

4.2 CONFIDENTIAL ITEM**Report Reference: CAP060722 – 4.2****Application No: 21012619****Site Location: 1 Freya Avenue Hallett Cove & 3 Freya Avenue Hallett Cove**

- James Levinson of Botten Levison Lawyers, acting on behalf of Future Urban (Applicant) addressed the Panel

Having considered all relevant planning matters in relation to the subject development application:

- The Panel notes this report and concur with the findings and reasons for the recommendation;**
- The Panel concurs that the proposed development is not seriously at variance² to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and**
- The Panel advise the Environment, Resources and Development Court that Council supports the comprise proposal submitted by Future Urban Pty Ltd for Application ID: 21012619 at 1 & 3 Freya Avenue, Hallett Cove subject to the following Conditions.**

CONDITIONS

- The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).**
- A revised fully engineered site works and drainage plan, which details top of kerb levels, existing ground levels throughout the site and on adjacent land, proposed bench levels and finished floor levels, extent of cut/fill required, location and height of any proposed retaining walls, driveway gradients, proposed and existing crossovers, and the location of all existing street infrastructure and street trees shall be submitted to Council prior to Development Approval, detailing consistency with the application plans prepared by ON Architecture, Revision G.**
- The operating hours of the pre-school shall be limited to the following times:
Monday to Friday (inclusive) 6:30am to 6:30pm**
- Signage is to be installed in a distinctive fashion which identifies staff only car parking spaces.**
- Landscaping shall be planted and maintained in accordance with the plans and details forming part of the development authorisation.**

² Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* (or Section 35(2) of the *Development Act 1993* for applications under that Act), a “development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code” (or the Development Plan if under the Development Act).

What is ‘seriously at variance’ is not a defined legislative term and is not synonymous with a proposal that is merely ‘at variance’ with certain provisions of the Code (or Plan), which many applications will be. Instead, it has been interpreted to be an important or grave departure in either quantity or degree from the Code (or Plan) and accordingly not worthy of consent under any circumstances and having the potential to undermine the objectives of the Code (or Plan) for the land or the Zone.

6. Landscaping shall provide clear sightlines at the property line to ensure adequate visibility between vehicles leaving the site and pedestrians on the adjacent footpath, in accordance with Figure 3.3 'Minimum Sight Lines for Pedestrian Safety' in AS/NZS 2890.1:2004.
7. All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers to facilitate the movement of persons with a disability).
8. Wheel stopping devices shall be placed and maintained within each parking bay as depicted in the stamped plans so as to prevent damage to adjoining fences, buildings or landscaping in accordance with Australian Standards (AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009).
9. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.
10. Designated accessible (disabled) car parking spaces shall be designed, constructed and maintained in accordance with Australian Standards (AS/NZS 2890.6:2009).
11. All car parking areas, driveways and vehicle manoeuvring areas must be constructed in accordance with the approved plans and recognised engineering practices prior to the occupation of the premises or the use of the development herein approved and maintained in a good condition at all times.
12. All car parking spaces shall be line marked or delineated in a distinctive fashion prior to occupation of the premises, with the marking maintained in a clear and visible condition at all times.
13. The advertisement(s) and supporting structure(s) shall be maintained in good repair at all times.
14. All waste disposal and pick up shall be undertaken in accordance with the requirements stipulated within the *Environment Protection (Noise) Policy 2007*, or subsequent legislation.
15. All waste and other rubbish shall be stored in a manner so that it does not create insanitary conditions, unreasonable nuisance or pollution to the environment and shall be screened from public view to the reasonable satisfaction of Council.
16. All loading and unloading of vehicles associated with the subject premises shall be carried out entirely upon the subject land.
17. All external lighting must be designed and constructed in accordance with Australian Standard (AS 4282-1997).
18. Pedestrian walkways on the subject site shall be adequately lit in accordance with Australian / New Zealand Standard AS/NZS 1158.3.1:1999 "Road Lighting Part 3.1: Pedestrian area (Category P) lighting - Performance and installation design guidelines". Such lighting shall be maintained at all times, to the reasonable satisfaction of the Council.

19. Prior to the use and/or occupation of the structure(s), all stormwater from buildings and paved areas shall be disposed of in accordance with the approved plans and details.