

**REPORT REFERENCE: CAP060422 – 4.3  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 06 APRIL 2022**

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<b>Originating Officer:</b>	<b>Nicholas Timotheou Senior Development Officer – Planning</b>
<b>Applicant:</b>	<b>Future Urban Pty Ltd</b>
<b>Development Description:</b>	<b>Construction of a child care centre with associated advertising, masonry walls and ancillary storage shed.</b>
<b>Site Location:</b>	<b>10 Renown Avenue Clovelly Park; and 12 Renown Avenue Clovelly Park</b>
<b>Zone &amp; Policy Area:</b>	<b>General Neighbourhood Zone</b>
<b>Lodgement Date:</b>	<b>22/07/2021</b>
<b>Planning and Design Code:</b>	<b>Version 2021.9 (Operational 15 July 2021 to 28 July 2021)</b>
<b>Referrals:</b>	<b>Internal Development Engineer</b>
<b>Application Type:</b>	<b>Performance Assessed</b>
<b>Relevant Authority:</b>	<b>The Panel is assigned as a ‘Relevant Authority’ in its own right pursuant to Section 82 of the Planning, Development and Infrastructure Act 2016 and therefore will be the respondent to appeals against their decisions.</b>
<b>Application No:</b>	<b>21012625</b>
<b>Recommendation:</b>	<b>Advise the Environment, Resources and Development Court that Council supports the compromise plans and recommends a Reserved Matter and Conditions</b>

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**Attachments**

*Attachment I: Decision Notification Form*

*Attachment II: Compromise Proposal Plans and Supporting Documentation*

## BACKGROUND

The subject application for “construction of a child care centre with associated advertising, masonry walls and ancillary storage shed” was delegated to the Council Assessment Panel pursuant to Instrument of Delegation – CAP, Clause 5.1.1.1, which states:

*The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which:*

*Any Performance Assessed application that has undergone Public Notification where at least one representor has expressed opposition to the proposed development and has expressed their desire to be heard by the Panel.*

The application was previously presented to the Council Assessment Panel (CAP) at the meeting held on 3 November 2021 and was refused for the following reasons:

1. Does not satisfactorily meet the desired outcome of the General Neighbourhood Zone as expressed in DO 1 and PO 1.1;
2. Does not satisfactorily take into consideration Design in Urban Areas DO 1 (a), (c) and (d);
3. Building footprint and site coverage is not consistent with the character and pattern of a low density suburban neighbourhood as expressed in General Neighbourhood Zone PO 3.1;
4. Building does not contribute to the low rise suburban character and does not compliment the height of nearby buildings as expressed in General Neighbourhood Zone PO 1.3 and 4.1;
5. Does not provide sufficient detail on landscaping to reduce urban heat Design in Urban Areas PO 3.1;
6. The size, scale of the proposed development and vehicle access point to Renown Place will compromise the safety of pedestrian and road users, thus conflicting with General Policies - Transport, Access and Parking DO 1 and PO 3.4.

*Refer Attachment I*

The original report, plans and attachments can be found in the member's agenda from the 3 November 2021 meeting. Through the appeal process, the following key events occurred:

- A preliminary conference was held on 10 December 2021
- The applicant requested a directions hearing in order to identify a suitable hearing date
- A Hearing date was set for 30 March 2022
- The applicant requested an adjournment to the hearing date in order to submit a compromise plan before the Council Assessment Panel
- The ERD Court granted an adjournment and set a directions hearing for 11 April 2022
- The applicant has provided amended plans for consideration as a compromise prior to the conference.

The Panel must, following consideration of the proposal, advise the ERD Court of their recommendation.

## Amendments

The compromise submitted by the applicant incorporates the following amendments to the previous proposal:

1. Increased set back of the north eastern corner of the first floor ("Activity 3" room) from the northern boundary.
2. Change of the roof form to a pitched design which is considered to reflect the residential character of the locality.
3. Lowering of the eave height from 6.6m to 6.24m.
4. Removal of the 3.53m cladded walls from the northern elevation (adjacent the residential allotment to the north).
5. Removal of the 3.18m cladded walls from the southern and eastern elevations (around the perimeter of the outdoor play area).
6. Continuation of the first-floor balustrade at a height of 1.80m around the entire perimeter of the first-floor outdoor play area.
7. Increased glazing around the perimeter of the first-floor outdoor play area on the eastern elevation and consequential reduced use of Weatherboard in Dulux Domino Grey Finish as part of first floor balustrade.
8. Removal of full-length windows from northern elevation and replacement with clerestory windows below the eaves.
9. Reduction in the number and size and increased variation of windows along the eastern elevation of the first floor.
10. Change to the layout of the carpark to ensure adequate sightlines between vehicles exiting the car park and pedestrians entering the cross over on Renown Place including a corner cut on eastern side of driveway to enable:
  - drivers to see left to oncoming pedestrians; and
  - pedestrians to see cars approaching the cross over from within the carpark.
11. Inclusion of secure bicycle parking adjacent the car parking area.
12. Inclusion of canopy on eastern side of ground floor.
13. Revised landscaping plan and planting scheme including:
  - the addition of street trees along Renown Place nature strip (subject to Council approval and requirements);
  - a significant increase in soft landscaping within and around the car parking area;
  - an increased diversity of trees and screening plants to be planted around site boundary; and
  - the inclusion of native species.

Outside of the above, the applicant has provided an updated acoustic and traffic report to reflect the abovementioned amendments.

*Refer Attachment II*

## **ANALYSIS**

The proposed compromise plans have attempted to address the reasons for refusal relating to the building's size siting and design, it's implications upon the character, amenity, visual appearance of the locality and nearby land, lack in landscaping and traffic related consequences upon the nearby road network.

The compromise plans have reduced the overall extent and bulk of the built form through a reduction in floor area, roofed areas and balustrade heights at the first floor. The roof form has changed to provide a more residential character and appearance from the public and private realm.

Several cosmetic amendments have been made through the removal of cladding materials, reduction in balustrade heights, alteration of window sizes, introduction of a canopy (east side) and additional landscaping throughout the land at each level, together with additional street tree plantings.

The overall layout and design of the car parking area has improve sightlines between vehicles and pedestrians, while 4 bicycle parking spaces have been included to improve opportunities for users of the childcare centre.

## **RECOMMENDATION**

Council staff recommended the original scheme warranted Planning Consent, and given the changes have made further improvements to the overall built form, car park layout, general amenity and landscaping the compromise sufficiently reflects the intent of the relevant Desired and Performance Outcomes.

It is respectfully recommended that the Panel advise the Environment, Resources and Development Court that the Panel supports the comprise proposal, subject to appropriate Conditions.

## RECOMMENDATION

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

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (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 Council supports the comprise proposal submitted by Future Urban Pty Ltd for Application ID: 21012625 at 10 & 12 Renown Avenue, Clovelly Park subject to a Reserved Matter and Conditions.

## RESERVED MATTERS

Pursuant to Section 102 (3) of the Planning, Development and Infrastructure Act 2016, Council RESERVES its decision in relation to the following matters. Development Approval cannot be issued by the Council unless and until it has assessed such matters and granted its consent thereof.

1. Amended elevation plans be submitted illustrating the full length north facing window being fitted with obscure glazing to a minimum 1.5m above the finished floor level.

Pursuant to Section 102 (3) of the Planning, Development and Infrastructure Act 2016 the Council reserves its decision on the form and substance of any further conditions of planning consent that it considers appropriate to impose in respect of the reserved matter outlined above.

## CONDITIONS

1. 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).
2. The operating hours of the pre-school shall be limited to the following times:
  - Monday to Friday (inclusive) 6:30am to 6:30pm
3. Landscaping shall be planted prior to operation of the premises and maintained in accordance with the plans and details forming part of the development authorisation.

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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.

4. 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.
5. 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).
6. Wheel stopping devices shall be placed and maintained within each parking bay 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).
7. 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.
8. Designated accessible (disabled) car parking spaces shall be designed, constructed and maintained in accordance with Australian Standards (AS/NZS 2890.6.2009).
9. 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.
10. Signage is to be installed in a delineated and distinctive fashion which identifies the tandem car parking spaces are to be utilised by staff only.
11. All car parking spaces shall be linemarked 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.
12. All loading and unloading of vehicles associated with the subject premises shall be carried out entirely upon the subject land.
13. The content of the advertisement(s) shall relate only to the legitimate use of the land and shall not display any third-party advertising.
14. The advertisement(s) and supporting structure(s) shall be maintained in good repair at all times.
15. All waste and other rubbish shall be stored in the designated areas and screened from public view in accordance with the approved plans.
16. 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.
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.**