

NOTICE TO LODGING PARTIES
LAND SERVICES GROUP
Department for Administrative and Information Services
101 Grenfell Street Adelaide 5000



Government
of South Australia

No. 133

LOCAL GOVERNMENT LEGISLATION

LOCAL GOVERNMENT ACT 1999

On 1 January 2000 the Local Government Act 1999 (LGA 99)¹ came into operation. It replaces most of the Local Government Act 1934 (LGA 34).

This notice is intended to give a brief overview of those parts of the LGA 99 that affect lodgements with this office and the forms or procedures to be adopted.

Section 38 - Seal of Council

The common seal of a Council must not be affixed to a document except to give effect to a resolution of the Council.

The affixing of the common seal must be attested to by both the principal member of the Council² and the Chief Executive Officer (CEO).³

If anyone attesting the affixing the common seal holds a position other than Mayor, Chairperson or CEO further clarification as to their capacity to attest to the affixing of the seal should be given on the outside of the document.

Section 184 & 185 - Non payment of rates

A Council may sell land for non-payment of rates where the rates have been in arrears for three years or more.

A transfer of land by the Council for non-payment of rates is to be prepared on panel form T1 or T2. It should include in the heading that it is "Pursuant to a Power of Sale under section 184 of the Local Government Act 1999", even if the action were commenced under the LGA 34, but not completed prior to 1 January 2000⁴.

¹ Unless indicated otherwise, all references to sections in this instruction are references to the LGA 99.

² This includes the positions of Mayor (or acting mayor), Chairperson (howsoever described – see s 51, and any person acting in that position).

³ This includes a deputy CEO, or anyone else acting in the CEO's position. See s 102.

⁴ See s 23 of LG (Implementation) Act 1999.

The transfer must be accompanied by a statutory declaration from the CEO that the requirements of section 184 have been complied with. There is no set form for this declaration. For suggested wording see Annexure A.

The duplicate certificate of title or other relevant instrument need not be produced if it is not reasonably practicable to obtain. Fees required by Registrar-General, such as registration and new title fees, and stamp duty are payable.

If a Council has -

- attempted to sell land and has no reasonable prospect of selling it within a reasonable time frame, or
- the value of the land is less than the outstanding rates

the Council may apply to the Minister⁵ for an order to have the land transferred to the Crown or the Council, or in the case of land held from the Crown under a lease, licence or agreement to purchase, to forfeit to the Crown the lease, licence or agreement to purchase.

The application to the Registrar-General is to be made on panel form A3 and must have the Ministerial Order attached to it. In the case of land held from the Crown under a lease, licence or agreement to purchase, where the order cancels the lease, licence or agreement to purchase, the order is to be given the prefix of DL. In any other case the order acts as a transfer to the relevant authority. The order is to be prefixed OA.

The wording to be used in the nature of application panel in the A3 panel form is -

“The Applicant applies pursuant to section 185 of the Local Government Act 1999 to have the attached order from the Minister(insert title of Minister responsible for the administration of the Crown Lands Act 1929)... dated the day of 20..... Transferring (or forfeiting) the land to noted on the above Certificate(s) of Title (or Crown Lease).”

The duplicate certificate of title need not be produced if it is not reasonably practicable to obtain.⁶

No stamp duty is payable on an order under section 185⁷.

Fees as required by Registrar-General, such as registration and new title fees, are payable.

Section 190 & 191 - Acquisition of land

A Council may acquire land compulsorily with the Minister’s consent, or without the Minister’s consent for the purposes set out in the regulations⁸, using the

⁵ “Minister” is the Minister responsible for the administration of the *Crown Lands Act 1929*.

⁶ s 185 (5).

⁷ s 185(4)

⁸ Regulation 15 in *Regulations under the Local Government Act 1999*

Land Acquisition Act 1969. The Minister's consent (if required) need not be attached to the acquisition.

A Notice of Intention to Acquire must precede any acquisition.

Section 194 - Revocation of community land

The Council may revoke the classification of community land subject to certain procedures and exceptions. If the certificate of title has a dedication, reservation or trust noted on it, the Council must immediately after the revocation give notice of the revocation to the Registrar-General who must then make appropriate amendments to records held.

The approved pro-forma is to be used (see "Annexure B"). This form is to be typed on a LTO Panel Form B2 and given a prefix of RT. It need not be certified correct for the purposes of the Real Property Act 1886 (RPA). The duplicate certificate of title must accompany the notification. Evidence of the Minister's consent is not required.

If only portion of the land in a title is being revoked from its classification as community land a filed plan will be required to define the portion being revoked. This requirement may be waived if the revocation is associated with a division plan.

No fee is to be charged on the RT for the notification or for the issue of a new certificate of title.

Section 201 - Sale or disposal of community land

The Council may sell or otherwise dispose of land vested in the Council in fee simple or as lessee.

A Council cannot dispose of community land unless the land has been revoked from its classification as community land. Land forming a road or part of a road cannot be disposed of unless the road or part of the road has been closed under the Roads (Opening and Closing) Act 1991.

Community land held under a dedication, reservation or trust, such as a reserve vested in the Council under Part 19AB, must have its classification revoked before land can be:

- vested as a road under Part 19AB of the RPA
- declared under section 208 of the LGA 99 to be a public road, or
- opened as a road under the Roads (Opening and Closing) Act 1991.

It has been the policy of this office on receipt of a transfer of land owned by a Council to another party to require evidence that the land is no longer classified as community land and can, therefore, be sold or disposed of in accordance with this section. This evidence is no longer required. It will be the responsibility of certifying parties to satisfy themselves that the land is no longer community land and can be sold or disposed of.

Section 208 - Declaring community land to be a public road

Community land that is subject to a dedication, reservation or trust must first have its classification as community land revoked before it can be declared to be public road. This is to remove the dedication, reservation or trust that would otherwise prevent the land being used for any other purpose than that contemplated in the dedication, reservation or trust.

The Council must first own the land before it can exercise its powers under section 208 to declare land to be a public road. The current procedure of declaring land that is to be transferred to a Council to be public road before it is vested in the Council does not have its intended effect. Land in these circumstances is not a public road and will not appear as such on the plan or title.

Some Councils have purported, under this section, to declare an allotment in a deposited plan to be a reserve. There is no power to do so. The certificate of title issued for the land will not carry the designation of reserve in the land description.

Section 210 - Declaring a private road to be a public road

A Council may declare a private road to be a public road if the owner of the road asks for, or consents to, the declaration or the Council makes reasonable inquiries to find the owner and fails to do so.

A declaration under section 210 must be published in the Government Gazette (GG). On publication in the GG the road converts to a public road and vests in fee simple in the Council⁹.

The Council must immediately after a private road is declared to be public, furnish the Registrar-General with a copy, in a manner and form approved, of the declaration.

The only requirements for this notification are that it must –

- be on A4 paper of no less than 80gsm
- be under the letterhead of the Council
- refer to the GG in which the declaration appeared, and
- be signed by an officer of the Council

Land that is the subject of a road widening, that was not formerly a private road, cannot be declared to be a public road under this section. Section 208 would appear to be the correct section, but this cannot occur until the Council is the registered proprietor.

Section 219 - Assigning a name to a public or private road

A Council may assign a name to, or change the name of, a public or private road or a public place.

⁹ This land will vest free of certain interests. See discussion of s 208.

The Council must immediately notify the Registrar-General, Valuer-General and Surveyor-General of a name or name change.

Any name or change of name must appear in the GG and a newspaper circulating generally throughout the State.

Notification can be on A4 paper under the letterhead of the Council and be signed by an officer of the Council.

Section 243 - Registrar-General to issue certificates of title

If land is vested in a Council for an estate in fee simple, the Council must apply to the Registrar-General for the issue of a new certificate of title under the RPA.

The application must be in a form approved by the Registrar-General (as per application under section 115a of RPA) and accompanied by:

- the duplicate title, unless the Registrar-General determines otherwise;
- any survey or other materials the Registrar-General may require; and
- the fee fixed by the Registrar-General.

SCHEDULE 6 - Charges over land

This schedule allows a Council to place a charge on land. This schedule does not apply to rates, charges, interests or fines recoverable under Chapter 10 of the LGA 99.

The Council must deliver in a form determined by the Registrar-General a notice of the charge. Panel form A3 is to be used with a prefix of MC. See Annexure C. The notice must:

- identify the land over which the charge is to exist
- declare the unpaid amount and the rate of interest
- request the Registrar-General to make a note in the Register Book.

The charge is only created once the appropriate note has been entered on the Register Book.

After the note has been entered, the Registrar-General must not register any instrument affecting the land unless the instrument:

- was executed before the entry was made or under an agreement entered into prior to the entry being made,
- relates to an instrument registered before the entry was made,
- is of a prescribed class¹⁰,
- is made subject to the charge, or
- is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made.

An instrument that fits the above criteria, once registered, has effect as if it had been registered before the entry of the charge was made.

¹⁰ To date no instruments have been prescribed.

The Council has the same powers over the land the subject of the charge as are given to a mortgagee under the RPA in respect of default under the mortgage.

The charge will be discharged, and the relevant entry cancelled, by either:

- the registration of a transfer under a power of sale by a prior mortgagee, chargee or encumbrancee, or
- the Council applying, in a form approved by the Registrar-General, to discharge the charge.

To discharge the charge panel form A3 to be used with a prefix DA. Wording for the application panel is: "The Applicant applies pursuant to Clause 4 of Schedule 6 of the Local Government Act 1999 to note the discharge of charge on the above Certificate(s) of Title."

LOCAL GOVERNMENT (IMPLEMENTATION) ACT 1999

Section 8 and 10 - Confused Boundaries

After the repeal of section 308 of the LGA 34, sections 50 and 51 of the Survey Act 1992 were amended and section 255 inserted into the RPA to deal with confused boundaries.

Section 34 - Transitional provisions

Despite section 193 of the LGA 99, if a Council:

- had acquired land during the five years before 1 January 2000
- is satisfied that the land was acquired by the Council for a specific commercial or operational purpose and was not intended to be retained for public or community use or for the provision of community facilities
- has ensured that there was a reasonable opportunity for the community to make submissions to the Council before the acquisition actually occurred, and
- resolves within six months after 1 January 2000 that the land is to be excluded from classification as community land under the LGA 99

then the land will be taken to not be classified as community land. A Council must give notice in the GG of such a resolution.

There is no requirement to notify the Registrar-General of an exclusion under this section. As with any other land in a Council's name, if the land is to be transferred, the responsibility will be with certifying parties to satisfy themselves that the land is no longer classified as community land.

A Lease created under the LGA 34 continues in existence under the LGA 99.

**SIMON LIBBIS
REGISTRAR-GENERAL
12 March 2003**

ANNEXURE A

**STATUTORY DECLARATION UNDER SECTION 184 OF THE
LOCAL GOVERNMENT ACT 1999**

To the Registrar General,

I ... (insert Full Name) ... of ... (insert address) ... solemnly and sincerely
declare that:

- 1 I am the Chief Executive Officer of the ... (insert Council Name) ...
- 2 The land in Certificate of Title Register Book Volume Folio
.....is wholly comprised within the boundaries of the said Council.
- 3 Council rates in respect of the said Certificate of Title have been in
arrears for three years or more.
- 4 All the requirements of Section 184 of the Local Government Act
1999 in relation to the sale of the land in the said Certificate of Title
for non-payment of rates have been observed.

I make this solemn declaration conscientiously believing the same to be true
and by virtue of the Oaths Act 1936.

Dated

Declared and subscribed at
 by the said

 this.....day of.....20
 before me,
 J.P., etc. }

ANNEXURE B

NOTICE OF REVOCATION OF CLASSIFICATION OF COMMUNITY LAND

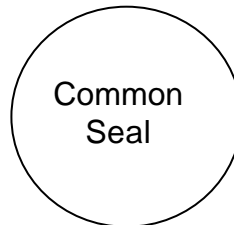
To the Registrar-General:

1. The [*insert name of council*] ("the Council") of [*insert address*] is the registered proprietor of the whole¹ of the land comprised in Certificate of Title Register Book Volume Folio ("the land").
2. Prior to [*insert date of resolution*] the land was classified as community land within the meaning of s 193 of the *Local Government Act* 1999 ("the Act").
3. By resolution passed on the [*insert date of resolution*] and with the consent of the Minister for [*insert correct title of Minister*], the Council revoked the classification of the land as community land ("the revocation").

NOW THEREFORE the Council gives notice of the revocation pursuant to s 195 of the Act.

Dated the _____ day of _____ 20____

The common seal of [*insert name of council*]² was hereunto
 affixed in the presence of:
)
 Mayor [*or Chairperson*])
)
 Chief Executive Officer)



¹ If the classification is revoked as regards a portion only of the land in a Certificate of Title, that portion will need to be defined precisely in the resolution (eg. Allotment 15 in Deposited Plan 65498 being portion etc.) If the portion to be revoked is not uniquely identified by a plan that is already deposited or filed in the Lands Titles Office, a plan will need to be lodged to define the portion. **It is strongly suggested that Councils ensure that this plan has been lodged in the LTO and approved for data prior to the resolution being made.** Failure to observe this guideline may result in a Council:

- having to delay giving notification of a resolution until an adequate plan has been prepared and lodged in the LTO, contrary to their obligation to "immediately" give such notice; and
- being required to pass additional resolutions, if the dimensions of the allotment specified in the resolution differ from those delineated on the plan that is finally approved for data.

² The Council must affix its common seal in accordance with s 38(2) of the Act.

ANNEXURE C

APPLICATION

Form A3

TO

NOTE A CHARGE

(Pursuant to section of the Local Government Act 1999)

CERTIFICATE(S) OF TITLE AFFECTED	All the titles effected by the Charge to be stated
ESTATE AND INTEREST	
APPLICANT(Full Name and	Insert full name and address of Council
<p>SPECIFY NATURE OF APPLICATION To the Registrar-General Registrar, The Applicant:</p> <p>a) gives notice of a charge to be created over the whole of the land in the above Certificate(s) of Title</p> <p>b) declares that the unpaid amount owing to the Applicant is the sum of (amount in words) (\$.....) plus interest at a rate of% per annum</p> <p>c) applies pursuant to Clause 2 of Schedule 6 of the Local Government Act 1999 to have this notice entered on the above Certificate(s) of Title.</p>	
DATED	
EXECUTION	
..... Signature of APPLICANT	Execution by the Council must comply with the requirements for affixing their common seal
..... Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity.	
..... Print Full Name of Witness (BLOCK LETTERS)	
.....	
..... Address of Witness	
Business Hours Telephone No	

* A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.