

# SYDNEY WESTERN CITY PLANNING PANEL

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSWC-319
<b>DA Number</b>	DA-19/2023
<b>Local Government Area</b>	Liverpool City Council
<b>Proposed Development</b>	Demolition of existing structures and construction of a three-storey centre-based child care facility over basement car parking accommodating 124 children
<b>Street Address</b>	Lots 1 & 2 in DP 1058859 73 Lachlan Street, Warwick Farm
<b>Applicant</b>	FLDC Pty Ltd
<b>Owner</b>	Ben Nicholas Clint Biggs Robert Noyes
<b>Date of DA Lodgement</b>	11 January 2023
<b>Application Type</b>	Development Application
<b>Capital Investment Value (CIV)</b>	\$5,500,000 (including GST)
<b>Regionally Significant Development Criteria</b>	Clause 5, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Private Infrastructure and community facilities over \$5 million
<b>Key Planning Instruments</b>	<ul style="list-style-type: none"><li>• Education and Care National Regulations</li><li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li><li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li><li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li><li>• Liverpool Local Environmental Plan 2008</li><li>• Child Care Planning Guideline (September 2021)</li><li>• Liverpool Development Control Plan 2008</li></ul>
<b>Submissions Received / Key Issues Raised</b>	2 individual submissions received (one containing a petition with 4 signatories), raising the following concerns: <ul style="list-style-type: none"><li>• Visual and acoustic privacy</li><li>• Traffic and parking impacts</li><li>• Flooding</li><li>• Waste collection</li></ul>
<b>Documents submitted for consideration</b>	<ol style="list-style-type: none"><li>1. Architectural plans TRIM 007603.2023, 007604.2023, 007608.2023, 007609.2023, 007613.2023, 007614.2023, 007615.2023,</li><li>2. Landscape plans TRIM 007607.2023 and 007606.2023</li><li>3. Stormwater drainage plans TRIM 007617.2023</li><li>4. Survey plan TRIM 007618.2023</li></ol>

	5. Statement of Environmental Effects TRIM 007616.2023 6. Acoustic Report TRIM 007597.2023 7. Waste Management Plan TRIM 007620.2023 8. Contamination Report TRIM 007601.2023 9. Design Excellence Panel Comments TRIM 177582.2023 10. PPSWC Briefing Note 212268.2023 & 383793.2023 11. Statement of Facts and Contentions TRIM 243195.2023 12. Draft Reasons for Refusal TRIM 416788.2023 13. Compliance Assessment (SEPP, LEP, DCP, Child Care Planning Guidelines, National Regulations) TRIM 416808.2023
<b>Recommendation</b>	Refusal
<b>Draft Reasons of Refusal</b>	Yes
<b>Prepared by</b>	Nelson Mu Fineline Planning & Design on behalf of Liverpool Council
<b>Date of Report</b>	17 November 2023

## 1. EXECUTIVE SUMMARY

The development application (DA-19/2023) seeks consent for the demolition of existing structures and construction of a three-storey centre-based child care facility over basement level car parking accommodating 124 children.

The subject site is legally described as Lots 1 & 2 in DP 1058859, and is known as No. 73 Lachlan Street, Warwick Farm. The site is triangular in shape with a total area of approximately 1,150m<sup>2</sup>. The site has two frontages, with Sydney Road (Hume Highway) to the north and Lachlan Street to the south. Both pedestrian and vehicular access is via Lachlan Street.

Existing development on the site comprises a single-storey rendered dwelling house with a metal roof on the western portion, and a two-storey weatherboard and fibro dwelling house on the eastern portion. The site also includes ancillary outbuildings and a swimming pool toward the rear.

The site is located on the northern periphery of the Liverpool Town Centre and is zoned R4 High Density Residential. The proposed child care centre development is permitted on the site pursuant to the Liverpool Local Environmental Plan 2008.

The application was placed on public exhibition from 22 March 2023 to 6 April 2023. A total of 2 individual submissions were received, one of which contained a petition with 4 signatories. The submissions object to the development on the grounds of visual and acoustic privacy, traffic and parking impacts, flooding and waste collection. These issues are considered further in this report.

The application is referred to the Sydney South West City Planning Panel as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 6 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is a child care centre with a CIV over \$5 million.

The key issues associated with the proposal include:

1. **Concurrence from Regulatory Authority** – The proposal requires concurrence from the Regulatory Authority (ACECQA) as the outdoor play areas are enclosed and do not constitute outdoor space (Section 3.22 of SEPP (Transport and Infrastructure) 2021).
2. **Building Separation** – Clause 7.4 (2)(a) of the Liverpool LEP 2008 requires a building separation of 9 metres for buildings exceeding a height of 12 metres. A separation of only 5 metres to the eastern-adjoint building has been provided. A Clause 4.6 variation request has not been provided to assess the variation.
3. **Parking** – The proposal requires the provision of 33 parking spaces, whilst only 28 parking spaces are provided. There is also no parking space provided for the purposes of servicing or deliveries. Additionally, the shared zones associated with the proposed accessible parking spaces are not provided with compliant width (i.e., 2.4 metres required).
4. **Front and Rear Setbacks** – The proposal does not comply with the required setbacks to both Sydney Road (Hume Highway) and Lachlan Street. The required setback to Sydney Road is an 8m landscaped setback, however, the proposal provides a setback ranging from 1.3m to 4.7m. The required setback to Lachlan Street is a 4.5m landscaped setback, however, the proposal provides a setback ranging from 1.2m to 6m.
5. **Side Setbacks** – Whilst a 3m side setback to the eastern boundary might be considered appropriate having regard to ADG building separation and solar access requirements, it is noted that Cl. 7.4 of the LLEP 2008 requires a 9m separation between buildings.  
  
The proposal also includes a fire stair with a zero setback to the eastern boundary. An easement for maintenance purposes would need to be created in this instance, which would require the consent of the neighbouring property owner.
6. **Deep Soil Zones and Site Cover** – The maximum site cover permitted is 60%, which equates to 690m<sup>2</sup>. The basement level has a footprint of 842m<sup>2</sup>, which equates to a site cover of 73%.
7. **Site Isolation** – The proposed development has the potential to isolate the adjoining site to the east (No. 71 Lachlan Street), as the development would leave the adjoining site with a width of only 21.37m, which would not meet the required 24m as per Cl. 7.14(2)(b) of the LLEP 2008 for any building greater than 2 storeys on land in the R4 High Density Residential zone.
8. **Acoustic Barrier** – The accompanying acoustic report recommends the erection of a 2.1m high continuous barrier along the boundary to Sydney Road (Hume Highway), which would present poorly to this main road.

**Further details are provided in the Key Issues section of this report.**

Other issues revolve around insufficient information submitted to enable a thorough assessment of the application, specifically: a Social Impact Assessment was requested; further details with respect to the Detailed Site Investigation, Acoustic Assessment, Air Quality Assessment and Plan of Management were requested; further details surrounding the proposed site boundary fencing were requested; further information with respect to the proposed stormwater drainage system was requested; and an Arborist Report was also requested with respect to the proposed removal of trees.

The applicant was issued with a Request for Additional Information letter on 26 June 2023 outlining all the issues raised above. The applicant has not responded to the issues raised, and on 28 June 2023, a Class 1 Appeal was lodged with the Land and Environment Court for the deemed refusal of the development application. The matter is listed for a s.34 Conciliation Conference on 23 January 2024.

Having regard to the matters for consideration under Section 4.15(1) of the EP&A Act, in particular 4.15(1)(a), (b), (c), (d) & (e), the proposal is unable to be supported. Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA-19/2023 is recommended for refusal subject to the reasons contained at **Attachment 14** of this report.

## 2. SITE DESCRIPTION AND LOCALITY

The subject site is legally described as Lots 1 & 2 in DP 1058859, and is known as No. 73 Lachlan Street, Warwick Farm. The site is triangular in shape with a total area of approximately 1,150m<sup>2</sup>. The site has two frontages, with Sydney Road (Hume Highway) to the north and Lachlan Street to the south. Both pedestrian and vehicular access is via Lachlan Street.

Existing developmet on the site comprises a single storey rendered dwelling house with a metal roof on the western portion, and a two-storey weatherboard and fibro dwelling house on the eastern portion. The site also includes ancillary outbuildings and a swimming pool toward the rear.

The site is surrounded by residential properties. The eastern-adjointing property contains a single-storey dwelling house and the properties to its east are also single-storey dwelling houses. Located on the opposite side of Lachlan Street are multi-level residential apartment buildings.

The site is located on the northern periphery of the Liverpool Town Centre and is zoned R4 High Density Residential. The area is in transition from one and two-storey detached dwelling houses to multi-level residential apartment buildings as envisaged within the Liverpool LEP & DCP.

Street view photos of the site and surrounding area are provided below, as well as an aerial photo and an extract of the Liverpool LEP 2008 land zoning map.



**Figure 1:** Street view of subject site – western-most dwelling and structures  
(Source – Google Maps: 2023)





**Figure 2:** Street view of subject site – eastern-most dwelling and structures  
(Source – Google Maps: 2023)

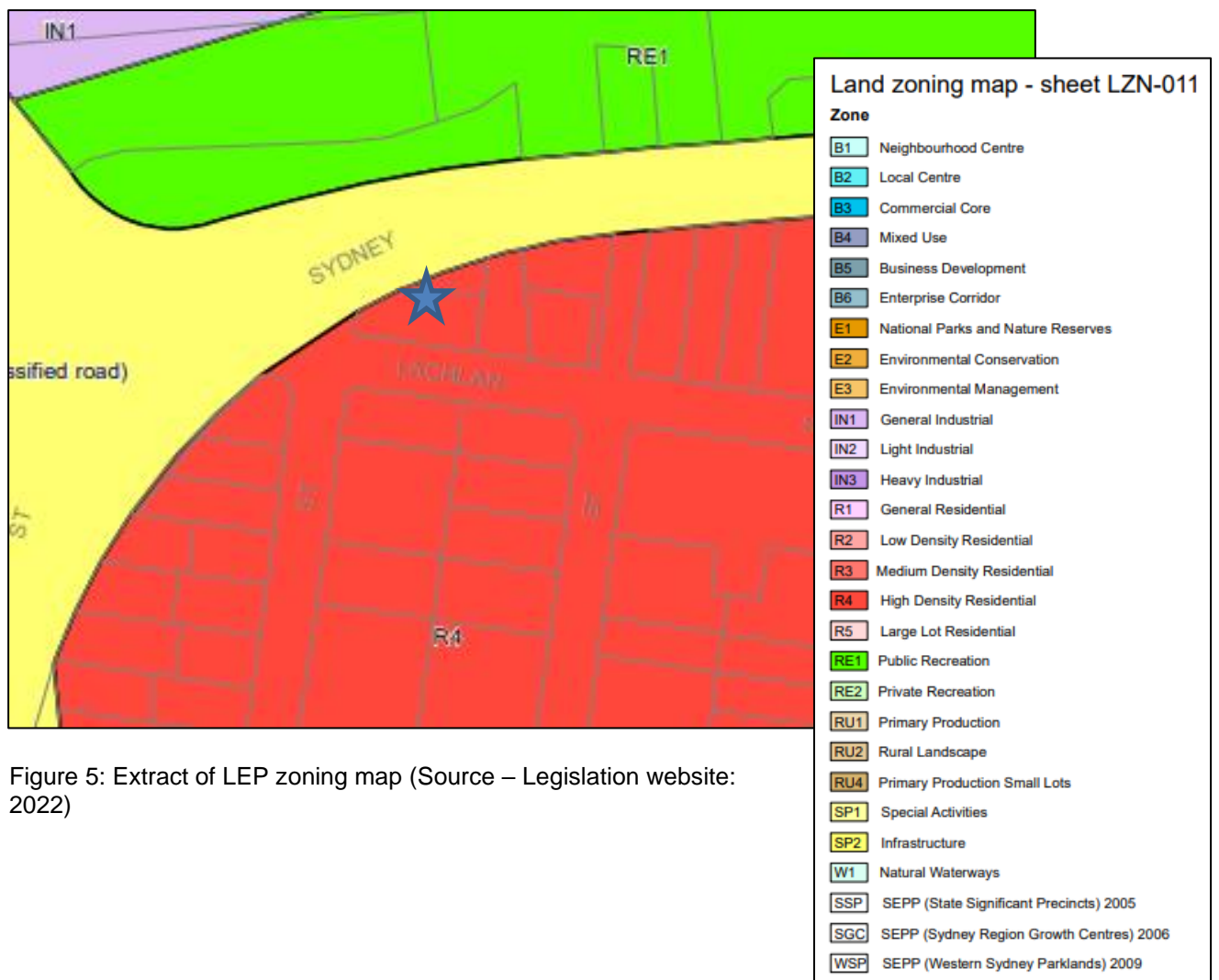


**Figure 3:** Aerial photograph of the site (Source – Six Maps: 2023)





**Figure 4:** Street view of immediate area facing east along Lachlan Street  
(Source – Google Maps: 2023)



**Figure 5:** Extract of LEP zoning map (Source – Legislation website: 2022)

### 3. BACKGROUND

#### 3.1 Development Application History

- Development Application No. DA-19-2023 was lodged with Council on 11 January 2023.
- On 23 January 2023, Council requested the submission of additional information relating to site contamination and the removal of vegetation.
- On 3 February 2023, Council issued stop-the-clock correspondence.
- On 22 March 2023, Council referred the development application to the following external authorities:
  - Transport for NSW ('TfNSW')
  - Sydney Water
- The development application was placed on public exhibition from 22 March 2023 until 6 April 2023. Two (2) submissions were received in response to the public consultation process.
- On 12 May 2023, Council referred the application to the Department of Education for Concurrence with respect to the provision of 'outdoor space'.
- On 11 May 2023, the application was considered by the Liverpool Design Excellence Panel.
- On 26 June 2023, Council issued a Request For Additional Information (RFI) letter outlining all matters of concern.
- On 28 June 2023, a Class 1 Appeal for the deemed refusal of the development application was lodged with the Land and Environment Court.

#### 3.2 Design Excellence Panel

The application was referred to the Liverpool Design Excellence Panel for review as the site is located within the Liverpool Town Centre (Cl. 7.5 of LLEP 2008). Minutes of the Panel meeting are provided at Attachment 11. The Panel were unsupportive of the proposal having regard to a number of design considerations. In conclusion, the Panel noted the following:

*The Panel has not fully commented on several other architectural design, aesthetics, and NCC-compliance issues within the scheme considering these are lower-order issues in comparison with more fundamental issues which must be addressed as a priority.*

*The Panel considers the proposal, in its current form and configuration is not supported as it does not meet the standards or architecture, urban design, landscape design and amenity expected for achieving design excellence for a childcare centre within the Liverpool local government area.*

*The applicant should consider alternative site planning and urban design strategies to ensure that the childcare centre closely aligns with Council's 'community' aspirations, rather than a built form driven by a child space maximisation rationale at the expense of all else. If you are to persist with a childcare centre on this site, indoor and outdoor amenity for the children, pedestrian access and movement, indoor comfort, solar*

*access, air quality, noise attenuation, and concurrently landscape design (ie: design excellence in all its forms) are required to be at the heart of the proposal.*

### **3.2 Class 1 Appeal**

- On 28 June 2023, the Applicant lodged a Class 1 Appeal in the Land and Environment Court for the deemed refusal of the Development Application.
- A Statement of Facts and Contentions (SOFAC) was filed with the Court on 4 August 2023.
- A Section 34 conciliation conference is scheduled for 23 January 2024.
- The applicant has submitted a preliminary 'Without Prejudice' plan for discussions with Council. The Council has provided comments that the plans do not address the contentions in these proceedings. Should further amended plans be submitted either at or prior to the conciliation conference, the likely timeframe to resolve all contentions is estimated at 4 – 6 weeks.

## **4. DETAILS OF THE PROPOSAL**

The application seeks approval for the following:

- Demolition of existing structures and the construction of a three-storey centre-based child care facility over basement carpark accommodating 124 children.
- The proposed facility will cater for the following number of children:
  - 24 children: 0-2 years old
  - 40 children: 2-3 years old
  - 60 children: 3-6 years old
- The proposed hours of operation are from 7.00am to 6.00pm, Monday to Friday.
- A total of 20 staff are proposed to be employed.
- Two (2) levels of basement car parking provides for a total of 28 car parking spaces (comprising 16 staff and 12 visitor parking spaces) including 2 accessible parking spaces.

The general building arrangement of the proposal is detailed as follows:

### **Basement level 2**

- Sixteen (16) car spaces for staff including 1 accessible car space
- Services room, lift and stair access

### **Basement level 1**

- Twelve (12) car spaces for visitors including 1 accessible car space
- Storage room, lift and stair access

### **Ground floor level**



- Four (4) indoor play spaces for 44 children (ages 0-2 and 2-3)
- Outdoor play space consisting of 352m<sup>2</sup> of natural landscaped area
- Main pedestrian entrance to facility
- Vehicular access to basement
- Accessible bathroom, laundry, kitchen
- External stair access to upper levels
- lift and stair access
- Waste storage area
- Landscaped area within front, side and rear setback areas

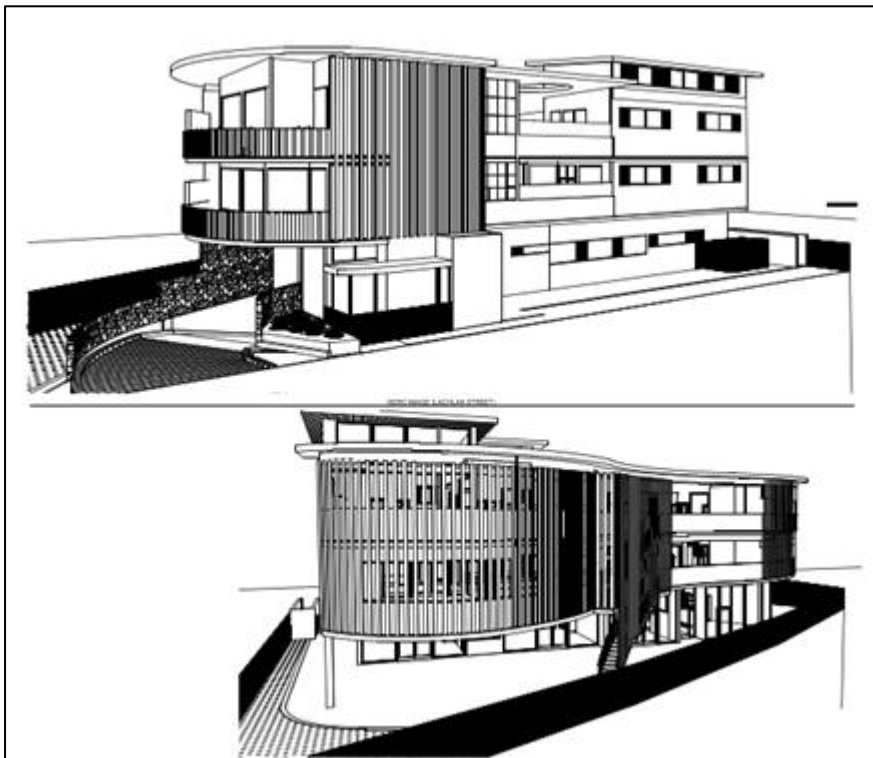
#### Level 1

- Three (3) indoor play spaces for 40 children (ages 2-3 and 3-6)
- Simulated outdoor play space consisting of 316.55m<sup>2</sup> of play area
- Foyer, staff room, office, educational room, W/C and accessible bathroom
- External stair access to upper and lower levels
- Lift and stair access

#### level 2

- Two (2) indoor play spaces for 40 children (ages 3-6)
- Simulated outdoor play space consisting of 334.22m<sup>2</sup> of play area
- Foyer, staff room, office, educational room, W/C and accessible bathroom
- External stair access to upper and lower levels
- Lift and stair access

The submitted architectural and landscape plans are provided at **Attachments 1 & 2**. Elevations of the proposal are provided below at Figure 6.



**Figure 6:** Elevations (Source – FLDC Architects: 2023)

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

#### 5.1.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application.

- Education and Care National Regulations
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Liverpool Local Environmental Plan 2008
- Child Care Planning Guidelines (September 2021)
- Liverpool Development Control Plan 2008

A summary of the key matters for consideration arising from the above statutory instruments is outlined in the table below.

**Table 1: Summary of Applicable Statutory Instruments**

Instrument	Matters for Consideration	Complies (Y/N)
Education and Care National Regulations	Regulation 108 (outdoor unencumbered space requirements)	N
SEPP (Resilience and Hazards) 2021	Chapter 4: Remediation of Land <ul style="list-style-type: none"><li>• Section 4.6 – Contamination and remediation have been considered in the Detailed Site Investigation Report. However, Further detail was requested.</li></ul>	N
SEPP (Biodiversity and Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none"><li>• The proposal does not exceed the biodiversity offsets scheme threshold.</li></ul>	Y
	Chapter 6: Water Catchments <ul style="list-style-type: none"><li>• The proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to promote the protection of the Georges River Catchment.</li></ul>	Y
SEPP (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"><li>• Clause 2.119 – Development with frontage to a classified road<ul style="list-style-type: none"><li>- Vehicular and pedestrian via Lachlan Street. No impact to operation of the Classified Road.</li></ul></li></ul>	Y

	<ul style="list-style-type: none"> <li>- An air quality assessment was undertaken, however, further detail was requested.</li> </ul>	N
	<ul style="list-style-type: none"> <li>• Clause 2.120 – Impact of road noise or vibration on non-road development               <ul style="list-style-type: none"> <li>- An acoustic assessment was undertaken, however, further detail was requested.</li> </ul> </li> </ul>	N
	<ul style="list-style-type: none"> <li>• Clause 3 – Educational establishments and child care facilities               <ul style="list-style-type: none"> <li>- Concurrence is required from regulatory authority with respect to outdoor unencumbered space requirements.</li> <li>- The proposal does not meet all the requirements of the Child Care Planning Guideline (September 2021) (Refer to <b>Attachment 15</b> for a full assessment).</li> </ul> </li> </ul>	N
Liverpool LEP 2008	Part 2.2: Permitted or Prohibited Development <ul style="list-style-type: none"> <li>• Child care centres are permitted with consent in the R4 High Density Residential Zone.</li> </ul> Cl. 7.4: Building Separation in Liverpool City Centre <ul style="list-style-type: none"> <li>• The required 9m separation between buildings is not provided.</li> </ul> Cl. 7.5: Design Excellence in Liverpool City Centre <ul style="list-style-type: none"> <li>• It is considered that the proposal does not achieve design excellence.</li> </ul>	Y
		N
		N
Child Care Planning Guideline (September 2021)	As noted above, the proposal does not meet all the requirements of the Child Care Planning Guideline (Refer to <b>Attachment 15</b> for a full assessment).	N
Liverpool DCP 2008	The proposal does not demonstrate full compliance with the relevant sections of the Liverpool DCP 2008. (Refer to <b>Attachment 15</b> for a full assessment).	N

The proposal is considered to be inconsistent with a number of SEPPs, as well as the LEP, DCP.

#### 5.1.2 Section 4.15(1)(a)(iv) - Provisions of Regulations

Part 4, Division 1 of the EP&A Regulation 2021 contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- i. Demolition – Compliance with AS 2601
- ii. Compliance with the Building Code of Australia

Should approval be granted, appropriate conditions covering each stage of the development will be imposed with regard to the above provisions.

### 5.1.3 Section 4.15(1)(b) – Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

Accordingly, it is considered that the proposal will result in significant adverse impacts to the immediate locality, as discussed in greater detail below.

### 5.1.4 Section 4.15(1)(c) – Suitability of the Site

Having regard to the deficiencies that result from the proposed design, it is considered that the size and shape of the site is unsuitable. Whilst a child care centre is permitted on this site, the site itself, having regard to its physical limitations, may not be appropriate for the proposed built form, which among other things, results in non-compliant setbacks, building separation, site cover and parking.

Further, the proximity of the site to a Classified Road, means that a large proportion of the proposed outdoor space is required to be fully enclosed so that traffic noise from the Classified Road can be ameliorated. Such an impact is either a result of an inappropriate locality, or of an attempt to maximise the number of children through a multi-level design, as noted by the Design Excellence Panel.

Having regard to the limitations of the site itself, the location of the site, and the deficiencies that result from the proposed design, it is considered that the site is not suitable for the proposed development.

### 5.1.5 Section 4.15(1)(d) – Public submissions

During the period of public exhibition, which was undertaken for a period of fourteen (14) days from 22 March 2023 to April 2023, two (2) submissions were received, with one including a petition with 4 signatories. The concerns raised include visual and acoustic privacy, traffic and parking impacts, flooding and waste collection. These issues are considered below within the Key Issues section of this report.

### 5.1.6 Section 4.15(1)(e) – Public Interest

On balance, the proposal is considered to be contrary to the public interest.

## 6. REFERRALS AND SUBMISSIONS

### 6.1 Agency Referrals and Concurrence

Agency	Concurrence / Referral Trigger	Comments (Issue, Resolution, Conditions)	Resolved
Transport for NSW	Comments required with regard to proximity to Classified Road.	No issues raised	Y
Sydney Water	S.78 Sydney Water Act 1994	No issues raised	Y
Design Excellence Panel (DEP)	Cl. 7.5 Liverpool LEP 2008	Issues raised (Refer to <b>Attachment 13</b> ).	N



Department of Education	S. 3.22 of SEPP (Transport & Infrastructure.	Concurrence from ACECQA required as the outdoor play areas are undercover / enclosed and do not constitute an outdoor space. Further information has been requested by the Department of Education to complete their referral however, clarification of the nature of what is required is still to be determined. Further attempts to finalise this referral will be made. It is noted that this issue is not the only reason for the refusal of the application.	N
-------------------------	--	---	---

## 6.2 Council Officer Referrals

Officer	Comments	Resolved
Traffic Engineer	<ul style="list-style-type: none"> <li>The Transport Management Team recommend deferral of the application to address the parking provision shortfall and provide 33 car parking spaces (13 for visitors and 20 for staff) and 4 bicycle parking spaces, as required by the DCP.</li> </ul> <p>Note: The 20 staff are required to meet National Regulations – this does not include any ancillary staff which need to be accounted for.</p> <ul style="list-style-type: none"> <li>The shared space width adjacent to the accessible parking space does not comply with the AS2890.6 (requirement of 2.4m).</li> </ul>	<p>N</p> <p>N</p>
Land Development Engineering	<ul style="list-style-type: none"> <li>Vehicular crossing location within the Council reserve shall be shown on the plans and required minimum clearances provided to existing services.</li> <li>CBD paving shall be shown on the plans (stormwater, landscape and architectural) for the full site frontage including Sydney Road frontage.</li> </ul>	<p>N</p> <p>N</p>
Community Planning	<ul style="list-style-type: none"> <li>SIA requested to be submitted analysing local needs and potential impacts of the proposed development on the community. Details of the SIA requirements are in LCC SIA Policy &amp; Guidelines (updated March 2023).</li> <li>Application to demonstrate how the proposed development fulfill the requirements of DCP and Childcare Planning Guidelines.</li> <li>Section 3.6, C27 of the NSW Childcare Planning Guideline states: <i>locate childcare facilities on sites which avoid or</i></li> </ul>	<p>N</p> <p>N</p> <p>N</p>

	<p><i>minimise the potential impact of external sources of air pollution such as major roads and industrial development.</i></p> <ul style="list-style-type: none"> <li>The site location and surrounding development do not support the 'exceptional circumstances' evidence to justify the simulated upper floor outdoor play area. Are there any alternate designs?</li> </ul>	N
Tree Removal	<ul style="list-style-type: none"> <li>Tree removal proposed, however, no arborist report submitted.</li> </ul>	N
Environmental Health	<ul style="list-style-type: none"> <li>The Applicant must arrange for the submitted Detailed Site Investigation Report to be peer reviewed by a suitably qualified environmental consultant who is certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.</li> <li>The Applicant must arrange for the submitted acoustic report to be peer reviewed by a suitably qualified acoustic consultant who is a member of the Australian Acoustical Society or employed by an Association of Australasian Acoustical Consultants (AAAC) member firm.</li> <li>The Applicant must arrange for the Air-Quality Impact Assessment to be peer reviewed by a suitably qualified environmental consultant who is a Certified Air Quality Professional under the CAQP Scheme administered by the Clean Air Society of Australia and New Zealand (CASANZ) or Certified Environmental Practitioner under the CEnvP Scheme administered by the Environment Institute of Australia and New Zealand (EIANZ).</li> <li>The submitted Plan of Management shall be peer reviewed by a suitably qualified acoustic consultant to ensure that it is consistent with the recommendations of the submitted acoustic report.</li> </ul>	 N       N       N

### 6.3 Community Consultation

The application was placed on public exhibition from 22 March 2023 to 6 April 2023. A total of 2 individual submissions were received, one of which contained a petition with 4 signatories. The submissions object to the development on the following grounds:

- Visual and acoustic privacy
- Traffic and parking impacts
- Flooding
- Waste collection

The above issues were considered in the assessment of the application and form part of the consideration discussed in the key Issues section of this report.

## 7. KEY ISSUES

## 7.1 Concurrence from Regulatory Authority

The proposal requires concurrence from the Regulatory Authority (ACECQA) as the outdoor play areas are undercover / enclosed and do not constitute an outdoor space (Section 3.22 of SEPP (Transport and Infrastructure) 2021). Concurrence has thus far not yet been obtained and detailed comments have not been received. Further attempts will be made to finalise this referral and obtain Concurrence from the Department of Education.

## 7.2 Building Separation

Clause 7.4 of LLEP 2008 relevantly provides:

### **7.4 Building separation in Liverpool city centre**

- (1) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least—*
  - (a) 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and*

The building exceeds 12m in height and is only provided with a 3m setback from the eastern side boundary. A minimum of 9 metres building separation is required to be provided, but only approximately 5 metres building separation is provided between the proposed building and the eastern-adjoining dwelling. A variation to the development standard has not been lodged under the provisions of clause 4.6.

## 7.3 Car Parking

- (a) Part 1, Section 20 (Table 11) of the LDCP 2008 requires the following car parking spaces to be provided on site:

### Child Care Centres

*1 space per staff member and 1 space per 10 children (Stack parking of employees cars, maximum 2 deep, will be considered if there is good design for flow-through of short term car parking) Pick up and set down of children must address their safety*

Based on the required 20 staff (as per the National Regulations) and the 124 children proposed to be accommodated, 33 parking spaces are required. However, only 28 spaces have been provided.

- (b) The proposed car parking layout contains shared space widths less than the 2.4m requirement as per AS2890.6.

- (c) A space for the parking of a service van / delivery vehicle has not been provided.

## 7.4 Setbacks

- (a) All new development along the Hume Highway is to provide an 8 metre landscaped setback to the highway corridor, and a landscaped front setback of 4.5 metres to Lachlan Street, in order to achieve the objectives stated in Clause 7.1 of LLEP 2008 and Section 4.2.7 of LDCP 2008, stated as follows:

### 7.1 Objectives for development in Liverpool city centre

*Before granting consent for development on land in the Liverpool city centre, the consent authority must be satisfied that the proposed development is consistent with such of the following objectives for the redevelopment of the city centre as are relevant to that development—*

- (a) to preserve the existing street layout and reinforce the street character through consistent building alignments,*

...

### 4.2.7 Street Alignments and Street Setbacks

#### Objectives

1. Create a strong and consistent definition of the public domain.
2. Define the street as a spatial entity. Reinforce the importance of the public role of the street.

...

4. Establish the desired spatial proportions of the street.

...

- (b) Whilst a 3m setback to the eastern boundary might be considered appropriate having regard to ADG building separation and solar access requirements, it is noted that the Cl. 7.4 of the LLEP 2008 requires a 9m separation between buildings.
- (c) The proposal also includes a fire stair with a zero setback to the eastern boundary. An easement for maintenance purposes would need to be created, which would require the consent of the neighbouring property owner.

## 7.5 Deep Soil Zones and Site Cover

The basement level has a site coverage of 73% (842m<sup>2</sup> / 1,150m<sup>2</sup>), which exceeds the maximum permitted site coverage of 60% (690m<sup>2</sup>) of the site, as provided within Section 4.2.11 of the LDCP 2008. The extent of site coverage proposed provides for minimal area for mature height trees to be planted within the development site, particularly within the setback area to the Hume Highway.

## 7.6 Urban Design

The proposed development is considered to be unsatisfactory from an urban design perspective having regard to concerns raised by the Liverpool Design Excellence Panel.

At their meeting on 11 May 2023, the Liverpool Design Excellence Panel considered the proposed development and noted the following:



*“The Panel has not fully commented on several other architectural design, aesthetics, and NCC-compliance issues within the scheme considering these are lower-order issues in comparison with more fundamental issues which must be addressed as a priority.*

*The Panel considers the proposal, in its current form and configuration is not supported as it does not meet the standards or architecture, urban design, landscape design and amenity expected for achieving design excellence for a childcare centre within the Liverpool local government area.*

*The applicant should consider alternative site planning and urban design strategies to ensure that the childcare centre closely aligns with Council’s ‘community’ aspirations, rather than a built form driven by a child space maximisation rationale at the expense of all else. If you are to persist with a childcare centre on this site, indoor and outdoor amenity for the children, pedestrian access and movement, indoor comfort, solar access, air quality, noise attenuation, and concurrently landscape design (ie: design excellence in all its forms) are required to be at the heart of the proposal.”*

A full copy of the Design Excellence Panel meeting minutes is held at **Attachment 11**.

## **7.7 Site Isolation**

The proposed development has the potential to isolate the adjoining site to the east (No. 71 Lachlan Street), as the development would leave the adjoining site with a width of only 21.37m, which would not meet the required 24m as per Cl. 7.14(2)(b) of the LLEP 2008 for any building greater than 2 storeys on land in the R4 High Density Residential zone. A satisfactory argument that their development will not cause site isolation has not been provided.

## **7.8 Acoustic Barrier**

The acoustic report submitted in support of the proposal recommends the erection of a 2.1m high continuous barrier along the boundary to Sydney Road (Hume Highway), which would present poorly to the main road.

## **7.9 Insufficient Information**

### **(a) Social Impact Assessment**

A Social Impact Assessment (SIA) has not been submitted as required by the LDCP 2008. In this regard, the following minimum matters have not been addressed:

- i. Analysis of local needs and potential impacts of the proposed development on the community.
- ii. Suitability of the site in close proximity to a classified state road with respect to child safety, pedestrian access and air quality.
- iii. Public transport access to the site.
- iv. Safety and security of children accessing the centre through the basement car park.
- v. Fire safety and evacuation risk.
- vi. The adequacy and appropriateness of providing a ‘simulated outdoor space’ as opposed to a ‘natural environment outdoor space’.

### **(b) Site Contamination Assessment**

The submitted Detailed Site Investigation Report prepared by Neo Consulting dated 8 February 2023, does not appear to be prepared or reviewed and certified by a suitably qualified environmental consultant who is certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

(c) Acoustic Assessment

The submitted acoustic prepared by VMS Australia Pty Ltd dated 23 November 2022, does not appear to be prepared or peer reviewed by a suitably qualified acoustic consultant who is a member of the Australian Acoustical Society or employed by an Association of Australasian Acoustical Consultants (AAAC) member firm.

(d) Air Quality Assessment

The submitted air quality assessments prepared by Airsafe dated 24 October 2022, does not appear to have been prepared or reviewed and certified by a suitably qualified environmental consultant who is a Certified Air Quality Professional under the CAQP Scheme administered by the Clean Air Society of Australia and New Zealand (CASANZ) or Certified Environmental Practitioner under the CEnvP Scheme administered by the Environment Institute of Australia and New Zealand (EIANZ).

(e) Plan of Management

The submitted Plan of Management prepared by Ology dated does not identify and implement strategies to minimise noise from the proposed development and incorporate: approaches for promoting noise awareness by patrons and staff; training procedures; a complaint lodgment procedure to ensure that members of the public and local residents are able to report noise issues; an ongoing review process and a plan for responding to noise complaints.

The Noise Management Plan does not clearly specify the responsibilities of site personnel in managing noise or include a detailed list of steps taken to manage potential noise impacts. Management measures that may be incorporated in the Noise Management Plan are outlined in the Association of Australasian Acoustical Consultants (AAAC) Guideline for Child Care Centre Acoustic Assessment.

The Plan of Management has not been peer reviewed by a suitably qualified acoustic consultant to ensure that it is consistent with the recommendations made within the of the acoustic report prepared by VMS Australia Pty Ltd, dated 23 November 2022.

(f) Fencing

The architectural plans do not illustrate the full extent of boundary fencing. The plans as submitted show a 1.8m high open-type fence (presumably timber or metal picket). However, this is inconsistent with the acoustic report, which requires the erection of a 2.1m erected along the northern and eastern boundaries. A 2.1m high continuous barrier erected along the boundary to

Sydney Road (Hume Highway) for a distance of approximately 55 metres would present poorly to the street frontage.

(g) Development Engineering

The application does not resolve the following development engineering details:

- i. A water quality device has not been provided, as per Part 6.5 of the LDCP 2008.
- ii. The stormwater outlet that is connecting to the existing kerb inlet pit is conflicting with the existing power pole and telecommunications pit.
- iii. A minimum 1% fall has not been provided between all surface pits proposed.
- iv. Additional surface pits are likely to be required within the rear setback to collect stormwater from this area.
- v. Details of the vehicular crossing within the Council reserve have not been provided, which would include minimum clearances to existing services.
- vi. CBD paving has not been illustrated on the plans (stormwater, landscape and architectural) for the full site frontage including Sydney Road (Hume Highway) frontage.

(h) Tree Removal

The application proposes the removal of a number of trees, however, an arborist report has not been undertaken to support the removal of these trees.

## 8. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, the application cannot be supported. It is considered that the key issues as outlined in Section 7 have not been addressed or resolved through amendments to the proposal.

## 9. RECOMMENDATION

That Development Application DA No. DA-19/2023 for the demolition of existing structures and construction of a three-storey centre-based child care facility over basement car parking accommodating 124 children at 73 Lachlan Street, Warwick Farm be REFUSED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal in the draft Reasons For Refusal and as discussed in this report.