

10.11.Issue of Owner's Consent to Coles for development of Grosvenor Lane Carpark

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ATTACHMENTS	1. Owner's consent request - Coles 20 March 2023 [10.11.1 - 5 pages]
CSP LINK	<ol style="list-style-type: none"> 1. Our Living Environment <ol style="list-style-type: none"> 1.2 Environmentally sustainable community 1.3 Clean and green places 1.4 Well utilised open space and recreational facilities 2. Our Built Infrastructure <ol style="list-style-type: none"> 2.1 Infrastructure and assets meet diverse community needs 2.2 Vibrant public domains and villages 3. Our Innovative City <ol style="list-style-type: none"> 3.1 Our commercial centres are prosperous and vibrant 3.3 Distinctive sense of place and design excellence 4. Our Social Vitality <ol style="list-style-type: none"> 4.1 North Sydney is connected, inclusive, healthy and safe 5. Our Civic Leadership <ol style="list-style-type: none"> 5.1 Lead North Sydney's strategic direction

PURPOSE:

The purpose of this report is to consider a request from Coles, seeking Council's consent as the owner of the Grosvenor Lane carpark and associated roads in Neutral Bay, to lodge a development application. Coles seeks to develop its site whilst concurrently creating a new pedestrianised plaza on Council land by replacing the existing surface carpark with an underground one.

EXECUTIVE SUMMARY:

- Coles, which owns the land currently occupied by Woolworths on Grosvenor Street, Neutral Bay, has advised Council that it is in the process of preparing a development application (DA) to be lodged under the current planning controls for a mixed-use residential/commercial development. The development will seek to replace the existing supermarket and incorporate shop-top housing.

- The DA will also seek to create an “at-grade” plaza by replacing the current Grosvenor Lane carpark with an underground format as part of its redevelopment proposal. To do this, Coles requires Council’s consent to lodge the DA.
- Coles acknowledges that the design process for a future plaza is important, and that Council will retain full control and ownership of any future plaza.
- Coles is required to make decisions about the future of the site in the short term given that the Woolworths lease expires in 2024. Coles is unable to participate in the Neutral Bay Planning Study as a means of informing its proposal in the longer term given this time constraint. This is why the current DA is being prepared ahead of the preparation of Council’s planning study.
- This report only deals with the issue of owner’s consent, which is required for Coles to integrate the plaza proposal in its DA. It is important to note that the issue of owner’s consent does not imply or infer approval of either the application or the plaza design. It will however provide Coles with the confidence to continue to explore the possibilities of the site and refine its proposal. Council owns the land, and owner’s consent to consider a DA does not undermine Council’s role in determining ultimate outcomes for its site, being the location of the existing car park. Coles will retain control over its site.
- The design of the plaza will need to be refined, and it may be that the DA is lodged with a “placeholder” concept design for the plaza whilst Council/community consultation occurs to refine this aspect of the development. Council will ultimately have the final say on this, including its design, materials, access arrangements etc. Council will not lose control of the future of the carpark/plaza by issuing owner’s consent to the lodgement of the DA.
- If Coles’ proposal is successful, the design, access arrangements, and other details associated with the delivery of an at-grade plaza, will need to be delivered via a voluntary planning agreement, which is another process that will have public ventilation.
- This report recommends that Council issue owner’s consent to further explore the design and delivery possibilities of the plaza proposal, which has been a Council objective for many years. This represents an opportunity for Council to realise a cost-effective way of delivering a collaboratively designed public plaza of (approximately) 2,000-2,500 sqm, to act as a community hub for Neutral Bay.

RECOMMENDATION:

- 1. THAT** Council grant Coles owner’s consent to lodge a development application for the land described in its letter dated 20 March 2023 being parts of the Grosvenor Lane carpark, Cooper Lane, Waters Lane and Grosvenor Street.
- 2. THAT** Council notes that the issue of owner’s consent does not in any way infer or suggest approval for the development application to be lodged.
- 3. THAT** Council notes that a consultative and collaborative design process will be required to be entered into for any future plaza at the Grosvenor Lane carpark site.

4. THAT Council notes that a formal negotiation process will need to be entered into to develop formal agreements for the delivery of a new plaza and associated arrangements for the delivery, access, ownership and long-term arrangements for public parking.

Background

Coles owns the site at 43-53 Grosvenor Street, Neutral Bay (see Figure 1 below). It is currently leased to Woolworths, with that lease expiring in November 2024.

The North Sydney Development Control Plan (DCP) 2013 includes provisions that enable consideration of the undergrounding of the existing carpark at Grosvenor Lane in order to create a pedestrian plaza.

Council's now-rescinded planning study for the Neutral Bay town centre, which was previously adopted in 2021, also anticipated that as a public benefit, a pedestrian plaza should be pursued in the location of the current Grosvenor Lane carpark. The planning study for Neutral Bay is currently being undertaken, with targeted community and stakeholder consultation planned to occur in the short term.

Given that the current lease with Woolworths expires in 2024 however, Coles needs to make a decision about whether the site is retained and "rebadged" or redeveloped. This report is a precursor to Coles lodging a development application (DA) and pursuing the opportunity of redeveloping the site whilst also delivering a plaza.

Report

1. Broad Description of DA

Coles has submitted a letter (20 March 2023 - Attachment 1) requesting that Council issues consent as the owner of the Grosvenor Lane carpark and associated road, for the consideration of a DA. That DA will seek consent for a mixed-use development incorporating a supermarket, specialty stores, and shop-top housing. That component of the development does not need owner's consent from Council and would seek to work within the existing planning controls including the applicable 16m height limit as outlined in the North Sydney Local Environmental Plan 2013. The DA will also seek to replace the current Grosvenor Lane carpark in an underground format and replace it with a pedestrian plaza "at grade" (outlined in red in Figure 1). This is explained further below.

In exchange for the relocation of the public carpark and delivery of a public plaza, Coles would replace the "lost" surface parking spaces and utilise the land below ground level to supplement its own parking needs (this area is shown dotted in red below). The proposed car park relocation would be across two levels under the existing car park. A third basement level would provide residential parking associated with the Coles development. Coles would design and deliver an at-grade plaza (in the area broadly occupied by the existing carpark) to Council's satisfaction. This is explained conceptually in Figure 2.

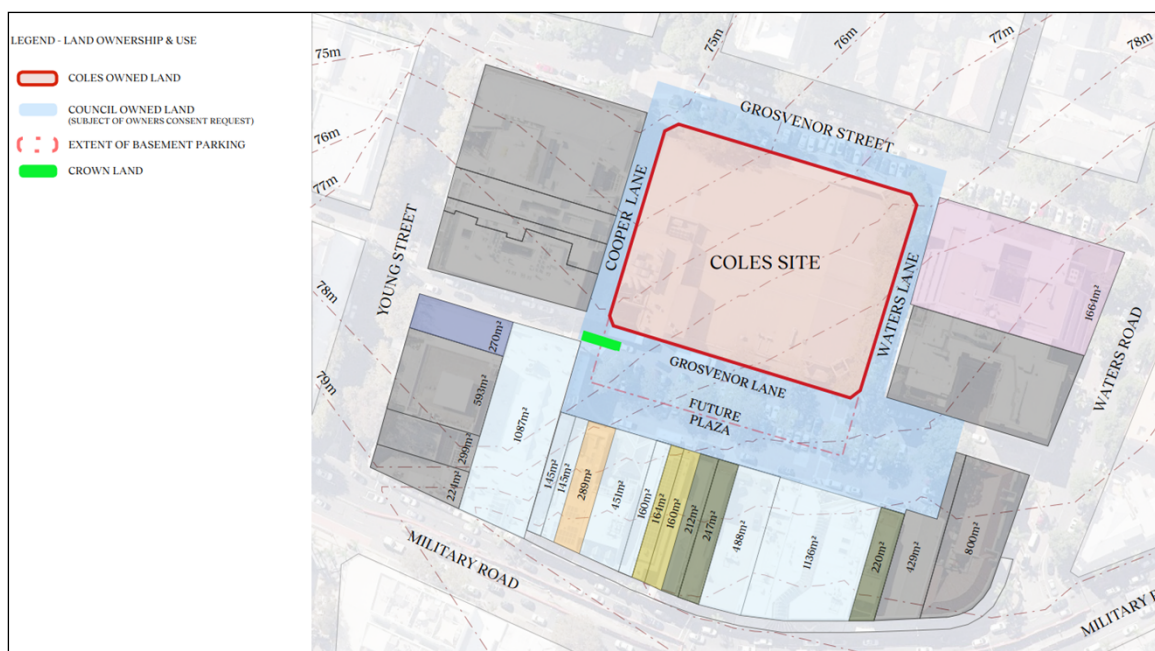


Figure 1 – broad outline of Coles land requirements.

The proposal as described by Coles’ representative is:

The construction of 2 levels of underground public car parking below that part of the existing Grosvenor Lane Car Park...will replace and add to the current number of at grade parking spaces on the site. Whilst subject to further design formulation, there will be in the order of 84 public spaces on Council’s land, an increase of approximately 19 on current numbers.

Council’s public parking will be accessible to and from Coles ‘private’, but publicly available, car park. The public will benefit from 24/7 access to a large contiguous quantity of publicly available parking spaces across the 2 contiguous basement levels (in the order of 269 spaces, 92 more than current numbers on the combined sites). To the general public there will be no delineation of the “public” and “private” spaces available in the contiguous car park. It is anticipated that the car parking facility will be managed as a single facility and there will be equitable access for all the customers and visitors to the Neutral Bay Town Centre on the terms of a management agreement to be determined by both parties.

There will be clear separation and delineation between public parking and the private residential car park with a separate entry and exit located on Coopers Lane.

A 3rd basement level will provide private residential parking associated with the building on the Coles land. A form of agreement, to be negotiated between the parties, will need to be entered into in relation to this element of the development.

The DA will include concept drawings for the plaza which will be delivered by Coles at no cost to Council. This will be required to be negotiated by way of a Planning Agreement including rights of access, ownership, detailed design treatments, and access arrangements generally. Principles for the treatment of the public carpark and plaza are broadly outlined in section 3.3 of this report.

The drawing below illustrates the broad concept that will be pursued by Coles.

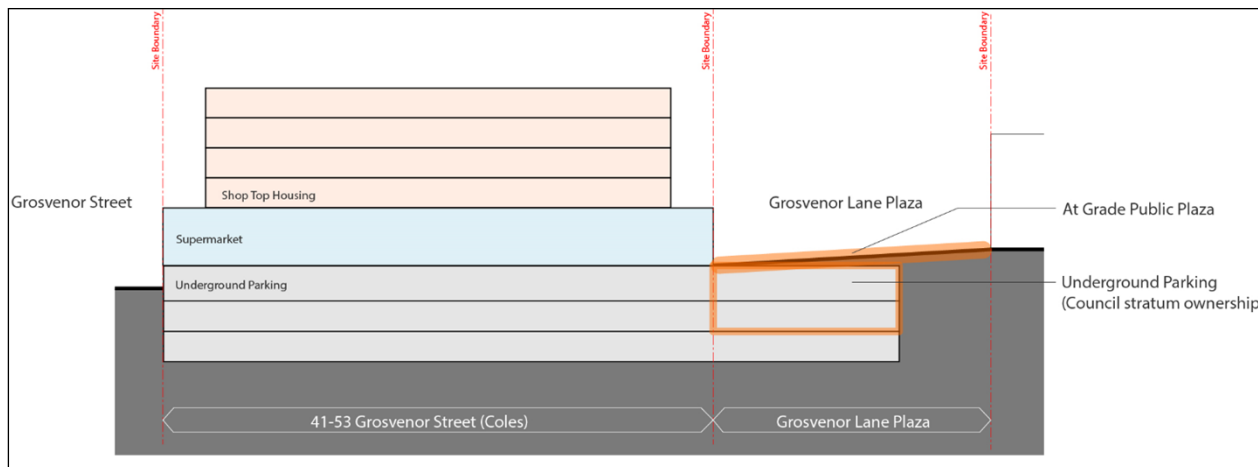


Figure 2 – Concept cross section

1. Owner’s Consent

The Environmental Planning and Assessment Act requires that DAs be accompanied by owner’s consent. Case law supports the notion that owner’s consent is a prerequisite to favourable determination and can be obtained any time up to the time of determination.

Given that Council owns the Grosvenor Lane carpark and associated street network, Coles will not have the capacity to have a DA lodged and determined which explores the delivery of a public plaza in the manner as described in section 1 of this report, unless owner’s consent is granted by Council.

The consent authority for the DA will be the Sydney North Planning Panel.

2. Issues

The following identifies the various issues and matters for consideration that are relevant.

2.1 Relationship to Neutral Bay Town Centre Planning Study

The Neutral Bay Town Centre Planning Study (the Study) is currently under development. Targeted community engagement will occur in the coming weeks.

Ideally, the Study would be completed after community and stakeholder engagement and used to guide future development. Unfortunately, this will not be possible for the preparation of the Coles DA. Coles has indicated a willingness and desire to continue to work with Council however, its timeframes do not align with the timeframes required for the preparation of the Study. In its letter, Coles states:

In relation to the design of the plaza for the purposes of this DA, Coles acknowledges Council’s ongoing process of consultation and independent advice (in the form of

its...Study) relating to the design of the proposed public plaza on this site. As such, whilst Coles has engaged highly regarded landscape architects...to formulate detailed designs for the plaza, it does not wish to pre-empt the outcomes of Council's process. Consequently, Coles intends to continue to liaise with Council's professional staff to confirm the level of detail and the nature of the consent that will be sought in this DA as it relates to the plaza design.

There may well be an understandable level of community confusion around Council preparing a planning study on the one hand and working with Coles to potentially deliver a public plaza which is central to that planning study, on the other. This will need to be very clearly and proactively communicated and explained.

2.2 Council control over outcome

Whilst the issue of owner's consent may well be perceived as tacit support for the proposal in the wider community, Council will continue to retain full control over this land, even if the DA is approved. The following should be noted:

- owner's consent in no way infers approval of the development proposal;
- owner's consent is provided to consider the proposal and determine whether reasonable public benefit may be leveraged from the site;
- Council owns a proportion of the land which will be the subject of the proposal (carpark) and therefore retains full control over the future of the proposal, regardless of owner's consent for the DA or even approval of the DA. Council effectively has veto powers if negotiations do not proceed satisfactorily;
- any future agreement would likely be via a VPA/deed of agreement with requisite legal input to protect Council's interests; and
- owner's consent would provide Coles with the confidence to further invest in the DA design and preparation process, and associated consultation.

2.3 Principles for Design

In discussing designs for a new public plaza to replace the existing Grosvenor Lane carpark and associated underground carparking, the following principles should guide the design process as a minimum:

- the plaza space should be retained in public ownership and largely pedestrianised;
- the plaza space should maximise solar access;
- the pedestrian vertical movement from the underground parking should "land" in an environment that feels as public as possible;
- the plaza should contain significant soft landscaping including canopy trees;
- provision for delivery access to nearby businesses should be retained in as convenient a form as possible;
- provision for vehicular access potential to nearby future development aspirations is to be included;
- public vehicular access should be available on an ongoing 24 hour per day basis;
- public parking should be clearly delineated, and the number of spaces currently available in the existing carpark should be replicated in the new, contiguous format; and

- public parking is to be located in the upper sections of the basement car park.

It is foreshadowed that the discussions regarding the design of the plaza will need a level of Council endorsement prior to the DA assessment being finalised and reported to the consent authority.

2.4 Value

In any dealing associated with Council land, Council needs to ensure that fair value for the community is achieved in any future transaction. Independent valuation needs to occur to ensure that the various components of any transaction are appropriately and fairly valued including land, costs associated with any improvements, value to the developer including increased parking, and manoeuvrability/circulation etc. This needs to be carefully documented.

2.5 Probity

Council would play various roles in a process as described in this report. It would act as both a regulator and land-owner. Care will need to be taken to ensure these roles are conducted independently of each other and without undue influence. Steps include:

- appointing an independent party to assess and report on the DA;
- acknowledgment that the Sydney North Planning Panel is the consent authority;
- negotiations associated with land and facilities being conducted on behalf of Council's Land Management Division, independently of Council's regulatory DA functions.

3.6 Crown Land

There is a small parcel of land (Crown Reserve Lot 1244 in DP 45724 – shown in Figure 3 below), which exists on the north-west corner of the carpark site. It appears that this parcel was erroneously omitted when the carpark was previously transferred from the Crown to Council for the purposes of a road. This will be required to be addressed if the proposal is successful.

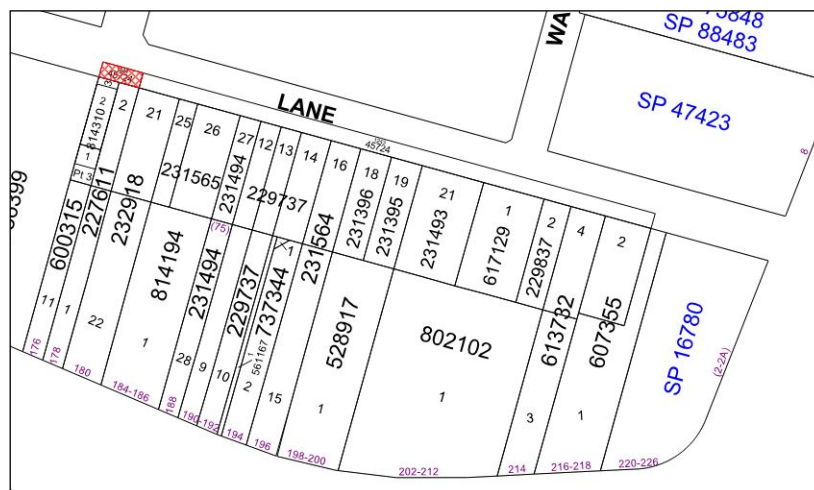


Figure 3 - Crown Land Reserve identified in red

Options

Council has the following options in relation to this matter:

1. Do nothing/take no action
2. The recommended option

These options are assessed in the table below.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Nil	Doing nothing may represent a missed opportunity. Council has for many years pursued a better pedestrian environment within the carpark which manifested in an amendment to the North Sydney DCP in 2013, and more recently in the (now-rescinded) Military Road Corridor Planning Study.	None required.
2.	This option will seek to negotiate the exchange a “stratum” of (underground) land to Coles in exchange for the delivery of a new plaza. Ongoing maintenance costs and responsibilities will need to be factored into the discussion, although it is noted that the carpark requires a level of ongoing maintenance at present.	The risks include confusion around the relationship of this process with the preparation of the Neutral Bay Town Centre Planning Study. In addition, the speed of the DA process may undermine the design and consultation process associated with a new plaza. Council retains control over the site and should not feel forced into an outcome that it is not comfortable with.	Consultation on design and a range of design issues will be required to be undertaken.

Option 2, is recommended for the following reasons:

- Issuing owner’s consent merely enables the exploration of a better public domain opportunity for Neutral Bay in the context of a largely compliant DA. This would be the first step in a long process of discussion and negotiation with Coles in which Council continues to own the carpark land.
- Council continues to retain control regardless of issue of owner’s consent.

- Once the site is redeveloped, or refurbished for a Coles supermarket, it is unlikely that this opportunity will be presented again in the short to medium term.

Consultation requirements

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

Financial/Resource Implications

There are no immediate financial implications for the issuing of owner's consent to accompany a future Coles DA. If the process moves towards design and delivery with Council agreement, consideration will need to be had for any ongoing, whole of life-costs associated with any new infrastructure delivered as part of this process, and how they fit into Council's long term financial planning and asset management framework.

There are no direct and immediate resource implications for the issuing of owner's consent to accompany a future Coles DA. However, it should be noted that Council staff will need to invest significant amounts of time in reviewing material to further explore the potential opportunities associated with the Coles proposal.

Legislation

The legislative requirements or considerations relevant to this matter are outlined in the Environmental Planning and Assessment Act and associated Regulation. The most relevant requirements are the inability of the consent authority to consent to an application that does not include owner's consent.



Gyde Consulting

31 March 2023

General Manager
North Sydney Council
PO Box 12
North Sydney, NSW 2059
Attention: Joseph Hill

Dear Mr Hill

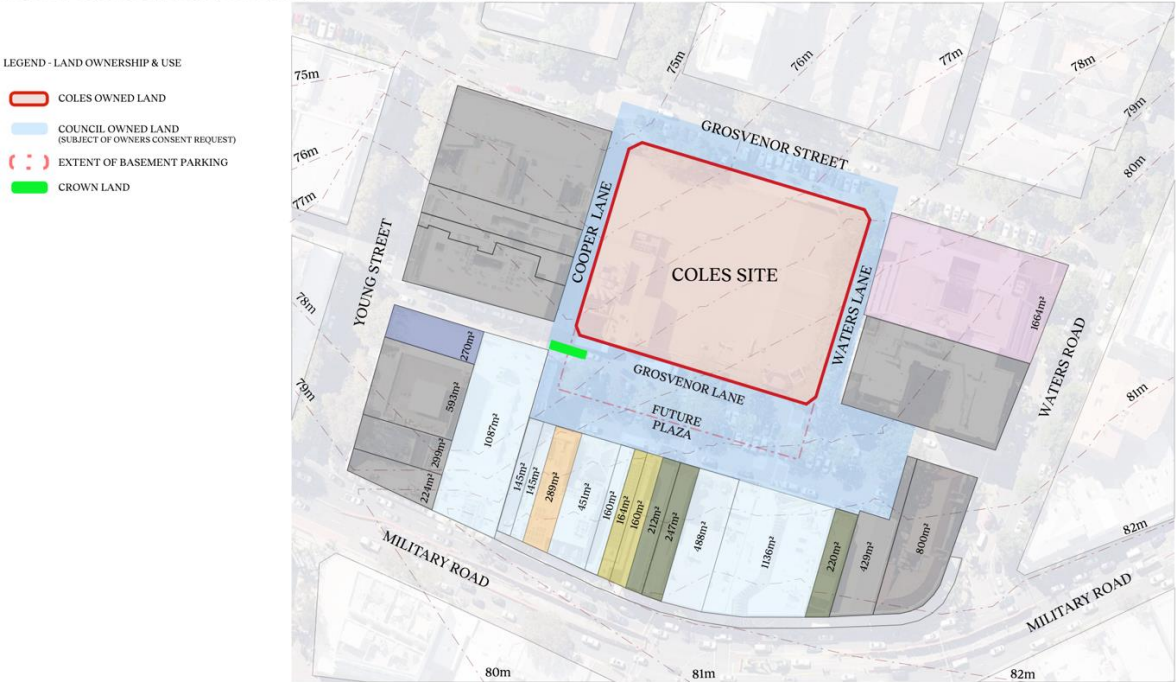
GROSVENOR LANE CAR PARK OWNER'S CONSENT REQUEST

We write on behalf of Coles Group Property Development (Coles) to request Council's consent as landowner of the Grosvenor Lane Car Park and adjoining public roads in Neutral Bay, to lodge a Development Application (DA) on that land (that also involves the adjoining Coles owned land). Details of the land and the proposed development the subject of the DA are provided below.

Proposed development site

The Council owned land the subject of this request is shown in Figure 1 (in blue), and involves the whole of the Grosvenor Lane Car Park (with the exception of a small parcel of Crown Land) and parts of Grosvenor Street, Grosvenor Lane, Waters Lane and Cooper Lane. Figure 1 also shows the Coles land at No. 43 – 53 Grosvenor Street Neutral Bay (currently occupied by a Woolworths Supermarket), that will also be encompassed in the DA site, but which is not subject to this request.

FIGURE 1 - COUNCIL LAND SUBJECT TO THE CONSENT TO LODGE REQUEST





Overview of proposed development

In summary, the proposed DA will involve:

- Redevelopment of Coles' property for a shop top housing development incorporating a supermarket and specialty retail and associated parking and facilities.
- The relocation of some of the current at-grade public parking and provision of additional public and private car parking in an underground parking structure, and the construction of a public plaza on the current Grosvenor Lane car park site.
- The proposed public car parking and public plaza to be delivered by Coles at no cost to Council, through the mechanism of a Planning Agreement between Coles and Council.

Further explanation of the proposed development on Council's and Coles' land follows.

Development on Council owned land

Section 5.1.6 of the North Sydney DCP 2013, requires development within the Grosvenor Lane Car Park locality to:

P4) Create a public plaza on the current public car park site, and

P15) Relocate public parking underground and provide additional public car spaces.

Consistent with the DCP, the proposed DA will include:

The construction of 2 levels of underground public car parking below that part of the existing Grosvenor Lane Car Park shown in Figure 1. This will replace and add to the current number of at grade parking spaces on the site. Whilst subject to further design formulation, there will be in the order of 84 public spaces on Council's land, an increase of approximately 19 on current numbers.

Council's public parking will be accessible to and from the supermarket car park. It is anticipated that the parking for the supermarket and the Council parking will be integrated as a seamless carpark to be operated by a single operator (subject to Council approval) to provide a Neutral Bay Town Centre Car Park.

The public will benefit from 24/7 access to a large contiguous quantity of publicly available parking spaces across the 2 contiguous basement levels (in the order of 269 spaces, 92 more than current numbers on the combined sites). To the general public there will be no delineation of the "public" and "private" spaces available in the contiguous car park. It is anticipated that the car parking facility will be managed as a single facility and there will be equitable access for all the customers and visitors to the Neutral Bay Town Centre on the terms of a management agreement to be determined by both parties.

A 3rd basement level will provide private residential parking associated with the building on the Coles land. A form of agreement, to be negotiated between the parties, will need to be entered into in relation to this element of the development.

There will be clear separation and delineation between public parking and the private residential car park, with a separate entry and exit located on Coopers Lane.

The DA will include a concept of the detailed design of a public plaza, with associated surface car parking and vehicular and pedestrian access, over the whole of the existing Grosvenor Lane Car Park and part of Grosvenor Lane. This will be further informed by the progress of the Council's **Public Domain Concept Design Study**.

The proposed public car parking and public plaza will be delivered by Coles at no cost to Council, via the mechanism of a Planning Agreement to be negotiated between Coles and Council.

While a suitable suite of agreements needs to be made to control and operate these facilities, Coles understands and supports the Council's requirement that the Plaza is to remain in public ownership and control.

Rights of public access are to be provided in the form of vertical transport from the proposed underground public car park to the public plaza, in accordance with a management agreement.

In relation to the design of the plaza for the purposes of this DA, Coles acknowledges Council's ongoing process of consultation and independent advice (in the form of its Neutral Bay Town Centre Planning Study - Public Domain Concept Design Study) relating to the design of the proposed public plaza on this site. As such, whilst Coles has engaged highly regarded landscape architects, Aspect Studios, to formulate detailed designs for the plaza, it does not wish to pre-empt the outcomes of Council's process. Consequently, Coles intends to continue to liaise with Council's professional staff to confirm the level of detail and the nature of the consent that will be sought in this DA as it relates to the plaza design.



As the plaza will at all times remain in Council ownership, there is no question that Council will remain in control of the final form and function of the plaza. The granting of owner's consent to lodge the DA does not affect Council's right to determine the final design.

In this regard, Coles' particularly acknowledges Council's feedback that any proposals for the existing car park and laneways must not prejudice access to adjoining private and public land, nor their future development potential. Such principles will be thoroughly considered in the design formulation for Council's land. Again however, assurance that these principles will be achieved rests in Council's continued control over the land.

Whilst potentially being able to be undertaken as 'off-site works', there may also be changes to the design and embellishment of parts of Grosvenor Street, Waters Lane and Cooper Lane. A brief description of the anticipated works is outlined below:

- Coopers Lane – Services and utilities required for the development, reinstatement of kerbs, gutters footpaths, road pavements and landscaping to Council's specifications.
- Waters Lane – Services and utilities required for the development, reinstatement of kerbs, gutters footpaths, road pavements and landscaping to Council's specifications, consistent with Council's Public Domain Concept Design Study.
- Grosvenor Street – Reconfiguration of crossovers for vehicular entries to the development. Services and utilities required for the development, reinstatement of kerbs, gutters footpaths, road pavements and landscaping to Council's specifications, consistent with Council's Public Domain Concept Design Study.

Whilst the nature and extent of such work is still to be confirmed, this request for owner's consent relating to these



roads is simply to allow for any proposed works within Council's roads to be lodged.

Development on Coles land

Whilst Council consent as owner is not required for this part of the proposed DA, the development on Coles' land will involve shop top housing comprising residential accommodation above a new full line supermarket and associated specialty stores at ground level, serviced by 3 levels of basement car parking, loading and back of house facilities.

Council can be assured that a key driver of the design of the proposed Coles building is optimising solar access to the proposed public plaza. This is likely to be achieved through stepping of the building down from a high point at Grosvenor Street, to its lowest point fronting the proposed public plaza to the south. Coles' design team has evaluated that this approach provides significantly better solar outcomes for the proposed public plaza compared to a 'height compliant' building across the whole site. Whilst the proposal is still undergoing design development, this approach is likely to involve a variation to the building height standard towards the northern part of the site to balance the southern part of the site which will be below the height standard. Any such variation will be subject to a Clause 4.6 accompanying the DA, which will be assessed on its merits and which will only be applicable to the Coles land and not the Council land to which this owner's consent request relates.

Rationale for Lodging the DA

Coles has a lease expiry on the Woolworths supermarket of the 28th November 2024. Coles has a business requirement to have a defined plan for the replacement of the Woolworths with a next generation world class Coles store for implementation by July 2024 to enable the procurement and construction of the store to commence once the Woolworths tenancy is vacated.

The process of obtaining a Development Consent for the redevelopment of the site requires Coles to lodge a Development Application by mid this year to enable sufficient time for the application to progress to determination and meet its timetable for a commencement on site by December 2024. Coles can provide its program to Council if further confirmation is required.

If Development Consent cannot be secured within this timeframe, Coles advises that it will be necessary to seek a Complying Development Certificate for the refurbishment and 'rebadging' of the existing store. In those circumstances, given the investment required to implement the CDC, the opportunity for Coles to undertake a full redevelopment of its site and to actively contribute to the implementation of Council's desired public realm improvements would be unlikely to occur.

Conclusion

Whilst it could have simply sought to redevelop its own site in isolation, Coles supports Council's intentions to transform the current Grosvenor Lane Car Park into a vibrant space for the local community. Coles considers that its own redevelopment intentions provide a major opportunity to realise Council's vision and it is pleased to be able to offer a mechanism to deliver it within a relatively short timeframe (consistent with the commercial leasing circumstances applying to the Coles site).

Coles has engaged in formal pre-lodgement discussions with Council staff and has appreciated the highly professional feedback and advice provided in relation to this proposed development. At all times Coles seeks to take a consultative and constructive approach with Council and the local community in relation to its development plans. In this regard, it has also constructively engaged with the local community, the surrounding landowners and various stakeholders on its proposals. It will continue to do so as the design evolves in an endeavor to find a design solution that achieves the objectives of the DCP and planning guidelines.

Coles therefore looks forward to the opportunity to continue this process of engagement in formulating a DA, as generally described in this request, in the knowledge that Council's consent to its lodgment will be forthcoming. Coles acknowledges that the granting of owner's consent to lodge a DA does not in any way imply Council's support for the substance of the DA nor interfere with the discretion of the consent authority to determine the DA in any manner it deems appropriate based on its statutory and merit assessment of the proposals.

Coles considers that this development provides a unique and timely opportunity to work together with Council and the community to implement the objectives of Council's DCP and deliver a public plaza and additional parking for the Neutral Bay Town Centre.



Please do not hesitate to contact the undersigned should you require any clarification or further information in relation to this request. Otherwise, we will look forward to Council's response.

Yours sincerely

A handwritten signature in black ink, appearing to be 'DR', with a long horizontal flourish extending to the right.

David Ryan
Executive Director