

REVOCATION OF COMMUNITY LAND CLASSIFICATION

A RESOURCE FOR SOUTH AUSTRALIAN COUNCILS

INDEX

INTRODUCTION	4
BACKGROUND	4
COMMUNITY LAND – VARIOUS LAND DESCRIPTION TERMINOLOGY	5
LOCAL GOVERNMENT ACT DEFINITIONS	7
EXCLUSIONS FROM REVOCATION PROCESS	8
DELEGATION	9
MINISTER’S ROLE	9
REVOCATION PROCESS	9
A: Initial Report preparation	9
B: Council resolves to progress to consultation	11
C: Public Consultation	11
D: Native Title	13
E: Council resolves to refer proposal to Minister for approval	13
F: Referral to Minister for approval	13
G. Council receives Minister’s approval	14
FLOW CHART SUMMARY	15
TEMPLATES – EXAMPLES ONLY	16
CHECKLIST	18
FURTHER ENQUIRIES	19

INTRODUCTION

This resource has been prepared by the Office for State/Local Government Relations as a guide to councils on how to compile an application made to the Minister for State/Local Government Relations under the *Local Government Act 1999* for approval to revoke the classification of community land. It also contains an overview of the legislative framework governing the classification of local government land as “community land”.

The resource is intended to be a tool to assist councils in understanding the revocation of community land processes. Councils should seek their own legal advice in relation to the interpretation of any of the provisions of the *Local Government Act 1999*.

BACKGROUND

The *Local Government Act 1999* established a framework for the classification of land owned or under a Council’s care, control and management as “community land”. On 1 January 2000, the Act classified most land owned or held under the care, control and management of a Council (except roads) as community land, [section 193](#) of the *Local Government Act 1999*.

The framework ensures a consistent and strategic approach to the administration and management of local government land. Its objectives are to protect the interests of the whole community in land for current and future generations and to build consensus about the future management of such land.

Transitional arrangements between 2000 and 2003 allowed councils to exclude specific parcels of land from classification as community land. These arrangements provided the community with a meaningful opportunity to have a say on which local government land (irrespective of its history or use) was regarded as a valuable asset that should be retained and managed for community benefit. The *Local Government Act 1999* prevented land from being excluded that was subject to a reservation, dedication or trust preventing or restricting their alienation, or was defined in schedule 7 of the *Local Government Act 1999*. Apart from those prohibitions, there were no restrictions as to what class or type of land could be excluded. Typically, land used solely for council operational purposes (works depots), or for business or commercial purposes (car parks), or other non-community purposes (land identified for sale) were excluded.

The *Local Government Act 1999* does not prevent community land from being used for business or commercial purposes. A council may approve the use of community land for such purposes provided that the use has been authorised in an approved management plan for the land, [section 196](#) of the *Local Government Act 1999*.

The Council should be aware that any decision that was made to exclude or retain a parcel of land at that initial time does not mean that it can never be considered again for removal from or addition to the classification system. The *Local Government Act 1999* is designed to give Councils flexibility to move pieces of land in and out of the classification system.

COMMUNITY LAND – VARIOUS LAND DESCRIPTION TERMINOLOGY

Terminology: the classification of Council land as Community Land has resulted in the removal of ambiguous and often confusing terminology used to describe land to be held for the benefit of the community. The following terminology may still be used by Councils and the public, and in the context of other legislation, for example, the *Development Act 1993*, the *Real Property Act 1886*, and the *Crown Lands Act 1929*.

A brief description of the terms often used follows:

- **Reserve:** usually describes an open space created as a condition of approval on the division of land under the *Development Act 1993* ([section 50](#)). On deposit of the plan of division under the *Real Property Act 1886* ([section 223\(1\)\(f\)](#)) the land shown on the plan as a “Reserve” vests in the name of the Council and a title is issued. In addition, a Council may have chosen to resolve that certain land under its ownership is a “Reserve”. However, this does not occur very often.
- **Crown Reserve:** generally applies to a reserve dedicated under the *Crown Lands Act 1929*. Usually no titles exist but a computerised Crown Record (CR) is created with a “title” reference. Land can be dedicated for varying community and non-community purposes ranging from recreation to drainage to parks. The Minister for State/Local Government’s approval doesn’t free the land from any dedication, reservation or trust under that Act, ([section 195](#) of the *Local Government Act 1999*,) and resumption of a dedication, reservation or trust must be dealt with under the *Crown Lands Act 1929*.
- **Ornamental Grounds:** were defined in the *Local Government Act 1934* as land of which the care, control and management is or has been assumed by a Council under [section 453](#) of the former *Ornamental Grounds Act 1881*.

This legislation was the ancestor of the current legislation that enables the establishment of open space and reserves in a council area, usually as a formal garden or park. Not commonly referred to in recent years.

- **Park Land:** was defined in the *Local Government Act 1934* as land declared or set apart as a park or set aside for the use and enjoyment of the public. The most common type of parkland is located around a town having been created at the time of survey of the town by the Government, for example, the Adelaide Park Lands.
- **Road Reserve:** apply to roads created under the *Roads (Opening and Closing) Act 1991*. The term is also used in local government to refer to land that has been surveyed (and sometimes titled) as a public road but not formed or developed for use by the public.
- **Water Reserve and other types:** not very common but check the title for any references to trusts, proclamations, or Special Acts. Section 452 of the *Local Government Act 1934* provided for the grant of a title over a water reserve or other reserves for public convenience.

The cancellation of these titles used to be dealt with under the *Local Government Act 1934* but now are taken to be a grant under [section 5AA](#) of the *Crown Lands Act 1929* ([section 27](#) of the *Local Government (Implementation) Act 1999*).

- **Cemetery Reserve:** [Part XXX](#) of the *Local Government Act 1934* provides that a Council may petition the Governor for the closure of a cemetery that is unsuitable or is no longer required for burial purposes. Any proposal to revoke a classification as community land with the view to dispose of the land, close a cemetery or remove the trusts over cemetery land must be considered having regard to [Part 30](#).
- **DP:** Deposited Plan – Deposited in the Land Title Office and creates new land identifiers (Allotment numbers).
- **FP:** Filed Plan – Filed in the Lands Title Office but does not create any new land identifiers. Used for easement purposes - to create an easement. Used for outer boundary surveys.
- **RP:** Road Plan.
- **GRO Plan:** General Registry Office Plan – looks at Old System Land (Prior to the Torrens Title System).
- **CR:** Crown Record – a computerised record of Crown Land, not a legal title, just a legal record.
- **CT:** Certificate of Title – includes land grants.
- **TG:** Trust Grant – is a land grant issued with a condition to hold in trust for a specific purpose.

LOCAL GOVERNMENT ACT DEFINITIONS

Some [definitions](#) (Chapter 1 – Preliminary, 4 – Interpretation, *Local Government Act 1999*) to remember when considering applications:

- “land” means, according to the context
 - (a) land as a physical entity, including
 - (i) any building or structure on, or improvements to, land; or
 - (ii) land covered by water and, in such case, the overlying water; or
 - (iii) a strata lot under the Community Titles Act 1996 or a unit under the Strata Titles Act 1988; or
 - (b) a legal estate or interest in, or right in respect of, land;
- “local government land” means land owned by a council or under a council’s care, control and management
- “owner of land” means
 - (a) if the land is unalienated from the Crown ; or
 - (b) if the land is alienated from the Crown by grant in fee simple
 - (i) the holder of an estate in fee simple, or a life estate, in the land; or
 - (ii) the holder of a leasehold estate in the land who is not in occupation of the land; or
 - (iii) a mortgagee in possession of the land (or a receiver appointed by such a mortgagee); or
 - (c) if the land is held from the Crown under a lease, licence or agreement to purchase the lessee, licensee or purchaser; or
 - (d) a person who holds native title in the land; or
 - (e) a person who has arrogated to himself or herself (lawfully or unlawfully) the rights of an owner of the land,

and includes the executor of the will, or administrator of the state, of any such person

- “public notice” means notice published in the *Gazette* and in a newspaper circulating generally throughout the State
- “public road” means
 - (a) any road or land that was, immediately before the commencement of the *Local Government Act 1999*, a public street or road under the repealed Act; or
 - (b) any road
 - (i) that is vested in a council under the Act or another Act; or

- (ii) that is placed under a council’s care, control and management as a public road after the commencement of the Act

but not including an alley, laneway, walkway or other similar thoroughfare vested in the council; or

- (c) any road or land owned by a council, or transferred or surrendered to a council, and which, subject to the Act, is declared by the council to be a public road; or
- (d) any land shown as a street or road on a plan of division deposited in the Lands Titles Registration office or the General Registry Office and which is declared by the council to be a public road; or
- (e) any land transferred or surrendered to the Crown for use as a public road that was, immediately before the transfer, held by a person in fee simple or under a lease granted by the Crown,

(and includes any such road that is within the boundaries of a public square);

- “road” means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes
 - (a) a bridge, viaduct or subway; or
 - (b) an alley, laneway or walkway.

EXCLUSIONS FROM REVOCATION PROCESS

A Council may revoke the classification of community land in accordance with prescribed procedures, [section 194](#) of the *Local Government Act 1999*, except for the following classes of land:

- The Adelaide Park Lands;
- Land required to be held for the benefit of the community under [Schedule 8](#) of the *Local Government Act 1999* (Beaumont Common, Klemzig Memorial Garden, Levi Park, Reynella Oval and the Lochiel Park Lands), under a special Act of Parliament, or under an instrument of trust; and
- Land excluded by Regulation.

DELEGATION

A resolution seeking the Minister's approval to revoke the community land classification cannot be delegated to a Council committee, [section 44\(3\)\(i\)](#) of the *Local Government Act 1999*. Full Council must pass a resolution to undertake public consultation and to pass a resolution seeking Ministerial approval.

MINISTER'S ROLE

It is important to note that the Council is the instigator of any proposed community land classification revocation, and as such it is ultimately the Council that is responsible and accountable to its community for the decisions it makes. The Minister's role in the revocation process is not to make the revocation but to review the Council proposal and the process followed. The effect of the Minister's approval gives the Council the authority to revoke the classification itself.

Providing that the application receives Ministerial approval, it then becomes a matter for the Council to make the final decision on the revocation. [section 194\(3\)\(b\)](#) of the *Local Government Act 1999*.

The Minister must be satisfied that the council has allowed the community to have maximum input into the consultation and requires assurance that the community's voice has been fully considered.

REVOCATION PROCESS

A: Initial Report preparation

Before a Council revokes the classification of community land it must prepare a report, [section 194\(2\)](#) of the *Local Government Act 1999*, on the proposal and follow the steps set out in its public consultation policy, [section 50](#) of the *Local Government Act 1999*. The report, which is to be made available during the public consultation phase, must contain:

- A summary of the reasons for the proposal to revoke the classification of community land;

Explanatory Note:

This statement should take into consideration any strategic planning documents prepared by the Council, for example, open space or recreation strategy, residential strategy or town centre strategy. This statement should also reference how the proposed revocation relates to Council's Strategic or Community Plan (outlining the desired future for the local government) and the investigations undertaken to determine that revocation of Community Land status was warranted.

- A statement of any dedication, reservation or trust to which the land is subject;

Explanatory Note:

This statement may necessitate consultation with adjoining councils if the land abuts land in an adjoining council with a similar dedication, reservation or trust. This statement should also take into account the relationship of the proposal, if any, to government strategic planning for open or recreational land in the area or region, for example, whether the land is linked with the Government's Metropolitan Open Space System (MOSS) network.

- A statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the Council proposes to use the proceeds;

Explanatory Note:

If sale or disposal is contemplated, the report should indicate how the proposal is consistent with the Council's policy on sale or disposal of land, [section 49\(1\)\(d\)](#) of the *Local Government Act 1999*.

[Section 201\(3\)](#) of the *Local Government Act 1999* provides that if Government financial assistance was given and the Council has not resolved to use the proceeds for the acquisition or development of other land for public or community use, or for the provision of community facilities, the Minister may request the Council, as a condition of approval, to pay an amount to the Crown, or applied for a specific purpose, the equivalent amount of money equal to the original purchase price.

- An assessment of how implementation of the proposal would affect the area and the local community;

Explanatory Note:

This assessment should provide a discussion and conclusion as to whether the implementation would have positive or negative affects on the area and the local community. This assessment should also identify potential groups that could be directly influenced by the proposal, for example, sporting groups that use the parcel of land.

- If the Council is not the owner of the land – a statement of any requirements made by the owner as a condition of approving the proposed revocation;

Explanatory Note:

Where the land has been placed under the care, control and management of the Council, and is subject to a dedication, reservation or trust created under the *Crown Lands Act 1929*, the approval of the appropriate Minister, as owner of the land, [section 189](#) of the *Local Government Act 1999*, should be obtained before the report is prepared. A copy of the consent from the appropriate Minister shall be included in the [Section 194\(2\)](#) report.

If the area is part of a significant park or reserve, the owner may also include a native titleholder. A statement should be included as to whether the parcel(s) is subject to native title (refer to section D).

- A copy of the relevant Certificate(s) of Title or other [title reference](#); and
- A map or plan defining the area of each piece of land for which revocation is proposed.

B: Council resolves to progress to consultation

The Council will have to consider the [section 194\(2\)](#), *Local Government Act 1999*, report and pass a resolution to proceed with public consultation, in accordance with the Council’s public consultation policy, [section 50](#) of the *Local Government Act 1999*.

C: Public Consultation

The Minister, in fulfilling the statutory role in the revocation process, is interested in ensuring maximum community input on proposals to revoke the community land classification. The Minister wants assurances that the community’s voice has been considered.

Importantly, the Council’s public consultation process is a critical stage of any council proposal under the *Local Government Act 1999* to deal with community land (exclusion, revocation, a proposed grant of a lease or licence, the adoption of a community land management plan). [Section 194\(b\)](#) of the *Local Government Act 1999* requires the council to follow the relevant steps set out in its public consultation policy following the preparation of the report outlined above.

The Council’s reasons for wanting to deal with a particular parcel of land should be clearly articulated to the community so that it is fully informed and is given genuine opportunity to put forward any concerns, or give support to the proposal.

Having done so, consensus can be reached on the future management and use of the land and any community misconceptions may be avoided about any possible future dealing with the land.

Pursuant to section [194\(2\)\(b\)](#) of the *Local Government Act 1999*, it is desirable that the notice placed in the newspaper(s) circulating in the Council's area should be set out in a way that the Council's intentions are clearly made known to the community.

The following information should be considered for the publication in a notice:

- What the Council's reasons are for implementing the proposal;
- Details which readily identify the land subject to the proposal, for example, a common place name, the current use of the land, whether all or part of the land is involved, the legal description of the land (Certificate of Title etc);
- If the land doesn't have a common place name, the inclusion of a plan or photo showing the location of the land should be considered;
- Any conditions imposed by the landowner, if relevant;
- Details of where copies of the report, plan or further information can be obtained;
- The name of the contact person at the Council; and
- The closing date for submissions to be made to the Council.

The *Local Government Act 1999* requires that a notice must provide for at least 21 days in which interested persons can make submissions on the proposal ([section 50\(4\)\(a\)](#)).

It is important that Councils take appropriate measures to ensure that any proposal to revoke the classification of community land is brought to the attention of the wider community. To that end, Councils should consider providing a greater period of time for responses than the minimum 21 days, particularly where a large or significant parcel of land is involved.

Councils should be sensitive to the concerns of those persons who live or own property in proximity to the affected land, particularly where the revocation is for the purpose of alienating open space currently available for recreational purposes. As such, Councils are encouraged to correspond individually and promptly with those affected persons, and also erect a sign on the land.

Where it is known that people living outside of the Council's area use the land, particularly where a large or significant parcel of land is involved, a period of time greater than 21 days should be given for responses.

Where the proposal is to revoke the classification of community land of a large or significant parcel of land, it is appropriate that the Council prepare and release a media article identifying the land in question, explaining its intentions and describing the processes. In certain cases, it may be prudent for the Council to invite the community to attend a public meeting, or a meeting of Council where their views will be heard.

Councils should acknowledge, in writing, all those who have taken the time to make submissions, thanking them for their interest and contribution, and informing them that their comments will be considered by the Council in making its decision.

Where the proposed revocation attracts interest from community members, particularly where there is both support and opposition to a proposal, it may also be prudent for the letter to include the date and time of the Council meeting at which the proposal will be considered, and extend an invitation to make a deputation.

D: Native Title

It is timely to remind councils that consultation with native title groups needs to be consistent with the public consultation policy required by [section 194\(2\)\(b\)](#) of the *Local Government Act 1999* in respect of parcels of land that are proposed to be resumed on which native title has not been extinguished. Councils should seek their own legal advice as to whether or not native title may be an issue over the land concerned.

E: Council resolves to refer proposal to Minister for approval

After complying with the requirements of preparing a report, [section 194\(2\)](#) of the *Local Government Act 1999*, and undergoing public consultation, the Council will have to consider the report, along with all submissions made during the public consultation process, and pass a resolution to proceed with seeking Ministerial approval for the revocation of the community land classification ([section 194\(3\)\(a\)](#)).

F: Referral to Minister for approval

Once Council has resolved to seek Ministerial approval for the revocation, an application can be made to the Minister for consideration.

An application should contain the following information:

- A copy of the report to Council to commence the process to revoke the community land classification and commence public consultation. (This report to Council is to include a copy of the report required under [section 194\(2\)](#), which is to include a copy of the response from the landowner, if relevant); (Refer A above)
- Details of the public consultation undertaken including copies of the actual advertisement(s) placed in local newspaper(s), media releases and photos of any sign erected on the land;
- A copy of the current Council's public consultation policy;
- A copy of any correspondence sent to adjoining property occupiers or owners and details of the adjoining owners or occupiers who were notified;
- Copies of correspondence received as part of the public consultation process;

- A copy of the report to where consideration was given to the submissions made during the consultation period, and how the Council responded to those submissions;
- A copy of all council resolutions made in respect to the proposal;
- Where relevant, evidence that the Council has consulted with Native Title claimants;
- Any other documentation that the Council believes will support its application, especially maps, diagrams, title references etc; and
- If the land is to be sold, a copy of the valuation report on the land and the Council's policy on sale or disposal of land is required.

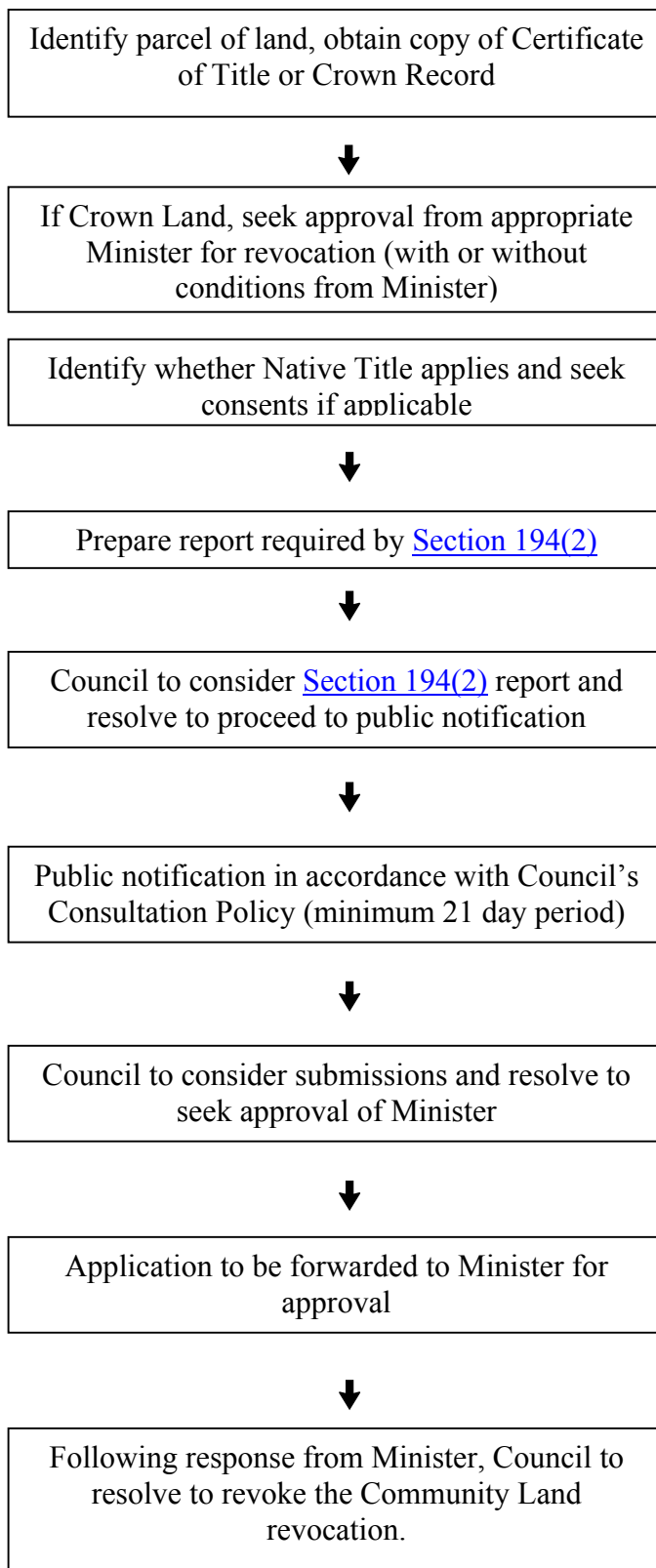
G. Council receives Minister's approval

The revocation of the community land classification has no effect unless the council makes a resolution to give effect to the proposal. The council may decide that it does not wish to proceed with the revocation. In that case, it is desirable that an appropriate resolution is made.

In addition to any requirements in its public consultation policy, the council may wish to place a notice in the local newspaper informing the community of its decision to revoke the community land classification.

The council should also amend its community land register and any management plan. Further public consultation to amend the management plan is not required.

FLOW CHART SUMMARY



TEMPLATES – EXAMPLES ONLY

Council name

Section 194 of the *Local Government Act 1999*, Revocation of Community Land Classification.

Consultation Report

Date

Insert location plan and lot plan

Parcel identifier (Lot number, street address, CT or CR reference) attach a copy of the CT or CR.

[Section 194\(2\)\(a\)](#) *Local Government Act 1999*

- (i) a summary of the reasons for the proposal.

Insert details.

- (ii) a statement of any dedications, reservation or trust to which the land is subject.

Insert details.

- (iii) a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land and, if so, details of any Government assistance given to acquire the land and a statement of how the council proposes to use the proceeds.

Insert details.

- (iv) as assessment of how implementation of the proposal would affect the area and the local community.

Insert details.

- (v) if the council is not the owner of the land – a statement of any requirements made by the owner of the land as a condition of approving the proposed revocation of the classification.

If Crown Land attach a copy of the appropriate Minister's comments, highlighting any conditions of consent.

Outline whether Native Title applies and if relevant, attach a copy of the correspondence.

The council must follow the relevant steps set out in its consultation policy.

Outline what the steps of consultation will be.

Advert for public consultation (Local newspaper as per Council's Consultation Policy)

Council name
REVOKING COMMUNITY LAND CLASSIFICATION - CONSULTATION

NOTICE is hereby given, pursuant to Section 194 of the *Local Government Act 1999* that the *insert name of council* Council resolved to commence public consultation for the revocation of the following parcel/parcels of land from the classification of Community Land:

- (a) *insert lot number, street address, CT or CR reference (legal description of the land), which is known as insert common place name*

Council's reasons for revoking the community land status of the land are *insert reasons*

[If Crown Land:

The owner of the land (insert appropriate Minister) has applied the following conditions to the proposed revocation of community land *insert conditions from Minister*.

The owner of the land (appropriate Minister) has not applied any conditions to the proposed revocation of community land.]

A plan and section 194 report are available at the Offices of the Council located at *insert address*, during normal business hours or on Council's website *insert web address*, and any person may make relevant representation in writing concerning the proposed revocation to reach the Chief Executive Officer at *insert address*, **no later than *insert date***.

Each person making a submission should indicate the reasons why Council should consider retaining the land as Community Land or for Community purposes and whether that person wishes to appear personally or be represented by another party before the Council in support of that submission.

Please contact *insert name* on *insert contact number* for further details

=====

Advert for finalising revocation (local newspaper and Government Gazette) - optional

Council name
REVOKING COMMUNITY LAND CLASSIFICATION - FINALISATION

Pursuant to Section 194 of the *Local Government Act 1999*, Notice is hereby given that at its meeting held on *insert date* and upon approval from the Minister for State/Local Government Relations, Council resolved to finalise the revocation of the following parcel/parcels of land from the classification of Community Land:

- (a) *insert lot number, street address, CT or CR reference (legal description of the land), which is known as insert common place name*

Please contact *insert name* on *insert contact number* for further details

=====

CHECKLIST

A copy of the following information must be supplied to the Minister for State/Local Government Relations.

- The report to Council and the resolution to commence the process to revoke the community land classification and commence public consultation.
- Details of the public consultation undertaken including copies of the actual advertisement(s) placed in local newspaper(s), media releases and photos of any sign erected on the land.
- Correspondence sent to adjoining property occupiers or owners and details of the adjoining owners or occupiers who were notified.
- Submissions received as part of the public consultation process.
- Council's responses to those who made submissions, outlining how the council will take into consideration any concerns raised.
- Where relevant, evidence that the Council has consulted with Native Title claimants.
- Ownership details (Certificate of Title, Road Plan etc).
- Any other documentation that the Council believes will support its application eg. maps, diagrams, photos etc.
- The report to Council where consideration was given to submissions made during the consultation period and the resolution to seek Ministerial approval.
- If the land is to be sold or disposed of, a copy of the valuation report and the Council's current policy on sale or disposal of land.

FURTHER ENQUIRIES

For further enquiries, contact:

Office for State/Local Government Relations
Level 7, Roma Mitchell Building
136 North Terrace
ADELAIDE SA 5000

Telephone: (08) 8204 8700
Fax (08) 8204 8734
Email: localgov@saugov.sa.gov.au