

Environmental Defenders Office (SA) Inc.

INFORMATION GUIDE

Roads (Opening and Closing) Act 1991

(current as at June 2011)

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The EDO is often asked to advise on the process for closing (or opening) public roads. There are many hundreds (thousands?) of roads in South Australia shown on maps which do not actually "exist" as a trafficable road. Often they are leased to adjoining land holders (eg. for grazing) and are fenced in with other private land.

From time to time, local councils decide to relinquish these roads and sell them to adjoining landholders. This information guide explains how that process works and the rights of members of the public to object to road closures and sale.

Authority

- The council has the power to make road process orders under Part 2, s5 of the Act.
- A 'road process order' is an order made by the council to close the road in accordance with the Act.

Proposal

Where the council proposes to close a road it must prepare:

- a preliminary plan of the land to be subjected to the road closing;
- a statement containing the names and addresses of the people affected by the road closing who can be identified by reasonable inquiry; and
- a statement containing any information in relation to the land that is required by the Surveyor-General.

These documents are then deposited at the Adelaide office of the Surveyor-General with the prescribed fee (s9).

Advertisement

The Council or relevant authority must give public notice, as well as serve notice in writing of the proposal on each person affected who can be identified by reasonable

inquiry. A person affected is defined in section 3(1) of the Act as:

(a) a person who has an interest in land subject to the road process or proposed road process; and

(b) a person who has an interest-

(i) in land adjoining land subject to the road process or proposed road process; or

(ii) where the process relates to less than the full width of a road or proposed road-in land adjoining the opposite side of the road or proposed road; and

(c) a prescribed public utility; and

(d) in relation to land of a prescribed class-a public authority (other than a prescribed public utility) prescribed in relation to land of that class; and

(e) any other person who would be substantially affected by the process;

The requirements for public notification of a road process are set out in the *Roads (Opening and Closing) Regulations*. Notice of a proposed road opening or closure must be published by the Council (or relevant authority) in the *Gazette* and in a newspaper circulating generally in the area in which the proposed road process is to be undertaken, and must:

6(2) ...

(a) describe, with reasonable particularity, the nature of the proposal;

(b) specify, by means of a clear and accurate diagram, or other description determined by the Surveyor General, the land subject to the proposed road process;

(c) where the proposed road process is or includes a road closure - specify the manner in which it is intended to deal with each part of the land that is subject to the closure;

(d) state the address of an office of the council and the times at which the preliminary plan and statement prepared by the council pursuant to section 9 of the Act 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;

(e) state that any person who objects to the proposal may lodge a written objection for the consideration of the relevant authority at a meeting of the authority, and indicate -

(i) the time within which such an objection must be made;

(ii) where the objection should be lodged; and

(iii) the information that the objection should contain; and

(f) where the proposed road process is or includes a road closure - state that an adjoining landowner or other person substantially affected by the closure who wishes to apply for an easement over any part of the land subject to the closure may do so in accordance with these regulations, and indicate -

(i) the time within which such an application must be made;

(ii) where the application should be lodged; and

(iii) the information that the application should contain.

Objections

Any person may object to a proposed road process under s13(1).

Objections must be made:

- in the prescribed form (see below),
- at the office of the relevant authority within 28 days of the date of the public notice under section 10 and
- by lodging a copy of the notice, within the same period, at the Adelaide office of the Surveyor-General.

Prescribed Form for Objections

The requirements for the form of an objection are set out in the *Roads (Opening and Closing) Regulations*. Regulation 7 provides that a notice of objection must:

- be in writing;
- set out the full name and address of the person making the objection;
- state with reasonable particularity the reasons for the objection; and
- state whether the objector wishes to make submissions to the council at any meeting held to consider objections and applications made in relation to the proposed road opening or closing.

When writing an objection, you should pay particular attention to the matters listed below. A submission has more chance of success if it addresses the same issues that the Council is obliged to consider. There is nothing wrong with including "philosophical" objections (such as privatising the commons), however it would be best to also include as many "practical" objections as possible. In particular, it will be important to see what the relevant Planning Scheme ("Development Plan") for the areas says about current or future access requirements. Development Plans can be obtained from [Planning SA](#).

Meeting of Council to hear objectors

Under s14(1) the council must notify persons who have made an objection or application in relation to the proposed process in writing of a time and place at which the relevant authority will meet to consider all such objections and applications. Furthermore, pursuant to s14(2), a person who has made an objection may personally or by a representative, attend at the meeting and make submissions in support of his or her objection or application.

Decision making process

Section 16 enumerates the criteria in relation to road process orders:

"In determining whether to make a road process order and what order should be made, the relevant authority must have regard to

- (a) any objections made by any person pursuant to this Act; and
- (b) the plans, principles, regulations and other matters to which regard must be had by assessment authorities for determining applications for development authorisation under the Development Act 1993 in relation to developments in the area to which the proposed road process order relates; and
- (c) whether the land subject to the road process 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 subject to the road process that would benefit the public or a section of the public; and
- (e) any other matter that the authority considers relevant."

Notice to be given to Objectors

After a road process order is made, notice in writing must be given to any person who objected to the process (s19(a)).

Review and Confirmation

- Within three months of the making of a road process order, the council must deposit at the Adelaide office of the Surveyor-General the specific documents required by the Surveyor-General to review the road process (ss20(1)-(2)).
- Upon receipt of these documents, the Surveyor-General must review the order and may seek such expert advice as it sees fit (s21)
- The Surveyor-General must then report to the Minister on the results of this review, and make a recommendation as to whether the road process should be confirmed by the Minister (s23(1)).
- The Minister must then confirm or decline to confirm the road process order pursuant to s24.
- Ministerial confirmation includes an order to vest the land in the purchaser (s25).

This means that objectors should also make sure that they send copies of their objections to the Minister for Infrastructure. The Minister has an effective right of veto of road closures, so objectors should ensure that the Minister is aware of their concerns, otherwise the Minister is almost certain to accept the Council's Road Process Order.

Public Appeal Rights

In relation to road process orders, there are no public appeal rights provided for in the Act. The Act expressly provides that once a road process order is made by the council, confirmed by the Minister and published in the Government Gazette it cannot then be reviewed by the Supreme Court of South Australia (s35).