

**Item 4.****Development Application: 5040 Church Street, Newtown - D/2019/225**

File No.: D/2019/225

**Summary****Date of Submission:** 8 March 2019**Applicant:** Rygate Surveyors**Owner:** Council of the City of Sydney**Cost of Works:** \$0**Zoning:** The site is zoned R1 - Residential. Subdivision is permissible with consent.

**Proposal Summary:** The subject application seeks consent for a Torrens title subdivision to facilitate a part road closure and the creation of a new certificate of title for a new lot on of Church Street, Newtown, in accordance with Sydney City Council resolution 1(b) dated 14 July 1986. The purpose of the subdivision would be to effectively reverse a component of redundant road widening and facilitate its future sale and consolidation into the adjacent to the property at, adjoining Nos. 180-182 Church Street, Newtown. The land is no longer required for road related purposes and the proposal creates an allotment that can be appropriately consolidated with the adjoining property at Nos. 180-182 Church Street, Newtown. The land is located adjacent to the front boundary of 180-182 Church Street.

The subject land is not Crown land. It was private property until it was resumed in 1965 under a road widening action by the City of Sydney. The recent Crown land legislation made amendments to the Roads Act 1993 (Division 3, clauses 38A - 38F) which now permits Councils to close council owned unutilised roads without having to seek the consent of the Minister of Lands.

In the case of a closure of a "formed road" the closed road vests in, that is becomes the responsibility of Council. In the case of a closure of "unformed road" the closed road vests in the Crown. The subject land has been maintained by the City, and available for public access since the late 1960's.

**Proposal Summary  
(continued):**

Council's legal unit are satisfied that this aligns with the definition of a formed road, and so on closure the land will become the responsibility of Council and is classified as operational land.

The application was notified for a 21 day period between 25 March 2019 and 16 April 2019. Two submissions were received. One of the submissions was in the form of an inquiry, seeking clarification as to why such a long length of Church Street was being closed on the extent of road closure and for what time period. Upon advice that it involved the small section of widening fronting the property at 180-182 Church St, the submitter responded that they had no further concerns. The remaining submission was in support of the application from the adjacent property by the owner of Nos. 180-182 Church Street, who has been in negotiations with the City to purchase the land.

The application is reported to the Local Planning Panel as the City of Sydney is the applicant and owner of the land.

The application has been assessed as being generally consistent with the relevant provisions of the Sydney LEP 2012 and the Sydney DCP 2012.

**Summary Recommendation:**

The development application is recommended for approval, subject to conditions.

**Development Controls:**

Environmental Planning and Assessment Act, 1979

Roads Act, 1993

Sydney Local Environmental Plan 2012 (Gazetted ## December 2012, as amended)

Sydney Development Control Plan 2012 (in force on ## December 2012, as amended)The development application is recommended for approval, subject to conditions.

**Attachments:**

**Attachment A.** Recommended Conditions of Consent

**Attachment B.** Plan of Proposed Subdivision

**Recommendation**

It is resolved that consent be granted to Development Application No. D/2019/225 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development satisfies the relevant strategy, objectives and provisions of both the Sydney LEP 2012 and Sydney DCP 2012.
- (B) The land is no longer required for road related purposes and the proposal creates an allotment that can be appropriately consolidated with the adjoining property at Nos. 180-182 Church Street, Newtown.
- (C) The proposal implements a Sydney City Council resolution dated 14 July 1986.





**Figure 2:** Site as viewed from Church Street, looking north, with proposed road closure area outlined in red



**Figure 3:** View of the site looking east from Church Street



Figure 4: Aerial photo of the subject site with locality context

**Proposal**

6. The application seeks consent for a Torrens title subdivision of part of the Church Street road reserve for title issue and to facilitate a road closure under the Roads Act 1993.
7. The purpose of the subdivision would be to effectively reverse a redundant road widening and facilitate its future sale and consolidation into the adjacent to the property at Nos. 180-182 Church Street, Newtown.
8. A copy of part of the proposed subdivision plan is provided below.

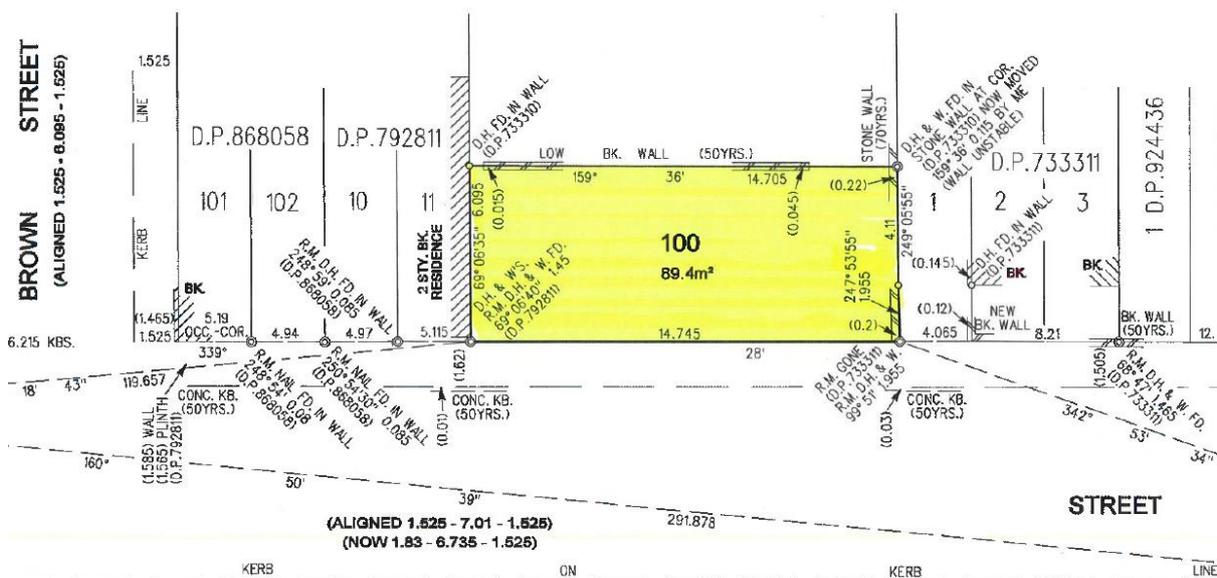


Figure 5: Proposed plan of subdivision to create New Lot 100

## History Relevant to the Development Application

9. On 25 March 1927 a Notice of Realignment of Streets was gazetted as Gazette No. 40 Folio 1580, realigning Layton Street (which is what Church Street was known as at the time). A Crown plan catalogued as S. 295.907 showed the extent of the realignment.
10. In a resolution of Council, dated 14 July 1986, the following was resolved by Sydney City Council:

That arising from consideration of the report by the City Engineer dated 16th June 1986, approval is given to:

  - 1 (a) The reaffirming of the intention to proceed with the widening by realignment of Church Street on the north eastern side as proclaimed in Government Gazette dated 25th March, 1927, Folio 15890 as shown on plans No. S289.907 and S295.907 at the Department of Lands, between Parramatta Road, and Rochester Street and such widening to be noted in the draft Local Environmental Plan No. 66.
  - (b) The rescinding of the above realignment only in so far as it affects the north eastern side of Church Street from Rochester Street to the south eastern boundary of No. 182.
  2. Subject to the approval of 1(b) above, all necessary steps, including road closures if applicable, being taken to offer for sale to the adjoining owners that land in front of Nos. 180-182 Church Street which as vested in Council and for which compensation was paid and to return the land vested in Council in front of Nos. 164-166 Church Street to the adjoining owners.
  3. All relevant documents and plans being executed under the Common Seal of Council or by Council's Attorney.
11. The widening of Church Street was rescinded by government gazette No. 114 Folio 3684 dated 8 July 1988.
12. In August 2016, the City received a submission from a neighbouring owner seeking to purchase the land and consolidate with the land into the neighbouring private land holding.
13. In early 2017, the City entered into a Deed for the purchase of the land. The Deed provides for the land to be revalued prior to transfer, and if the new valuation is lower, the prior valuation prevails.
14. On 9 October, 2018 a public notice of road closure was advertised in the Sydney Morning Herald and letters issued to the neighbouring property owners. No submissions were received.
15. Relevant authorities, including utilities such as Ausgrid, Jemena, Telstra and authorities including RMS and Transport NSW were also notified of the proposal. No objections were received.
16. The subject subdivision has been lodged to facilitate this sale.

### Economic/Social/Environmental Impacts

17. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

- (a) Environmental Planning Instruments and DCPs.

### Roads Act 1993

#### Sydney Local Environmental Plan 2012

18. The site is located within the R1 Residential zone. The proposal is defined as subdivision, which is permissible with consent in the zone.
19. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

#### Compliance Tables

Development Control	Compliance	Comment
2.6 Subdivision - consent requirements		
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area.  No works are proposed, and it is considered that the subdivision and road closure will not impact on the heritage fabric or on any significant subdivision pattern in the locality.

#### Sydney Development Control Plan 2012

20. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

#### 2. Locality Statements – Camperdown

The subject site is located in the Camperdown. The proposed subdivision is considered to be in keeping with the unique character of the area and design principles in that it will restore the road alignment to its original location.

3. General Provisions	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The subdivision is required to facilitate the partial road closure in accordance with the 1986 resolution by Council.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	The proposal will facilitate the reinstatement of the original fine grain form of the cadastral boundaries

21. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

### Suitability of the site for the Development

22. The proposal is of a nature in keeping with the overall function of the site.

### External Referrals

#### Notification, Advertising and Delegation

23. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 25 March 2019 and 16 April 2019.

24. A total of 242 properties were notified and two submissions were received.

- (a) One submission requested clarification on why Church Street is being closed for this application, why such a long length of Church Street was being closed, and for what time period.

**Response** - The submitter was advised that only the portion set back from the main road alignment adjoining 180-182 Church Street was being closed, that Church Street would remain open, and that no physical works were proposed for the application. The submitter had no further questions once this was clarified.

- (b) One submission was received in support of the proposal.

### Public Interest

25. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

### Relevant Legislation

26. The Environmental Planning and Assessment Act 1979.
27. The Roads Act 1993.
28. The Crown Lands Management Act 2016.

## Conclusion

29. The proposed development application seeks consent for the subdivision of part of Church Street adjacent to Nos. 180-182 Church Street for the purpose of road closure and issue of the first title.
30. The proposal has been assessed as being generally consistent with the objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012.
31. The subdivision of this land is consistent with the 1986 resolution of the Council to close this part of the road, and as detailed in the relevant history section of this report, the proposal is consistent with the road closure process under the Roads Act being undertaken as a separate process by Council.
32. Subject to the imposition of conditions, the proposal has been assessed as being acceptable and is recommended for approval.
33. The next step in the process is that, after determination, a Subdivision Application under S. 109J of the Environmental Planning & Assessment Act, 1979 will be lodged with Sydney City Council.
34. After the subdivision certificate is executed by the City's authorised delegate, the subdivision will be lodged with NSW Land Registry Services (formerly LPI-NSW), redefining the land and assigning a lot and DP number.
35. It will then be registered and a title will issue to the City. The land will be classified as Operational Land.
36. It will then be gazetted by the City as being closed as public road
37. In accordance with the Deed of Road Closure and Sale with the adjoining landowner, the land will be subject to an updated valuation and then transferred for that amount to the adjoining landowner.

## GRAHAM JAHN, AM

Director City Planning, Development and Transport

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