



## REPORT: Planning Proposal R24-003 - Council-Owned Road Closure as Exempt Development

**DIVISION:** Development and Environment  
**REPORT DATE:** 17 May 2024  
**TRIM REFERENCE:** ID24/1004

### EXECUTIVE SUMMARY

Purpose	<ul style="list-style-type: none"><li>Seek endorsement</li><li>Fulfil legislated requirement</li></ul>	
Issue	<ul style="list-style-type: none"><li>The Dubbo Regional Local Environmental Plan (LEP) 2022 regulates planning decisions in the Local Government Area through land and development controls such as zoning, minimum lot sizes, development standards and land use permissibility.</li><li>This Planning Proposal seeks to amend the Dubbo Regional LEP 2022 and make the subdivision of a Council-owned road for the purpose of a road closure exempt development. This will ensure the process is efficient and straightforward, and removes the requirement for a Development Application.</li><li>Council-owned roads to be closed must be subdivided to create a title lot for the specific area of road. The NSW Land Registry Services requires a Subdivision Certificate, which can only be issued after development consent has been granted or the subdivision can be undertaken as exempt development. In many instances, the prospective lot area is less than the Minimum Lot Size Area identified in the Dubbo Regional LEP 2022 by more than 10%, which requires endorsement from the elected Council for a Clause 4.6 variation; this delays the process.</li></ul>	
Reasoning	<ul style="list-style-type: none"><li>Environmental Planning and Assessment Act 1979</li><li>NSW Government – Local Environmental Plan Making Guidelines</li></ul>	
Financial Implications	Budget Area	Growth Planning
	Funding Source	Growth Planning Branch Budget
	Proposed Cost	The proposed cost will be accounted for in the Growth Planning budget as the amendment is operational in nature.
	Ongoing Costs	Nil
Policy Implications	Policy Title	Dubbo Regional Local Environmental Plan 2022
	Impact on Policy	Schedule 2 Exempt Development would be amended

## STRATEGIC DIRECTION

The Towards 2040 Community Strategic Plan is a vision for the development of the region out to the year 2040. The Plan includes six principle themes and a number of objectives and strategies. This report is aligned to:

Theme:	2 Infrastructure
CSP Objective:	2.1 The road transportation network is safe, convenient and efficient
Delivery Program Strategy:	2.1.5 Council works collaboratively with the government and stakeholders on transport-related issues

## RECOMMENDATION

1. That Council endorse the Planning Proposal (attached in Appendix 1) to amend the Dubbo Regional Local Environmental Plan 2022 and make the subdivision of a Council-owned road for the purposes of road closure under the Roads Act 1993, Part 4, Division 3, as exempt development.
2. That Council submit the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway Determination.
3. That Council request the Chief Executive Officer (or delegate) be authorised as the Local Plan Making Authority under Section 3.36 of the Environmental Planning and Assessment Act 1979.
4. That Council support a minimum 10 business days public exhibition period for the Planning Proposal, subject to the conditions of a Gateway Determination.
5. That following the completion of the public exhibition period, a further report be presented to Council for consideration, including the results of public exhibition.

*Stephen Wallace*  
Director Development and Environment

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Manager Growth Planning

## BACKGROUND

### 1. Closing a Council-Owned Road

Since December 2019, Council has been responsible for closing Council-owned roads under the Roads Act 1993, Part 4, Division 3. Council may propose the closure of a Council-owned road if:

- the road is not reasonably required as a road for public use (whether for present or future needs);
- the road is not required to provide continuity for an existing road network; and
- if the road provides a means of vehicular access to particular land, another public road provides lawful and reasonably practicable vehicular access to that land.

Council-owned roads to be closed must be subdivided to create a title lot for the specific area of road. The NSW Land Registry Services requires a Subdivision Certificate, which can only be issued after development consent has been granted or the subdivision is undertaken as exempt development. In many instances, the prospective lot area is less than the Minimum Lot Size Area identified in the Dubbo Regional LEP 2022 by more than 10%, which requires endorsement from the elected Council for a Clause 4.6 variation; this delays the overall process.

## REPORT

### 1. Details of the Planning Proposal

The Planning Proposal (attached in **Appendix 1**) aims to ensure the process of a Council-owned road closure is efficient and straightforward, and removes the requirement for development consent. It seeks to amend the Dubbo Regional LEP 2022 and introduce a provision to permit the subdivision of a Council-owned road for the purposes of road closure under the Roads Act 1993, Part 4, Division 3, as exempt development. A Subdivision Certificate would still be required to satisfy the requirements of the NSW Land Registry Services, but this is a relatively straightforward process.

The Planning Proposal is required as road closures do not currently constitute exempt development under State Environmental Planning Policy (Exempt and Complying Development) 2008, State Environmental Planning Policy (Transport and Infrastructure) 2021, or the Dubbo Regional LEP 2022.

If the amendment to Schedule 2 Exempt Development is not accepted by the Department of Planning, Housing and Infrastructure, Clause 4.1 Minimum Subdivision Lot Size would be amended so that it does not apply to the subdivision of land occurring in connection with the closure of a Council-owned road under the Roads Act 1993. Development consent would still be required in this instance, but it would remove the requirement for the elected Council to endorse a Clause 4.6 variation if the prospective lot area is less than the Minimum Lot Size Area identified in the Dubbo Regional LEP 2022 by more than 10%.

## 2. Planning Assessment and Consideration

The Planning Proposal has been assessed against relevant Council strategies, policies and guidelines, the NSW Department of Planning and Environment's Local Environmental Plan Making Guidelines, State Environmental Planning Policies, and Ministerial Directions.

Given the minor nature, the assessment indicates it has strategic merit and should be submitted to the NSW Department of Planning, Housing and Infrastructure for a Gateway Determination.

## 3. Consultation and Planned Communications

If Council supports the Planning Proposal and receives a Gateway determination, it will be placed on public exhibition for a minimum of 10 business days in accordance with the Local Environmental Plan Making Guidelines. This will include a notice on Council's website and Customer Experience Centres, and the NSW Planning Portal.

Given the minor nature of the Planning Proposal, Council won't engage with State agencies.

A further report will be presented to Council for consideration following the completion of public exhibition and consultation processes.

## 4. Resourcing Implications

There are no resourcing implications arising from this report as it forms part of the work program of the Growth Planning branch.

## 5. Timeframe

Key Date	Explanation
13 June 2024	Consideration by Infrastructure, Planning and Environment Committee
27 June 2024	Consideration by Council
July 2024	Gateway Determination
August 2024	Public exhibition period
September 2024	Consideration of submissions
October or November 2024	Consideration by Council
December 2024	Submission to Department for finalisation
January 2025	Making of the LEP amendment

## APPENDICES:

- 1 [Planning proposal](#)