

APPENDIX 15

INSTRUMENT OF DELEGATION UNDER THE ROADS (OPENING AND CLOSING) ACT 1991

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

	SUB-DELEGATE
1. Commencement Of Road Process	
1.1 The power pursuant to Section 5 of the Roads (Opening and Closing) Act 1991 ("the Act") to commence a road process in relation to a road or proposed road within the area of the Council.	
2. Deposit of Preliminary Plan and Statement of Persons Affected	

<p>2.1 The duty pursuant to Section 9(1) of the Act where the Council proposes to commence a road process, to cause to be prepared:</p>	
<p>2.1.1 a preliminary plan of the land subject to the proposed road process in a form approved by the Surveyor-General; and</p>	
<p>2.1.2 a statement in a form approved by the Surveyor-General containing –</p>	
<p>2.1.2.1 the names and addresses of those persons affected who can be identified by reasonable enquiry; and</p>	
<p>2.1.2.2 such information in relation to the land subject to the proposed road process as is required by the Surveyor-General.</p>	
<p>2.2 The duty pursuant to Section 9(2) of the Act where the Council has proposed a road process and a preliminary plan and statement has been prepared pursuant to the requirements of Section 9(1) of the Act, to deposit a copy of the said preliminary plan and statement at the Adelaide office of the Surveyor-General together with the prescribed fee.</p>	
<p>3. Notification of Proposed Road Process</p>	
<p>3.1 The duty pursuant to Section 10(1) of the Act where the Council commences a road process (where the Council is the relevant authority in relation to the road process) to –</p>	
<p>3.1.1 after compliance with the requirements of Section 9 of the Act, give public notice, in accordance with the Regulations, of the proposal; and</p>	
<p>3.1.2 at the same time to give notice in writing of the proposal on each person affected who can be identified by reasonable enquiry.</p>	
<p>3.2 The duty pursuant to Section 10(2) of the Act to (where the Council is a relevant authority in relation to a proposed road process) as soon as practicable after giving public notice under Section 10(1) of the Act in relation to the process, deposit a copy of the</p>	

notice at the Adelaide office of the Surveyor-General.	
4. Dealings in Land after Commencement of Road Process	
4.1 The power pursuant to Section 11(a)(ii) of the Act where the Council commences a road process under which a road is proposed to be opened over land not owned by the Council (where that land is land which has been brought under the Real Property Act 1886), to lodge a caveat with the Registrar-General forbidding any dealing with the land without the consent of the Council.	
4.2 The power pursuant to Section 11(b)(iii) of Act where the Council commences a road process under which a road is proposed to be opened over land not owned by the Council (where that land is not land that has been brought under the Real Property Act 1886), to lodge a copy of the notice of the proposed road opening at the General Registry office, and by notice in writing served on any person, require the person to deliver up to the Registrar-General any instrument evidencing the person's interest in the land.	
5. Power to make Preliminary Agreements	
5.1 The power pursuant to Section 12(1) of the Act and in accordance with the provisions of Section 12 to make agreements for exchange or transfer in relation to land subject to a proposed road closure with the owner of land adjoining that land.	
5.2 The duty pursuant to Section 12(3) of the Act where the Delegate seeks to make an agreement for transfer in relation to land subject to a proposed road closure pursuant to Section 12 of the Act –	
5.2.1 where adjoining land is owned by a person who owns land subject to a proposed road opening, to first endeavour to secure an agreement for exchange with that person;	
5.2.2 in any case, to first invite offers from the owners of land adjoining the land subject to the proposed road closure.	
6. Meeting to Consider Objection or Application	
6.1 The duty pursuant to Section 14(1) of the Act in circumstances where the Council is the relevant	

<p>authority and where the Council has commenced a road process and a person has made an objection or application in relation to the proposed road process, to notify that person in writing of a time and place at which the Council will meet as the relevant authority to consider all such objections and applications.</p>	
<p>7. Making of Road Process Order</p>	
<p>7.1 The duty pursuant to Section 15(1) of the Act to (as the relevant authority) as soon as practicable after the expiration of the time allowed for the making of objections and applications and after considering all objections and applications (if any) made in relation to a proposed road process -</p>	
<p>7.1.1 make a road process order in relation to all or part of the land to which the proposed road process relates; or</p>	
<p>7.1.2 determine that no road process order is to be made.</p>	
<p>7.2 The duty pursuant to Section 15(3) of the Act where the Delegate (as the relevant authority) determines that no road process order is to be made, to as soon as practicable give notice in writing of that decision;</p>	
<p>7.2.1 to the Surveyor General; and</p>	
<p>7.2.2 to any person who made an objection or application in relation to the proposed road process pursuant to Division 1 of Part 3 of the Act; and</p>	
<p>7.2.3 in addition, in the case of a proposed road opening, to any person who has an interest in land over which the road was proposed to be opened.</p>	
<p>7.3 The duty pursuant to Section 16 of the Act when acting as the relevant authority, in determining whether to make a road process order and what order should be made, to have regard to –</p>	

7.3.1	any objections made by any person pursuant to the Act; and	
7.3.2	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	
7.3.3	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	
7.3.4	alternative uses of the land subject to the road process that would benefit the public or a section of the public; and	
7.3.5	any other matter that the Delegate considers relevant.	
7.4	The duty pursuant to Section 17 of the Act where, when acting as the relevant authority, a road process order or a road closure has been made, to as part of that order make one or more of the following orders dealing, or together dealing, with all of the land subject to the road closure:	
7.4.1	if an agreement for exchange or transfer has been made in respect of land subject to the road closure, an order that the land be transferred or added to other land in accordance with the agreement;	
7.4.2	an order that the land be sold by public auction or tender, if the Delegate considers that land subject to the road closure can conveniently be used separately from other land and the power to so form that opinion;	
7.4.3	an order that land subject to the road closure be sold, or transferred, for use for some public, charitable or beneficial community purpose;	
7.4.4	if land subject to the road closure is required by the Council for some purpose - in order that the land be retained by the Council and the Certificate of Title be issued to the	

	Council;	
7.4.5	an order that land subject to the road closure -	
7.4.5.1	be added to adjoining land that is dedicated under the Crown Lands Act 1929; or	
7.4.5.2	be transferred to the proprietor of adjoining land that is alienated in fee simple in trust under the Crown Lands Act 1929; or	
7.4.5.3	be vested in the Crown.	
7.5	The power pursuant to Section 18(1) of the Act and in accordance with the provisions in Section 18(2) of the Act, when acting as the relevant authority where a road process order for a road closure has been made, to make an order as part of that order for the granting of an easement over land subject to the road closure.	
7.6	The power pursuant to Section 18(2)(d) of the Act, where an application for an easement has been made pursuant to Division 1 of Part 3 of the Act by a person as the owner of adjoining or nearby land, to form the opinion that the persons use or enjoyment of that adjoining or nearby land would be substantially altered if the easement were not granted and therefore make an order for the granting of the easement in favour of that person.	
7.7	The duty pursuant to Section 19 of the Act when acting as the relevant authority to as soon as is practicable after a road process order is made;	

<p>7.7.1 give notice in writing of the order to any person who made an objection or application in relation to the proposed road process pursuant to Division 1 of Part 3 of the Act; and</p>	
<p>7.7.2 In addition, in the case of an order for a road opening –</p>	
<p>7.7.2.1 give notice in writing of the order to any person who has an interest in land over which a road is proposed by the order to be opened; and</p>	
<p>7.7.2.2 if the order does not deal with part of the land specified in the public notice of the proposed road opening given pursuant to Division 1 – give notice in writing of the discontinuance of the road process in respect of that land to any person who has an interest in that land; and</p>	
<p>7.7.2.3 deliver to the Adelaide office of the Surveyor-General a copy of the minutes of all meetings held by it in relation to the proposed road process certified by the Chief Executive Officer of the Council.</p>	
<p>7.8 The duty pursuant to Section 20 of the Act, within 3 months after a road process order is made to deposit at the Adelaide office of the Surveyor-General –</p>	

7.8.1	2 copies of the order; and	
7.8.2	survey plans as required by the Registrar-General for the purposes of this Section; and	
7.8.3	in the case of an order for a road closure that includes an order that land be transferred or added to other land in accordance with an agreement for exchange or transfer - a copy of the agreement for exchange or transfer on which is denoted all stamp duty payable in respect of the agreement; and	
7.8.4	in the case of an order for a road opening or the narrowing of a road - a statement that the order complies with the requirements of Part 8 of the Act as to the minimum width of roads; and	
7.8.5	any other document required by the Surveyor-General; and	
7.8.6	any fee prescribed by regulation including any fee required to be paid by a person in whom land or an interest in land would be vested on publication in the Gazette of notice of the order and its confirmation by the Minister.	
7.9	The duty pursuant to Section 20(3) of the Act in circumstances where a road process lapses by virtue of the provisions of Section 20(2) of the Act to, as soon as practicable, give notice in writing of that fact –	
7.9.1	to any person who made an objection or application in relation to the proposed road process pursuant to Division 1 of Part 3 of the Act; and	
7.9.2	in addition, in the case of a proposed road opening - to any person who has an interest in land over which a road is proposed to be opened.	
8.	Review and Confirmation of Road Process Order	
8.1	The duty pursuant to Section 22(2)(i) of the Act as the relevant authority in circumstances where the	

<p>Surveyor-General has amended a road process order under Section 22(1) of the Act and then provided a written notice of that amendment to the Council, to as soon as practicable give notice in writing of that amendment to any person who was required to be given notice in writing of the road process order under Section 19(a) or (b) of the Act.</p>	
<p>8.2 The duty pursuant to Section 24(2)(b) of the Act in circumstances where the Minister declines to confirm a road process order under Section 24(1) of the Act and has then provided written notice of that decision to the Council, to as soon as practicable give notice in writing of that decision -</p>	
<p>8.2.1 to any person who made an objection or application in relation to the proposed road process pursuant to Division 1 of Part 3 of the Act; and</p>	
<p>8.2.2 in addition, in the case of a proposed road opening - to any person who has an interest in land over which a road was proposed to be opened.</p>	
<p>9. Compensation</p>	
<p>9.1 The duty pursuant to Section 31(1)(a) of the Act where a road is opened pursuant to the Act over land not owned by the Council to -</p>	
<p>9.1.1 serve notice in writing of the road process order on each person who had an interest in the land immediately before it vested in the Council by virtue of the road opening; and</p>	
<p>9.1.2 append to the notice an offer in writing stating the total amount of compensation that the Council proposes to pay to the person and dividing that amount, so far as is practicable, into its separable components.</p>	
<p>10. Acquisition of Additional Land under Land Acquisition Act</p>	
<p>10.1 The power pursuant to Section 33(1) of the Act in circumstances where a Council proposes to open a road over any land pursuant to the Act, to -</p>	

<p>10.1.1 consider that the acquisition of additional land adjoining or near to the land to which the road opening relates is appropriate; and</p>	
<p>10.1.2 proceed to acquire the land, whether or not the land is required in connection with the proposed road.</p>	
<p>10.2 The power pursuant to Section 33(4) of the Act, where additional land is acquired by the Council pursuant to Section 33 of the Act, to sell or otherwise deal with that land in such manner as the Delegate considers appropriate, and to use the proceeds from the sale of any such land toward defraying expenses incurred by the Council in connection with the road opening.</p>	
<p>11. Duty to Fence</p>	
<p>11.1 The duty pursuant to Section 39 of the Act in any case in which a road is fenced along one or both of its boundaries and the road is altered or diverted, to ensure that the road as altered or diverted is fenced along its boundaries with a substantial fence of the same nature as the fence previously on the boundary of the road and the abutting land.</p>	

SCHEDULE OF CONDITIONS

CONDITIONS OR LIMITATIONS APPLICABLE TO DELEGATIONS CONTAINED IN THIS INSTRUMENT

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
NIL	NIL