



# Planning Proposal

## Amendment to the Dubbo Regional Local Environmental Plan 2022

### Subdivision for Road Closure as Exempt Development

Council Reference R24-003

NSW Planning Portal Reference PP-2024-1409

ED24/146365

#### Acknowledgement:

Dubbo Regional Council wish to acknowledge the Wiradjuri People who are the Traditional Custodians of the Land. Council pay respect to the Elders past, present and emerging of the Wiradjuri Nation and extend that respect to other First Nations peoples.



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## EXECUTIVE SUMMARY

This Planning Proposal seeks to amend the Dubbo Regional Local Environmental Plan (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**. 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.

Should this provision not be accepted, Clause 4.1 Minimum Subdivision Lot Size will be amended so that it does not apply to the subdivision of a Council-owned road for the purposes of road closure under the Roads Act 1993, Part 4, Division 3.

Since December 2019, Council has been responsible for closing Council-owned roads. The general process of closing a Council-owned road is attached in **Appendix 1**. 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.

This Planning Proposal aims to ensure the process of a Council-owned road closure is efficient and straightforward, and removes the requirement for development consent.

This Planning Proposal is categorised as Basic in accordance with the Local Environmental Plan Making Guideline – August 2023.



## PART 1 OBJECTIVES AND INTENDED OUTCOMES

The objective of this Planning Proposal is to introduce a provision in the Dubbo Regional Local Environmental Plan (LEP) 2022 to permit the of subdivision land occurring in connection with the closure of a Council-owned road, or part of a Council-owned road, under the Roads Act 1993, as **exempt development**. This Planning Proposal aims to ensure the process of road closures is efficient and straightforward, and removes the requirement for development consent. A subdivision certificate would still be required to satisfy the requirements of the NSW Land Registry Services.

This 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.

Since December 2019, Council has been responsible for closing Council-owned roads. 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.

The process of closing a Council-owned road is attached in **Appendix 1**. In accordance with 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), and
- 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.

## PART 2 EXPLANATION OF PROVISIONS

This Planning Proposal will amend Schedule 2 Exempt Development of the Dubbo Regional LEP 2022 so that the subdivision of land occurring in connection with the closure of a Council-owned road, or part of a Council-owned road, under the Roads Act 1993, is **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.

Should this provision not be accepted, Clause 4.1 Minimum Subdivision Lot Size will be amended so that it does not apply to the subdivision of land occurring in connection with the closure of a Council-owned road, or part of a Council-owned road, by Council 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%.

These provisions are currently included in the [Camden Local Environmental Plan 2010](#) and [Sutherland Shire Local Environmental Plan 2015](#), and Byron Bay Council considered a report at their [1 August 2024 Planning Meeting](#) to amend the Byron Local Environmental Plan 2014 in the same manner.



## PART 3 JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

This Planning Proposal has been assessed against the following 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.

- Central West and Orana Regional Plan 2041
- Dubbo Regional Council – Towards 2040 Community Strategic Plan
- Dubbo Regional Council – Local Strategic Planning Statement
- Dubbo Urban Areas Development Strategy
- Dubbo Rural Areas Development Strategy
- Ministerial Directions
- State Environmental Planning Policies

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.

### Section A – Need for the Planning Proposal

Question	Considerations
Is the planning proposal a result of an endorsed LSPS, strategic study or report?	This Planning Proposal is not a result of any strategic study or report. The proposed amendments to the Dubbo Regional LEP 2022 have been identified by Council officers and are minor in nature.
Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	<p>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.</p> <p>The Planning Proposal is the best means of achieving the objectives and intended outcomes. In a lot of instances, the prospective closure 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 the Clause 4.6 variation.</p> <p>This Planning Proposal aims to ensure the process of road closures is efficient and straightforward, and does not require a development application.</p>



## Section B – Relationship to the Strategic Planning Framework

Question	Considerations
Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?	<p><b><u>Central West and Orana Regional Plan 2041</u></b></p> <p>This Planning Proposal is consistent with the Central-West and Orana Regional Plan 2041's (CWORP 2041) objectives. The relevant objectives are:</p> <ul style="list-style-type: none"> <li>• Objective 5: Identify, protect and connect important environmental assets</li> <li>• Objective 19: Protect agricultural production values and promote agricultural innovation, sustainability and value-add opportunities</li> <li>• Objective 20: Protect and leverage the existing and future road, rail and air transport networks and infrastructure</li> </ul>
Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	<p><b><u>Dubbo Local Strategic Planning Statement</u></b></p> <p>This Planning Proposal is consistent with the Planning Priorities of the Dubbo Local Strategic Planning Statement. The relevant Planning Priorities are:</p> <ul style="list-style-type: none"> <li>• Planning priority 1: Plan for the delivery of infrastructure to support growth</li> <li>• Planning priority 5: Protect and enhance our agricultural industries and agribusiness</li> <li>• Planning priority 15: Protect areas of high environmental value and significance</li> <li>• Planning priority</li> </ul>
Is the planning proposal consistent with other local government strategies?	The Dubbo Urban Areas Strategy and Rural Areas Strategy are not considered relevant to this Planning Proposal.
Is the planning proposal consistent with any other applicable State and regional studies or strategies?	<p><b><u>Other State or Regional Strategies</u></b></p> <p>There are no other applicable State and regional studies or strategies relevant to this Planning Proposal.</p>
Is the planning proposal consistent with applicable SEPPs?	<p><b><u>State Environmental Planning Policies</u></b></p> <p>While this Planning Proposal does not propose any development, it is consistent with the following SEPPs and would require any future development application to consider the requirements:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> </ul>



Question	Considerations
Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?	<p><b><u>Ministerial Directions</u></b></p> <p>This Planning Proposal is generally consistent with the following Ministerial Directions:</p> <ul style="list-style-type: none"> <li>• Direction 1.1 Implementation of Regional Plans</li> <li>• Direction 1.3 Approval and Referrals Requirements</li> <li>• Direction 1.4 Site Specific Provisions</li> <li>• Direction 1.4A Exclusion of Development Standards from Variation</li> <li>• Direction 3.1 Conservation Zones</li> <li>• Directions 3.2 Heritage Conservation</li> <li>• Focus Area 4: Resilience and Hazards</li> <li>• Direction 6.1 Residential Zones</li> <li>• Direction 7.1 Employment Zones</li> <li>• Direction 9.1 Rural Zones</li> <li>• Direction 9.2 Rural Land</li> </ul> <p>This Planning Proposal does not introduce restrictive site-specific planning controls as it allows development to occur in all land use zones, and does not impose any development standards or requirements in addition to those already contained in that zone.</p> <p>This Planning Proposal does not seek to rezone rural land or increase the density of land within a rural zone, ensuring land fragmentation or land use conflict is avoided. The portion of closed road is often sold to an adjoining land owner and consolidated into a larger lot, ultimately increasing the ongoing viability of agriculture. A recent example of this approach is <a href="#">development application D23-498</a> at Terramungamine Road, Terramungamine, and a recent example of this approach in an urban area is <a href="#">development application D19-571</a> at Fitzroy Street, Dubbo.</p>

## Section C – Environmental, Social and Economic Impacts

Question	Considerations
Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?	<p>There is no likelihood that this Planning Proposal will have adverse effects on critical habitat, threatened species, populations, ecological communities, or their habitats.</p> <p>Although the Planning Proposal is proposed to apply to all land within the Dubbo Local Government Area, it will only impact Council-owned roads and doesn't involve new development. As such, it will have no impact on ecologically sensitive habitats.</p>
Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?	<p>This Planning Proposal will only affect Council-owned roads and doesn't involve new development. As such, it will have no environmental effects.</p>



Question	Considerations
Has the planning proposal adequately addressed any social and economic effects?	This Planning Proposal will only affect Council-owned roads and doesn't involve new development. As such, there will be no social or economic effects.

## Section D – Infrastructure

Question	Considerations
Is there adequate public infrastructure for the planning proposal?	This is not considered relevant as this Planning Proposal is minor in nature.

## Section E – State and Commonwealth Interests

Question	Considerations
What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?	Due to the minor nature of this Planning Proposal, consultation with State and Commonwealth public authorities was not undertaken. Public consultation will be undertaken for 10 business days following receipt of a Gateway determination.

## PART 4 MAPS

This Planning Proposal does not require map amendments.

## PART 5 COMMUNITY CONSULTATION

This Planning Proposal is categorised as Basic in accordance with the Local Environmental Plan Making Guideline – August 2023.

Community consultation will occur in accordance with the requirements of the Gateway Determination. This Planning Proposal will be on public exhibition for a minimum of 10 working days, and it will be notified in the following ways:

- NSW Planning Portal
- Council's Customer Experience Centres – Dubbo and Wellington
- Macquarie Regional Library - Dubbo and Wellington branches
- Council's website
- Local newspapers

Council will not undertake consultation with State agencies.





## PART 6 PROJECT TIMELINE

The below estimated timeline provides a mechanism to monitor and resource the various steps required to progress this Planning Proposal:

Key Date	Explanation
13 June 2024	Consideration by Infrastructure, Planning and Environment Committee
27 June 2024	Consideration by Council
1 August 2024	Gateway Determination
August 2024	Updated in response to Gateway Determination conditions
Late-September 2024	Public exhibition period (due to Local Government Election caretaker period)
October 2024	Consideration of submissions
November 2024	Consideration by Council
December 2024	Submission to Department for finalisation
January 2025	Making of the LEP amendment



## APPENDIX 1 – ROAD CLOSURE PROCESS

