

DATE OF DETERMINATION	15 December 2023
DATE OF PANEL DECISION	13 December 2023
DATE OF PANEL BRIEFING	11 December 2023
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Karress Rhodes,
APOLOGIES	Ned Mannoun
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 4 December 2023.

MATTER DETERMINED

PPSSWC-319 – Liverpool – DA-19/2023 – Lots 1 & 2 in DP 1058859 - 73 Lachlan Street, Warwick Farm - Demolition of existing structures and construction of a three-storey centre-based childcare facility over basement car parking accommodating 124 children.

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters listed at item 8 in Schedule 1.

Development application

The panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to refuse the application for the following reasons

1. Section 3.22 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* requires the concurrence of the Australian Children's Education and Care Quality Authority (where outdoor space requirements do not comply with Regulation 108 of the *Education and Care National Regulations*) (2011). The Regulatory Authority was notified of the DA and has advised that it is dissatisfied with the information provided and has withheld its concurrence. The DA cannot therefore be lawfully be approved. The Panel is also not satisfied with the quality of the elevated play spaces adjacent to a busy main road.
2. The site is located within the Liverpool City Centre to which Clause 7.4 of the Liverpool Local Environmental Plan 2008 applies. That clause requires a separation distance from neighbouring buildings of 9 metres for “*parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential*”. The proposed building is dimensioned at 13.998 metres at its eastern elevation, but a separation of only 5 metres is proposed to the building adjoining to the east. No variation request under clause 4.6 has not been submitted in that regard, and the proposal is for that reason prohibited.
3. The proposed development does not comply with the Liverpool Development Control Plan 2008 parking rates. No other available published rates are cited in the Applicant's traffic report. The traffic report supplied with the DA accepts a shortfall of 4 spaces measured against the DCP. The justification for the shortfall does not provide reference to data from comparable facilities in the

area. The traffic report notes no bicycle parking is proposed, in breach of the DCP requirements advising that *“It is unlikely that parents would take their children to the child care centre via bicycle”* when the use of electric cargo bikes for that purpose is becoming increasingly common for parents without cars, and no bike parking is provided for staff. A shortfall of one disabled space is proposed measured against Council’s DCP.





4. Council’s Design Excellence Panel has concluded that the proposal does not meet the required standards or architecture, urban design, landscape design and amenity expected for achieving design excellence for a childcare centre in the proposed location.
5. The excavation of the site to the boundary to the basement level raises issues of engineering support that have not been satisfactorily addressed.
6. The Panel is not satisfied that the site is appropriate for a childcare centre of the proposed scale, given the lot size and the fact that the site’s principal address is to a heavily trafficked classified road raising concerns over noise exposure and air quality, and noting that the acoustic report submitted in support of the application requires a fence of 2.1 metres for a distance of approximately 55 metres along the longest frontage.
7. Having regard to the matters identified above, the proposal is not considered to be in the public interest, having regard to the above reasons of refusal.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

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

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
Justin Doyle (Chair) 	Louise Camenzuli 
David Kitto 	Karress Rhodes 

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-319 – Liverpool – DA-19/2023
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a three-storey centre-based childcare facility over basement car parking accommodating 124 children.
3	STREET ADDRESS	Lots 1 & 2 in DP 1058859 - 73 Lachlan Street, Warwick Farm
4	APPLICANT/OWNER	Applicant: FLDC Architects Pty Ltd Owner: Sublime Developments/Robert Sydney Noyes
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021 Liverpool Local Environmental Plan 2008 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Liverpool Development Control Plan 2008 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 17 November 2023 Written submissions during public exhibition: 2 Total number of unique submissions received by way of objection: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick Off Briefing: 15 May 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair) David Kitto, Louise Camenzuli, Karress Rhodes, Ned Mannoun <u>Council assessment staff</u>: Greg Mottram, Nabil Alaeddine, Amanda Merchants, Nelson Mu <u>Applicant representatives</u>: Did not attend Council/Applicant Briefing: 13 November 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair) David Kitto, Louise Camenzuli, Karress Rhodes, Ned Mannoun <u>Council assessment staff</u>: Greg Mottram, Nabil Alaeddine, Amanda Merchants, Nelson Mu <u>Applicant representatives</u>: Did not attend Final briefing to discuss council's recommendation: 11 December 2023

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9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable