

House of Assembly—No 40

As laid on the table and read a first time, 29 April 2020

South Australia

**Statutes Amendment (Colonel Light Gardens
Character Protection) Bill 2020**

A BILL FOR

An Act to amend the *Development Act 1993* and the *Planning, Development and Infrastructure Act 2016*.

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Schedule 4A—Colonel Light Gardens Development Principles

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Statutes Amendment (Colonel Light Gardens Character Protection) Act 2020*.

2—Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.
- 10 (2) The following sections come into operation 6 months after the day on which this Act is assented to by the Governor:
 - (a) sections 4 to 7 (inclusive);
 - (b) section 8 (but only insofar as it inserts clauses 1 and 2 of Schedule 3);
 - (c) sections 9 to 11 (inclusive);
 - (d) section 12 (but only insofar as it inserts clauses 1 and 2 of Schedule 4A).

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 4—Interpretation

Section 4—after subsection (10) insert:

- (11) For the purposes of this Act and Schedule 3, the Colonel Light Gardens State Heritage Area is the State Heritage Area known as Mitcham (City) State Heritage Area (Colonel Light Gardens), established by the Development Plan that relates to the area of the City of Mitcham (and a reference to the Colonel Light Gardens State Heritage Area includes a reference to a place within that area).

5—Amendment of section 25—Amendments by a council

(1) Section 25(3)(b)—after subparagraph (iv) insert:

- (iva) if the DPA relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area—adheres to the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act; and

(2) Section 25(14)(b)(ii)—after subsubparagraph (C) insert:

- (CA) if the alteration to the proposed amendment relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area—adheres to the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act; and

(3) Section 25—after subsection (15) insert:

- (15a) The Minister may only approve a proposed amendment under subsection (15) that relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area if satisfied that the amendment adheres to the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act.

6—Amendment of section 26—Amendments by the Minister

(1) Section 26(1)(b)—after subparagraph (iii) insert:

- (iiia) if the DPA relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area—adheres to the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act; and

(2) Section 26—after subsection (8) insert:

- (8a) The Minister may only approve a proposed amendment under subsection (8) that relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area if satisfied that the amendment adheres to the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act.

7—Amendment of section 33—Matters against which development must be assessed

(1) Section 33(1)—after paragraph (b) insert:

(ba) in relation to a development that is within, or may affect, the Colonel Light Gardens State Heritage Area—the provisions of the Colonel Light Gardens Development Principles set out in Schedule 3 of this Act;

(2) Section 33—after subsection (1) insert:

(1a) To the extent of any inconsistency between the matters referred to in paragraphs (a) and (ba) of subsection (1), the matters set out in paragraph (ba) prevail.

8—Insertion of Schedule 3

After Schedule 2 insert:

Schedule 3—Colonel Light Gardens Development Principles

1—Interpretation and application

(1) This Schedule applies in addition to the *Heritage Places Act 1993*, but prevails to the extent of any inconsistency between this Schedule and that Act.

(2) In this Schedule—

prescribed area means the Colonel Light Gardens State Heritage Area.

2—Colonel Light Gardens Development Principles

The management of the prescribed area, and any development undertaken in the prescribed area, must take place in accordance with the following principles:

- (a) a development in the prescribed area must adhere to the Colonel Light Gardens Management Plan;
- (b) the heritage value of the prescribed area should be identified, protected and conserved;
- (c) the best available knowledge, skills and standards should be used in relation to the management of, and any development in, the prescribed area;
- (d) community input and technical expertise should be sought in relation to decisions and actions that may have a significant impact on the heritage value of the prescribed area;
- (e) the use and presentation of the prescribed area should be consistent with the conservation of its heritage value;

- (f) the community should have the opportunity to give input into and be involved in the management of the prescribed area, especially persons who:
- (i) have an interest, or association with, the prescribed area; or
 - (ii) may be affected by the management of, and any development in, the prescribed area; and
- (g) Aboriginal and Torres Strait Islander persons should be considered the primary source of information on the value of the prescribed area's heritage;
- (h) the views of Aboriginal and Torres Strait Islander persons should be sought and taken into account in relation to the management of, and any development in, the prescribed area.

3—Colonel Light Gardens Management Plan

- (1) A Colonel Light Gardens Management Plan is to be prepared by the Minister for the purposes of this Act in relation to the prescribed area.
- (2) The Minister must, within 6 months of the commencement of this clause, by notice in the Gazette, publish the Management Plan.
- (3) The Minister may, by further notice in the Gazette, vary or substitute the Management Plan.
- (4) The Minister must, in preparing, or varying or substituting, the Management Plan, consult with—
- (a) the Minister responsible for the administration of the *Heritage Places Act 1993*; and
 - (b) the council for any area within the prescribed area; and
 - (c) any residents association that represents an area within the prescribed area; and
 - (d) any other person or body prescribed by the regulations, and may consult with any other person or body that the Minister thinks appropriate.
- (5) The Management Plan must include the following:
- (a) a management framework that includes reference to any statutory requirements for the protection and conservation of the prescribed area;
 - (b) a comprehensive description of the prescribed area, including information about the location, features, condition, historical context and current uses of the prescribed area;
 - (c) a description of the heritage values of the prescribed area, and their condition;

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- (d) the method that should be used to assess the heritage values of the prescribed area;
- (e) a description of the current management requirements and goals in relation to the prescribed area, including potential changes to and pressures on the heritage value of the prescribed area;
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- (f) a policy to manage the heritage value of the prescribed area, which, without limiting the matters that the policy may address, must include reference the following matters:
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- (i) management and conservation processes that should be used;
- (ii) the planning and management of development in the prescribed area;
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- (iii) access and security arrangements, including access to the prescribed area by Aboriginal and Torres Strait Islander persons to maintain cultural traditions;
- (iv) stakeholder and community consultation arrangements;
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- (v) the participation by Aboriginal and Torres Strait Islander persons in the management process;
- (vi) the management of sensitive information;
- (vii) the management of discoveries or disturbances to the heritage value of the prescribed area;
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- (viii) how, and under what circumstances, advice in relation to the heritage value of the prescribed area is to be sought and obtained;
- (ix) the monitoring and reporting of the condition of the heritage value of the prescribed area;
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- (x) the manner in which records of intervention and maintenance of the heritage value of the prescribed area are to be made and kept;
- (xi) the research, training and resources required to improve the management of the prescribed area;
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- (xii) the manner in which the heritage values of the area are to be interpreted and promoted;
- (g) a strategy to implement the Management Plan;
- (h) a strategy to monitor, review and report on the conservation of the heritage value of the prescribed area and the suitability of the Management Plan.
- (6) The Management Plan, and any variation or substitution of the Management Plan, has effect from the date on which it is published in the Gazette.

Part 3—Amendment of *Planning, Development and Infrastructure Act 2016*

9—Amendment of clause 3—Interpretation

Section 3—after subsection (7) insert:

- 5 (8) For the purposes of this Act and Schedule 4A, the Colonel Light Gardens State Heritage Area is the State Heritage Area known as Mitcham (City) State Heritage Area (Colonel Light Gardens), under the Development Plan that relates to the area of the City of Mitcham, as in existence on 1 May 2020 (and a reference to the Colonel Light Gardens State Heritage Area includes a reference to a place within that area).
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- (9) Subsection (8) is not affected by the revocation of the Development Plan that relates to the area of the City of Mitcham.

10—Amendment of section 73—Preparation and amendment

- 15 (1) Section 73—after subsection (6) insert:
- (6a) If the relevant proposal relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area, the designated entity must undertake an assessment of the extent to which the proposal adheres to the Colonel Light Gardens Development Principles set out in Schedule 4A of this Act.
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- (2) Section 73(7)—after "subsection (6)" insert:
(and subsection (6a) if applicable)
- (3) Section 73—after subsection (10) insert:
- (10a) The Minister may only adopt a designated instrument, or an amendment of a designated instrument that relates to, or may affect, any part of the Colonel Light Gardens State Heritage Area if satisfied that the designated instrument, or the amendment of a designated instrument (as the case may be) adheres to the Colonel Light Gardens Development Principles set out in Schedule 4A of this Act.
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11—Amendment of section 102—Matters against which development must be assessed

- (1) Section 102(1)—after paragraph (b) insert:
- (ba) in relation to a development that is within, or may affect, the Colonel Light Gardens State Heritage Area—the provisions of the Colonel Light Gardens Development Principles set out in Schedule 4A of this Act;
- 35
- (2) Section 102—after subsection (1) insert:
- (1a) To the extent of any inconsistency between the matters referred to in paragraphs (a) and (ba) of subsection (1), the matters set out in paragraph (ba) prevail.
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12—Insertion of Schedule 4A

After Schedule 4 insert:

Schedule 4A—Colonel Light Gardens Development Principles

1—Interpretation and application

- (1) This Schedule applies in addition to the *Heritage Places Act 1993*, but prevails to the extent of any inconsistency between this Schedule and that Act.
- (2) In this Schedule—

prescribed area means the Colonel Light Gardens State Heritage Area.

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- (a) a development in the prescribed area must adhere to the Colonel Light Gardens Management Plan;
- (b) the heritage value of the prescribed area should be identified, protected and conserved;
- (c) the best available knowledge, skills and standards should be used in relation to the management of, and any development in, the prescribed area;
- (d) community input and technical expertise should be sought in relation to decisions and actions that may have a significant impact on the heritage value of the prescribed area;
- (e) the use and presentation of the prescribed area should be consistent with the conservation of its heritage value;
- (f) the community should have the opportunity to give input into and be involved in the management of the prescribed area, especially persons who:
 - (i) have an interest, or association with, the prescribed area; or
 - (ii) may be affected by the management of, and any development in, the prescribed area; and
- (g) Aboriginal and Torres Strait Islander persons should be considered the primary source of information on the value of the prescribed area's heritage;
- (h) the views of Aboriginal and Torres Strait Islander persons should be sought and taken into account in relation to the management of, and any development in, the prescribed area.

3—Colonel Light Gardens Management Plan

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- (1) A Colonel Light Gardens Management Plan is to be prepared by the Minister for the purposes of this Act in relation to the prescribed area.
- (2) The Minister must, within 6 months of the commencement of this clause, by notice in the Gazette, publish the Management Plan.
- (3) The Minister may, by further notice in the Gazette, vary or substitute the Management Plan.
- 10
- (4) The Minister must, in preparing, or varying or substituting, the Management Plan, consult with—
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- (a) the Minister responsible for the administration of the *Heritage Places Act 1993*; and
 - (b) the council for any area within the prescribed area; and
 - (c) any residents association that represents an area within the prescribed area; and
 - (d) any other person or body prescribed by the regulations,
- and may consult with any other person or body that the Minister thinks appropriate.
- (5) The Management Plan must include the following:
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- (a) a management framework that includes reference to any statutory requirements for the protection and conservation of the prescribed area;
 - (b) a comprehensive description of the prescribed area, including information about the location, features, condition,

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 - (c) a description of the heritage values of the prescribed area, and their condition;
 - (d) the method that should be used to assess the heritage values of the prescribed area;
 - (e) a description of the current management requirements and goals in relation to the prescribed area, including potential changes to and pressures on the heritage value of the prescribed area;

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 - (f) a policy to manage the heritage value of the prescribed area, which, without limiting the matters that the policy may address, must include reference the following matters:

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- (iv) stakeholder and community consultation arrangements;
- (v) the participation by Aboriginal and Torres Strait Islander persons in the management process;
- 10 (vi) the management of sensitive information;
- (vii) the management of discoveries or disturbances to the heritage value of the prescribed area;
- (viii) how, and under what circumstances, advice in relation to the heritage value of the prescribed area is to be sought and obtained;
- 15 (ix) the monitoring and reporting of the condition of the heritage value of the prescribed area;
- (x) the manner in which records of intervention and maintenance of the heritage value of the prescribed area are to be made and kept;
- 20 (xi) the research, training and resources required to improve the management of the prescribed area;
- (xii) the manner in which the heritage values of the area are to be interpreted and promoted;
- (g) a strategy to implement the Management Plan;
- 25 (h) a strategy to monitor, review and report on the conservation of the heritage value of the prescribed area and the suitability of the Management Plan.
- (6) The Management Plan, and any variation or substitution of the Management Plan, has effect from the date on which it is published
- 30 in the Gazette.