



Report to General Manager

Attachments:

1. Planning Proposal for 101-111 Willoughby Road, Crows Nest
2. Draft Voluntary Planning Agreement for 101-111 Willoughby Road, Crows Nest

SUBJECT: Planning Proposal and Draft Voluntary Planning Agreement for 101-111 Willoughby Road, Crows Nest (Crows Nest Plaza).

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EXECUTIVE SUMMARY:

A planning proposal and draft voluntary planning agreement have been submitted to Council for 101-111 Willoughby Road, Crows Nest, also known as the Crows Nest Plaza. The planning proposal also covers a portion of Zig Zag Lane adjacent to that site.

The planning proposal seeks to amend the zoning and height controls on the site and the adjoining portion of Council-owned Zig Zag Lane to allow for the future mixed use redevelopment of the site.

The draft voluntary planning agreement (VPA) proposes that:

1. Coles Group Property Developments Ltd (Coles) construct a publicly accessible plaza of approximately 415m² fronting Willoughby Road;
2. Coles redevelop the adjoining portion of Zig Zag Lane to include a dedicated pedestrian walkway separated from the roadway;
3. Coles construct and operate a public car park for a minimum of 140 cars with two hour free parking;
4. Coles make a monetary contribution of \$1.1m to Council, representing the estimated shared profit over ten years of the proposed public car park; and
5. Coles purchase the adjoining portion of Zig Zag Lane from Council for \$2.4m.

Development concept plans are included within the attached documentation, although the physical redevelopment will be subject to a future development proposal and assessment, which must accord with the parameters set out within the planning proposal and VPA.

The planning proposal and draft VPA have been assessed internally and externally and are considered to represent a sound outcome for Council and the community. This report seeks Council's resolution to seek a gateway determination from the Minister for Planning to allow public exhibition of the planning proposal, and that once a gateway determination has been issued, to exhibit the draft VPA concurrently with it.

FINANCIAL IMPLICATIONS:

The financial implications of the draft VPA are outlined within the report.

RECOMMENDATION:

1. **THAT** Council forward the planning proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
2. **THAT** the draft voluntary planning agreement between North Sydney Council and Coles Group Property Developments Ltd be exhibited concurrently with the planning proposal conditional on it receiving a Gateway Determination.

Signed: _____

Endorsed by: _____
Director Planning and Development Services

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.1 Infrastructure, assets and facilities that meet community needs
2.2 Improved mix of land use and quality development through design excellence
2.7 Improved parking options and supply

BACKGROUND



Figure 1: Site location

Purchase of Site and Current Approval

Coles Group Developments Ltd (Coles) purchased 101-111 Willoughby Road in 2011. The site has a development approval (DA 53/08) for a mixed use development comprising two supermarkets and six residential apartments, over approximately 10,949 m² of gross floor area.

Coles Concept Proposal

Coles approached Council in January 2012 with a concept proposal for a development that would decrease the commercial floor space but increase the number of residential units compared with that set out in the approved DA. Through a consultative process with Coles, Council staff suggested alternatives to the Coles scheme with the aim of producing a more

significant and tangible planning outcome for the community, proponent and Council, particularly with regard to traffic, design, and public domain outcomes.

The concept proposal was considered and commented upon by Council's Design Excellence Panel on 5 June 2012.

Draft Voluntary Planning Agreement and Planning Proposal

Subsequently, Coles presented a draft voluntary planning agreement (VPA) and draft planning proposal to Council in September 2012 reflecting the comments made on the original concept. The suggestion by Council to amend the concept proposal was based on the wish to derive a better planning outcome for the site in accordance with strategic policies relating to it, including the Crows Nest Shopping Area Masterplan 2002 and the Crows Nest Mainstreet Strategic Plan 2010.

The revised concept proposal accompanied by the draft VPA and draft planning proposal outlined a mixed use development comprising a supermarket and smaller retail tenancies at lower and upper ground levels, 70 residential units and three levels of basement car parking, representing around 9,500 m2 of gross floor area.

Cost-Benefit Analysis

Council engaged independent external property consultants to undertake a financial cost-benefit analysis of the Coles draft VPA in September 2012. That analysis advised Council of what was considered to constitute a more acceptable overall financial outcome for Council.

Councillor Briefings and Reports

Councillors have discussed this matter with staff at councillor briefings held on 4 June 2012, 18 February 2013 and 30 July 2013. A report and confidential memo were also considered by Council at its meeting on 19 August 2013.

Legal Advice

Council has requested and received legal advice throughout the process to assist in its consideration of the draft VPA and to ensure legal probity is maintained. Councillors have been briefed on these matters as required.

Road Closure

In order to sell the relevant portion of Zig Zag Lane to Coles, a formal process of road closure under the *Roads Act (1993)* is required. The closure of roads is a lengthy legal and administrative process. Despite the fact that agreement to sell the road to Coles has not formally been made by way of a signed voluntary planning agreement, it is considered prudent that preliminary steps be undertaken to begin the formal road closure, should Council ultimately decide to complete the sale. The preliminary steps do not compel Council to sell the land but are an acknowledgement of the lengthy process and the need to progress the matter to ensure timely implementation of the draft VPA should it be formally entered into.

CONSULTATION REQUIREMENTS

The draft VPA will be publicly exhibited concurrently with the planning proposal once a gateway determination has been issued by the Minister for Planning. The gateway determination will advise of the length of public exhibition required, although voluntary planning agreements are required to be available for public review and comment for at least 28 days.

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	The planning proposal and draft VPA seek to improve the public domain within the context of the redevelopment of the site.
Social	The draft VPA contains elements that will improve the social capital of the Willoughby Road precinct, namely the construction of a publicly accessible plaza fronting Willoughby Road.
Economic	The draft VPA would result in a market-based and significant financial payment to Council for the sale of Zig Zag Lane and the capitalisation and pay out of projected public car park income. Council will forgo income of \$26,000 per annum from the loss of metered parking spaces in Zig Zag Lane.
Governance	Council is undertaking due financial diligence in its negotiations with Coles Group to ensure the public interest is well served by this process.

DETAIL

1. Planning Proposal

The planning proposal is attached (Attachment 1) to this report and contains additional detail.

1.1 Location and Planning Context

The subject sites comprise of three properties in Crows Nest:

- 101 Willoughby Road;
- 103-111 Willoughby Road; and
- A portion of Zig Zag Lane, as shaded yellow in Figure 2.

The combined area of the subject site is 4,039 m².



Figure 2: Subject Site. Council-owned land shaded yellow

101 Willoughby Road is a single storey building previously occupied for commercial purposes. 103-111 Willoughby Road is currently occupied by a supermarket, other retail tenancies and a car park with 74 spaces. Zig Zag Lane is a roadway with 26 council-owned metered car spaces adjoining it.

The site is zoned B4 Mixed Use under North Sydney Local Environmental Plan 2013 (LEP 2013), with the exception of a portion of Zig Zag Lane zoned SP2 Infrastructure (Car Park), representing that part of the site that is dedicated to the existing metered parking in the laneway. To the north, west and south, the streets and adjoining lands are zoned B4 Mixed Use, with residential land to the east zoned R2 Low Density Residential.

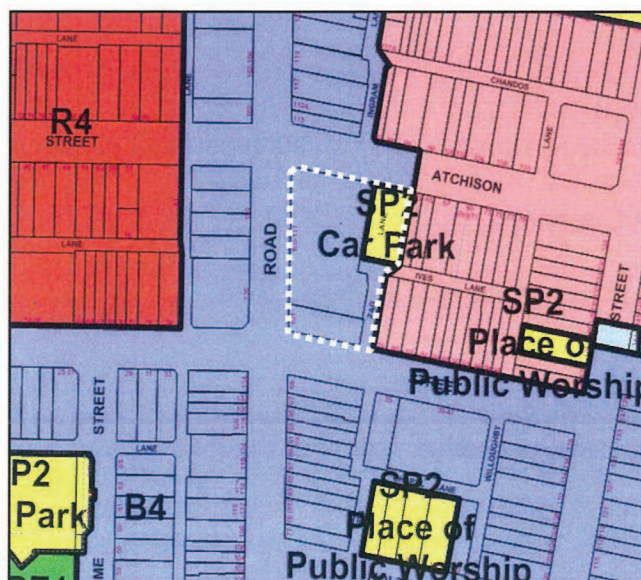


Figure 3: LEP 2013 Zoning

The subject site has street frontages to Willoughby Road and Atchison and Albany Streets, Crows Nest. The site is situated towards the northern end of the Willoughby Road portion of the Crows Nest Town Centre. The surrounding precinct is home to a mix of uses, including low-density housing, traditional main street retail uses, commercial tenancies and residential flat buildings.

1.2 Provisions of the Planning Proposal

The planning proposal seeks the following amendments to LEP 2013:

- The rezoning of (the relevant portion of) Zig Zag Lane from SP2 Infrastructure – Car Park to B4 Mixed Use;
- The amendment of the LEP 2013 Height of Buildings Map to amend the height limit across the site from 10m and 13m to the range of heights indicated on Figure 4 below; and
- The insertion of a clause into LEP 2013 that will allow for a variation of the proposed height limit map of up to 1m in any direction without triggering the necessity of a formal variation to development standards under clause 4.6 of LEP 2013.

1.3 Proposed Amendments Explained

1.3.1 Zoning

The rezoning of a portion of Zig Zag Lane from Infrastructure to Mixed Use would bring the whole of the subject site under the single zoning and provide the permissibility required for the proposed mixed use development envisaged under the concept plans (attached).

The rezoning is justified in that the car park use currently referred to in the SP2 zoning would no longer operate under the proposed redevelopment concept.

1.3.2 Height of Buildings Map

The planning proposal seeks to amend the current height controls for the site in line with the built form proposed under the concept plans. The proposed heights range from 1m along the proposed reconfigured Zig Zag Lane to 26.5m at the corner of Atchison Street and Willoughby Road.

Apart from the 1m proposed height on Zig Zag Lane, the proposed height controls are expressed as reduced levels (RLs) (height above sea level). This is proposed due to the sloping topography of the site, under which RLs provide a more certain control.

The dividing of the site into various proposed height zones as indicated in Figure 4 is considered to provide a more accurate and certain indication of height controls that will inform any future development application.

To aid the understanding of the proposed height controls, Figure 5 below includes a translation of RLs to metres. It should be noted that the proposed height controls of RL 105.7 and RL 102.6 include a 3m allowance for roof top plant and lift overruns etc, which the current LEP definition of height does not include. This effectively means that the actual building height as seen from the street will be 3m below that indicated by the proposed RL

control.

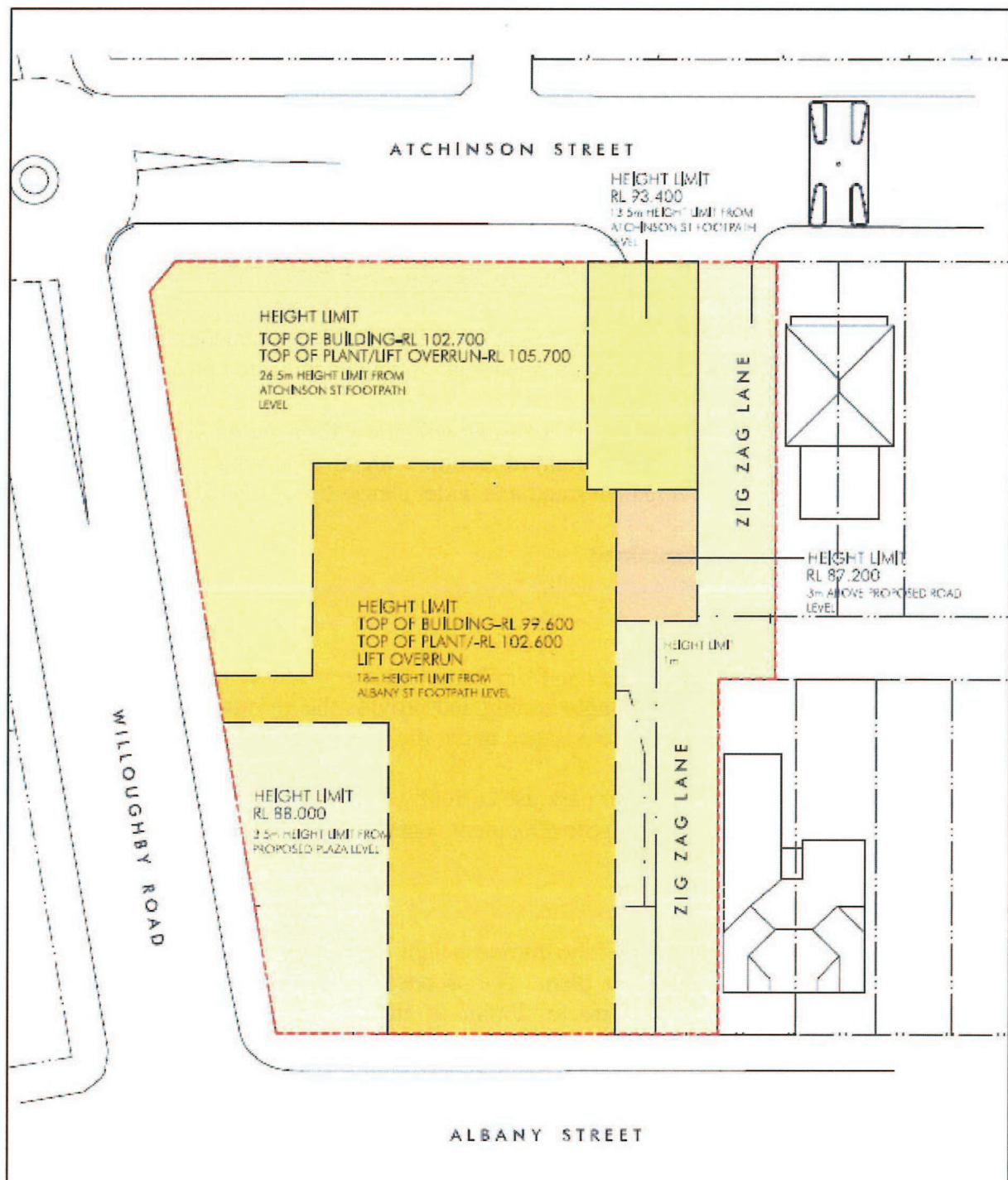


Figure 4: Proposed Height Diagram

1.3.3 Variation Clause

Any variations sought to LEP provisions within development applications must be formally made under Clause 4.6 of LEP 2013. This is similar in operation to the previous SEPP1 variation regime which operated when LEP 2001 was in force.

The planning proposal seeks to allow variations to the LEP 2013 Height of Buildings map of

1m in any direction without the requirement of a formal request for variation to be made. The stated intention of this clause is to allow some flexibility in the massing and height as currently indicated by the indicative height of buildings map, caused by any minor design changes made during a future development application process. Any such variation would however still need to be identified and explained.

Staff are generally unsupportive of such measures to circumvent the required use of Clause 4.6. However, the applicant has provided for a clearer and more certain indication of future development height via the articulated proposed height diagram. The alternative, a map with a 26.5m height across the site, provides none of that certainty. Also, the impact of a less than 1m variation is unlikely to impact negatively on surrounding land, particularly given the substantial setback provided by the existing (and re-constructed) laneway to the eastern boundary.

Under these circumstances, staff support the proposed variation clause to allow for minor adjustments to height and massing that may be required as the future development proposal progresses.

1.4 Justification for Planning Proposal

Section 6 of the attached planning proposal provides the applicant's justification for the planning proposal. The justification is based on:

- the delivery of significant public benefit;
- proposed contribution to local housing stock and targets;
- the broadening of retail offering in the area;
- the concept plan's demonstration of sound built form and design principles;
- the provision of additional public car parking; and
- the implementation of ecologically sustainable development principles.

1.5 Planning Appraisal

The Planning Proposal as submitted is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning's 2009 'Guide to Preparing Planning Proposals'. The planning proposal is supported by staff for the following reasons:

- The planning proposal and draft VPA propose considerable public benefit, specifically:
 - A reconstructed laneway with a dedicated pedestrian walkway adjoining;
 - A publicly accessible plaza on Willoughby Road, open to the public at all times;
 - A public car park with a minimum of 140 spaces with 2-hour free parking; and
 - A significant market-based financial payment to Council of \$3.5m in total.
- The proposed height of buildings as indicated in Figure 4, whilst an increase from that which is currently permissible across the site, represents a more nuanced and considered approach to a blanket height increase of height across the site. The highest height increases are thoughtfully located and take into consideration Council's controls relating to bulk, scale and building separation;

- The concept plan, planning proposal and draft VPA represent a significant improvement from the current development approval on the site in terms of land use, scale, and public benefit;
- The concept plan, planning proposal and draft VPA are the result of a cooperative planning process between Council and the applicant and represent a negotiated outcome which satisfies the public interest as well as that of the applicant;
- The redevelopment of the site will transform an otherwise ailing site into a significant retail and residential building and incorporate significant improvements to the public domain, revitalising the northern end of the Willoughby Road retail / mixed use strip in Crows Nest.
- The planning proposal is consistent with State and Local strategic plans, including North Sydney Residential Development Strategy 2009.
- The planning proposal is consistent with relevant State Environmental Planning Policies and Section 117 Ministerial Directions.

1.5.1 Precedents

In general terms, if planning proposals are expected to create precedents, Council will request that a planning study be undertaken which encompasses a wider area and establishes the case for a wider-scale amendment to an LEP. The subject planning proposal is not considered to create any potential precedents in the Crows Nest area, primarily due to the uniqueness of the site in terms of its size, location, current and proposed use, and ownership. The planning proposal is therefore supported as a stand-alone, site-specific draft amendment.

2. Draft Voluntary Planning Agreement

As defined by the NSW Department of Planning and Infrastructure, a voluntary planning agreement (VPA) is an agreement entered into by a planning authority (such as Council) and a developer. Under the agreement a developer agrees to provide or fund:

- public amenities and public services
- affordable housing
- transport or other infrastructure.

And these contributions can be made through:

- the dedication of land
- monetary contributions
- the construction of infrastructure
- the provision of materials for public benefit and/or use

2.1 Draft VPA Summary

The draft VPA forms Attachment 2 to this report. The contributions proposed by the draft VPA are detailed in *Schedule 1 – Contributions* of the document. In summary, the draft VPA

proposes the following contributions, dependent upon the processing of the planning proposal and a future development approval in line with the concept plans which form a part of Attachment 1:

1. Coles Group Property Developments Ltd (Coles) construct a publicly accessible plaza of approximately 415m² fronting Willoughby Road;
2. Coles redevelop the adjoining portion of Zig Zag Lane to include a dedicated pedestrian walkway separated from the roadway;
3. Coles construct and operate a public car park for a minimum of 140 cars with two hour free parking;
4. Coles make a monetary contribution of \$1.1m to Council, representing the estimated shared profit over ten years of the proposed public car park; and
5. Coles purchase the adjoining portion of Zig Zag Lane from Council for \$2.4m.

The draft VPA has been extensively reviewed by Council's legal representatives and is considered to provide adequate legal surety for the delivery of the proposed public benefits set out within.

The draft VPA would be publicly exhibited concurrently with the planning proposal for 28 days should the planning proposal receive a favourable gateway determination from the Minister for Planning.

3. Development Application

It is important to note that the planning proposal and draft VPA, and particularly the indicative concept plans contained within, do not represent an application for development consent. As such, the actual development of the site will be subject to a future development application assessment, which will include detailed considerations relating to design, traffic, public domain works and section 94 contributions. The DA will need to accord with the parameters set out within the planning proposal and draft VPA.

4. Conclusion

The planning proposal and draft VPA are supported by staff and are considered to provide for sound planning and public benefit outcomes. It is requested that Council resolve to seek a gateway determination from the Department of Planning and Infrastructure allowing the planning proposal to be publicly exhibited, and that the draft VPA is exhibited concurrently with it.