

**REPORT REFERENCE: CAP060722 – 4.2
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 06 JULY 2022**



Originating Officer:	Nicholas Timotheou Acting Team Leader - Planning
Applicant:	Future Urban Pty Ltd
Development Description:	A change in land use from two detached dwellings to pre-school (childcare centre) with associated advertisements and advertising hoarding, outbuilding, earthworks, retaining walls and fencing.
Site Location:	1 Freya Avenue, Hallett Cove & 3 Freya Avenue, Hallett Cove
Zone & Policy Area:	Hills Neighbourhood Zone
Lodgement Date:	05/08/2021
Planning and Design Code:	9 September 2021 Version 2021.10
Referrals:	Internal Development Engineer Coordinator Traffic and Parking
Application Type:	Performance Assessed
Relevant Authority:	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.
Application No:	21012619
Recommendation:	Advise the Environment, Resources and Development Court that Council supports the compromise plans

Attachments

Attachment I: Decision Notification Form

Attachment II: Compromise Proposal Plans and Supporting Documentation

BACKGROUND

The subject application for “a change in land use from two detached dwellings to pre-school (childcare centre) with associated advertisements and advertising hoarding, outbuilding, earthworks, retaining walls and fencing” 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) The proposed development fails to satisfy Hills Neighbourhood Zone Performance Outcomes 1.1, 1.4 and 4.1, in addition to Design in Urban Areas DO 1, as the proposed non-residential development is not sited and designed to complement the residential character and amenity of the neighbourhood.
- 2) The proposed development fails to satisfy Hills Neighbourhood Zone Performance Outcome 3.1 as the building footprint of the upper level is not consistent with the character and pattern of a low-density suburban neighbourhood and does not provide sufficient space around the building to limit visual impact, provide an attractive outlook or access to light and ventilation.
- 3) The proposed development fails to satisfy Hills Neighbourhood Zone Performance Outcome 9.1 as the upper level of the proposed building will not be sufficiently set back from the rear boundaries to provide separation between dwellings in a way that complements the established character of the locality, access to natural light and ventilation for neighbours and space for landscaping and vegetation.

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 12 April 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 provided a compromise plan for consideration by the Panel, which was not supported on 6 April 2022
- A hearing was held on 9 and 10 June 2022. A judgement has not been made on this matter as yet.

Despite a pending judgment for the subject application, the applicant has resolved to submit a further compromise offer to the Panel, which packaged as part of this report. Administration are informed the primary reason for the settlement offer, stems from commercial considerations in terms of the timing of the Court's judgment.

Amendments

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

- Reduction in the total number of childcare spaces from 98 to 92 and consequential reduction in floor space of the upper level and upper level outdoor play area (from 520m² to 478m²);
- Increase in the southern (rear) setback of the upper level to 6.35 metres (building line) and 4.95 metres (planter box/outdoor play);
- Inclusion of planter box on south western perimeter of the upper level with planting of appropriate species to reduce visual dominance and soften the view from the south/south west;
- Reduction of upper-level outdoor play areas on the southern and western sides of the building (closest to residential properties);
- Removal of all four car stackers and reconfiguration of 6 parking spaces in tandem arrangement reserved for staff use only;
- Reservation of parking space numbered 1 (adjacent the bin store) for staff per the recommendations of Ben Wilson in his report dated 2 June 2022;
- Removal of “small car” parking space (previously parking space numbered 16);
- Removal of illumination from sign in north eastern corner of site in favour of non-illuminated sign;
- Reconfiguration of internal layout of ground floor;
- Reduction in the north south length of the ground level canopies on the northern façade from 2 metres to 1.5 metres;
- Width of access point from Freya Avenue reduced to 6 metres per the recommendation of Ben Wilson in his report dated 2 June 2022.

Refer Attachment II

ANALYSIS

The proposed compromise plans have attempted to address the reasons for refusal relating to the building's siting and design and its respective implications upon the character, amenity, visual appearance of the locality and nearby land.

The compromise plans have resulted in a reduction in the number of childcare spaces and subsequent reduction in the overall extent of built form. Consequently, separation from boundaries has increased, together with cosmetic additions. The car stacker device has been deleted and replaced with tandem car parking spaces for the use by staff and as identified on the application plans. Other improvements have been made to the car parking and access arrangements as recommended by the Applicants Traffic Engineer.

The north eastern advertisement display has been amended to remove its internal illumination. This outcome is considered an improvement to the amenity of the locality. This notwithstanding, it is noted the inclusion of internal illumination as originally proposed was not a significant concern.

RECOMMENDATION

Council staff recommended the original scheme warranted Planning Consent, and given the changes have made further improvements to the overall built form, layout and amenity, 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 variance¹ 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: 21012619 at 1 & 3 Freya Avenue, Hallett Cove subject to the following Conditions.

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. 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.
- 3. The operating hours of the pre-school shall be limited to the following times:
Monday to Friday (inclusive) 6:30am to 6:30pm
- 4. Signage is to be installed in a distinctive fashion which identifies the car lift structure/area is to be utilised by staff only.
- 5. 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.
- 6. 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).

¹ 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.

7. 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).
8. 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.
9. Designated accessible (disabled) car parking spaces shall be designed, constructed and maintained in accordance with Australian Standards (AS/NZS 2890.6.2009).
10. 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.
11. 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.
12. The advertisement(s) and supporting structure(s) shall be maintained in good repair at all times.
13. 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.
14. 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.
15. All loading and unloading of vehicles associated with the subject premises shall be carried out entirely upon the subject land.
16. All external lighting must be designed and constructed in accordance with Australian Standard (AS 4282-1997).
17. 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.
18. 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.