

**4.3 CONFIDENTIAL ITEM****Report Reference: CAP060422 – 4.3****Application No: 21012625****Site Location: 10 Renown Avenue Clovelly Park & 12 Renown Avenue Clovelly Park**

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

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

- (a) The Panel notes this report;**
- (b) The Panel concurs that the proposed development is not seriously at variance<sup>1</sup> to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and**
- (c) The Panel advise the Environment, Resources and Development Court that it does not support the proposed compromise.**

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<sup>1</sup> 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.