



IRF22/1904

Gateway determination report – PP-2022-1874

Subdivision for Road Closure as Exempt Development

July 22



Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2022-1874

Subtitle: Subdivision for Road Closure as Exempt Development

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 22) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal	1
1.1	Overview	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	1
1.4	Site description and surrounding area	3
1.5	Mapping	3
1.6	Background	3
2	Need for the planning proposal	5
3	Strategic assessment	5
3.1	District Plan	5
3.2	Local	7
3.3	Local planning panel (LPP) recommendation	8
3.4	Section 9.1 Ministerial Directions	8
3.5	State environmental planning policies (SEPPs)	9
4	Site-specific assessment	10
4.1	Environmental	10
4.2	Social and economic	10
4.3	Infrastructure	10
5	Consultation	11
5.1	Community	11
5.2	Agencies	11
6	Timeframe	11
7	Local plan-making authority	11
8	Assessment summary	11
9	Recommendation	12

1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	Camden Council
PPA	Camden Council
NAME	Subdivision for Road Closure as Exempt Development
NUMBER	PP-2022-1874
LEP TO BE AMENDED	Camden Local Environmental Plan 2010
ADDRESS	All land within the Camden LEP 2010
DESCRIPTION	N/A
RECEIVED	14/06/2022
FILE NO.	IRF22/1904
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to:

- amend the Camden LEP 2010 to include road closures as an item within Schedule 2 Exempt Development.

The objective of this planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Camden Local Environmental Plan 2010 by introducing a new provision to Schedule 2 Exempt Development to permit subdivision of a public road as exempt development for the purpose of road closure.

This provision also proposes to include a link to Section 38A of the *Roads Act 1993*, which sets out the requirements for when Council proposes a closure of a council-owned road.

Council's proposed new provision (subject to legal drafting) is as follows:

Schedule 2 Exempt development

Closure of Council Owned Roads that are the subject of a closure

- (1) Must be owned by council.
- (2) Closure of road must be suitable as per [s38A of the Roads Act 1993](#).

The planning proposal contains an explanation of provisions that adequately explains how the objective of the proposal will be achieved.

The Department notes that under *State Environmental Planning Policy (Transportation and Infrastructure) 2021* - provisions (refer to clause 2.21 and Schedule 1 of that SEPP) facilitate subdivision associated with the closure of a road, despite minimum lot size requirements assigned to particular zones. The subtlety of these provisions was discussed with council officers, who were of the view that these provisions are limited and did not readily assist with the process.

Further, the Department noted that a recent amendment (i.e., amendment no. 23) to the Sutherland Shire Local Environmental Plan 2015, addressed a similar issue by including the following in the plan:

Clause 4.1 Minimum subdivision lot size

Insert at the end of clause-

- (4A) This clause does not apply to the subdivision of land occurring in connection with the closure of a road, or part of a road, by a public authority under the Roads Act 1993.*

While Council has proposed a new provision, this would ultimately be a matter for legal drafting and another more appropriate drafting pathway may be chosen to better enact the intent of the planning proposal. Consequently, it is recommended that as a determination condition, Council be required to amend the proposal to indicate that the proposed provision may alter to satisfy legal drafting and to better enact the intent of the proposal.

1.4 Site description and surrounding area

The planning proposal will apply to all land within the Land Application Map (**Figure 1**) for Camden LEP 2010.

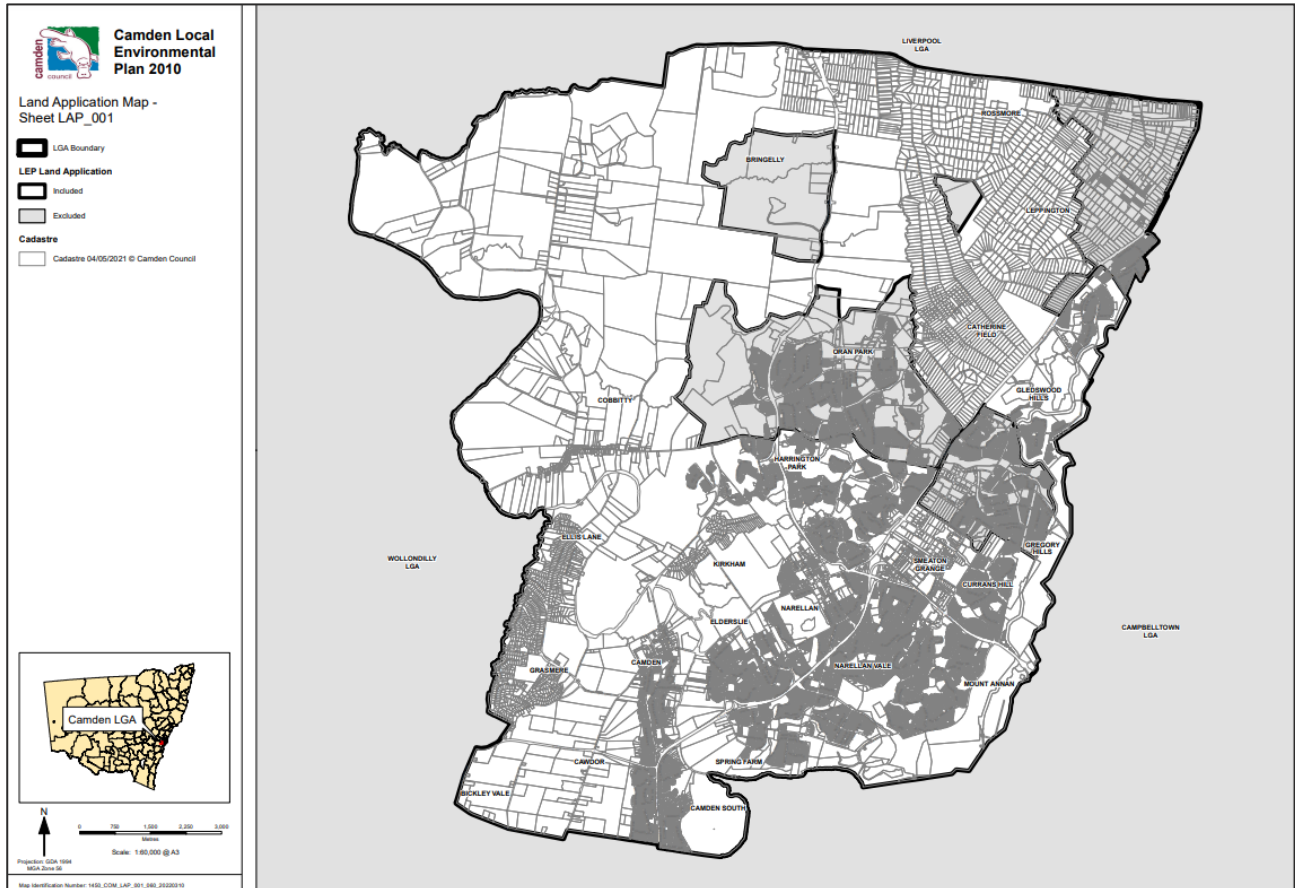


Figure 1 Land Application Map – Camden LEP 2010

1.5 Mapping

No mapping is required as part of the planning proposal.

1.6 Background

The background of the planning proposal is as follows:

- In December 2019, the responsibility for road closures was transferred from the then Department of Planning, Industry and Environment (DPIE) Crown Lands (now DPE Crown Lands) to Council.
- Council contends that the current process for the closure of council-owned roads depends on the ability to obtain consent for a subdivision certificate granted through a development application. **Figure 2** provides a brief outline of the road closures process to illustrate where Council is unable to fulfill its obligation under s38A of the *Roads Act 1993*. (Note: this is not the entire process).



Figure 2 Relevant parts of the road closure process

Since December 2019, when the responsibility of road closures was transferred to Council, issues have arisen in the closure process for council-owned roads. Council is currently in the process of closing two roads where the minimum lot size for subdivision cannot be complied with, as follows:

- A site on The Old Oaks Road, Grasmere, is zoned RU1 Primary Production with a minimum lot size of 40 hectares under the Camden LEP 2010. The area of road to be closed is approximately 11,297m², which is smaller than the minimum lot size standard specified under Camden's LEP. Consequently, Council contends that development consent for subdivision is not possible. This situation initiated the adoption and submission of the planning proposal for Gateway determination by Council.
- In a second example, the site is zoned R5 Large Lot residential with a minimum lot size of 4,000m² under the Camden LEP 2010. The area of road to be closed is approximately 965m², smaller than the minimum lot size. Similarly, Council contends that development consent for subdivision is unable to be granted.

Council has advised it has investigated other avenues to achieve the intended road closure.

The planning proposal indicates that legal advice obtained from Lindsay Taylor Lawyers provided the following three options:

1. Amend the Camden LEP 2010 to rezone the land or change the applicable minimum lot size standard.
2. Utilise a mechanism under the *Land Acquisition (Just Terms Compensation) Act 1991* which will allow Council to acquire land which it already owns. The division of the land that is caused by this is not subdivision for the purposes of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and therefore will not need development consent.

3. Amend the Camden LEP 2010 to make subdivision of a road exempt development.

This Planning Proposal seeks to enable Option 3.

2 Need for the planning proposal

The planning proposal is not a result of any strategic study or report. The proposed amendments to Camden LEP 2010 identified within the planning proposal were identified by Council officers and are considered minor in nature.

The proposed amendment to Camden LEP 2010 is considered by Council to be the best means of establishing an efficient process for the subdividing and closure of council-owned roads. By adding subdivision of Council owned roads as an item within Schedule 2 Exempt Development, an effective and efficient process for road closures will be able to be established. This is especially important for the closure of roads in areas with a large minimum lot size standard, where Council has been unable to subdivide and close roads.

Further justification for the need for the planning proposal is outlined in Section 1.6 of this report.

3 Strategic assessment

3.1 District Plan

The proposal applies to multiple sites within the Camden LGA, as the need arises. The Western City District Plan applies. The then Greater Sydney Commission released this plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is generally consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan, as outlined overleaf.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. **Table 2** (over leaf) includes an assessment of the planning proposal against relevant directions and actions.

Table 2 District Plan Assessment

District Plan Priorities	Justification
<p>Planning Priority W1: Planning for a city supported by infrastructure</p>	<p>The proposal seeks to ensure that the process for closure of Council-owned roads is effective, efficient and consistent with Council's functions pursuant to the <i>Roads Act 1993</i>.</p> <p>This aligns with Objectives 1-4 under Planning Priority W1, making the proposal not inconsistent with this Priority.</p>
<p>Planning Priority W3: Providing services and social infrastructure to meet people's changing needs</p>	<p>The proposal was triggered by a need for a more efficient and effective process for the closure of Council-owned roads. Council-owned roads may be closed in response to the growth of urban development across the Camden LGA, including the provision of appropriate services and social infrastructure to meet the community's changing needs.</p> <p>The proposal aligns with Objective 6 under Planning Priority W3, making it not inconsistent with this Priority.</p>
<p>Planning Priority W7: Establishing the land use and transport structure to deliver a liveable, productive and sustainable Western Parkland City</p>	<p>The proposal seeks to ensure that the process for closure of Council-owned roads is efficient and has the ability to support the establishment of an effective land use and transport structure for the Camden LGA. Improving the council-owned road closure process will allow Council to better respond to providing effective connectivity through its urban areas.</p> <p>The proposal aligns with Objectives 14-16 under Planning Priority W7, making it not inconsistent with this Priority.</p>
<p>Planning Priority W16: Protecting and enhancing scenic and cultural landscapes</p>	<p>The proposal seeks to ensure that the process for closure of council-owned roads is efficient and effective. Improving this process will bolster Council's ability to protect its rural, scenic and cultural landscapes, including areas containing sensitive habitats or of heritage significance.</p> <p>The proposal therefore aligns with Objective 28 under Planning Priority W16, making it not inconsistent with this Priority.</p>
<p>Planning Priority W17: Better managing rural areas</p>	<p>The proposal seeks to ensure that the process for closure of Council-owned roads is efficient and effective. Improving this process will allow Council to be better equipped to manage its rural areas. The proposal provides an example of a rural site in Grasmere with a large Minimum Lot Size control that prevented Council from closing a redundant, council-owned road as it was unable to successfully progress through the DA process. The proposal seeks to remove the requirement of the DA process by introducing a new provision to Schedule 2 Exempt Development to permit subdivision of a public road as exempt development for the purpose of road closure.</p> <p>The proposal therefore aligns with Objective 29 under Planning Priority W17, making it not inconsistent with this Priority.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also generally consistent with the strategic direction and objectives, as stated in **Table 3** below:

Table 3 Local strategic planning assessment

Local Strategies	Justification
Camden Community Strategic Plan	<p>The proposal gives effect to the Camden Community Strategic Plan by addressing:</p> <p><i>(a) Key Direction 1: Actively Managing Camden LGA's Growth</i></p> <p>The proposal seeks to ensure that the process for closure of Council-owned roads is efficient and has the ability to support the active management of the continual growth of the Camden LGA. Improving this process will allow Council to better respond to the growth and changing needs of the LGA.</p> <p><i>(b) Key Direction 4: Effective and Sustainable Transport</i></p> <p>The proposal's objective of creating a new provision for the process of closure of Council-owned roads to become exempt development will allow Council to make informed decisions regarding the connectivity of integrated transport solutions and efficient land use planning.</p>
Local Strategic Planning Statement (LSPS)	<p>The proposal gives effect to the Camden LSPS, as follows:</p> <p><i>(a) Local Priority I1: Aligning infrastructure delivery with growth</i></p> <p>The proposal seeks to ensure that the process for closure of Council-owned roads is efficient and has the ability to support the alignment of delivering infrastructure with the growth of the Camden LGA. Improving this process will allow Council to efficiently close redundant council-owned roads and replace these with upgraded roads infrastructure that will support population growth.</p> <p><i>(b) Local Priority I2: Connecting Camden through integrated transport solutions</i></p> <p>The proposal's objective of creating a new provision for the process of closure of Council-owned roads to become exempt development will allow Council to make informed decisions regarding the connectivity of integrated transport solutions and efficient land use planning.</p> <p><i>(c) Local Priority S3: Protecting Camden's Rural Land</i></p> <p>The proposal seeks to improve the efficacy of the council-owned road closure process. Improving this process will allow Council to be better equipped to protect its rural, scenic and cultural landscapes, including areas containing sensitive habitats or of heritage significance.</p>

Camden Local
Housing Strategy
(LHS)

The proposal gives effect to the Camden LHS by addressing:

- (a) *Priority 1: Providing housing capacity and coordinating growth with infrastructure*

The proposal seeks to improve the process for the closure of Council-owned roads, which will allow Council to make timely decisions on coordinating land use planning, growth and required infrastructure. Additionally, creating a new provision for the Council-owned road closure process to become exempt development will provide Council with the capacity to focus on assessments related to the delivery of new homes and communities.

3.3 Local planning panel (LPP) recommendation

On 19 April 2021, the Camden Local Planning Panel (CLPP) considered the original draft planning proposal and resolved to advise the Council:

- The two current matters which have been under consideration for some time (i.e., the two examples cited in the planning proposal document), should be dealt with via a development application and associated clause 4.6 variation dealing with minimum lot size, so that they may be handled more efficiently and in a timely manner, rather than waiting for the outcome of the planning proposal.

The CLPP voted 4-0 in favour of the recommendation.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.3 Approval and Referral Requirements	Consistent	<p>The objective of this Direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>The proposal is consistent with this Direction as it seeks to make an amendment to the Camden LEP that is considered minor in nature. The proposal is not likely to require the concurrence, consultation or referral of development applications to a Minister or public authority and is not considered to have significant environmental impact.</p>
Direction 3.1 Conservation Zones	Consistent	<p>The objective of this Direction is to protect and conserve environmentally sensitive areas.</p> <p>The proposal is consistent as it does not propose to amend the existing provisions that facilitate the protection and conservation of environmentally sensitive land.</p>

Direction 3.2 Heritage Conservation	Consistent	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The proposal is consistent as it does not propose to amend any heritage items or places listed under the Camden LEP 2010 or amend the existing provision that facilitate the conservation of heritage items and places.</p>
Direction 4.3 Planning for Bushfire Protection	Consistent	<p>The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.</p> <p>The proposal is consistent with the Direction as it does not seek to impede the application of the direction. Additionally, the proposal does not seek to propose any development; however, its objective has the potential to create an opportunity for development. This may include development on land that is identified as bushfire prone. Therefore, future development applications which seek to develop on bushfire prone land will need to consider this Direction.</p>
Direction 9.1 Rural Zones	Consistent	<p>The objective of this Direction is to protect the agricultural production value of rural land.</p> <p>The proposal is consistent as it does not seek to rezone rural land or increase the permissible density of land within a rural zone.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in **Table 5**.

Table 5 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Transport and Infrastructure) 2021	The policy aims to provide well-designed and located transport and infrastructure integrated with land use.	Yes	<p><i>Chapter 2 Infrastructure</i> of the SEPP is applicable to the planning proposal.</p> <p>The proposal is consistent as it does not impede the delivery or application of this SEPP.</p>
State Environmental Planning Policy (Resilience and Hazards) 2021	The policy aims to achieve climate resilience and sustainability through managing risks and	Yes	<p><i>Chapter 4 Remediation of land</i> of the SEPP is applicable to the planning proposal.</p> <p>The proposal does not seek to propose any development; however</p>

	building resilience in the face of hazards.		its objective has the potential to create an opportunity for development. All future development applications which seek to develop land that has been subdivided due to road closure will need to consider this SEPP, specifically in regard to any remediation works required as part of a DA. The proposal itself is consistent with this SEPP as it does not impede its delivery or application.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The policy aims to provide streamlined assessment processes for development that complies with specified development standards by providing exempt and complying development codes that have State-wide application.	Yes	The planning proposal does not impede the delivery or application of this SEPP.

4 Site-specific assessment

4.1 Environmental

The planning proposal will apply to all land illustrated within the Land Application Map for Camden LEP 2010; however, it will only directly apply to council-owned roads/alignments and it is not anticipated to involve new development. The revised process will therefore not entail adverse impacts upon any threatened species, populations or ecologically sensitive habitats within the Camden LGA.

4.2 Social and economic

The planning proposal is considered minor in nature and is designed to improve the efficiency and function of the existing road closure process. The proposal is therefore not supported by a social or economic assessment as it does not directly involve new development.

The primary economic benefit of the proposal is the increased efficiency it will bring to the existing road closure process. The proposed process will result in less council resources being expended upon progressing road closures. Council will also be able to better maintain its assets through the disposal of redundant parcels of road.

4.3 Infrastructure

The planning proposal is considered minor in nature and does not propose to directly initiate or involve new development. Therefore, the provision of adequate public infrastructure is not considered relevant in this instance.

5 Consultation

5.1 Community

Given the minor nature of the proposal, a 14 day exhibition period is considered to be appropriate and is recommended as a condition of the Gateway determination.

The proposed exhibition period was discussed with council officers and no objections were raised.

5.2 Agencies

The proposal does not specifically address agency consultation.

As the proposal is a process matter and solely involves council owned land, consultation with government agencies is not considered necessary under section 3.34(2)(d) of the EP&A Act.

6 Timeframe

Council proposes a 6 month time frame to complete the LEP amendment.

To ensure that the proposal is finalised within Gateway conditions, however, the Department recommends a completion time frame of 9 months. Further, it is recommended that the determination be conditioned requiring council to exhibit and report (if necessary) on the proposal by specified milestone dates.

7 Local plan-making authority

Given the minor nature of the proposal, the Department recommends that Council be authorised to be the local plan-making authority for this proposal. Discussions have occurred with Council regarding Council being the plan making authority for this proposal. Council agreed to exercise its functions as a Local Plan-Making authority.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it is not inconsistent with regional, district and local plans and their relevant objectives;
- there are no adverse social, economic or environmental impacts as a result of the proposed amendments;
- the proposal will bolster Council's ability to make timely decisions on coordinating land use planning, managing population growth and delivering the required associated infrastructure; and
- the proposal will result in better outcomes for the community as Council will have an improved road closure process which increases efficiency and function of Council procedures.

9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. The planning proposal must be exhibited 2 months from the date of the Gateway determination.
3. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



7 July 2022

Terry Doran

Manager, Metro West

Noted:



8 July 2022

Naomi Moss

Acting Director, Metro West

Assessment officer

Murray Jay

Senior Planning Officer, Metro West

9860 1512