

DEVELOPMENT NO.:	21031474
APPLICANT:	14 JOHNSTON PTY LTD
ADDRESS:	14 JOHNSTON ST STIRLING SA 5152
NATURE OF DEVELOPMENT:	Construction of a three-level childcare centre (pre-school) with ancillary car parking, outdoor play areas and landscaping
ZONING INFORMATION:	Zones: <ul style="list-style-type: none"> • Suburban Main Street Overlays: <ul style="list-style-type: none"> • Hazards (Bushfire - Medium Risk) • Mount Lofty Ranges Water Supply Catchment (Area 2) • Native Vegetation • Prescribed Water Resources Area • Regulated and Significant Tree • Traffic Generating Development Technical Numeric Variations (TNVs): <ul style="list-style-type: none"> • Maximum Building Height (Metres) - 10 Metres • Maximum Building Height (Levels) - 2 Levels
LODGEMENT DATE:	12 Oct 2021
RELEVANT AUTHORITY:	Assessment Panel at Adelaide Hills Council
PLANNING & DESIGN CODE VERSION:	Operative Version 2021.14 - (23 September to 13 October 2021)
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Melanie Scott/Aaron Wilksch
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Council Engineering Council Arboriculture

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DETAILED DESCRIPTION OF PROPOSAL:

The proposal is for the re-development of 14 Johnston Street, Stirling, including the demolition of the existing dwelling, a circa 1960's-70's single storey, brick dwelling, which has been previously approved for demolition in 2018 (473/760/18) as part of a previous redevelopment proposal.

- The proposed re-development is to comprise a three-storey pre-school facility comprising children's pre-school services, within the building and undercroft car parking arrangements for up to 23 car spaces. The proposed undercroft level has been amended and no longer includes bicycle parking.
- The proposed building's overall dimensions are to be 18.0 metres wide at its frontage to Johnston Street x 45.5 metres depth (inclusive of first storey platform deck).
- The proposed building establishes a front building line setback of 8.0 metres from Johnston Street (excluding dedicated play area fencing and stairway access, and exhibits zero setback, building-to boundary line on both the north-eastern and south-western side property boundaries, with a minimum setback of 5.6 metres to the north-west (rear) property boundary.
- Rear 'yard' areas are to be set out as dedicated children's activity / play spaces and the site frontage is proposed to include new landscaping either side of the vehicle access ramp to the undercroft parking area, with the northwest corner of the frontage accommodating the necessary firefighting booster box infrastructure.
- The proposed building is to incorporate a composite of materials including natural limestone face masonry (rough finish in natural material / and render finishes), ADBRI 'oatmeal' retaining block walling, vertically expressed profile (Lysaght longline or similar) metal and fibre cement wall cladding in Colourbond 'windspray' (light grey), with limited roofing material for the first and second storey roof and lift-plant housing. First storey roofing is predominantly formed as green roof areas and children's activity / play spaces.

As a result of the further information provided, the proposal has been amended to include a building height of 10.4 metres as detailed below and no includes a small boundary setback on level 1 adjacent the south western boundary with a reduced footprint for the office and the universal access bathroom.

The proposed building height has been amended to accommodate the taller undercroft car-stackers, with increased undercroft ceiling height to approximately 4.1 metres (whilst continuing to protect the trees, by avoidance of further excavation) – consequently, the basement FFL is the same, the undercroft floor is 0.5 metres higher and the upper level is 0.6 metres higher than that previously proposed. The amended proposal increases the overall building height from 9.6 metres to approximately 10.4 metres above natural ground level (for the upper roofline), and approximately 11.2 metres maximum height at the rear second storey roofline including the lift-housing. The façade of the building is a maximum of 6.2 metres to the top of the first storey green roof at the Johnston Street frontage.

All response documentation is provided for the Assessment Panel's information, in attachments 1-10 to this report.

BACKGROUND

This application was previously presented to the 9 March 2022 meeting of the Adelaide Hills Council Assessment Panel, with a detailed assessment report setting out the assessment matters for the Panel's determination and provided the Panel with all relevant plans and details as well as specialist advice tendered as part of the application.

At its meeting, after considerable deliberation, the Panel resolved to defer determination of the application for the following further information:

- 1) *An acoustic report prepared by a suitably qualified professional.*
- 2) *A review of the car parking design and its relationship with the intensity of the land use, in consideration of staff, parents and children, and visitors to the site.*
- 3) *Preparation and provision of a Waste Management Plan which considers storage capacity, location and collection times.*
- 4) *Consideration of built form in terms of overshadowing.*

Council formally requested this information in correspondence dated 11 March 2022 and the applicant responded on 17 June 2022. In response to the matters raised and items requested by the Panel, the applicant has provided the following documentation via the PlanSA portal for the further consideration of the Panel:

- URPS Planning Consultants – Response to Deferral, covering statement for requested information
- URPS Site Plans / Shadow Diagrams-3115216.pdf
- Revised Application Plans Package (Plans Dated 11/05/2022), by Gardiner Architects
- Traffic and Parking Assessment Report, by Phil Weaver & Associates, Consultant Traffic Engineers
- Peer Reviewed Traffic and Parking Assessment, by Frank Siow & Associates, Traffic & Parking Consultants
- Environmental Noise Assessment Report, by Echo Acoustic Consulting
- Waste Management Plan, by Colby Phillips Advisory

The previous CAP Report and Attachments for this proposal from the Council Assessment Panel meeting held on 9 March 2022 are provided for reference (Attachment 11).

On 21 June 2022 Council was notified by the PlanSA portal that the applicant has sought a 'Deemed Consent' for the application. **(Attachment 10)** This has resulted in a limited window of opportunity to report to the relevant planning authority (Council's Assessment Panel), and engage with the applicant on the identified issues.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 14 JOHNSTON ST STIRLING SA 5152

Title ref.: CT 5350/901 **Plan Parcel:** F158259 AL13 **Council:** ADELAIDE HILLS COUNCIL

The site is a relatively rectangular shaped allotment of approximately 1054m² with frontage of 19.6 metres and depth of 60.1 metres on the low side of Johnston Street. The site has moderate slope away from Johnston Street with a variation of approximately 4.0 to 4.5 metres maximum fall diagonally across the site from front (south-west) to rear (north-east) of the site or a grade of approximately 1:10.

The land contains the previously mentioned dwelling and two domestic outbuildings, all of which are to be demolished to make way for the proposed development

LOCALITY

The locality exhibits a similarly sloping landscape, and typically large (600 to 1000m²) allotments. The streetscape and locality exhibits a high degree of existing vegetation and landscaping amongst residential and commercial land uses (including retail, service and office land uses) within the subject Suburban Main Street Zone and the adjacent Suburban Neighbourhood Zone.

The locality is serviced with reticulated mains water and sewer services and well-established roads, footpaths and stormwater drainage infrastructure. Johnston Street is a minor scale local road which connects to the State maintained, Mount Barker Road which is the main thoroughfare through Stirling.

The locality is considered to have a strong mixed-use / urban character, influenced by the diversity of land uses such as small-scale retail shops, supermarket and service / office orientated businesses amongst residential land uses.

CONSENT TYPE REQUIRED:

Planning Consent sought with subsequent Building Rules Consent required.

DEFERRED ASSESSMENT - ITEMS TO BE DETERMINED

The matters to be resolved and determined at the Assessment Panel's deferral of this assessment at its March meeting are identified under the following headings:

Environmental Noise Assessment

The Panel requested the applicant provide the following information:

- 1) *An acoustic report prepared by a suitably qualified professional.*

The applicant has obtained an Environmental Noise Assessment Report prepared by Echo Acoustic Consulting, which has considered the proposed facility and adjacent dwellings, the proposed treatments for Play Areas 1, 2, 3 and 4, the building's insulation treatments, plant and equipment and basement car stacker. The Acoustic Report assesses the collective predicted noise levels against the relevant Planning and Design Code policies and World Health Organisation guidelines.

The Echo Environmental Noise Assessment identifies, against the Code's noise & interface related policies that the *Designated Performance Feature DPF Criteria 4.1* references the Environment Protection Act 1993, *Environment Protection (Noise) Policy 2007 (EPA Noise EPP)*, which incorporates a requirement to ensure the acoustic amenity of a locality is not unreasonably interfered with, and provides a quantitative approach to satisfy this requirement underpinned by the *World Health Organization's Community Noise Guidelines* as it relates to community annoyance and sleep disturbance.

Compliance with the EPA Noise EPP is the criteria of *DPF 4.1* and is considered to also satisfy the subjective requirements of the *Desired and Performance Outcome* values in the Code (being the *Interface between land uses DO 1, PO 1.2, PO 2.1 and PO 4.1*), however the Report identifies that Schedule 1 (clause 6) of the EPA Noise EPP excludes noise from a *school, kindergarten, childcare centre or place of worship* from its objective assessment method, and notes the following:

Child-care centres, schools, kindergartens, places of worships and playgrounds are often located immediately adjacent to residences and their impacts are rarely of concern, even though the sound levels can often easily exceed environmental noise criteria such as those contained in the general provisions of the Noise Policy. Complaints to the Authority regarding school and church noise do occur from time to time and there have been proceedings brought in the South Australian Environment Resources and Development Court to deal with noise nuisance impacts from a child-care centre in one case. Typically, such complaints are handled under the general environmental duty provisions of the Environment Protection Act 1993 rather than through comparison with objective criteria such as those in the Noise Policy, which have not been established for the specific circumstances presented by schools, kindergartens, child-care centres or places of worship.

And provides that:

In the absence of the Policy as an objective measure, the Environment, Resources and Development Court has considered noise levels from children playing against the recommendations of the WHO guidelines. The WHO guidelines include that to protect the majority of people from being moderately annoyed during the daytime, the outdoor sound level should not exceed 50 dB(A) LAeq16hr...

This WHO noise criterion is utilised by the assessment of the proposal to satisfy the Code requirements from the sound of children playing.

The criterion does not mean all people will be “moderately annoyed” at levels greater than 50 dB(A) but rather provides a criterion above which some people can become moderately annoyed.

Echo Acoustic Consultants have identified in this regard that to achieve the WHO criterion and to ensure best practice operation with respect to childcare noise reduction to surrounding land uses, the following recommendations are provided:

- Ensure the extent of the fences depicted in Figure 2 as blue is a minimum of 2.4m in height and red is a minimum of 1.8m in height when measured above the Outdoor Play Area 1 ground level
- Construct the fences from sheet steel with a base material thickness (BMT) of 0.42mm, or an alternative material with the same or greater surface density. The fences should be sealed airtight at all junctions, including with the building, the ground/flood wall and at the overlap of sheets
- Ensure the extent of the balustrade depicted as yellow in Figure 3 is a minimum of 2.1m in height when measured above the deck
- Ensure the extent of the balustrade depicted as orange in Figure 3 and Figure 4 is a minimum of 1.8m in height when measured above the deck
- The balustrade material can be any material with a surface density equal to or greater than sheet steel with a 0.42mm BMT, including glass or Perspex. The balustrade should be sealed airtight at all junctions, including with the deck and at the overlap of sheets
- Incorporate a 1.8m high solid external gate for access to Play Area 2 and Play Area 4 with the same material specification as the balustrade. The gate shall incorporate a frame and rubber contact at all sides and a drop-down seal at the base to provide an airtight seal when closed
- Ensure any shade sail used in the play areas is constructed from an acoustically transparent material such as “open weave” shade cloth or similar rather than waterproof PVC (that is, any material which can be breathed through)
- Provide acoustic absorption to the soffit of the slab above the Play Area 1 for the extent shown as purple in Figure 3 and in accordance with Figure 5 below or by directly fixing material such as 25mm thick *Pyrotek “Reapor”* panels
- Maintain a Noise Management Plan for the facility which includes measures such as:
 - Closing doors and windows in rooms where music is being played
 - Ensuring outdoor play spaces are not used before 7am
 - Not introducing surfaces or equipment which would regularly elevate children above the fence height
 - Not having equipment or surfaces intended for impact outside
 - Not having musical instruments outside
 - Maintaining play equipment such that noise which could be reduced by maintenance is not generated
 - Utilising gates and doors with soft close mechanisms
 - Maintaining a method for neighbours to contact the facility
 - Ensuring crying or distressed children are taken inside the centre and comforted
 - Monitoring the behaviour of children by trained childcare staff

- Ensuring carers and staff control the level of their voice while outside.

****Figures / diagrams referenced in the above performance recommendations are contained amended proposal plans.**

The Environmental Noise Assessment determines that subject to the above mitigation factors, the facility can reasonably and practicably achieve the relevant standard. The above measures have been incorporated into the project documentation, Identified in the Revised Plans package – on Drawings TP.03, TP.04, TP.05, TP.06 (site & floor plans) and TP.08 & TP.09 (elevations) prepared by Gardiner Architects and dated 11/05/2022.

Confirmation of Adequacy of Car Parking

- 2) *A review of the car parking design and its relationship with the intensity of the land use, in consideration of staff, parents and children, and visitors to the site.*

The applicant has accordingly engaged the services of Phil Weaver & Associates, Consultant Traffic Engineers who produced the initial Traffic Assessment to prepare the further Traffic and Parking Assessment in response to the CAP's request.

The applicant has also subsequently obtained a *Peer Reviewed* Traffic and Parking Assessment, by Frank Siow & Associates, Traffic & Parking Consultants as a secondary, independent verification of the adequacy of the traffic and parking proposed for the development.

The Phil Weaver and Associates, supplementary assessment identifies that:

Amendments to the plans since the Development Application was originally lodged with the planning authority ensure that clear space widths of 2.6m will be provided for all spaces which would be available to parents/carers of children attending the centre. Furthermore the accessible (disability) car parking space and associated shared area fully meeting the requirements of the relevant off-street car parking standard (AS/NZS 2890.6:2009).

One wider space (Space 13) located adjacent to the landscaped area in the south-western corner of the car parking area will be designated for use by staff given the need to maintain a 300 mm clearance from the adjacent bifold gates.

A significant amendment made to the design of the building subsequent to the CAP meeting includes an increase in the vertical clearance between the car parking area and this slab of level 1 above. Consequently the car stackers would provide a clearance of at least 1800 mm on each level of these facilities.

The design will address the pedestrian-vehicular sight distance requirements of the relevant off-street car parking standard given that only low-level landscaping and paving will be provided adjacent to the corner of the driveway and the footpath.

And accordingly, provides that:

...the design of the on-site car parking areas would fully conform to the dimensional requirements of the relevant off-street car parking standards (AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009).

The above measures have been incorporated into the project documentation, Identified in Revised Plans package – on Drawings TP.03, TP.04, (site & floor plans) prepared by Gardiner Architects and dated 11/05/2022.

ITEM 9.1

The Phil Weaver and Associates assessment also provides a detailed account of the operation and adequacy of the car parking facilities for the modelled peak traffic movements to and from the site, the modelled delays for vehicles turning-into and turning-out of the car parking area to Johnston Street and, the additional traffic interface with the existing traffic movements on Johnston Street and the surrounding road network. The assessment report has also responded to matters raised concerning the adequacy of the car stacker system, proposed to support staff parking requirements.

The remaining issue of the shortfall of 0.75 of a car parking space, or the equivalent of 3 children occupancy of the centre represented in Table 1 – General Off-Street Car Parking Requirements remains a minor departure, not considered to be of material impact to the operation or adequacy of the car parking provisions.

The above is also generally corroborated by the peer review of parking and traffic undertaken by Frank Siow & Associates. In the opinion of staff it has been adequately demonstrated that the layout, grades and access / egress matters regarding the car parking are satisfactory.

The Phil Weaver & Associates assessment provides a substantial level of detail regarding the previously un-addressed waste management for the site. The proposal now suggests waste will be collected on Johnston Street with a rear-lift rubbish truck of up to 10 metres in length. The applicant has proposed to create an indent in the footpath on Johnston Street and proposes the rubbish truck will straddle the entrance point to the undercroft car parking and the carriageway of Johnston Street.

The Frank Siow & Associates assessment corroborates the Phil Weaver & Associates assessment in regard to waste collection. The application has identified that it is not possible for waste management to occur within the bounds of the site. The applicant’s traffic assessment acknowledges the waste pick-up and exchange of receptacles, albeit expressed as being fairly brief in duration, will temporarily block Johnston Street.

Council staff have determined the waste collection associated with the proposal is at odds with the Planning and Design Code. A number of representations received during public notification identified the existing traffic situation on Johnston Street as highly pressurised and make note it is a narrow street and increasing traffic demand is a matter of substantial concern. Council engineering staff do not support the proposed waste pick up on Johnston Street nor the proposed footpath indent.

The proposal to have waste managed on the Johnston Street road reserve, as detailed in the Phil Weaver & Associates assessment and the Colby Phillips Advisory Waste Management Plan is considered to present new elements which are at variance with the following Assessment Provisions:

Design

All Development – External Appearance	
PO 1.2	<u>Where zero or minor setbacks are desirable, development provides shelter over footpaths (in the form of verandahs, awnings, canopies and the like, with adequate lighting) to positively contribute to the walkability, comfort and safety of the public realm.</u>

This element of the proposal does not positively contribute to maintaining the walkability and safety of the public realm on Johnston Street.

Transport, Access and Parking

Desired Outcomes	
DO1	A comprehensive, integrated and connected <u>transport system that is safe, sustainable, efficient, convenient</u> and accessible to all users.
Movement Systems	
PO 1.2	Development is designed to <u>discourage commercial and industrial vehicle movements through residential streets</u> and adjacent other sensitive receivers.
PO 1.4	Development is sited and designed <u>so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.</u>
Sightlines	
PO 2.1	Sightlines at intersections, <u>pedestrian and cycle crossings, and crossovers to allotments for motorists, cyclists and pedestrians are maintained or enhanced to ensure safety for all road users and pedestrians.</u>
Vehicle Parking Areas	
PO 6.6	<u>Loading areas and designated parking spaces for service vehicles are provided within the boundary of the site.</u>

With regard to the above assessment provisions and performance outcomes, the proposed waste management is considered to prejudice amenity and safety of the road reserve for vehicle access (to the undercroft car parking), for road users on Johnston Street by creating traffic movements around stationary, queued vehicles and the waste collection vehicle itself, and also for pedestrians utilising the footpath area, which will be encroached upon considerably by the indent.

The formation of the indent for the waste collection vehicle may also inadvertently lead to informal or unauthorised car parking.

The Transport, Access and Parking provisions provide direction that commercial traffic such as waste collection vehicles should be accommodated for loading and unloading within the site in order to avoid the kinds of traffic / road and pedestrian interfaces discussed above.

The Phil Weaver & Associates report and Colby Phillips Advisory Waste Management Plan identifies waste to be collected outside peak traffic hours, i.e. pick up between 9am - 3pm. It is suggested that this is of least impact for adjacent residential occupiers.

Also references have been made to the application to previous Planning Consent for the site in Development Application 18/760 which contemplated kerbside collection of consolidated domestic, household waste for the proposed 8 residential units. In fact waste pick up for that proposal did not progress to conditions and investigation with Council's waste staff detailed that the applicant was going to indulge in a privately owned forklift to wheel the bins to the kerbside once a week for the Council pick up. The proposal now being considered is trade waste, with rear-lift pick up of larger bins, multiple times a week and the applicant's argument is considered to be irrelevant to the current proposal. Further the former application lapsed, without progressing to Development Approval – and therefore such precedent is neither in effect, nor established.

Council sought independent traffic advice immediately following the March meeting and a review of the amended plans from MFY Traffic Engineers (*see attachment 9*). The April advice was provided to the applicant and there have been numerous communications in the ensuing months regarding waste pick up in particular. MFY has responded to the additional information. Their additional response can also be found in attachment 9. In summary MFY considers the parking shortfall minor however remain concerned with gradients within the parking area and considers the proposed waste pick up to be against road rules.

Further Council Engineering Referral Response

Council have reviewed the amended proposal with the following comment:

“I recommend that Council does not support this development, as the proposed waste collection strategy will have too big an impact on traffic on Johnston Street.

Johnston Street is a very busy road within Stirling's main commercial precinct, with over 4,000 vehicles per day. It features a solid white dividing line, which controls parking and overtaking along its length, which is required for road safety. The applicant proposes to collect 3 to 5 skip bins per week utilising private contractor who will have to stop on Johnston Street, blocking traffic for an estimated 3 minutes (applicant's estimate) at a time. During this time, no traffic heading eastbound will be able to pass, and will queue behind the private waste contractor's vehicle.

Whilst Council's own waste collection vehicle also blocks traffic, it is for a much lesser duration, much less frequent, and is well understood by the community.

The proposal of providing an indented area for the private waste contractor on Council road verge is also not supported. The indent will not be large enough to allow free flowing traffic on Johnston Street, but it will be large enough to negatively impact the existing footpath on Johnston Street. Further, there is a real risk that parents attending the childcare centre will try and use the indent as an informal drop zone, adding to congestion on Johnston Street.

All other commercial developments in Stirling that utilise private waste contractors accommodate waste collection within their own site/ private property, and there are no known precedents within Adelaide Hills Council of a development requiring the temporary closure/ obstruction of a full lane of traffic for waste collection by private contractor. On this basis the development should be refused.”

The restricted hours of waste collection are not considered to be a mitigating factor as the proposed development has already identified that a proportion of traffic movement occurs ‘spread across the day’, and includes staff changeover and breaks in the middle of the day, unlike schools and kindergartens *for instance*, which have tightly defined peak traffic times which coincide with the commencement and the completion of normal school hours and the associated traffic demand for drop-off and pick-ups respectively.

The proposed short, 3 minute duration for collection of the waste bins from the undercroft bin enclosure, manual conveyance to the kerbside area, pick-up, set-down and return of the bins to the enclosure is considered to be ambitious, and it is noted that within this duration, Johnston Street traffic is substantially restricted, particularly traffic moving to the east. Additionally, the entrance to the proposed child care centre is completely obstructed during this collection time.

The assessment of the traffic impacts of the proposed kerbside waste collection does not appear to have been modelled with the existing traffic movements on Johnston Street and the new traffic movements from the proposed centre in the SIDRA analysis of traffic impacts.

The proposed traffic impacts in respect of the waste management plan, is not considered to be appropriate and is considered to be at variance with the Code in this instance in relation to the roads, traffic and locality elements of the assessment.

Waste Management

3) Preparation and provision of a Waste Management Plan which considers storage capacity, location and collection times.

The applicant has provided a Waste Management Plan, prepared by Colby Phillips Advisory, consultants in waste management. The proposal as pre-empted above presents a plan for collection of waste at the Johnston Street frontage, using a rear-lift collection vehicle, and 1100 litre rolling bins, brought to the kerbside for collection. The applicant first proposed street pick up in late April and numerous advices have been conveyed to them that Council would not support street pick up.

The proposal also included the requirement for an indent to be formed in the Johnston Street road reserve (incursion into the existing footpath area) for the waste collection vehicle to operate without completely blocking the passage of traffic on Johnston Street. Council engineering advice is that the flow of traffic on Johnston Street would be considerably impacted by the waste collection vehicle in this manner and may promote unsafe passing around the stationary waste collection vehicle.

Comparisons are also drawn between the proposed development's waste management requirements and another of Paisley Park Early Learning Centre's facility at Hallett Cove, which is considered comparable with a maximum occupancy of 95 children.

A basic visual assessment of the Hallett Cove facilities identifies that the site comprises:

- A large land holding with a total area of over 2300m² which is almost three times the land area of the Stirling site
- Single storey facilities on a relatively flat site with three road frontages and broad street verges, and
- Almost 500m² of outdoor open space / yard areas

Waste management requirements are considered to be reasonably equitable between the proposed development and the example given at Hallett Cove. However notably, the Hallett Cove site manages food waste recycling on-site, which appears to be a reasonable probability with the extent of outdoor open space and yard area, which is not equivalent to the Stirling site – and accordingly, the waste management plan identifies that *small amounts of food waste is to be composted on site as part of the learning experience for children, with any residual food waste can be disposed via Council's kerbside collection service.*

The Waste Management Plan also identifies a difference in the collection of mixed recyclables where the proposed development will also be reliant on Council kerbside collection services, with cardboard recycling being managed separately.

Tables 2.1 and 2.2 (Page 2) within the Waste Management Plan identifies the schedules for waste collection, and notwithstanding the comparison between the facility at Hallett Cove, the tables make it clear that the combined reliance on private waste removal contractors and Council's municipal waste collection services, results in twice the frequency of 'General waste' removal from the site (one 1100 litre bin, twice weekly) with an additional occasion (one 1100 litre bin, once weekly) for removal of cardboard waste, and stated one fortnightly collection of one 240 L bin for Mixed Recycling and one 240 litre bin for food waste by Council, noting Council collection is weekly.

A discrepancy may exist in the latter two (mixed recycling and food waste) figures as these are not comparable to the established waste management indicated for the Hallett Cove facility – i.e. collection once weekly for mixed recycling would more closely reflect the division of cardboard (80%) and other mixed recyclables (20%) being managed, and the collection schedule for food waste, once fortnightly, is considered insufficient, in respect of maintaining stored food waste for that duration. – Given the procedural submission for Deemed Consent by the

applicant, there has not been a further opportunity to revisit these matters or request further information and seek clarification.

The March 2022 CAP Staff Report identified also that:

A notable omission of the proposal is the capacity for bin storage either at the first storey (appurtenant to the kitchen area and rampway to the street frontage) or proximate to the lift shaft to facilitate exchange of full and empty bins and containment to avoid odours or other amenity impacts) and whilst a small, temperature controlled room would be desirable for waste management, unless the applicant were obliging with a varied plan, it is considered appropriate that conditions should be applied in respect of waste management particularly in consideration of the nature and volume of potentially offensive waste which could be generated from the land use.

The storage of food waste in an uncontrolled environment is not considered satisfactory and this aspect of the development is considered to be at odds with the following Assessment Provisions and Performance objectives of the Code:

Interface Between Land Uses

Desired Outcome	
DO 1	Development is located and <u>designed to mitigate adverse effects on or from neighbouring and proximate land uses.</u>

Design in Urban Areas

Site Facilities / Waste Storage (excluding low rise residential development)	
PO 11.1	<u>Development provides a dedicated area for on-site collection and sorting of recyclable materials and refuse, green organic waste and wash bay facilities for the ongoing maintenance of bins that is adequate in size considering the number and nature of the activities they will serve and the frequency of collection.</u>

Overshadowing

4) Consideration of built form in terms of overshadowing.

The applicant has provided Shadow Diagrams prepared by URPS Planning Consultants, which identify the winter solstice access / overshadowing impacts from the proposed development in plain view at 9:00, 12:00 noon & 15:00, and in oblique view of the affected land adjacent to the east, at 16 Johnston Street.

The site shadow diagrams are considered to adequately demonstrate the extent of shadowing, and confirms the proposal satisfactorily accords with:

- *General Development Policies, Design, Environmental Performance, PO 4.1* in respect of solar access and ventilation to main activity areas, habitable rooms, common areas and open spaces, and
- *Interface Between Land Uses, Overshadowing PO 3.1(b) /DPF 3.1* – affording greater than 3 hours of direct solar access between 9:00 and 15:00 on 21 June (winter solstice), and
- *Interface Between Land Uses, Overshadowing PO 3.2(b)* – affording greater than 2 hours of direct solar access between 9:00 and 15:00 on 21 June (winter solstice) to the outdoor open space areas of the adjoining

land (*notwithstanding the DPF 3.2 values do not apply as the adjacent land is not within a neighbourhood-type zone*).

The adjacent dwelling does not exhibit any roof mounted photovoltaic solar energy systems (in respect of *Interface Between Land Uses, Overshadowing PO 3.3*), and in any case the upper level roofline of the dwelling at 16 Johnston Street is not shadowed from 9:00 onwards, under winter solar conditions (and the lower roofline is not affected beyond 12noon) as demonstrated by the shadow diagrams. Accordingly, any potential future solar installations would not be impacted.

The solar access and overshadowing detail is considered to appropriately satisfy the relevant assessment provisions and performance provisions of the Code.

CONCLUSION

The assessment of the proposal by 14 Johnston Pty. Ltd. at 14 Johnston Street, Stirling to develop the subject land within the Suburban Main Street Zone for a new preschool and childcare facility, comprising a three-storey building and undercroft car parking and associated landscaping, is a form of commercial development which is encouraged in the Zone.

The applicant has provided extensive additional and new information and documentation in support of the proposal in response to the matters raised by the Assessment Panel at its March meeting.

Additional information in respect of environmental noise impacts, general operational traffic and parking and the solar access / overshadowing detail generally supports the proposal and verifies adequacy of the proposal's various relevant elements, including revised plans addressing some key issues – i.e. undercroft parking and new acoustic barriers to attenuate noise outfall.

The on-site car-parking remains closely in accord with the Code provisions at maximum occupancy with the departure of 0.75 car parks considered to a minor departure which would not compromise the proposal.

The proposal has however presented new information in respect of waste management and traffic impacts resulting from the intended waste management plan involving on-street collection by private contractors. This aspect of the proposal is considered to present serious concerns in respect of the efficient operation and safety of traffic on Johnston Street for road users, including pedestrians and cyclists. Council engineering has advised the proposal will exacerbate the existing traffic flow and safety matters, which are also identified as concerns in the submissions made during public notification.

The proposal has also further varied its overall height and bulk in response particularly to the parking requirements and the car-stackers. The resultant building height further departs from the building height provisions for this locality in the Suburban Main Street Zone. Where previously a minor 400mm height departure was proposed, this has now increased the building to more than 1.2 metres over the prescribed building height limit. It is acknowledged that the site contour had already been considered in respect of concealing the three-storey design within a locality that supports buildings to a maximum of two-levels but the building height departure is now substantial at 1.2 metres.

The representors' concerns have been given considerable regard in this and in the previous assessment and are considered to be relevant in consideration of the new information in respect of traffic impacts and the corresponding impacts from the waste collection at the street frontage.

The compounding and accentuated departures that have materialised through the further documentation and information provided are considered to be matters of road safety and building height variance as identified within

this report. In this regard the proposal is at variance with the Assessment Provisions and performance values of the Code for transport movement and waste service vehicle loading/unloading and building height.

The applicant has sought a ‘Deemed Consent’ for the application. This has resulted in a limited window of opportunity to report to the relevant planning authority (Council’s Assessment Panel), to engage with the applicant on the identified issues. The revised proposal is considered to be at variance with the Planning and Design Code and maintains serious and unresolved issues. As such it is recommended by planning staff that Planning Consent be REFUSED pursuant to Section 125 (6)(b), and that the Council Assessment Panel apply to the Environment Resource and Development Court to have the deemed planning consent quashed and Development Application 21031474 refused.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1) Having:

- i) received a deemed consent notice dated 21 June 2022 in relation to Development Application 21031474, by 14 JOHNSTON PTY LTD, for construction of a three-level childcare centre (pre-school) with ancillary car parking, outdoor play areas and landscaping at 14 Johnston Street, Stirling; and
- ii) undertaken an assessment of Development Application 21031474 (including its subsequent amendments and additional information/documentation) against the Planning and Design code

an application be made to the Environment, Resources and Development Court for an order quashing the Deemed Planning Consent.

2) The reasons the Council Assessment Panel considers that Development Application 21031474 should have been refused Planning Consent include the following:

The proposed development is at variance with the following Planning & Development Code Assessment Provisions (AP) , Desired Outcomes (DO) and Performance Outcome (PO/Designated Performance Feature (DPF) Values:

Design

All Development – External Appearance	
PO 1.2	<u>Where zero or minor setbacks are desirable, development provides shelter over footpaths (in the form of verandahs, awnings, canopies and the like, with adequate lighting) to positively contribute to the walkability, comfort and safety of the public realm.</u>

- The proposed footpath indent for waste pick up will not create a safe and walkable public realm space.

Transport, Access and Parking

Desired Outcomes	
DO1	<u>A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.</u>
Movement Systems	
PO 1.2	<u>Development is designed to discourage commercial and industrial vehicle movements through residential streets and adjacent other sensitive receivers.</u>

PO 1.4	Development is sited and designed so that <u>loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.</u>
Sightlines	
PO 2.1	<u>Sightlines at intersections, pedestrian and cycle crossings, and crossovers to allotments for motorists, cyclists and pedestrians are maintained or enhanced to ensure safety for all road users and pedestrians.</u>
Vehicle Parking Areas	
PO 6.6	<u>Loading areas and designated parking spaces for service vehicles are provided within the boundary of the site.</u>

- The proposed waste pick up on Johnston Street is not considered safe, efficient or convenient in terms of general road users.
- The proposed waste pick up will increase the number of large vehicle movements on a largely residential street.
- The proposed waste pick up will interrupt the operation of and queuing on Johnston Street and will impact on pedestrian paths.
- The proposed waste pick up will interfere with sight lines on Johnston Street and will not maintain or enhance safety for all road users and pedestrians on Johnston Street.
- The proposal does not provide loading areas and parking spaces for service (waste) vehicles within the boundary of the site.

Interface Between Land Uses

Desired Outcome	
DO 1	Development is located and <u>designed to mitigate adverse effects on or from neighbouring and proximate land uses.</u>

- The proposal will impact on adjacent residential properties adversely with the proposed private kerbside waste pickup.

Design in Urban Areas

Site Facilities / Waste Storage (excluding low rise residential development)	
PO 11.1	<u>Development provides a dedicated area for on-site collection and sorting of recyclable materials and refuse, green organic waste and wash bay facilities for the ongoing maintenance of bins that is adequate in size considering the number and nature of the activities they will serve and the frequency of collection.</u>

- The proposal does not have a dedicated area for onsite collection of waste.

Zone

Suburban Main Street Zone					
PO 3.11	<p>Building height consistent with the form expressed in any relevant Maximum Building Height (Levels) Technical and Numeric Variation and Maximum Building Height (Metres) Technical and Numeric Variation, and otherwise low-to-medium rise, where the height is commensurate with the development site's frontage and depth as well as the main street width, to complement the main street character.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">Maximum Building Height (Metres)</td> </tr> <tr> <td style="text-align: center;">Maximum building height is 10m</td> </tr> <tr> <td style="text-align: center;">Maximum Building Height (Levels)</td> </tr> <tr> <td style="text-align: center;">Maximum building height is 2 levels</td> </tr> </table>	Maximum Building Height (Metres)	Maximum building height is 10m	Maximum Building Height (Levels)	Maximum building height is 2 levels
Maximum Building Height (Metres)					
Maximum building height is 10m					
Maximum Building Height (Levels)					
Maximum building height is 2 levels					

- The proposed building exceeds the maximum building height by one level and is greater than 10metres in height.

AND:

- 3) The Assessment Manager is directed to engage Council’s lawyers to make an application under Section 125(6) of the *Planning, Development and Infrastructure Act 2016* to the Environment, Resources & Development Court.

OFFICER MAKING RECOMMENDATION

Name: Melanie Scott & Aaron Wilksch
Title: Senior Statutory Planner/ Consultant Planner