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# ELIZABETHAE II REGINAE

A.D. 1990

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No. 63 of 1990

**An Act to facilitate the establishment of the Wilpena Station Tourist Facility; to facilitate the establishment of an airport near Hawker and electrical power lines to the facility and the airport; and for other purposes.**

*[Assented to 6 December 1990]*

The Parliament of South Australia enacts as follows:

## Short title

1. This Act may be cited as the *Wilpena Station Tourist Facility Act, 1990*.

## Interpretation

2. (1) In this Act, unless the contrary intention appears—

“the airport land” means—

- (a) land (not exceeding 600 hectares in area) within 20 kilometres of the Post Office at Hawker selected by the council for the establishment of an airport pursuant to section 5;
  - (b) land for the purposes of navigational beacons or other navigational aids;
- and
- (c) land (if required) for the purposes of a road giving vehicular access to the land referred to in paragraphs (a) and (b):

“building” includes part of a building:

“to clear” native vegetation means—

- (a) to kill, destroy or remove native vegetation;
- (b) to sever the branches, limbs, stems or trunks of native vegetation or to cause any other damage to native vegetation:

“the council” means the District Council of Hawker:

“essential term” in relation to the lease means a term of the lease referred to in clause 11.18 of the lease as an essential term of the lease:

“the lease” means the lease dated 16 January, 1989, between the Minister for Environment and Planning and Ophix Finance Corporation Pty. Limited:

“the lessee” means the person who is, for the time being, the lessee pursuant to the lease:

“native vegetation” means—

(a) any plant that is indigenous to Australia;

and

(b) any plant of a species declared by regulation under the *National Parks and Wildlife Act, 1972*, to be a native plant,

whether the plant is alive or dead:

“protected animal” has the same meaning as in the *National Parks and Wildlife Act, 1972*:

“structure” includes part of a structure:

“the Wilpena Station Tourist Facility” or “the facility” means the tourist facility proposed to be established in the development zone:

“the Wilpena Station Tourist Facility development zone” or “the development zone” means the land shown in schedule 1 being land zoned for the purposes of development by the plan of management for the Flinders Ranges National Park.

(2) A right referred to in this Act to change the use of land to a particular use is a right to commence that use whether it supersedes a previous use of the land, follows upon a period of non-use or is in addition to a previously established use of the land.

(3) For the purposes of this Act a building will not be taken to comprise more than one storey by virtue of the fact that—

(a) its floor is divided into different levels if the difference between the lowest and highest level is less than 2.4 metres;

or

(b) it incorporates space below floor level that is used for storage or for some other purpose but not for human occupation.

### **Construction, etc., of tourist facility**

3. (1) A person authorized by the Minister, may—

(a) erect or construct the works referred to in subsection (3), or any part of those works, in the development zone;

(b) convert, alter or add to a building or structure, situated in the development zone;

(c) change the use of the development zone to use as a tourist facility or to a use that is incidental or ancillary to use as a tourist facility;

(d) clear native vegetation in the development zone for the purpose of establishing the facility;

(e) undertake any other act or activity in or in relation to the development zone for or in relation to the establishment of the Wilpena Station Tourist Facility or in relation to the operation of the facility.

(2) The Minister may authorize the lessee or any other person to undertake the acts and activities referred to in subsection (1).

(3) The works consist of—

(a) a tourist facility comprising—

(i) the forms of overnight accommodation set out below (the first stage of the facility) and any further accommodation authorized by the Minister under this section—

- a hotel of not more than 120 bedrooms;
- not more than 40 separate bungalows;
- dormitories providing a total of not more than 30 single beds;
- not more than 75 powered caravan or camping sites;
- not more than 250 unpowered camping or caravan sites;
- sites for the accommodation of the passengers of not more than 10 buses;

(ii) the facilities (excluding facilities for the overnight accommodation of visitors) referred to in clause 4.1 of the lease;

(iii) buildings, structures and other facilities that are incidental or ancillary to the accommodation and facilities referred to in subparagraphs (i) and (ii);

and

(b) buildings, structures and other works that are incidental or ancillary to the establishment or operation of the tourist facility.

(4) The accommodation and facilities referred to in subsection (3) (a) (i) and (ii)—

(a) must not include a building of more than one storey;

and

(b) must not include a building (other than a water tank or an observatory) if its floor is more than 550 metres above sea level.

(5) Subject to subsection (7), the Minister must (at the request of the lessee) by notice in the *Gazette*, increase the capacity of the facility to accommodate not more than 2 924 overnight visitors in the forms of accommodation determined by the Minister and specified in the notice.

(6) The notice must not specify a form of accommodation that does not appear in the fourth schedule to the lease.

(7) The Minister must not increase the capacity of the facility under subsection (5) unless—

(a) the Minister is satisfied that the lessee has complied with the requirements of the approved environmental maintenance plan in relation to the use of available water and has complied with clause 5.12.3 of the lease or, if the Minister is not satisfied as to those matters, the Minister is satisfied that an adequate and permanent supply of water is available for the purposes of the facility;

and

(b) the lessee and all former lessees under the lease have complied with the essential terms of the lease.

(8) Subject to subsection (9) the Minister may (at the request of the lessee) by notice in the *Gazette*, increase the capacity of the facility to accommodate not more than 3 631 overnight visitors in the forms of accommodation specified in the notice.

(9) The Minister must not increase the capacity of the facility under subsection (8) unless—

(a) the Minister is satisfied that the lessee has complied with the requirements of the approved environmental maintenance plan in relation to the use of available water and has complied with clause 5.12.3 of the lease or, if the Minister is not satisfied as to those matters, the Minister is satisfied that an adequate and permanent supply of water is available for the purposes of the facility;

and

(b) the lessee and all former lessees under the lease have complied with the essential terms of the lease.

(10) When determining the question of compliance by the lessee or a former lessee for the purposes of subsection (7) or (9) any non-compliance that has been rectified to the Minister's satisfaction will not be taken into account.

(11) The Minister must cause a copy of a notice referred to in subsection (8) to be laid before both Houses of Parliament as soon as practicable after the original was published in the *Gazette* and either House may disallow the increase in the capacity of the facility provided for by the notice within nine sitting days after the copy of the notice was laid before that House.

(12) The Minister may, by notice in the *Gazette*, increase the limit fixed under subsection (8) in respect of a particular form of accommodation if, at the same time, the Minister reduces the limit fixed in respect of one or more of the other forms of accommodation under that subsection so that the capacity of the facility to accommodate overnight visitors does not exceed 3 631 persons.

(13) For the purposes of this section the capacity of the various forms of accommodation will be taken to be—

- (a) 1.8 persons for a hotel bedroom;
- (b) three persons for a bungalow;
- (c) three persons for a cabin;
- (d) three persons for a camping or caravan site;

and

- (e) 44 persons for a bus site.

(14) A golf course must not be established in any part of the development zone.

#### **Compliance by lessee with plans**

4. (1) Within 14 sitting days after the preparation of a public information plan, or a revised public information plan, by the lessee under clause 4.20 of the lease the Minister must cause a copy of the plan or revised plan to be laid before both Houses of Parliament.

(2) Within 14 sitting days after the preparation of an environmental maintenance plan, or an amendment to such a plan, by the lessee under clause 5.12 of the lease the Minister must cause a copy of the plan or the plan as amended to be laid before both Houses of Parliament.

(3) If, in relation to a plan referred to in subsection (1) or (2), the period of 14 sitting days will comprise more than six weeks, the Minister must, within 10 days after the preparation of the plan, give notice (in the *Gazette* and a newspaper circulating throughout the State) that the plan is available for public inspection or purchase at the office of the Minister.

(4) The Minister must, on or before 30 September in each year, prepare a report in relation to the lessee's compliance with the public information plan and the environmental maintenance plan and must cause the report to be laid before both Houses of Parliament on or before that date.

#### **Construction, etc., of airport**

5. (1) The council, or a person authorized by the council, may—

- (a) erect or construct the airport works referred to in subsection (2), or any part of those works, on the airport land;
- (b) convert, alter or add to a building or structure situated on the airport land;
- (c) change the use of the airport land to use as an airport or to a use that is incidental or ancillary to use as an airport;

- (d) clear native vegetation on the airport land;
- (e) undertake any other act or activity on or in relation to the airport land for or in relation to the establishment of an airport on that land or in relation to the operation of the airport.

(2) The airport works consist of—

- (a) runways, buildings, structures and other works to accommodate aircraft within aeroplane reference code 3C specified by the Civil Aviation Authority in “Rules and Practices for Aerodromes” at the commencement of this Act;
- (b) buildings, structures and other works that are incidental or ancillary to the establishment or operation of the airport.

(3) An act or activity referred to in subsection (1) must not be undertaken for, or in relation to, the initial establishment of the airport until an environmental impact assessment has been prepared and officially recognized under section 7 in relation to the airport works.

### **Construction, etc., of power lines**

6. (1) The council, or a person authorized by the council, may—

- (a) erect or construct the Wilpena power line and the airport power line;
- (b) convert, alter or add to a building or structure comprising part of the Wilpena power line or the airport power line;
- (c) change the use of the land above or under which the Wilpena power line or the airport power line is, or is to be, erected or constructed and any adjoining land to use for the purposes of operating the power line or to a use that is incidental or ancillary to that use;
- (d) clear any native vegetation on the land referred to in paragraph (c);
- (e) undertake any other act or activity for or in relation to the establishment of the Wilpena power line or the airport power line or in relation to the operation of either power line.

(2) The council may authorize a person to undertake the acts and activities referred to in subsection (1) in relation to either the Wilpena power line or the airport power line or in relation to both power lines.

(3) The Wilpena power line consists of a 33 kilovolt electrical power line from Yappala to the Wilpena Station Tourist Facility and includes buildings, structures and other works that are incidental or ancillary to the establishment or operation of the power line.

(4) The airport power line consists of an electrical power line to the airport and includes buildings, structures and other works that are incidental or ancillary to the establishment or operation of the power line.

(5) An act or activity referred to in subsection (1) must not be undertaken for, or in relation to, the initial establishment of the Wilpena power line or the airport power line until an environmental impact assessment has been prepared and officially recognized under section 7 in relation to the power line.

### **Environmental Impact Assessments**

7. (1) Draft environmental impact assessments in relation to the airport works and the power lines must be prepared by the council or a person nominated by the council.

(2) Separate draft environmental impact assessments may be prepared under subsection (1) in respect of the airport works and each of the power lines or a draft assessment may combine the airport works and the airport power line or may combine the two power lines

or may combine the airport works and both power lines and the council may nominate one person, or different persons, to prepare those assessments.

(3) The council, or the person nominated by the council, must, when preparing a draft environmental impact assessment, address those social and environmental impacts of the acts and activities referred to in section 5 or 6 that should, in the opinion of the council or the nominee, be included in the environmental impact assessment.

(4) The Minister must, by public notice, invite interested persons to make written submissions on a draft environmental impact assessment within a period of not less than six weeks from the date of publication of the notice.

(5) The Minister must give to the council, or the council's nominee, copies of all submissions made within the period referred to in subsection (4) and must not proceed to accord official recognition to a draft environmental impact assessment until the council, or the council's nominee, has responded to those submissions to the satisfaction of the Minister.

(6) The Minister must, after considering the submissions and the response of the council, or its nominee, determine what (if any) amendments should be made to the environmental impact assessment and, after those amendments have been made, signify, by notice to the council, that the assessment is officially recognized.

(7) The Minister may from time to time amend, or require the amendment of, an environmental impact assessment to which official recognition has been accorded under this section in order to correct an error or to make modifications that are desirable in view of more accurate or complete data or technological or other developments not contemplated at the time of the original recognition but, where a proposed amendment would significantly affect the substance of the environmental impact assessment, it must not be made before interested persons have been invited, by public notice, to make written submissions on the proposed amendment and the Minister has considered the submissions (if any) received in response to the notice.

(8) Copies of draft and officially recognized environmental impact assessments and copies of submissions made in response to an invitation from the Minister under this section must be available for public inspection, or purchase, at the office of the council and the Minister.

(9) In this section—

“the Minister” means the Minister for Environment and Planning;

“public notice” means notice published in the *Gazette* and in a newspaper circulating throughout the State.

#### **Conditions imposed by Minister**

8. (1) The Minister must, by notice served on the council, impose on the council or the person authorized by the council, the conditions (if any) recommended by an officially recognized environmental impact assessment in relation to the airport works or the power lines.

(2) If the council, or the person authorized by the council, fails to comply with a condition imposed under subsection (1), the Minister may apply to the Supreme Court for an order enforcing compliance with the condition.

#### **Other Acts, etc., not to apply**

9. (1) The *Planning Act, 1982*, and the *Native Vegetation Management Act, 1985*, do not apply to the acts or activities referred to in sections 3, 5 and 6 and those acts and activities may be undertaken in accordance with this Act notwithstanding any other Act or law to the contrary.

(2) The grant and acceptance of the lease did not constitute division of an allotment within the meaning of the *Planning Act, 1982*.

(3) The *National Parks and Wildlife Act, 1972*, does not apply to, or in relation to, the killing, injuring or molesting of a protected animal in the normal course of undertaking the acts or activities referred to in sections 3, 5 and 6 by a person to whom the Minister has granted a permit under this subsection.

(4) A permit referred to in subsection (3) will be subject to such conditions as the Minister thinks fit.

#### **Resumption of lands**

10. Where land held pursuant to a pastoral lease, a perpetual lease or a miscellaneous lease has been selected for the purpose of establishing the airport, the Wilpena power line or the airport power line under this Act, the land may be resumed pursuant to the *Pastoral Land Management and Conservation Act, 1989*, or the *Crown Lands Act, 1929*, for that purpose.

#### **Commonwealth legislation**

11. An act or activity may not be undertaken pursuant to this Act in contravention of an Act or law of the Commonwealth.

#### **Preservation of rights under lease**

12. (1) Subject to subsection (2), nothing in this Act varies the lease or in anyway restricts the exercise by the lessee of the lessee's rights under the lease or the exercise by the Minister for Environment and Planning or the Director of National Parks and Wildlife of a discretion or power under the lease.

(2) The capacity of the tourist facility may exceed the capacity specified in section 3 (3) only if—

(a) in relation to an increase in the capacity of the facility referred to in section 3 (5) the provisions of section 3 (7) have been complied with;

and

(b) in relation to an increase in the capacity of the facility referred to in section 3 (8)—

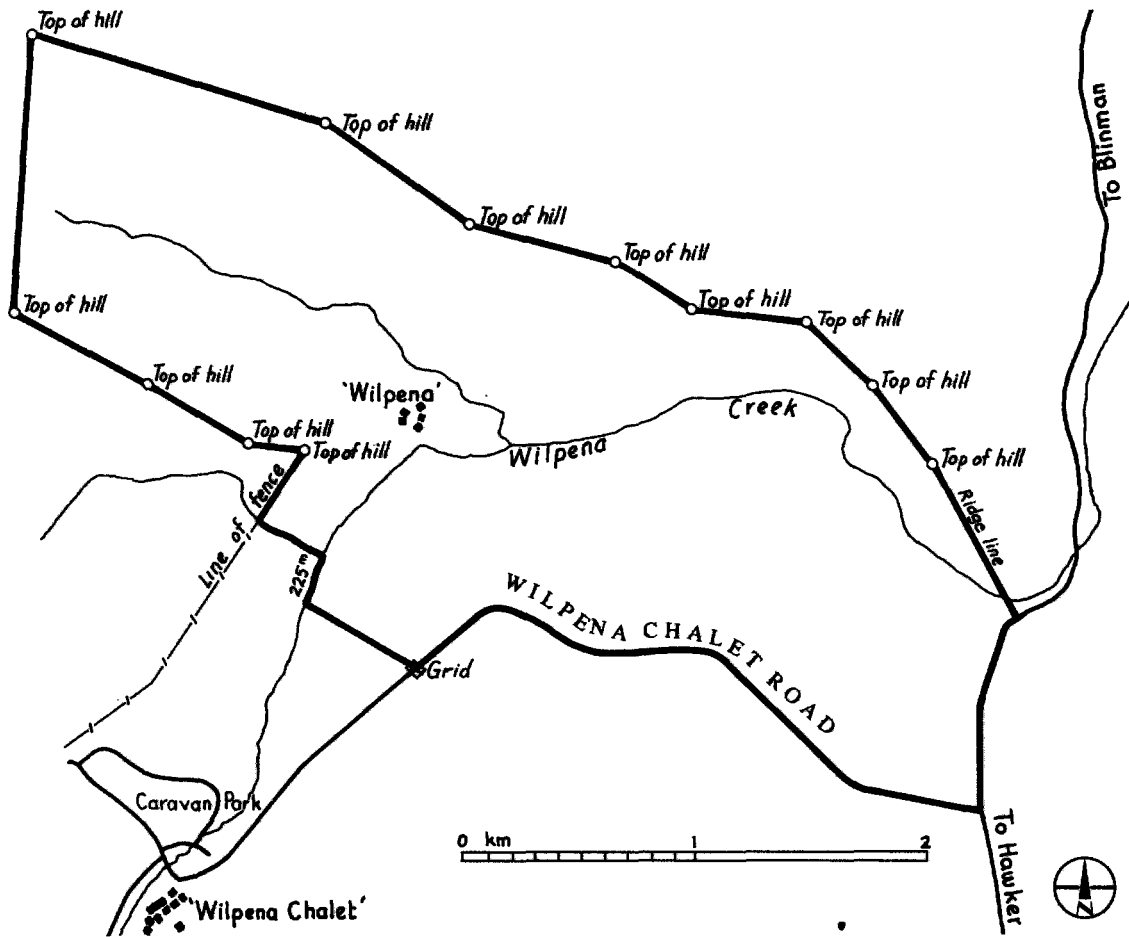
(i) the Minister has increased the capacity under that subsection and the provisions of section 3 (9) have been complied with;

and

(ii) neither House of Parliament has disallowed the increase pursuant to section 3 (14).

(3) Section 9 (1) does not apply to, or in relation to, the exercise by the lessee of a right under the lease if the exercise of the right is not in conformity with this Act.

SCHEDULE 1  
WILPENA STATION TOURIST FACILITY DEVELOPMENT ZONE



———— Boundary of Wilpena Station Tourist Facility Development Zone.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor