

# Management & Disposal of Roads Policy



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## 1. Purpose

The purpose of this policy is to provide guidance to the Council and its community in circumstances where:

- 1.1 a private landowner has encroached upon a Council road reserve and wishes to acquire the road reserve;
- 1.2 a private landowner otherwise wishes to acquire an unmade road or portion of a road reserve owned by the Council.

## 2. Definitions

- 2.1 **LG Act** means the *Local Government Act 1999*.

## 3. Policy

### 3.1 Introduction

- 3.1.1 Pursuant to section 208 of the LG Act, the Council is the owner of all public roads in its area.
- 3.1.2 The definition of 'public road' in section 4 of the LG Act is not limited to sealed roads and/or carriageways. It includes verges, road reserves, footpaths and unmade roads – i.e. all land which is designated as a public road on a Certificate of Title or a plan of division under the *Real Property Act 1886*.
- 3.1.3 As is common in many rural and regional Councils, the Council owns a number of unmade roads which are not developed with any form of carriageway and surface, may not be fenced from neighbouring land and may not otherwise be distinguishable from neighbouring land.
- 3.1.4 These roads were usually created many decades ago and were created to provide for future road corridors which were anticipated as being needed when planned development on adjacent land such as townships, occurred or as demand from agricultural land uses increased. In many cases, planned townships were never developed and modern farm machinery means that these planned road corridors are no longer needed.

- 3.1.5 Legally, a public road remains the property of the Council and the Council is liable for activities undertaken on public roads unless and until public roads are closed and transferred to a new owner in accordance with the requirements of the *Roads (Opening and Closing) Act 1991*.
- 3.1.6 Further and similarly to many rural and regional Councils, private land uses and occupancy have occurred over Council roads. In such circumstances, these road portions remain the property and responsibility of the Council until closed and transferred to a new owner under the *Roads (Opening and Closing) Act 1991*.
- 3.1.7 The Council will consider applications from private land owners to purchase all or part of a public road in accordance with all relevant documents adopted under the LG Act and the provisions of the *Roads (Opening and Closing) Act 1991*. If the closure and transfer of the road is not possible or desirable, alternative options are available to allow the road to be used for private activities.

## **3.2 Options for road use and acquisition**

If an owner of private land adjacent to a public road is currently using an unmade road or road reserve for a private purpose, the following options are available to them:

- 3.2.1 to apply for and obtain (as relevant):
  - 3.2.1.1 an authorisation under section 221 of the LG Act to make an alteration to the public road; and
  - 3.2.1.2 a permit under section 222 of the LG Act to use the public road for business purposes;
- 3.2.2 to obtain a lease from the Council;
- 3.2.3 to apply to the Council to have it consider a road closure and transfer process under the *Roads (Opening and Closing) Act 1991*.

## **3.3 Option 1**

- 3.3.1 Authorisations and permits granted under the LG Act can be granted for a maximum term (including extensions) of 42 years. Where an authorisation or permit application proposes to enclose, fence, partition or otherwise impede the flow of traffic through the road, public consultation must occur before the relevant application can be granted.
- 3.3.2 Applications for authorisations and permits may be made by accessing the relevant application forms from the Council's website – [mid-murray.sa.gov.au](http://mid-murray.sa.gov.au) - and submitting them with the applicable fee to the Council.

## **3.4 Option 2**

- 3.4.1 The Council can grant leases over unmade roads or road reserves for a maximum period of five (5) years or for a longer period of time subject to public consultation occurring pursuant to section 202 of the LG Act.
- 3.4.2 A lease can be granted for a maximum term (including extensions) of 42 years.
- 3.4.3 A formal application for a lease must be made to the Council by way of a letter addressed to the Chief Executive Officer of the Council and sent by email to [postbox@mid-murray.sa.gov.au](mailto:postbox@mid-murray.sa.gov.au) which explains the reasons why a road closure and transfer is desired, providing the applicant's details, what land is owned, and the identification of the area of road to be closed.
- 3.4.4 Should the Council determine to progress the lease, the applicant will be required to enter into a Costs Agreement for the reimbursement of the Council's costs associated with the preparation and execution of the lease.

## **3.5 Option 3**

- 3.5.1 Where a private land owner wishes to acquire a road or portion of a road, option 3 is the most suitable option for them.
- 3.5.2 The Council will consider applications to have unmade roads and portions of road reserves closed and transferred to private owners under the *Roads (Opening and Closing) Act 1991* on a case-by-case basis.

### 3.6 Road Closure Process

The road closure process under the *Roads (Opening and Closing) Act 1991* is a statutory process which involves the following steps:

#### 3.6.1 Decision to Commence the process (section 5)

A decision of Council is required to commence the process. This decision is made by resolution.

#### 3.6.2 Preparation of Preliminary Plan (section 9(1)(a))

A Preliminary Plan is by a licensed surveyor in accordance with the Surveyor-General's requirements to accurately identify the portion of the road that is proposed to be closed.

#### 3.6.3 Invitation to Adjoining Owners and Determining Preferred Transferee (section 12(3))

3.6.3.1 Where a road closure proposal envisages the closed road being transferred to an adjoining landowner in accordance with an agreement for transfer, before entering into the agreement for transfer, the Council must first invite offers from all owners of land adjoining the road (i.e. contiguous land that has a common boundary with the road) that is proposed to be closed.

3.6.3.2 In the event multiple offers are received, the determination regarding the Council's preferred transferee (if the Council wishes to proceed) should be made having regard to the considerations set out in the Council's Disposal of Land and Assets Policy that is adopted under section 49 of the LG Act.

#### 3.6.4 Preparation and Execution of Agreement to Transfer (section 12)

3.6.4.1 Where the road closure proposal involves the closed road being transferred to an adjoining landowner, an agreement to transfer between the Council and its preferred transferee must be executed (as above, this can only occur after the Council has invited offers from all adjoining land owners).

3.6.4.2 An agreement for exchange can be executed before or after the lodgment of stage 1 documents (refer step 5 below), but must be executed before the Council resolves to make the road process order.

#### 3.6.5 Stage 1 Lodgement (section 9)

The Council must arrange for the following documents to be lodged with the Surveyor-General, together with all relevant fees:

- 3.6.5.1 certified copy of the preliminary plan (as prepared by the Council's surveyors); and
- 3.6.5.2 the schedule of affected landowners, which is a statement containing prescribed details of persons affected (as defined) by the road closure who can be identified by reasonable inquiry; and
- 3.6.5.3 the statement in the prescribed form of the prescribed public utilities and authorities (the latter are identified in regulations 4 and 5 of the *Roads (Opening and Closing) Regulations 2021*).

#### 3.6.6 Public Consultation & Notification of Proposed Road Process (section 10)

Once the above requirements have been complied with, the Council must give public notice of the proposed road closure. The public notice must:

- 3.6.6.1 describe, with reasonable particularity, the nature of the proposal;
- 3.6.6.2 specify, by means of a clear and accurate diagram, the land subject to the proposal;
- 3.6.6.3 specify the manner in which it is intended to deal with the land subject to the proposal (i.e. it will be transferred to an adjoining landowner and merged with the title of their adjoining land);
- 3.6.6.4 state the address of an office of the Council and the times at which the preliminary plan and statement prepared by the Council (as mentioned above) are available for examination by the public and indicate that the plan and statement are also available for inspection on request at the Adelaide office of the Surveyor-General during normal office hours; and

- 3.6.6.5 state that any person who objects to the proposal may lodge a written objection for the consideration of the Council at a meeting of the Council, and indicate:
  - (a) the time within which such an objection must be made; and
  - (b) where the objection should be lodged; and
  - (c) the information that the objection should contain.
- 3.6.6.6 The notice must be published in the Government Gazette and in a newspaper circulating generally in the Council's area. A copy must also be provided to the Surveyor-General for placement on the SA.GOV.AU website.
- 3.6.6.7 At the time that the notice is published in the Gazette, notice must also be served on each person affected (as defined) by the proposal (including adjoining landowners).

### **3.6.7 Dealings with Objections and Applications for Easements (section 14 and 18)**

- 3.6.7.1 Where the Council receives an objection in relation to the proposed road process, a meeting must be arranged to consider the objection (this does not have to be a formal Council meeting) and to give the objector an opportunity to, personally or by representative, attend the meeting and make submissions in support of his/her objection. The Council must notify the objector(s) (in writing) of the time and place at which the Council will meet to consider the objection(s).
- 3.6.7.2 Where the Council has received an application for an easement during the public notification process, an order for an easement *may* be made by the Council in connection with a road process order to close a road. An order for an easement must be made where a prescribed public utility has applied for an easement.

### **3.6.8 Determination of Proposed Road Process Order (sections 15-17)**

- 3.6.8.1 Upon the expiration of the time allowed for the making of objections and applications for easements and after considering the objections and applications (if any), the Council must (as soon as practicable):
  - a) make a road process order in relation to all or part of the land to which the proposed road closure relates; or
  - b) determine that a road process order will not be made.
- 3.6.8.2 Before resolving to make a road process order that will result in the closed road vesting in the Council, the Council must resolve to exclude the land subject of the proposed closure from classification as community land (refer section 193(4a) of the LG Act). Failure to take this step will result in the land being classified as community land and subject to the statutory restrictions on dealings with community land, including an inability to transfer it to a third party, unless the Council has first successfully completed the revocation process under section 194 of the LG Act. To avoid doubt, this is not necessary where the closed road will vest in an adjoining landowner in accordance with an agreement for transfer.
- 3.6.8.3 The Council **must** have regard to the following in determining whether to make the road process order (i.e. which matters must, therefore, be addressed in the Council report in relation to the matter):
  - a) any objections made by any person; and
  - b) the plans, principles, regulations and other matters to which regard must be had for determining applications for development authorisation under the *Planning, Development and Infrastructure Act 2016* in relation to developments in the area to which the proposed road process order relates; and
  - c) whether the land subject to the closure is reasonably required as a road for public use in view of present and likely future needs in the area; and
  - d) alternative uses of the land that would benefit the public or a section of the public; and
  - e) any other matter that the authority considers relevant.
- 3.6.8.4 In addition, the Council's Disposal of Land and Assets Policy must be considered.

- 3.6.8.5 If the Council determines to make the road process order, it must also make an order in the terms set out under section 17 of the Act in relation to the land subject of the road closure. By way of example, where an agreement for exchange has been executed, an order pursuant to section 17(a) of the Act that the land be added to other land in accordance with the agreement for transfer is required.

### **3.6.9 Notification of Road Process Order and Stage 2 Lodgement (sections 19 and 20)**

- 3.6.9.1 As soon as practicable after making the road process order the Council must give notice in writing to any person who made an objection.
- 3.6.9.2 Within three (3) months after a road process order is made, the following documents must be lodged at the office of the Surveyor-General, together with all relevant fees—
- a) two copies of the road process order; and
  - b) certified minutes of all Council meetings relating the road process;
  - c) survey plans as required by the Registrar-General; and
  - d) in the case of an order for a road closure that includes an order that land be added to other land in accordance with an agreement for transfer—a copy of the agreement for transfer on which is denoted all stamp duty payable in respect of the agreement (the agreement must be stamped prior to lodgement); and
  - e) the final road plan documents, including as certified by the Council and the RTD form;
  - f) any objections and evidence of an invitation having been provided to the objector as well as any Council report addressing the objection; and
  - g) the prescribed Stage 2 checklist.

### **3.6.10 Confirmation of Road Process Order (section 24)**

Following the Surveyor-General's receipt of the above documents the Surveyor General will make a recommendation to the Minister to either confirm or decline the road process order. If the Minister confirms the order the Council is required to give notice in writing of the decision to any person who objected to the proposed road process. Further, the Surveyor-General is required to publish notice of the confirmation of the order in the Gazette – once this has occurred, the road process order takes effect.

## **3.7 Applications to the Council for consideration of a road closure**

Where a private landowner desires to have all or part of a road (unmade or otherwise) transferred to it, the following process applies:

- 3.7.1 A formal application must be made to the Council by way of a letter addressed to the Chief Executive Officer of the Council and sent by email to [postbox@mid-murray.sa.gov.au](mailto:postbox@mid-murray.sa.gov.au) which explains the reasons why a road closure and transfer is desired, providing the applicant's details, what land is owned, and the identification of the area of road to be closed.
- 3.7.2 The application will then be considered. If the Council determines to initiate the road closure process, a Surveyor will be engaged by the Council to prepare the Preliminary Plan per 3.6.2 above.
- 3.7.3 Subject to 3.6.3 above, if the Council determines to enter into an Agreement to Transfer with the application pursuant to 3.6.4 above, a separate Costs agreement will be required at this time which requires the applicant to cover the costs of the preparation of the Preliminary Plan and to reimburse the Council for the costs of undertaking the road closure and transfer process.
- 3.7.4 The Agreement to Transfer will include a purchase price for the closed road, which price will be informed through valuations and will be subject to negotiation with and agreement from the Council.
- 3.7.5 The Council will then progress the road closure process. When the road closure is complete and the Minister approves it and the subsequent Gazette notice is published, the closed road will vest in the applicant's ownership. This usually occurs by way of amalgamation with the applicant's existing land.

- 3.7.6 If the applicant wishes to acquire the closed road in a separate allotment of land, they will need to apply for a land division to occur under the *Planning, Development and Infrastructure Act 2016* and must seek their own independent advice in this regard. This is a separate process to the road closure process.

## 4. Policy Responsibility

The Chief Executive Officer is responsible for ensuring the proper operation of this Policy.

## 5. Availability/Accessibility

- 5.1 This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: [www.mid-murray.sa.gov.au](http://www.mid-murray.sa.gov.au).
- 5.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's schedule of Fees and Charges, can be provided upon request.

## 6. Legislative Framework / Other References

- 6.1 [Local Government Act 1999](#)
- 6.2 [Planning, Development and Infrastructure Act 2016 \(SA\)](#)
- 6.3 [Roads \(Opening and Closing\) Act 1991 \(SA\)](#)
- 6.4 [Disposal of Land & Assets Policy](#)

## 7. Document History

This Policy will be reviewed as required, with the review being undertaken by the CEO and a report provided to the Council for consideration and adoption.

Version	Adopted	Minute	Description of Change
1	23 January 2024	C01-24/010	Adopted