

TO: Sydney Central City Planning Panel

SUBJECT: MS Society 80 Betty Cuthbert Drive Lidcombe.

APPLICATION No: PPSSCC-615 / DA2023/0566

Application accepted	27 October 2023.
Applicant	B Bradley.
Owner	Property NSW.
Application No.	PPSSCC-615 / DA2023/0566.
Description of Land	MS Society 80 Betty Cuthbert Drive Lidcombe. Lot 74 in DP 1141724, Lot 75 in DP 1141724 and Lot 475 in DP 45747.
Proposed Development	Subdivision of existing lot into 3 Torrens Title lots.
Site Area	57,678.8 square metres.
Zoning	<ul style="list-style-type: none"> Part R3 - Medium Density Residential. Part SP2 - Infrastructure.
Disclosure of political donations and gifts	None disclosed on the application form.
Cost of works	Nil.
Heritage	Not applicable.
Principal Development Standards	<p><u>Minimum Lot Size</u> Permissible: 170 square metres. 350 square metres (minimum lot size controls only exist for that part of the site zoned R3 Medium Density Residential). Proposed: 3.16 hectares (A future subdivision application would be required to subdivide the super lot into smaller lots to permit future housing).</p> <p><u>FSR</u> Permissible: 0.75:1 only applies to land zoned R3 Medium Density Residential. Proposed: Not applicable as no buildings are proposed.</p> <p><u>Height of Building</u> Permissible: 9m only applies to land zoned R3 Medium Density Residential. Proposed: Not applicable as no buildings are proposed.</p>
Issues	An agreement was not reached on one of the conditions of consent.

SUMMARY

1. Development Application No. DA2023/0566 was accepted on 27 October 2023 for the Subdivision of existing lot into 6 Torrens Title lots.

2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 24 November 2023 and 8 December 2023. In response, no submissions were received.
3. On 28 May 2024, the applicant modified the development application to a 3 lot subdivision. The assessment report below is based upon a three lot Torrens Title subdivision.
4. The application is referred to the Panel pursuant to Section 4.33(2)(b) of the Environmental Planning and Assessment Act, 1979 as the Crown development application has not been determined within the period prescribed by the regulations and an agreement cannot be reached on the conditions of consent, specifically condition 7 – *'Creation of Restriction on the use of Land related to access to Public Road'*.
5. The application is recommended approval subject to the conditions as recommended in the Council's assessment report.
6. Should the panel not concur with Council's recommendation and accept the request from the applicant, pursuant to Section 4.33(1)(b) of the Environmental Planning and Assessment Act 1979, the Sydney Central City Planning Panel is able to determine the application as per the attached Draft Notice of Determination in Attachment 1 with the exception of Condition 7.
7. Should the panel concur with Council's recommendation and not accept the request by the applicant, pursuant to Section 4.33(1)(b) of the Environmental Planning and Assessment Act, 1979, the Sydney Central City Planning Panel should refer the application to the Minister for Planning and Public Spaces with a recommendation that the conditions as per the attached Draft Notice of Determination in Attachment 1 be accepted and imposed.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site is legally described as Lot 74 in DP 1141724, Lot 75 in DP 1141724 and Lot 475 in DP 45747 and is known as 80 Betty Cuthbert Drive Lidcombe. The site, the subject of the development application occupies an area of 57,678.8 square metres. The existing Multiple Sclerosis Limited Centre (MSL) is situated across the northern part of the site which includes car parking areas.

The new MSL is under construction across the southern part of the site. The new facility will replace the ageing centre and once built, the existing building will be demolished.

There are numerous trees situated across the site and there is also a sealed road traversing through the site.

The land has a fall of between 2.85 metres and 4.11 metres from the south east to the west and north.

The site adjoins a residential area to the south. Betty Cuthbert Drive is located to the east and there are dwelling houses fronting the road along the eastern side of the site. There are residential areas to the north and north east.

Joseph Street being a classified arterial road borders the site to the west.

The site is shown below edged in yellow.

The site exhibits 2 zonings as follows:

- R3 Medium Density Residential.
- SP2 Infrastructure.

Further to the SP2 Infrastructure zoned land, there are subcategory zones being:

- Part SP2 (Infrastructure - Educational Establishment).
- Part SP2 (Infrastructure - Hospital).
- Part SP2 (Infrastructure - Drainage).

The zoning map is provided below with the site edged in yellow.

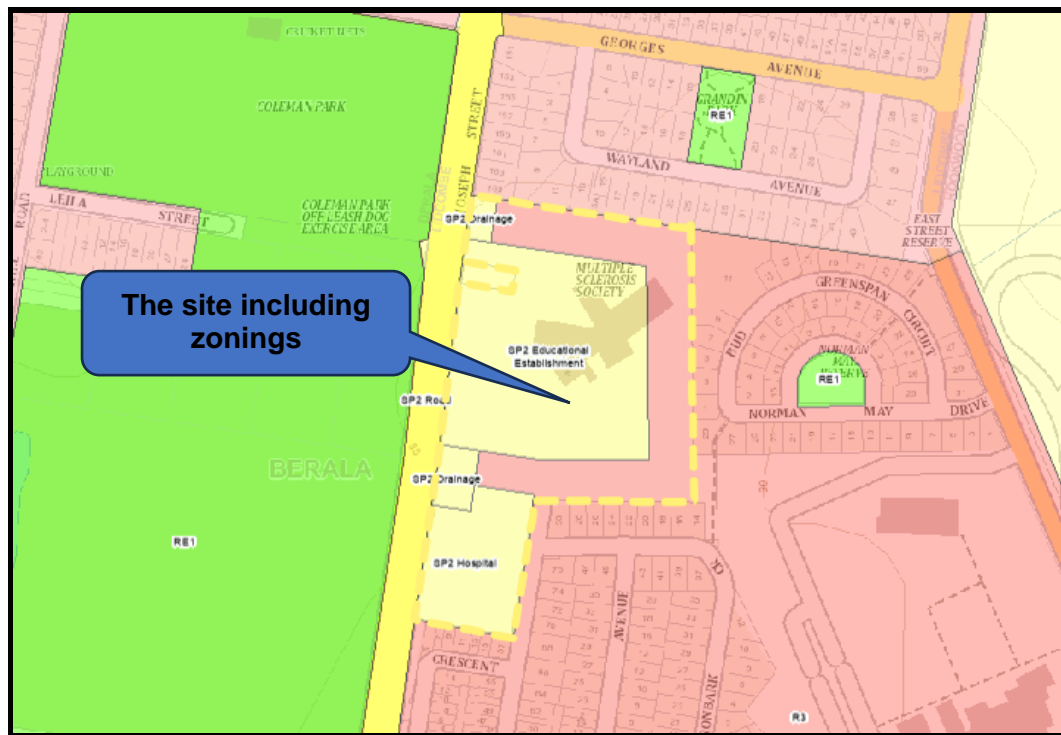


Figure 1 – Locality Plan of subject site (Source: NSW Planning Portal Spatial Viewer)



Figure 2– Aerial view of subject site (Source: Nearmap 2024)



Figure 3 - This is to become the site of a future drainage area.



Figure 4 - Location of the proposed road reserve and future school (Educational Establishment).

DESCRIPTION OF THE DEVELOPMENT

Council has received a development application for the subdivision of the whole land parcel into 3 Torrens Title allotments of varying size as follows:

Lot number	Size	Purpose
Lot 1.	8,886 square metres.	Site of the approved new MS Hospital which is now under construction.
Lot 2.	31,600 square metres.	Land earmarked for future residential allotments, a road and drainage reserves.
Lot 3.	18,330 square metres.	Land earmarked for a future educational establishment.

This is a paper subdivision only involving no construction work.

HISTORY

Planning Proposal 2022-2295 which sought to facilitate the redevelopment of the site for a mix of health, educational and residential uses by amending the SP2 (Hospital) zone to SP2 (Educational Establishment) SP2 (Hospital), SP2 (Drainage) and R3 Medium Density Residential and amending the existing height of Building, floor space ratio and applying the existing Clause 4.1(3C) of the Cumberland Local Environmental Plan 2021 to the R3 Medium Density Residential zone was gazetted on the 12th of May 2023.

Development application 2023/0566 was accepted by the Council on 26 October 2023. This application is in response to the Planning Proposal which facilitates in part the redevelopment of the site and seeks to subdivide the Super lot into 3 Torrens Title allotments.

The applicant modified the development proposal via a submission made on the 28 May 2024 in which the original 6 lot subdivision is to become a 3 lot subdivision.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided an Addendum Statement of Environmental Effects prepared by Urbis dated 20 November 2023 and was received by Council on 20 November 2023 in support of the application.

CONTACT WITH RELEVANT PARTIES

The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

INTERNAL REFERRALS

Development Engineering

The development application was referred to Council's Senior Development Engineer for comment who has advised that the proposal is satisfactory and therefore can be supported subject to the recommended conditions of consent.

EXTERNAL REFERRALS

Transport for New South Wales (TfNSW)

The application was referred to TfNSW pursuant to Clauses 2.119 and 2.122 of the SEPP (Transport and Infrastructure) 2021. As per the correspondence dated 7 June 2024, no objection is raised to the three-lot subdivision that is proposed. Additionally, no conditions were recommended for any consent that may be issued.

TfNSW has advised that any future development applications that involves physical works, will require their approval and concurrence under the Roads Act, 1993.

PLANNING COMMENTS

The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))

Crown applications

The development application is on behalf of the Crown with Property and Development New South Wales being the landowner. As such, the development application falls under Clause 4.33 of the Environmental Planning and Assessment Act which reads as:

4.33 Determination of Crown development applications

(1) A consent authority (other than the Minister) must not-

- (a) refuse its consent to a Crown development application, except with the approval of the Minister, or*
- (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*

Comment

As the application is made on behalf the Crown, the draft conditions of consent were sent to the applicant for their review and approval.

On-going conversations and meetings have been held between Council and the applicant in order to reach an agreement.

The two conditions that remain in disagreement are as follows:

6. DASCZ06 - Creation of Right of way/ carriageways

All the lots shall have access to public roads. In this this regard, details shall be submitted to Council, Prior to the issue of a Land subdivision certificate. If necessary, appropriate right of ways, right of carriageways, shall be created wherever they are required and appropriate to allow the benefitting lots to enjoy the rights. In this regard, the subdivision plan shall incorporate the relevant items such as the right of ways, etc as required. The final plan of subdivision shall incorporate the required provision.

Note: The document/instrument shall be submitted to Council for endorsement together with other relevant supporting documents prior to lodgement with the Land and Property Information Service of NSW.

(Reason: Provision of legal access right.)

7. DASCZ03 - Creation of Restriction on the use of Land related to access to Public Road

Prior to the issue of a Land subdivision certificate, a Restriction on the Use of Land shall be created against the title of proposed lots 2 and 3 to restrict access only via Joseph Street.

In this regard, the terms of restriction shall be obtained from council. Cumberland City Council shall be named as the authority having power to vary, modify or release the restriction. The Restriction on the use shall be incorporated in the subdivision plan to the satisfaction of council and the registration with the NSW Land Registry Services (LRS) shall be eventuated together with the registration of the subdivision plan.

(Reason: To ensure the compliance of the requirement of the planning proposal)

On the 17th of September 2024, Council emailed the applicant draft conditions of consent.

The applicant replied stating as follows:

“we do not accept the introduction of Condition 7 for the following reasons:

- *All lots will maintain access to Joseph Street as part of the three lot subdivision, the condition is not necessary to restrict the use to Joseph Street only.*
- *Lot 1 in particular requires access from Betty Cuthbert Drive. The MSL centre has been approved and relies on Betty Cuthbert Drive as the primary access, which aligns with the current usage of the site.*
- *Relying on access for all three lots does not align with the masterplan which was proposed as part of the rezoning. Many discussions were had with PDNSW, Council and TfNSW which noted that Betty Cuthbert will remain the primary access point. A previous scheme had two access points from Joseph Street and this was amended to provide only one access point off Joseph Street.*
- *The reliance on Joseph Street seems to align with the DCP control which requires the closure of Betty Cuthbert Drive. This has never been agreed to by the proponent and does not align with the traffic analysis undertaken to date. An RFI package issued to Council in March 2024 included a Technical Memo prepared by PDNSW’s traffic engineer, Mott Macdonald in 2022 that reviewed the potential to closure of Betty Cuthbert Drive and found the following (refer to Response to Query #1 in the attached memo):*
 - o *It is not a positive outcome to constrain movements between the new local access street and Betty Cuthbert Drive.*
 - o *Only 58 trips are anticipated from within the Botanica Estate during the AM Peak. Restriction of movement from Botanica would require any trips from the south to be made via Joseph Street which would increase traffic movement along the primary road.*
 - o *Outside of school hours, the local road provides additional connections with the local road network for residents.*
 - o *The current design of Betty Cuthbert Drive provides parking on both sides of the road. As a result, there are sections that only allow for a single vehicle passageway, which would act as a traffic calming measure. This would mitigate the risk of vehicles travelling at high speeds, as well the potential use as a ‘rat run’ alternative to Joseph Street. It is also noted that TfNSW has accepted the modelling that was publicly exhibited and has endorsed the Planning Proposal on that basis. The closure of Betty Cuthbert Drive has not been factored into the modelling and TfNSW has not had the opportunity to consider the draft DCP controls.*
- *Consideration of the road closure will still be required as part of any physical works for the site”.*

On the 19th of September 2024, after reviewing the applicant’s submission above, Council amended condition 7 with the restriction now only applying to lots 2 and 3. The applicant was advised that the Council would accept the deletion of 6, subject to condition 7 being accepted and imposed.

On the 24th of September 2024, Council, the applicant and representatives of Property and Development NSW (PDNSW) met via an online conference to discuss the draft conditions of consent.

The applicant advised that they needed to discuss the imposition of condition 7 with PDNSW and Schools Infrastructure and will advise Council of the outcome.

On the 22nd of October 2024, the applicant advised that PDNSW does not agree to the current draft conditions and would like the matter referred to the Regional Panel for determination.

Council remains of the view that condition 7 is to be accepted and imposed on any consent issued. The rationale is to separate the traffic that will be generated from the development site from the existing residential development and to also prevent through traffic and reduce the impacts on the local community. This approach is consistent with the site-specific requirements for this location under Part F1-19 the Cumberland Development Control Plan.

In addition to the above, the part closure of Betty Cuthbert Drive between the New Street and Ironbark Crescent and will also provide for opportunities to extend the pedestrian and cycle routes beyond the site boundaries. This approach is also consistent with the site-specific requirements for this location under Part F1-19 the Cumberland Development Control Plan.

Therefore, a 'Restriction on the Use of Land' shall be imposed on the title to proposed lots 2 and 3 to ensure future landowners/developers are aware of the requirement that access is only via Joesph Street and ensures consistency with the community expectations and controls of the site-specific development control plan.

State Environmental Planning Policies

State Environmental Planning Policies (SEPPs)	Relevant Clause(s)	Compliance with Requirements
<ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021. 	Chapter 2 - Vegetation in non Rural Areas.	<p>The development application does not seek approval for the removal of any trees.</p> <p>In addition, the site is not mapped as having Biodiversity value on the Biodiversity Values Map threshold tool notwithstanding the presence of significant trees across the site.</p>
	Chapter 6 - Water Catchments. Sydney Harbour Catchment.	<p>It is determined that given the location of the site, a detailed assessment is not required given that there is no direct impact upon the catchment and no direct impact upon watercourses.</p> <p>As such, the development is acceptable under the provisions that came into effect on Monday 21 November 2022.</p>
<ul style="list-style-type: none"> State Environmental Planning Policy 	Chapter 2 - Coastal Management.	The subject site is not identified as a coastal wetland or 'land identified as "proximity area for coastal

(Resilience and Hazards) 2021.		wetlands” or coastal management area.
	Chapter 4 - Remediation of Land. Part 4.6.	<p>Part 4.6 - Contamination and remediation to be considered in determining development application.</p> <p><u>Comments</u></p> <p>The development application seeks only paper sub-division for a Torrens Title subdivision of the land into 3 allotments. This is an administrative related matter involving no physical works.</p> <p>As such, it is considered that no detailed report is required in relation to land contamination.</p> <p>Notwithstanding the above statement, the proposed Lot 1 which will delineate the new MSL Hospital which is under construction was subject to detailed land contamination analysis. Relevant reports found evidence of land contamination across that part of the site. Given that works have now commenced, the recommendations made within the reports would have now been completed.</p> <p>As such, it is considered that the development application is satisfactory under Part 4.6 of Chapter 4 of the State Policy.</p>
• State Environmental Planning Policy (Industry and Employment) 2021.	Chapter 3 Advertising and Signage.	No signage is proposed as part of the development application and thus no assessment of signage is required.
• State Environmental Planning Policy (Transport and Infrastructure) 2021.	Chapter 2 - Infrastructure.	State Environmental Planning Policy (Transport and Infrastructure) 2021 is relevant to the development application as follows:
	Clause 2.119	<p>The application is subject to clause 2.119 of the SEPP as the site has frontage to a classified road.</p> <p><u>Comments:</u></p>

		<p>The site has a frontage to Joseph Street which is a 6 lane arterial road.</p> <p>TfNSW has advised that any future development applications that involves physical works, will require their approval and concurrence under the Roads Act, 1993.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 	Schedule 6.	The subject application has not been declared as regionally significant development pursuant to Clause 2.19 of SEPP (Planning Systems) 2021.
<ul style="list-style-type: none"> • State Environmental Planning Policy (Sustainable Buildings) 2022 	<p>Chapter 2 Standards for residential Development - BASIX</p> <p>and</p> <p>Chapter 3 – Standards for non-residential development</p>	<p>The provisions will not apply to a Torrens Title subdivision on the grounds that no buildings are proposed.</p> <p>The provisions do not need to be considered.</p>

Local Environmental Plans

Cumberland Local Environmental Plan 2021

The provision of the Cumberland Local Environmental Plan 2021 is applicable to the development proposal. It is noted that the development achieves compliance with the key statutory requirements of the Cumberland Local Environmental Plan 2021 and the objectives of the following zones:

The site exhibits 2 zonings as follows:

- R3 Medium Density Residential.
- SP2 Infrastructure.

Further to the SP2 Infrastructure zoned land, there are subcategory zones being:

- Part SP2 (Infrastructure - Educational Establishment).
- Part SP2 (Infrastructure - Hospital).
- Part SP2 (Infrastructure - Drainage).

The allotment boundaries are consistent with the applicable and relevant zonings that apply to the land and such boundaries.

(a) Permissibility:

The proposed development is for the three-lot sub-division of the 'Super lot' and is permissible in the R3 Medium Density Residential and SP2 Infrastructure with consent.

The relevant matters to be considered under the Cumberland Local Environmental Plan 2021 and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in Attachment 3.

Figure 5 – Cumberland LEP 2021 Compliance Table

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
<p>4.1(3C)</p> <p>Minimum Subdivision Lot Size:</p> <p>170 square metres-350 square metres (minimum lot size controls only exist for that part of the site zoned R3 Medium Density Residential).</p>	Yes	<p>For the site, minimum lot size controls only exist for that part of the site zoned R3 Medium Density Residential.</p> <p>The provisions of Clause 4.1(3C) have been considered. The development application proposes to create a residential super lot of 3.16 hectares. A future subdivision application would be required to subdivide the residential super lot into smaller lots to permit future housing.</p>
4.3 Height of Buildings max. 9m	N/A	<p>This only applies to land zoned R3 Medium Density Residential.</p> <p>On the account that no buildings are proposed, there is no requirement to assess the height of any building across the site.</p>
4.4 Floor Space Ratio 0.75:1	N/A	<p>This only applies to land zoned R3 Medium Density Residential.</p> <p>On the account that no buildings are proposed, there is no requirement to assess the floor space ratio of any building across the site.</p>

The provisions of any proposed instrument that is or has been the subject (EP&A Act s4.15 (1)(a)(ii))

No proposed planning instruments applicable.

The provisions of any Development Control Plans (EP&A Act s4.15 (1)(a)(iii))

The Cumberland Development Control Plan 2021 is relevant to the development proposal.

The development has been assessed using the following chapters:

- Part A2 -Subdivision.
- Part F1-19 – 80 Betty Cuthbert Drive, Lidcombe.

For a subdivision application being a “Paper subdivision”, the provisions are limited applicability. The relevant chapters and controls have been addressed below.

Part A2 - Subdivision

Subdivision controls are provided but these relate to physical works such as road building, infrastructure services and detailed lot layouts. In the case of the current application, the applicant is proposing 3 lots as follows:

Lot number	Size	Purpose
Lot 1.	8,886 square metres.	Site of the approved new MSL Hospital which is now under construction.
Lot 2.	30,690 square metres.	Land earmarked for future residential allotments, a road and drainage reserves.
Lot 3.	18,330 square metres.	Land earmarked for a future educational establishment.

There is one super lot that will be subdivided into 3 lots, further subdivision will be required to facilitate residential development and road.

The relevant provisions of Part A2 cannot be used in any detail to assist the assessment.

As part of the Planning Proposal, new provisions were added to Part F1 - Residential Site Specific Controls being F1-19 80 Betty Cuthbert Drive Lidcombe. The chapter address the site in greater detail.

The relevant provisions are considered where possible:

Under Part 3 (Subpart 3.1), the following objectives are specified:

O1. Educational Establishment - Providing a future educational establishment on an existing government site to meet the current educational demands of the Lidcombe area and surrounding areas.

O2. MSL Health Facility - Provide a fit for purpose facility for the care, support and treatment for multiple sclerosis and other neurological conditions.

O3. Residential - Provide additional residential facilities within an existing residential area to contribute towards housing targets set by State Government.

O4. Road Reserve - Provide efficient infrastructure to enable to possibility to accommodate buses for the future educational facility and connect to the existing road network.

O5. Stormwater Basins - To reduce the rate of stormwater runoff discharged to the public drainage network from development.

Comments

A detailed assessment was not required given that the application only seeks consent for Torrens Title Subdivision. In this regard, the subdivision layout is consistent with Figure 6 (as per the DCP) and shown below.

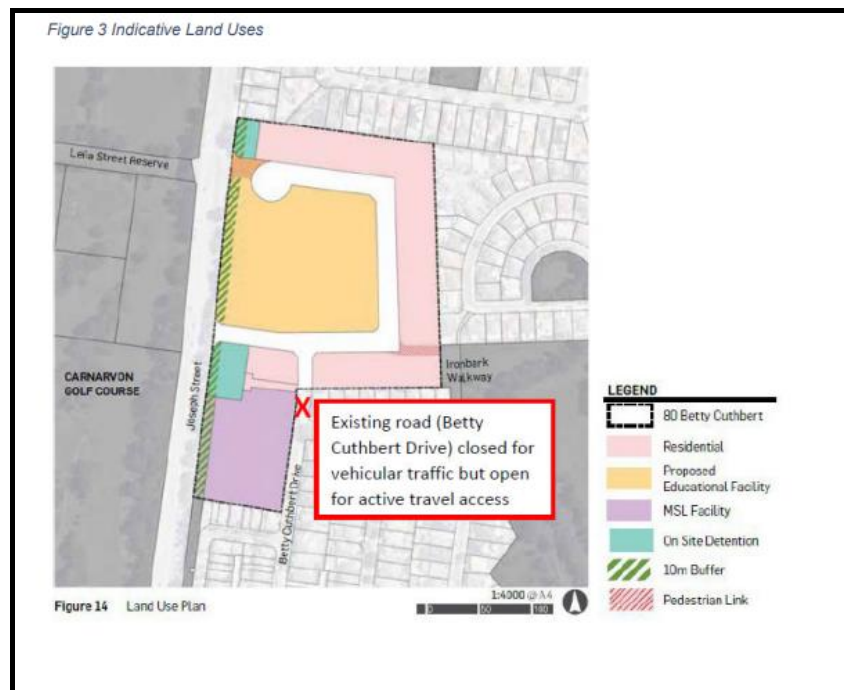


Figure 6 – Indicative Land Use (Source: Part F1-19 – 80 Betty Cuthbert Drive, Lidcombe – CDCP)

Further to the above, Part F1-19, sub-part 3.2 Movement Network and Street Layout of the CDCP 2021 outlines and reinforces the requirement to close part of Betty Cuthbert Drive. This will allow for the vehicular movement and direction in accordance with figure 7 below and the part close of Betty Cuthbert Drive between the New Street and Ironbark Crescent to separate local traffic and future development. These provisions will also provide for opportunities to extend the pedestrian and cycle routes beyond the site boundaries.

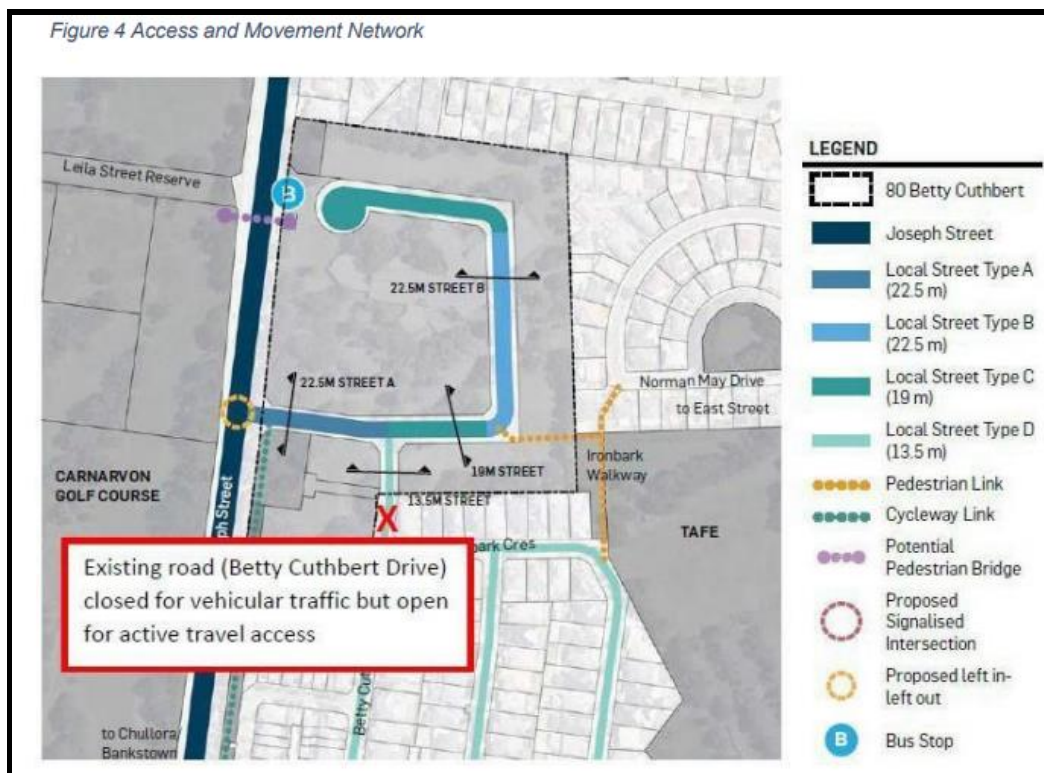


Figure 7 – Access and Movement Network (Source: Part F1-19 – 80 Betty Cuthbert Drive, Lidcombe – CDCP)

All the other controls relate to physical buildings works and position of buildings on respective allotments, none of which are proposed under the current development application.

On this account and given that the objectives are complied with, it is concluded that future development applications would be capable of achieving the outcomes as specified under the remaining controls including the closure of Betty Cuthbert Drive.

The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iia))

There is no draft planning agreement associated with the subject Development Application.

The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))

The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulation 2021* (EP&A Reg).

The Likely Environmental, Social or Economic Impacts (EP&A Act s4.15 (1)(b))

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality subject to the closure of Betty Cuthbert Drive.

The suitability of the site for the development (EP&A Act s4.15 (1)(c))

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, it is considered that the development is suitable in the context of the site and surrounding locality.

Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))

Advertised (Website) ☐

Mail ☒

Sign ☐

Not Required ☐

In accordance with Council's Notification requirements contained the Cumberland Development Control Plan, the proposal was publicly notified for a period of 14 days between 24 November 2023 and 8 December 2023. During the notification period, Council received no submissions.

Notwithstanding the change made to the number of lots forming the subdivision, it is considered that no renotification was required as there are no additional impacts involved with the proposal.

The public interest (EP&A Act s4.15(1)(e))

In view of the foregoing analysis, it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

However, should condition 7 not be imposed, this is likely to have adverse traffic implications as the site-specific development control plan provides specific controls for the movement network and street layout.

It is in the community interest that condition 7 be accepted and imposed to ensure that the objectives of the Planning Proposal and Site-Specific Development Control Plan are met.

CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

A contribution payment is not required for the type of application sought. As per written advice received from Council's Senior Contributions Advisor, a contribution is not levied for the development application.

HOUSING AND PRODUCTIVITY CONTRIBUTION (HPC)

In accordance with s7.24 of the Environmental Planning and Assessment Act, 1979 as amended by the Environmental Planning and Assessment Amendment (Housing and Productivity Contribution) Act 2023, the development is subject to the (Housing and Productivity Contribution) Act 2023.

The development application is for an overarching subdivision to enable future redevelopment of the site in accordance with the Planning Proposal. A future subdivision application will be required to facilitate the residential lots and allow for future dwellings on the site. The development application seeks for a super lot residential subdivision and as such, the Housing and Productivity Contribution will not apply in this instance.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, State Environmental Planning Policies, Cumberland Local Environmental Plan 2021 and Cumberland DCP and is considered to be satisfactory subject to the conditions contained in Attachment 1.

The proposed development is appropriately located within the R3 Medium Density Residential and SP2 Infrastructure under the relevant provisions of the Cumberland LEP 2021. The proposal is consistent with all statutory and non-statutory controls applying to the development.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the development may be approved subject to conditions.

However, as a consent authority (other than the Minister), must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister. In this instance, as an agreement has not been reached with Council and the Crown on condition 7 of the Draft Notice of Determination. Hence, the matter is referred to the Panel for determination taking into consideration Section 4.33(1)(b) of the *Environmental Planning and Assessment Act 1979*, or the matter be referred to the Minister for Planning and Public Spaces for determination.

RECOMMENDATION

1. **THAT** Development Application No. DA20230566 for the Subdivision of existing lot into 3 Torrens Title lots on land at 80 Betty Cuthbert Drive, Lidcombe be approved subject to conditions listed in Council's assessment report.
2. **THAT** pursuant to Section 4.33(1)(b) of the *Environmental Planning and Assessment Act, 1979*, should the panel not concur with Council's recommendation and accept the request from the applicant, the Sydney Central City Planning Panel is able to determine the application as per the attached Draft Notice of Determination in Attachment 1 with the exception of Condition 7.
3. **THAT** pursuant to Section 4.33(1)(b) of the *Environmental Planning and Assessment Act, 1979*, should the Panel concur with Council's recommendation to impose condition 7 and delete condition 6, and if not accepted by the applicant, the matter be referred to the Minister for Planning and Public Spaces with a recommendation that the conditions as per the attached Draft Notice of Determination in Attachment 1 be accepted and imposed.

ATTACHMENTS

1. Draft Notice of Determination.
2. Proposed Plan of Subdivision.
3. Appendix A - Cumberland LEP Assessment.
4. Cumberland DCP Part F1-19 80 Betty Cuthbert Drive, Lidcombe.