

South Australia

Character Preservation (McLaren Vale) Act 2012

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:

1—Short title

This Act may be cited as the *Character Preservation (McLaren Vale) Act 2012*.

2—Commencement

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*;

district means the area defined as the McLaren Vale district by the plan deposited in the General Registry Office at Adelaide and numbered GP 3 of 2012 (being the plan as it exists on 26 June 2012);

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

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

relevant council means a council whose area includes part of the district;

residential development means development primarily for residential purposes but does not include—

- (a) 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; or
- (b) a dwelling for residential purposes on land used primarily for primary production purposes;

rural area means the area of the district not including townships;

township means an area marked as a township in the plan deposited in the General Registry Office at Adelaide and numbered GP 3 of 2012 (being the plan as it exists on 26 June 2012).

- (2) A reference in this Act to the **special character** of the district is a reference to the identity and characteristics of the district and locations within 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.
- (2) For the purposes of the *Development Act 1993*, this Act is a character preservation law.

5—Administration of Act

This Act is to be administered by the Minister responsible for the administration of the *Development Act 1993*.

6—Objects

- (1) The objects of this Act are—
 - (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
 - (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.

7—Character values of district

- (1) The following character values of the district are recognised:
 - (a) the rural and natural 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;
 - (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.

8—Limitations on land division in district

- (1) This section applies to a proposed development in the rural area that involves a division of land under the *Development Act 1993* that would create 1 or more additional allotments.
- (2) A relevant authority (other than the Development Assessment Commission) must not grant development authorisation to a development to which this section applies unless the Development Assessment Commission concurs in the granting of the authorisation.
- (3) If the Development Assessment Commission is the relevant authority, the Development Assessment Commission must not grant development authorisation to a development to which this section applies unless the council for the area where the proposed development is situated concurs in the granting of the authorisation.
- (4) No appeal under the *Development Act 1993* lies against a refusal by a relevant authority to grant development authorisation to a development to which this section applies or a refusal by the Development Assessment Commission or a council to concur in the granting of such an authorisation.

- (5) If a proposed development to which this section applies will create additional allotments to be used 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 land was made after the commencement of this section).
- (6) If the relevant authority determines an application in respect of a development authorisation on the basis of subsection (5), the relevant authority must notify the applicant of that fact.
- (7) 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 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 responsible for issuing statutory authorisations under an Act (the *relevant Act*) may, by notice in writing to—
 - (a) an applicant for such a statutory authorisation 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 objects of this Act in relation to the statutory authorisation (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) In conducting the review, the Minister must (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils.
- (3) The review must include an assessment of—
 - (a) the state of the district, especially taking into account the objects of this Act and any relevant provisions of the Planning Strategy; and
 - (b) the family, social, economic and environmental impacts of this Act; and
 - (c) the impact of this Act on local government in the district; and
 - (d) any steps that have been taken or strategies that have been implemented to address any negative impacts of this Act,

and may include such other matters as the Minister thinks fit.

- (4) 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—
 - (a) make provision in relation to the referral of any application for development authorisation to the Development Assessment Commission for the purposes of section 8(2); and
 - (b) prescribe fees in respect of any matter under this Act and provide for their payment, recovery or waiver; and
 - (c) 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
 - (d) 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
 - (e) 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; and
 - (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.
- (4) Before a regulation is made under this Act, the Minister must (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils.

Schedule 1—Related amendments and transitional provisions

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

- (1) Section 22(3a)—after paragraph (c) insert:
 - and
 - (ca) the objects under a character preservation law; and
- (2) Section 22—after subsection (3a) insert:
 - (3aa) Without derogating from subsection (3), the Planning Strategy must incorporate provisions which address any character values of a district recognised under a character preservation law.
- (3) Section 22—after subsection (4a) insert:
 - (4aa) Before making any alterations to the Planning Strategy to incorporate provisions which address any character values of a district recognised under a character preservation law (or to alter any such provisions), the Minister must (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils (within the meaning of the character preservation law).

4—Amendment of section 23—Development Plans

Section 23—after subsection (5) insert:

- (5a) A Development Plan may refer to any relevant statutory provision.

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

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

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

6—Amendment of section 34—Determination of relevant authority

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

- or
- (x) the Minister 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, the proposed development may have a significant impact on an aspect of the district within the meaning of a character preservation law,

7—Amendment of section 46—Declaration by Minister

- (1) Section 46(3a)—delete subsection (3a) and substitute:
 - (3a) A declaration under this section cannot apply with respect to a development or project within—
 - (a) the Adelaide Park Lands; or

(b) a character preservation rural area.

(2) Section 46—after subsection (16) insert:

(17) In this section—

character preservation rural area means an area that is defined as a rural area under a character preservation law.

Part 3—Transitional provisions

8—Transitional provisions

The Minister must—

- (a) take steps to comply with subsection (3aa) of section 22 of the *Development Act 1993*, as enacted by this Act, in relation to the district under this Act within 6 months after the commencement of this clause; and
- (b) ensure that any Development Plan under that Act that relates to the district, or part of the district, 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 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; and
- (c) (in such manner as the Minister thinks fit) consult with, and consider any submissions of, relevant councils in relation to the matters specified in paragraphs (a) and (b).