committee may determine its own procedures.

10—Delegation

- (1) The Committee may delegate a function or power—
- (a) to a specified person, committee or other body;
 - (b) to a person occupying a specified office or position.
- 5 (2) However, the Committee may not delegate—
- (a) power to prepare and publish the draft plan under section 15; or
 - (b) power to prepare and publish the Basin Plan under section 14; or
 - (c) power to make a recommendation under section 17.
- (3) A delegation—
- 10 (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - 15 (c) is revocable at will and does not prevent the Committee from acting in a matter.

11—Disclosure of financial interests

A member of the Committee must disclose his or her financial interests in accordance with Schedule 2 of the *Development Act 1993* as if he or she were a prescribed member within the meaning of that Schedule (and the Minister will, for the purposes of that Schedule, be taken to be the relevant official in relation to a member of the Committee).

12—Staff of the Committee

- (1) There will be such staff of the Committee as the Committee thinks necessary for the proper performance of its functions.
- 25 (2) A member of the staff of the Committee is not a member of the Public Service, but the Committee may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.
- (3) The Committee may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.
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Part 3—Planning strategy and Basin Plan

13—General planning strategy for Willunga Basin

The general planning strategy for the Willunga Basin is the encouragement of the traditional and diverse agricultural and other productive uses of the area that complement its rural character, the protection of the environment and the heritage of the area and the promotion of tourism that complements the rural character of the Willunga Basin.

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14—Willunga Basin Plan

- (1) The Committee must, within 12 months after the commencement of this Act, prepare and publish a plan (*the Basin Plan*) in relation to the Willunga Basin.
- (2) The Minister may extend the time within which the Committee must prepare the Basin Plan being no more than 18 months after the commencement of this Act.
- (3) The Basin Plan—
 - (a) must seek to promote the general planning strategy set out in section 13; and
 - (b) may include other planning or development objectives or principles relating to the following:
 - (i) the natural or constructed environment and ecologically sustainable development;
 - (ii) social or socio-economic issues;
 - (iii) urban or regional planning;
 - (iv) the management or conservation of land, landscapes, buildings, heritage places and heritage areas;
 - (v) management, conservation and use of natural and other resources;
 - (vi) economic issues;
 - (vii) established industries within the Willunga Basin;
 - (viii) food security in South Australia;
 - (ix) water security in South Australia; and
 - (c) may include such other material relating to planning or development as may, in the opinion of the Committee, be appropriate.
- (4) If any provisions of the Basin Plan apply to an area in relation to which a Development Plan under the *Development Act 1993* applies, the relevant provisions of the Basin Plan are taken to have been adopted into the Development Plan (and will prevail over the Development Plan to the extent of any inconsistency).
- (5) The Committee may vary the Basin Plan from time to time (and the provisions of Part 3, Division 2, Subdivision 2 of the *Development Act 1993* do not apply to any provisions taken to have been adopted into a Development Plan in accordance with subsection (4)).

15—Development of Willunga Basin Plan

- (1) The Committee must publish a draft Basin Plan (*the draft plan*) within 6 months of the commencement of this Act.
- (2) The Minister must, as soon as is reasonably practicable after the preparation of the draft plan—
 - (a) cause a copy of the draft plan to be laid on the table of each House of Parliament; and
 - (b) make a copy of the draft plan available for public inspection (without charge) and purchase—

- (i) during ordinary office hours at an office determined by the Minister and notified in the Gazette; and
- (ii) at a website maintained by the Minister,

and a copy of the draft plan must be made available for public inspection (without charge) and purchase at any office of the Committee.

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- (3) The Committee must, immediately after publication of the draft plan—
- (a) refer the draft plan to any government Department or agency that, in the opinion of the Committee, has a direct interest in the matters set out in the draft plan; and
 - 10 (b) undertake a process of public consultation, over a period of at least 8 weeks, in such manner as the Committee thinks fit or as may be prescribed by regulation.
- (4) Any person with an interest in the draft plan may make written submission to the Committee regarding the draft plan within a period of 12 weeks after the draft plan is published.
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- (5) In developing the Basin Plan the Committee must consider any submission made under this section.

16—Public inspection of Basin Plan

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- (1) The Minister must make a copy of the Basin Plan available for public inspection (without charge) and purchase—
- (a) during ordinary office hours at an office determined by the Minister and notified in the Gazette; and
 - (b) at a website maintained by the Minister,
- and a copy of the Basin Plan must be made available for public inspection (without charge) and purchase at any office of the Committee.
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- (2) The Minister must, within a reasonable time after an amendment is made to the Basin Plan, ensure that a consolidation of the Basin Plan, as amended, is prepared and that copies of the consolidation are made available under subsection (1).
- (3) A council must, if the Basin Plan applies to any part of the area of the council, make copies of the Basin Plan available for inspection (without charge) and purchase by the public at an office of the council.
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Part 4—Development applications

17—Recommendation of Committee

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- (1) The Committee may give a recommendation to a relevant authority in relation to an application for development approval within the Willunga Basin received from that relevant authority under the *Development Act 1993*.
- (2) The Committee's recommendation must be based on an assessment of the proposed development against the provisions of the Basin Plan.

- (3) A recommendation of the Committee must be made within 30 days after the day on which it receives a copy of an application or within such longer period as the relevant authority making the referral allows.
- 5 (4) When making a recommendation in relation to an application for development approval under this section, the Committee must send a copy of its recommendation to the applicant as soon as is practicable after the recommendation is made.
- (5) If the Committee does not provide a recommendation within the timeframe provided for in this section in relation to a particular matter—
- 10 (a) it will be deemed to have recommended that the proposed development complies with the Basin Plan; and
- (b) the relevant authority that referred the matter may proceed to process the application in the absence of a recommendation from the Committee.

18—Additional material

- 15 (1) The Committee may, before making a recommendation under this Part, request the applicant to provide such additional documents or information (including calculations and technical details) as the Committee may reasonably require to consider the application.
- (2) The Committee may consult with any person in relation to an application including—
- 20 (a) the applicant; and
- (b) members of the public; and
- (c) persons with expertise in an area related to the application.

Part 5—Miscellaneous

19—Immunity from liability

- 25 (1) No liability attaches to the Committee, or a member of the Committee, for an act or omission done or made in good faith and in the exercise, or purported exercise, of powers or functions under this Act.
- (2) Any liability that would, but for this section, attach to the Committee or a member of the Committee, attaches instead to the Crown.

20—Annual report

- 30 (1) The Committee must, on or before 31 October in each year, provide to the Minister a report on the administration of this Act during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving the report, cause copies to be laid before both Houses of Parliament.

21—Codes of conduct

- 35 (1) The Minister may adopt a code of conduct to be observed by members of the Committee.
- (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.

22—Confidential information

(1) A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

Maximum penalty: \$10 000 or 2 years imprisonment.

(2) A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless—

(a) the disclosure is necessary for the proper performance of that function; or

(b) the disclosure is made to another who is also performing a function under this Act; or

(c) the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or

(d) the disclosure is authorised or required under any other Act or law; or

(e) the disclosure is authorised or required by a court or tribunal constituted by law; or

(f) the disclosure is authorised by the regulations.

Maximum penalty: \$10 000 or 2 years imprisonment.

23—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) 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 the Committee.

Schedule 1—Related Amendments to *Development Act 1993*

Part 1—Preliminary

1—Amendment provisions

5 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

 After the definition of *to undertake development* insert:

10 *Willunga Basin* means the Willunga Basin area as defined in the *Willunga Basin Protection Act 2009*;

Willunga Basin Protection Committee means the Willunga Basin Protection Committee as established under the *Willunga Basin Protection Act 2009*.

3—Insertion of section 37B

 After section 37A insert:

15 **37B—Proposed development in Willunga Basin**

- 20 (1) If a relevant authority receives an application in relation to a proposed development in the Willunga Basin the authority must forward a copy of the application to the Willunga Basin Protection Committee for the making of a recommendation in accordance with the *Willunga Basin Protection Act 2009*.
- (2) Subsection (1) does not apply in relation to applications of a class determined by the Committee for the purposes of this subsection.
- 25 (3) In determining an application for a proposed development in the Willunga Basin the relevant authority must not make a determination that is at variance with a recommendation of the Willunga Basin Protection Committee in relation to that application.
- 30 (4) If a relevant authority acting on the basis of a recommendation of the Committee refuses an application or imposes conditions in respect of a development authorisation, the relevant authority must notify the applicant that the application was refused, or the conditions imposed, on the basis of the recommendation of the Willunga Basin Protection Committee.
- 35 (5) If a refusal or condition referred to in subsection (4) is the subject of an appeal under this Act—
- (a) the Committee will be the respondent to the appeal; and
- (b) the relevant authority may be joined as a party to the appeal.