

### South Australia by Victoria Shute<sup>58</sup>

#### *Character Preservation (Barossa Valley) Act 2012 and the Character Preservation (McLaren Vale) Act 2012*

On 18 January 2013, the *Character Preservation (Barossa Valley) Act 2012* (SA) and the *Character Preservation (McLaren Vale) Act 2012* (SA) commenced operation. These Acts are unique as they specifically intend to protect two of South Australia's premier food and wine production, heritage and cultural regions from urbanisation, rather than leaving this to planning policy that can be altered without Parliamentary scrutiny.

The Barossa Valley is located approximately one hour's drive to the north-east of Adelaide and traverses the Barossa, Light and Adelaide Hills Council areas. The McLaren Vale region is located approximately 45 minutes' drive to the south of Adelaide and is wholly within the Onkaparinga Council area. Both regions are located within the Greater Metropolitan Adelaide region covered by the 30-Year Plan for Greater Metropolitan Adelaide.

The Acts have three main legislative triggers to effect the protection of these regions. The *Development Act 1993* (SA) has been amended to:

- require the Minister for Planning to recognise the 'character values' of district areas within the protected regions in the State Planning Strategy – South Australia's primary planning policy document, and
- to require the Minister to review the Development Plan for each Council within the protected regions and, if necessary, to undertake a Development Plan Amendment to ensure that the Development Plans are consistent with the Planning Strategy. Development Plans are local councils' planning documents against which development applications are assessed. There are four Development Plans which cover land outside council areas (most of which is located in the remote north of the State). Development Plans can be amended by a council (subject to Ministerial approval) or by the Minister for Planning.

The Acts, by reference to General Registry Office (GRO) Plans,<sup>59</sup> designate 'district' and 'township' areas within the protected regions. The Acts purport to restrict new land divisions from occurring within the 'district' areas of the protected regions by:

- requiring that land divisions that purport to create one or more additional allotments outside of rural areas cannot be approved by a council without the concurrence of the Development Assessment Commission (DAC) and vice-versa. The DAC is a state government development assessment body established by the *Development Act 1993* (SA). Although development applications are generally assessed by councils, the Act and Regulations provide for certain situations where development applications must be assessed by the DAC instead. The DAC also has an assessment advisory role in relation to Major Project and Infrastructure developments declared under the Act, which are subject to special assessment regimes.
- prohibiting land divisions in the Barossa Valley area which purport to create one or more additional allotments in rural areas which are not 'rural living areas' for residential purposes, by requiring that councils or the DAC refuse such applications, and by removing all appeal rights to the Environment, Resources and Development Court. A number of areas in the Barossa Valley region are zoned for 'rural living' purposes – i.e. for low-scale residential developments on large rural allotments conducive to hobby farming. The Barossa Valley Act envisages such land divisions continuing. Where a land division occurs in a rural living area, the allotment size must be at least that prescribed within the relevant Development Plan in force as of 18 January 2013. This provision intends to ensure that Development Plans cannot be amended in the future to allow small allotments to be created in rural areas.
- prohibiting land divisions in the McLaren Vale area which purport to create one or more additional allotments in rural areas by requiring that councils or the DAC refuse such applications, and by removing all appeal rights to the Environment, Resources and Development Court.

58 Lawyer, KelliedyJones Lawyers

59 GRO plans cover old subdivisions lodged in the 1800s over 'old system' land or plans for leasing purposes that are not under the *Real Property Act* (SA).

The Acts also require under s 6(2) that:

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.

Those objects include seeking to protect and enhance the 'special character' of the district areas within the protected regions. The term 'special character' is loosely defined as including a number of character values, such as the:

- rural and natural landscape and visual amenity of the district
- heritage attributes of the district
- built form of the townships as they relate to the district
- viticultural, agricultural and associated industries of the district
- scenic and tourism attributes of the district (s 7(1)).

This measure is intended to ensure that all statutory decision makers make decisions in accordance with the objects of the Act, and exposes decision-makers to judicial review if this obligation is not adhered to.

Since these Acts came into operation, there has been speculation that new, similar Acts could be introduced in the future to protect other significant areas within South Australia, such as Kangaroo Island and the Eyre Peninsula. Given that these areas are outside of the Greater Adelaide Metropolitan Area, it remains to be seen whether further legislative reform in this regard will follow.

## Tasmania

by Jessica Feehely

### Tarkine national heritage listing rejected

On 8 February 2013, Federal Environment Minister, the Hon Tony Burke MP, rejected the recommendation of the Australian Heritage Council to include 439,000ha of the Tarkine area in north west Tasmania in the National Heritage List. Instead, the Minister announced that a narrow coastal strip along the west coast, comprising approximately 21,000ha and dubbed the 'Western Tasmania Aboriginal Cultural Landscape', would be included in the National Heritage List in recognition of its indigenous heritage values.

The Australian Heritage Council's report to the Minister had recommended inclusion of the whole Tarkine Area in the National Heritage List on the basis of outstanding natural heritage values associated with its magnesite karst systems,

high wilderness values and its demonstrated links with Gondwanan flora. The Council also considered the area, the largest single tract of cool temperate rainforest in Australia, to be one of the most important Tertiary fossil flora sites in Australia.

Minister Burke emphasised the need to balance those values against the constraints National Heritage listing may place on economic development in the region, noting:

This part of Tasmania has the highest unemployment in Tasmania. At a time when I've been right in the heart of dealing with how the Commonwealth helps this state with the downturn that has occurred in forestry, I'm very mindful of anything that can have an impact on jobs.

The Minister stated that he had been unable to find a compromise boundary that could provide appropriate recognition of the heritage values identified by the Heritage Council while still allowing mineral development in the area. Ultimately, the Minister considered that any listing beyond the proposed Aboriginal Cultural Landscape would have 'unacceptable' social and economic consequences, and refused to include the wider area in the National Heritage List.

Conservation groups, and the Chair of the Australian Heritage Council, have condemned the decision.

Details regarding the decision, and the listing of the Western Tasmania Aboriginal Cultural Landscape, are available at [www.environment.gov.au/heritage/places/national/western-tasmania/index.html](http://www.environment.gov.au/heritage/places/national/western-tasmania/index.html)

### Tasmanian forests included in World Heritage nomination

The Federal Environment Minister has submitted a nomination to UNESCO proposing to extend the boundaries of the Tasmanian Wilderness World Heritage Area to include nearly 170,000ha of additional forest.

The nominated area includes 120,000ha of forests identified by signatories to the Tasmanian Forest Agreement, including the Styx, Weld and Upper Florentine forests, and additional areas designed to improve the integrity of the World Heritage Area boundary.

The nominated area explicitly excludes the Tarkine, and any areas that would impact on mining in the north-west of Tasmania. The nomination is expected to be considered by UNESCO in June 2013. Details of the World Heritage nomination are available at [www.environment.gov.au/heritage/places/world/tasmanian-wilderness/index.html](http://www.environment.gov.au/heritage/places/world/tasmanian-wilderness/index.html)