

Section 194 – *Revocation of Community Land Classification*

Guidance paper no. 5

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This document and others in the series are provided as a guide to good practice and not as a compliance requirement.

The content is based on officer's knowledge, understanding, observation of, and appropriate consultation on, current good practice. Information papers may also include the Office of Local Government's views on the intent and interpretation of the legislation.

The material does not constitute legal advice.



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The community land legislative framework

The *Local Government Act 1999* (the Act)¹ establishes a framework for the classification of most land owned by a council or under a council's care, control and management (local government land) as 'community land'².

The framework aims to ensure a consistent, strategic and flexible approach to the administration and management of local government land. Its objectives are to protect community interests in land for current and future generations.

Local government land (other than a road, easement, or right of way) is taken to be classified as community land unless—

- the council resolves before the land³ is acquired or comes under its care, control and management that it is excluded from classification: section 193(4)(a) of the Act; and
- the land is not affected by provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation: s 193(4)(b).

Once classified, community land—

- cannot be disposed of, except in prescribed cases: s 201(2);
- may require the preparation and adoption of a management plan: s 196;
- can be leased or licensed but only in accordance with prescribed requirements: s 202; and
- can be used for business or commercial purposes, subject to the use being authorised in an approved management plan for the land: s 200.

The council may not revoke the classification of community land in accordance with section 194 of the Act for the following classes of land—

- Adelaide Park Lands;
- land required to be held for the benefit of the community under Schedule 8 of the Act (Beaumont Common, Klemzig Memorial Garden, Levi Park, Reynella Oval, Lochiel Park Lands, and Frew Park), under a special Act of Parliament or under an instrument of trust; and

¹ See Appendix A for definitions relating to Chapter 11 of the *Local Government Act 1999*.

² Transitional arrangements between 2000 and 2003 allowed the council to exclude specific parcels of land from classification as community land. Typically, the land was used solely for council operational purposes (work depots), or for business or commercial purposes (car parks) or other non-community purposes (land identified for sale)

³ Land that formed a road or part of a road that vests in the council after the closure under the *Roads (Opening and Closing) Act 1991* is taken to be community land unless the council resolves before or at the time of making the relevant road process to exclude the land from classification: s 193(4a).

- land excluded by Regulation (no regulations have so far been made for this purpose).

The council may need to seek legal advice as to whether a parcel of land is subject to an instrument of trust.

Generally, the Act affords the council sufficient flexibility to manage and use community land, including a use for a business purpose, without the need to revoke the classification.

The council may resolve to classify any local government land that has previously been excluded from classification: s 193(5).

Role of the Minister

The relevant Minister is the Minister responsible for the *Local Government Act 1999* (the Minister).

The Minister has a duty to—

- review the process followed by a council in submitting a proposal for a revocation of community land classification, and
- assess the merits of the proposal.

The Act sets out the steps a council must follow before submitting a proposal to the Minister. It is pre-requisite for the exercise of the Minister's discretion that the council has followed the steps set out in the Act.

If the council has not followed the requirements set out in the legislation the Minister cannot exercise his/her discretion to approve a proposal.

If the Minister is satisfied that the council has complied with the legislative requirements, the Minister can then assess the merits of the proposal in determining whether to approve or not approve the proposal. The Act requires that the council provide to the Minister a report on the content of all submissions made in the course of the public consultation. The public consultation process and its results are therefore relevant considerations for the Minister when assessing the merits of a proposal.

The Minister's approval gives the council the authority to pass a resolution to revoke the classification. The council should not pre-empt that the Minister's approval will be given in every instance.

Accordingly, where the council proposes to dispose of land by private sale or public auction, it should not commence advertising the sale or enter into a contract for the sale or disposal (including a contract made on the condition of the Minister's approval being given), until such time as the Minister's approval is given.

Crown Land

If the subject land is Crown land dedicated to a council and that dedication is removed then after the dedication is removed, the subject land is considered to no longer be classified as 'community land' for the purposes of the Act and as a consequence a community land process under section 194 of the Act is not required.

Revocation process⁴

It is important to note that the council is the instigator of any proposal to revoke the classification of community land, and as such, it is ultimately the council that is responsible and accountable to its community for the decisions it makes. The Act seeks to ensure that members of the community are involved in the revocation process, and to provide them with an opportunity to make submissions which their council must consider.

The process for revoking community land classification exists to give scope to the council to determine (in consultation with its community) whether the community's long-term interest in a parcel of land does or does not need to be protected. The council and the community may decide that such protection under this classification is no longer required, and failure to do so would prevent the land's use or development for other specified and agreed purpose. For example, the council may wish to dispose of the land and use the proceeds for some other community purpose, use the land wholly or substantially for operational or commercial purposes, or lease the site for a term greater than the maximum 42 years permitted by the Act: s 202(4).

The council should be able to clearly demonstrate to the community that it has developed a specific strategy for the future use of the land, and that revocation of the classification is necessary to deliver that strategy.

The council should also take a holistic approach when developing a proposal for revocation of land that will facilitate a project or strategy on adjoining land, for example, the revocation is necessary to enable a road to be opened under the Roads (Opening and Closing) Act 1991 to give access to an adjoining land division. It is important that the council takes into account the processes and procedures required under other legislation, in addition to those under the Act.

Report on the proposal for consultation

Before the council submits a proposal to the Minister for revocation of the classification of community land, it must prepare and make publicly available a report on the proposal. This report forms the basis of the council's consultation with the community. It must contain all of the information listed in subsection 194(2)(a) of the Act. If any of the required information is

⁴ A flowchart summarising the revocation process is shown in Appendix B.

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not included in the report, the proposal will not comply with the legislative requirements and the Minister will not be able to exercise his/her discretion. If any of the information is not provided in sufficient detail, the Minister may consider that the community has not been given the appropriate opportunity to fully understand the proposal, and this may affect the assessment of the merits of the proposal.

The report must contain the following information—

- (i) *a summary of the reasons for the proposal;*

Comment:

This must be a full statement on the reasons of the proposal. For example, the land will be disposed of for private residential development, or a long-term lease granting exclusive rights to a sporting organisation is to be granted, or will be used for council's operational purposes.

A statement in the report that the reasons for the proposal is to revoke the community land classification of the land is not sufficient.

The reason the council proposes to revoke the community land classification should be clearly articulated so that members of the public are fully informed and given a genuine opportunity to either express concerns or to support the proposal. This should also include any relevancy the proposal has to strategies or objectives of the council that the community had been previously consulted on or would be aware of. For example, the proposal will contribute to the objectives of the strategic management or annual business plan, or the property was identified as being surplus in the asset management plan and its possible disposal flagged in the annual budget.

It is advisable that the report also contain a copy of the relevant certificate of title, and spatial map showing the cadastral boundaries of the subject land and immediate surrounding areas likely to be affected by the proposal.

- (ii) *a statement of any dedication, reservation or trust to which the land is subject; and*
- (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;*

Comment:

The report must include a statement of the intended use of the funds acquired from sale of the land, even if it is intended to put the money into general revenue.

Members of the public need to be given information about the use of acquired funds as it may affect their attitude to the proposal. For example, a person may be concerned about a proposal to sell community land if the money is to be placed into general revenue but may give support if the funds are to be used for the acquisition or upgrade of other community facilities.

If sale or disposal is contemplated, the report should indicate if the proposal is consistent with the council's policy on sale or disposal of land (s 49(1)(d)).

As mentioned above, where it is proposed that the land will be disposed of, the council should not commence advertising the sale or enter into a contract for the sale or disposal

(including a contract made on the condition of the Minister's approval being given), until such time as the Minister's approval is given.

Section 201(3) of the Act provides that if State Government financial assistance was given to the council to acquire the land 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 to apply, for a purpose specified by the Minister, an amount of money that does not exceed the sale price.

- (iv) *an assessment of how implementation of the proposal would affect the area and the local community;*

Comment:

This assessment should provide a discussion and conclusion on the effects of the proposal on the local community. It should set out the current use of the land and identify potential groups that could be directly affected by the proposal. For example, sporting groups or residents living in the locality who use the land. The assessment should explain clearly the perceived positive and negative affects on the community of the proposal.

The statement should take into consideration any relevant strategic planning documents prepared by the council, for example, open space or recreation strategy, residential strategy or town centre strategy.

The 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 to the State Government's Metropolitan Open Space Strategy, or the targets or objectives in the 30 Year for Greater Adelaide or relevant Regional Planning Strategy.

- (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;*

Comment:

If the land is under the care, control and management of the council, but is not owned by the council, the classification of land as community land cannot be revoked unless the owner of the land approves the revocation.

If the land is owned by the Crown and is dedicated under the care, control and management of the council, the approval of the Minister for Sustainability, Environment and Conservation (as the Minister who administers the *Crown Lands Management Act 2009*) must be obtained on behalf of the Crown, before the report is prepared. For other land owned by the Crown, the approval of the relevant Minister must be obtained.

A person who holds Native Title in the land is also considered an owner for the purposes of the Act and the revocation of the community land classification cannot proceed without that person's consent.

If the owner(s) of the land place any conditions on their approval of the revocation, the report must state this and set out those conditions.

Public consultation requirements

After the report has been prepared, the Act requires that it be made publicly available. The information in that report is intended to inform members of the public of the council's proposal,

enable them to form a view on that proposal, and should they choose, make a submission in support of that view.

The Act (s 194(2)(b)) also requires that the council consult with the public on the proposal in accordance with its own public consultation policy.

Under the Act (s 50), all councils must adopt a public consultation policy. That policy must set out the steps that the council will follow in cases where the Act requires that a council must follow its public consultation policy.

The Act (s 50(4)) requires that the council's public consultation policy must provide interested persons with a reasonable opportunity to make submissions, and at least provide for—

- a) the publication in a newspaper circulating within the area of the council a notice describing the matter under consideration and inviting interested persons to make submissions in relation to the matter within a period (which must be at least 21 days) stated in the notice; and
- b) the consideration by the council of any submissions made in response to an invitation under paragraph (a).

The council must adhere to the requirements of its own public consultation policy. If that policy prescribes steps that are more stringent than the minimum requirements of the Act, then those steps must be followed. If the policy is not complied with, the council's application to the Minister will not comply with the legislative requirements and the Minister cannot exercise his/her discretion in relation to that application.

The nature and outcome of the public consultation process are relevant to the Minister's exercise of his/her discretion.

Effective consultation

Planning is the key to successful engagement with communities on a proposal to revoke the classification of land as community land.

It is important to be clear about the decision to be made. Being unclear could lead to tension between the council and its community. In the context of a proposal to revoke the community land classification, the decision is generally much broader than the decision to change the classification of the land. The broader decision will also involve a decision to do something with the land if the classification is revoked. The real issue is the council's intention for the future use of the land.

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Effective consultation assists in managing expectations by ensuring that communities fully understand the nature of the project and the likely impacts and benefits that may result from a decision.

Each revocation proposal is unique. The council should give careful consideration to identifying the parties with an interest in the proposal. These are likely to include people who are directly impacted by the proposal – such as owners/residents of adjoining properties or organisations that regularly use the land – as well as those individuals or groups who may not be directly impacted but may still have a legitimate interest in the proposal, such as resident groups or visitors from outside of the council's area.

The council is encouraged to develop an understanding of these individuals and groups, their sensitivity to the project, and choose appropriate communication methods. When reviewing its public consultation policy, the council should include measures that will ensure that a proposal to revoke the classification of community land is brought to the attention of the wider community.

The *Community Engagement Handbook* (March 2008) provides a model framework for leading community engagement practice in Local Government. The handbook is available on the Local Government Association's website.

The council is encouraged to consider including the following steps in its public consultation policy—

- Writing directly and individually to those 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;
- Erection of a sign that explains the proposal and invites public submissions on the subject land;
- Publication of a media article in the local newspaper or council's newsletter which identifies the land and explains the proposal and the public consultation process (particularly when the land is large or significant);
- Holding a public meeting or a meeting of the council where community feedback can be received; and
- Allowing a period longer than the minimum 21 days in which the public can make submissions. This may be important where the proposal involves a large or significant parcel of land, or it is known that people living outside of the council's area also use the land

There is nothing preventing the council from conducting a broader public consultation process than is prescribed by its own policy.

Notice of the proposal to the public

To help inform the public of a proposal, it is desirable that the following information appears in the notice—

- Details which readily identify the land. For example, the name by which the land is commonly known, or a plan or photo showing the location of the land, the current use of the land, the Certificate of Title reference for the land and whether the proposal relates to all or part of the land identified;
- A clear statement that the council proposes to revoke the classification of the land as community land;
- The council's reasons for the proposal. For example, sale or disposal of the land, granting a long-term lease over the land, or future use for council's operational purposes;
- Details of where copies of the report and further information can be obtained;
- The name of the contact person at the council;
- An invitation for interested persons to make submissions to the council in relation to the proposal; and
- The closing date for submissions.

As mentioned above, it is desirable that the council considers a period longer than the minimum 21 days for the receipt of public submissions, where the proposal involves a large or significant parcel of land, or it is known that people living outside of the council's area use the land.

Consideration of submissions

The Act (s 50(4)(b)) requires that the council's public consultation policy must provide for the consideration by the council of any submissions made. Once the public notification period has ended, there must be compliance with this aspect of the policy. The Act (s 194(3)(a)) also requires that the council submit to the Minister a report on all submissions made as part of the consultation process.

Community members are more inclined to make submissions on a proposal if they feel they have the capacity to have input to the decision-making process. An acknowledgement in writing to those persons who have made a submission, and informing them that their

comments will be considered by the council, will also ensure that they feel they have contributed to the decision-making process. Where the proposal attracts interest from the community, particularly where there is both support for and opposition to a proposal, the council could consider including the date and time of the council meeting at which the proposal will be considered in the acknowledgment referred to in the previous paragraph.

Native Title

Consultation with Native Title groups needs to be consistent with any requirements in the council's public consultation policy in respect of land on which native title has not been extinguished. The council should seek its own legal advice as to whether or not Native Title may be an issue for the land concerned.

Seeking the approval of the Minister

After considering public submissions, the council may resolve to seek Ministerial approval for the proposal. Only then, can an application be made to the Minister.

The council may not delegate the power to make an application to the Minister (s 44(3)). The council must make a resolution to submit the proposal to the Minister for approval.

Information provided in the application to the Minister

When submitting the proposal to the Minister the council should provide a copy of its resolution to submit the proposal.

Information relevant to the application will help inform the Minister in making a decision on the merits of the application. Consequently, the following information should accompany an application—

- ☑ A copy of the report prepared by the council for the purposes of section 194(2)(a);
- ☑ In the event that the land is under the care, control and management of the council but is not owned by the council, a copy of the landowner's approval of the revocation (including approval of any native title holders);
- ☑ If the council proposes to sell the land, a copy of the council's policy on the sale or disposal of land, under section 49(1)(d);
- ☑ Details of the public consultation undertaken, including copies of the actual advertisement(s) placed in local newspaper(s), media releases, photos of signs erected on the land, and copies of any correspondence sent to adjoining property owners or occupiers as well as details of those persons who were notified;
- ☑ A copy of the relevant certificate of titles, spatial plan(s) showing the cadastral boundaries of the subject land and immediate surrounding areas, and any other documentation that the council believes will support its application; and

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- ☑ In the event that the land is to be sold, a copy of the valuation report on the land (if obtained), and a copy of any resolution by the council to use the proceeds of the sale of the land for the acquisition or development of other land for public community use or for the provision of community facilities.
- ☑ Copies of all submissions or petitions made on the proposal as part of the public consultation process;
- ☑ A report to the Minister on all submissions received on the proposal during the council's public consultation process, for the purposes of section 194(3)(a) and the council's response to the issues raised in the submissions received;
- ☑ A copy of the agenda report and minutes for the council meeting at which the council considered any submissions made during the public consultation process;
- ☑ A copy of council's resolutions relevant to the proposal, including the resolution to submit the proposal to the Minister;

It is requested that the application be sent electronically to the Minister at Minister.Pearce@sa.gov.au in PDF format. Please consider the size of the document and break the application up into parts if the size is likely to disrupt transmission.

Notification of the Minister's decision

The council will be advised of the Minister's decision in writing. If the Minister does not approve the proposal, or the application does not comply with the Act, it is open to the council to submit a further proposal in relation to that land at a later time.

The revocation of the community land classification does not take effect unless the council makes a resolution to give effect to the proposal. It may decide that it does not wish to proceed with the revocation. In that case, it is desirable that an appropriate resolution is made.

If the council resolves to revoke the classification, the land is freed from any dedication, reservation or trust affecting the land, other than a dedication, reservation or trust under the Crown Lands Management Act 2009: s 195(1).

If a certificate of title has been issued over land that is subject to a dedication, reservation or trust, (other than a dedication reservation or trust under the Crown Lands Management Act 2009) the council must, immediately after the revocation of the classification of land as community land, give notice of the revocation to the Registrar-General in a manner and form approved by the Registrar-General.

The council may choose to place a notice of the resolution in the local newspaper or in the Government Gazette, but it is not legally required under the Act to do so.

Appendix A—definitions

NOTE: The definition in this appendix is provided as a guide only, please refer to section 4 of the Local Government Act 1999 for interpretation.

“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.

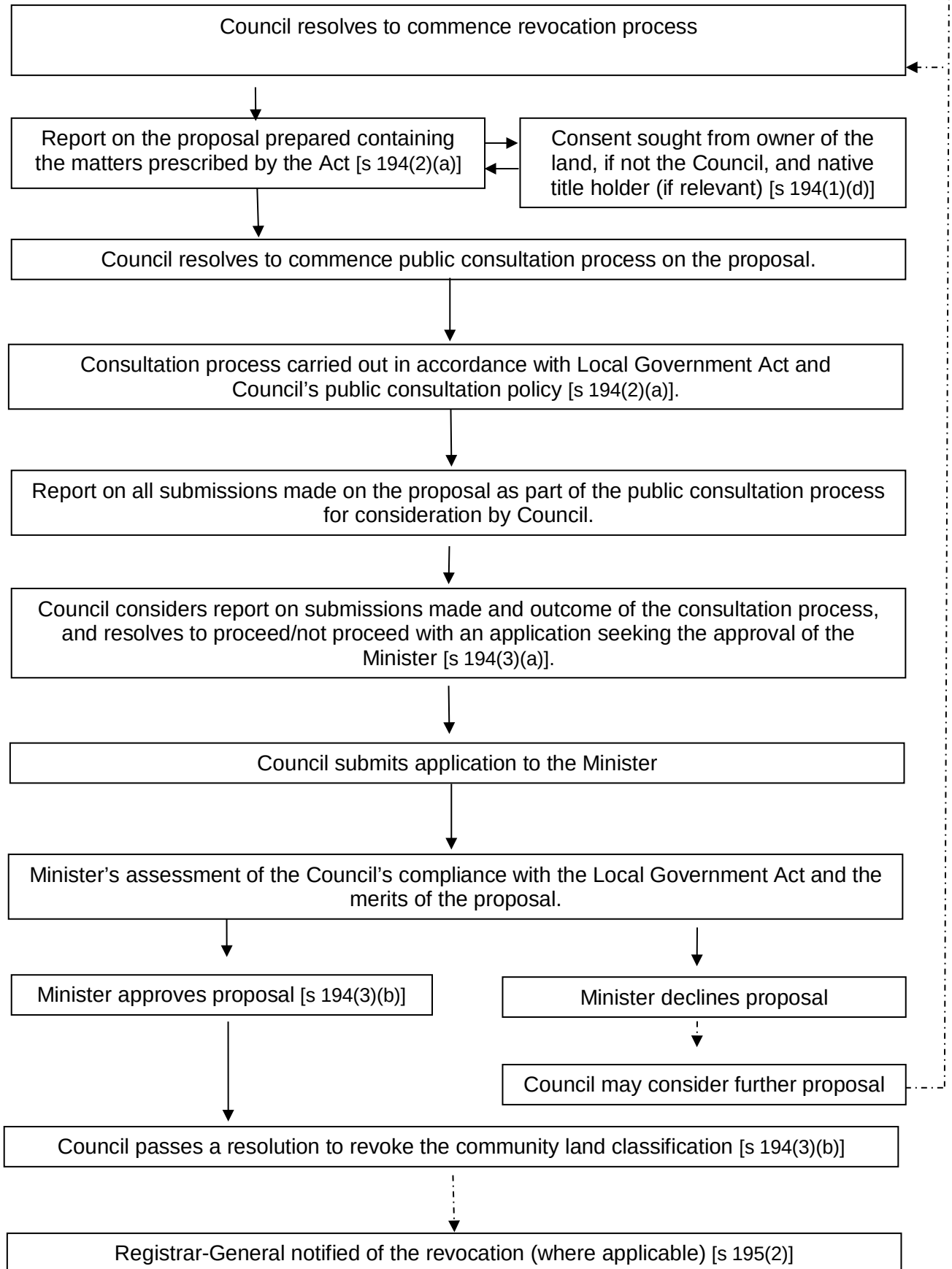
“public notice” means notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

“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 bridge, viaduct or subway; an alley, laneway or walkway.

Appendix B—flow-chart of revocation process



For further information about this and other guidance papers contact:

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Other guidance papers are available at www.agd.sa.gov.au/local-government

