

MESSAGE FROM THE MINISTER
(To Elected Members and CEOs)

COMMUNITY LAND CLASSIFICATION
Exclusion and Revocation

The *Local Government Act 1999* introduced a system for the classification of Council land as “community land”. This system protects the interests of the community in the land, for which Councils are the custodians, for current and future generations. It also builds community consensus about the future management and use of such land.

The Act [s193(1)(a)] provides the Council with an opportunity until 31 December 2002 to determine, in consultation with the community, which land under its ownership or care, control and management could be excluded from classification. This transitional process was intended to provide residents with a meaningful opportunity to identify which land currently held by a Council (irrespective of its history or current use) was regarded as a vital community asset that should be retained and managed for community benefit.

I am aware that Councils are at various stages in determining which land could be excluded from classification. I would like to remind the Council that in order to take advantage of the exclusion provisions of the Act, it must have determined and made the appropriate resolution(s) to exclude the land **by no later than 31 December 2002**.

I consider it timely to re-affirm some important matters concerning the community land provisions of the Act and their intended consequences.

Exclusion

Almost all land that a Council has acquired, or acquires in future, (except roads) is classified as community land unless the Council resolves to exclude it from that classification. For land owned or held by the Council when the Act commenced on 1 January 2000, the Council has until 1 January 2003 to, in consultation with its community, **exclude** land from classification.

Land affected by provisions of a reservation, dedication, trust or other instrument preventing or restricting its alienation [s193(1)(b)] cannot be **excluded** from classification. Such land can only have its community land classification removed by **revocation**. To ensure that no restrictions exist or have been created by a Council resolution that prevent or restrict the alienation of the land, it is important that the Council carries out a detailed investigation of the land title(s) and its records for each parcel of land it intends to exclude from classification. Other than this, there are no statutory guidelines or restrictions that specify what land should or should not be classified as community land – it is a matter for local determination.

The Council is reminded that some Council lands were not classified as community land at the commencement of the Act due to the operation of transitional provisions contained in the *Local Government (Implementation) Act 1999* [s34(3)] and the *Local Government (Implementation) Regulations 1999* [reg.11(2)].

It is essential that the Council develop classification criteria that can be applied when considering parcels of land for exclusion. The Local Government Association’s guidelines on LGA.net “*Community Land – Classification and Management Plans – July 2000*” suggest the kinds of criteria the Council could use in its assessment of the suitability of land for exclusion. These include:

- is there a community expectation that the land will always be retained by the Council?
- does the community have strong, social or cultural ties with the land?
- is the land intended to be available for use by the public as a right?
- has the land been, or is it intended to be, specifically modified or adapted for community use?
- does the Council intend to dispose of the land in the foreseeable future?
- is the land used only for Council's operational purposes (for example Council depot)?
- is the land used only for commercial purposes?

It is important that the Council does not consider any criterion in isolation. In particular, the existence of leases or licences over the land or other issues that might mean it would be administratively more convenient for a Council to exclude the land from classification should not be the decisive factor.

The Council must consult publicly before it resolves to exclude community land from classification (or to revoke the classification [s194(3)(b)] - discussed later) in accordance with the relevant steps set out in its public consultation policy. The Act [s50(4)] requires that consultation must at least provide for the publication in a newspaper circulating within the Council's area a notice describing the matter under consideration and invite interested persons to make a submission within a minimum period of 21 days. [see also Public Notification – discussed later]

For land acquired by the Council, or brought under its care, control and management, after 1 January 2000, any resolution to exclude the land from classification must be made before it comes into the Council's ownership or control. Note: Council cannot make such a resolution if the land is affected by provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation [s193(4)(b)].

Exclusion from classification does not prohibit a Council from making a resolution to classify the land as community land at some later date. A notice must be placed in the Government Gazette of any such resolution.

Revocation of Classification

The provisions for revocation of the classification of community land apply in the following instances:

- all Council land (except roads) not excluded from classification before 31 December 2002; or
- land held at, or acquired after 1 January 2000 that was affected by the provisions of a reservation, dedication, trust or other instrument that would prevent or restrict its alienation.

The classification of the following community lands **cannot** be revoked [s194(1)]:

- Adelaide Park Lands [s194(1)(a)]
- land required to be held for the benefit of the community under schedule 8 of the Act [Beaumont Common, Glenelg Amusement Park, Klemzig Memorial Garden, Levi Park, and Reynella Oval], under a special Act of Parliament relating to the land, or under an instrument of trust [s194(1)(b)]
- where the power to revoke the classification is excluded by regulation [s194(1)(c)]

Before the Council revokes a classification it must prepare report [s194(2)(a)] containing:

- a summary of the reasons for the proposal;
- a statement of any dedication, reservation, revocation or trust to which the land is subject. (This statement should also provide background information as to how the restraint was created when the land came into the Council's ownership or possession);
- a statement of whether revocation 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;

- an assessment of how implementation of the proposal would affect the area and the local community. (This assessment may necessitate consultation with adjoining Councils and 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); and
- a statement of any requirement made by the owner of the land as a condition of approving the proposed revocation. (For example, 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 Minister for Environment and Conservation, as owner of the land [s189], should be obtained before the report is prepared.)

The Council should then follow the relevant steps set out in its public consultation policy [s194(2)(b)]. The report must be made available for inspection by the community as part of the public consultation process and the Council needs to clearly articulate to the community its reasons for the revocation at this time.

Following public consultation, the Council must submit the proposal to me as Minister for Local Government with a report on all submissions received as part of the consultation process [s194(3)].

Application for Minister's approval to revoke

The Act prescribes a number of basic requirements to be met before an application is made for my approval to revoke the classification. The following is a checklist for the Council to consider in relation to those requirements:

- does the land fall within any of the prescribed exceptions [s 194(1)] that prevent the revocation from occurring?
- has a report on the proposal been prepared containing the prescribed information, and was the report made available to the public as part of the Council's public consultation process?
- was the public notice placed in the local newspaper advising of the proposal provide for at least a 21 day period to enable the community to make written submissions to the Council?
- if submissions were made to the Council as a result of the public consultation process, has the necessary report to the Minister been prepared on all submissions made?
- if the land is under the Council's care, control and management but not its ownership, has the land owner approved the revocation of the classification?

An application to me should be accompanied by the following:

- the report on the proposal containing the prescribed information mentioned above
- technical information identifying the land and the scope of the proposal, (for example, its location, size, a copy of the current title(s), a plan showing the land affected by the proposal, evidence of the reservation, dedication, trust or other instrument, existing improvements located on the land)
- information about the Council's decision making process, such as copies of reports to the Council and resolutions, the extent and nature of the Council's public consultation, a copy of the public notice placed in the local newspaper(s)
- the report on submissions, and evidence of the consideration given by Council to submissions.

I remind the Council that it may only make a resolution to revoke the classification after my approval has been given. Any resolution made beforehand would be invalid and have no effect.

Upon the revocation of the community land classification, the land is freed from any dedication, reservation or trust affecting the land, except where the dedication, reservation or trust is made under the *Crown Lands Act 1929* [s195 of the LG Act]. The removal of any constraints created under the *Crown Lands Act 1929* can only be effected under that Act.

Public Notification

Importantly, the Council's public consultation process is a critical stage of any Council proposal under the Act to deal with community land (exclusion, revocation, a proposed grant of a lease or licence, the adoption of a community land management plan). 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 on a 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.

It is desirable that the notice placed in the newspaper(s) circulating 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 placement in a public notice:

- what the Council's intentions are in relation to the proposal;
- what the Council's reasons are for implementing the proposal;
- detail which readily identifies the land subject to a proposal, for example, a common place name, the current use of the land, whether all or part of the land is involved;
- details of where copies of the report, plan or further information can be obtained;
- the name of a contact person;
- the closing date for submissions to be made to the Council. The notice must provide for at least 21 days in which interested persons can make submissions about a proposal.

I would appreciate it if this information also be brought to the attention of staff who are involved in the administration and management of community lands.

Further assistance regarding the information in this circular can be sought by contacting the Office of Local Government:

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Hon Jay Weatherill MP
Minister for Urban Development and Planning
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July 2002