

COUNCIL ASSESSMENT REPORT

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC - 675 – DA-19/2023/A
APPROVED DEVELOPMENT	<u>Approved Application DA-19/2023</u> Demolition of existing structures and construction of a 4-storey centre-based childcare centre facility over 2 levels of basement car parking to accommodate 120 children.
PROPOSED DEVELOPMENT	<u>Proposed Modification DA-19/2023/A</u> The modification seeks internal and external alterations to an approved centre-based childcare facility, including reduction in the number of children to 113.
PROPERTY ADDRESS	73 Lachlan Street, Warwick Farm 2170
PROPERTY DESCRIPTION	Lot 1 and Lot 2 in DP 1058859
APPLICANT	JNS Nehme Investments Pty Ltd
DA LODGEMENT DATE	27 October 2025
APPLICATION TYPE	S4.56 Modification Application
REGIONALLY SIGNIFICANT CRITERIA	Sydney Western City Planning Panel (SWCPP) was the determining body for the development as it was for development of a community facility that had an estimated development cost of more than \$5 million, specified under Clause 5 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The development application was originally refused by SWCPP on 15 December 2023, after which the decision was appealed to the NSW Land and Environment Court. Following the proceedings of a Class 1 Appeal, the appeal was upheld and the development application was subsequently approved on 7 August 2024 via an agreement between the parties during a conciliation conference under Section 34 of the <i>Land and Environment Court Act 1979</i>. Pursuant to (at the time of lodgement) the <i>Environmental Planning and Assessment Regulation 2021</i> Clause 275 - Functions exercisable by council on behalf of Sydney district or regional planning panel, there is no provision or instruction regarding the determination of an application to modify a development consent under section 4.56 of the EP&A Act on behalf of a Sydney district or regional planning panel. Since there is no instruction on the function/s exercisable by Council in this particular instance, and given that the parent

	development application was originally refused by the SWCPP, the subject s4.56 modification application is therefore required to be determined by the SWCPP, as the consent authority.
CIV	\$ 5,500,000 (including GST)
CLAUSE 4.6 REQUESTS	N/A
KEY PLANNING INSTRUMENTS	• 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 Guideline (September 2021) • Liverpool Development Control Plan 2008
UNIQUE SUBMISSIONS / KEY ISSUES RAISED IN SUBMISSIONS	1 individual submission received, raising the following concerns: • Objection to the overall childcare development, siting acoustic privacy, traffic and on-street parking impacts.
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Attachment A: Compliance Assessment against relevant legislation. • Attachment B: s4.56 Modification of Consent (draft conditions) • Attachment C: Architectural Plans and Landscape Plan • Attachment D: Amended Stormwater Plans • Attachment E: s4.56 Statement of Environmental Effects (DA-19/2023/A) • Attachment F: NSW LEC Notice of Determination (DA-19/2023) – 07 August 2024 • Attachment G: NSW LEC Judgement – 07 August 2024 • Attachment H: LEC Stamped Determination Documents (DA-19/2023)
RECOMMENDATION	Approval, subject to amended conditions of consent.
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	N/A
PREPARED BY	Sarah Ilma
DATE OF REPORT	4 August 2026

1. EXECUTIVE SUMMARY

1.1 The proposal

The subject application is to modify development consent DA-19/2023 to facilitate internal and external alterations to the approved centre-based childcare facility at 73 Lachlan Street, Warwick Farm, legally described as Lots 1 and 2 in DP 1058859. DA-19/2023 was approved by the LEC for the *Demolition of existing structures and construction of a 4-storey centre-based childcare centre facility over 2 levels of basement car parking to accommodate 120 children.*

The proposed modification, pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), seeks internal and external alterations to the approved development to incorporate additional building egress and services required to ensure compliance with relevant regulations and the National Construction Code.

This report provides a summation of the key issues which should be considered in the determination of the proposal, in accordance with the provisions of the EP&A Act 1979 and the relevant Environmental Planning Instruments, including applicable state environmental planning policies, Liverpool Local Environmental Plan (LEP) 2008, Liverpool Development Control Plan (DCP) 2008 and relevant codes and policies of Council.

1.2 The Site

The subject site (Figure 1) is legally described as Lots 1 & 2 in DP 1058859, and is known as No. 73 Lachlan Street, Warwick Farm. The site located on the northern periphery of the Liverpool CBD and is zoned R4 High Density Residential. The site is triangular in shape with a total area of approximately 1,150m². 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.

1.3 Exhibition of the Proposal

The application was required to be notified in accordance with the Liverpool Community Participation Plan 2025 from 14 November 2025 to 2 December 2025. One (1) submission was received as part of the subject application. The submission objects to the childcare centre development on the grounds of acoustic privacy and traffic and on-street parking impacts. However, as the subject application is a modification application, the childcare centre development as a whole has already been approved under the parent application, and as such these matters have already been considered under the LEC approval.

1.4 Reasons for the Report

Sydney Western City Planning Panel (SWCPP) was the determining body for the development as it was for development of a community facility that had an estimated development cost of more than \$5 million, specified under Clause 5 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.

The development application was originally refused by SWCPP on 15 December 2023, after which the decision was appealed to the NSW Land and Environment Court. Following the proceedings of a Class 1 Appeal, the application appeal was upheld, and the development application was subsequently approved on 7 August 2024 via an agreement between the parties during a conciliation conference under Section 34 of the *Land and Environment Court Act 1979*.

Pursuant to (at the time of lodgement) the *Environmental Planning and Assessment Regulation 2021* **Clause 275 - Functions exercisable by council on behalf of Sydney district or regional planning panel, there is no provision or instruction regarding the determination of an application to modify a development consent under section **4.56** of the EP&A Act on behalf of a Sydney district or regional planning panel. Since there is no instruction stipulated on the function/s exercisable by Council in this particular instance, and given that the parent development application was originally refused by the SWCPP, the subject s4.56 modification application is therefore required to be determined by the SWCPP, as the consent authority.**

1.5 Conclusion

The modification application has been assessed pursuant to the provisions of the EP&A Act 1979. Based on the assessment of the proposed modification, it is recommended the application be approved, subject to amended conditions of consent.

2. SITE DESCRIPTION AND LOCALITY

2.1 The Site

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 1,150m². 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 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 City 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: Aerial image of Subject site. (Source: Geocortex)



Figure 2: Street view of subject site – western-most side (Source: Google Maps, 2025).



Figure 3: Street view of subject site – eastern-most side (Source: Google Maps, 2025).



Figure 4: Street view of immediate area facing east along Lachlan Street (Source: Google Maps, 2025).



Figure 5: Aerial view of site (outline in red) and surrounding locality (Source: Geocortex).

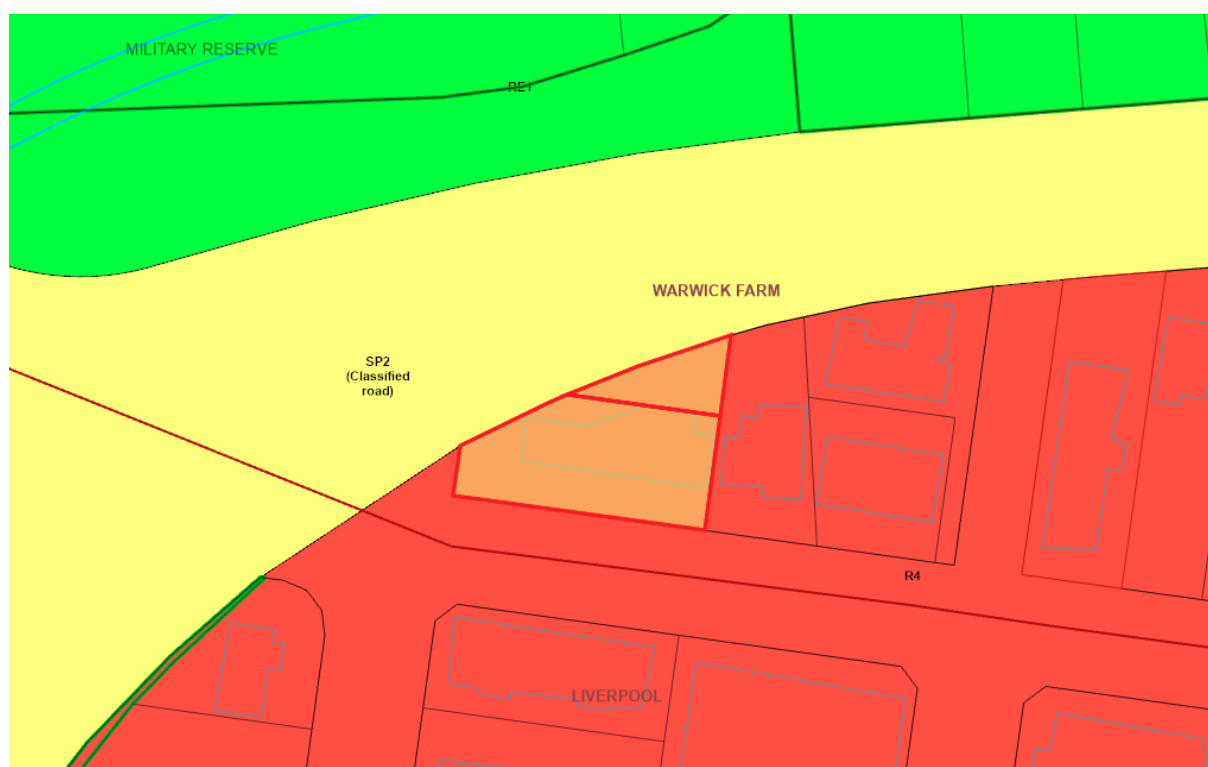


Figure 6: Extract of LEP zoning map for the subject site (Source: Geocortex).

3. BACKGROUND AND DA HISTORY

The site has been the subject of the previously approved development consent, and the proposed modification as follows:

DA Number	Proposal	Status
DA-19/2023	Demolition of existing structures and construction of a 4-storey centre-based childcare centre facility over 2 levels of basement car parking to accommodate 120 children.	Approved by the LEC on 7 August 2024
DA-19/2023/A	Modification to Development Consent DA-19/2023 under Section 4.56 of the Environmental Planning and Assessment Act 1979, for internal and external alterations to an approved centre-based childcare facility.	<i>Subject application under assessment</i>

3.1 Development Application History

During the initial assessment of the subject s4.56 modification application, Council's Development Planning and Urban Design sections requested further information on 1 May 2026, mainly regarding landscaping treatments and streetscape presentation.

Following receipt of the request for further information (RFI), the Applicant had requested a meeting with Council officers to discuss the outstanding matters. A meeting was held on 19 May 2026, where the Applicant agreed to submit amended plans to address the issues raised.

The Applicant submitted amended documentation on 2 June 2026, which was then re-referred to Council's internal Urban Design and Engineering teams. Responses from the internal referral officers were received on 25 June 2026.

4. PROPOSED MODIFICATION

The application proposes to modify DA-19/2023 under Section 4.56 of the EP&A Act 1979, for internal and external alterations and additions to the approved centre-based childcare centre to incorporate additional building egress and services required to ensure compliance with relevant regulations and the National Construction Code.

Specifically, the application proposes the following modifications:

- Amended basement car parking layout to reduce structural spans (no changes to car parking provisions)
- Increased passenger lift size
- Integrated building services and structure into the built form (pump rooms, meter cupboards, switch/communications room, and mechanical ducts)
- Relocated OSD tank
- Added fire sprinkler pump room and booster assemblies along site frontage
- Added egress stairs to the northern elevation with added fire egress gate to the Sydney Road boundary
- Amended fire-isolated stairs along the southern elevation
- Modification of steel roof framing to a concrete roof
- Adjusted level 03 slab area to align with the floor level below
- Amended ground floor elevation, replacing stacked stone tile finish with cladding and face brick
- Added planter box for landscaping above the basement on the ground floor along Lachlan Street elevation
- Reduced glazing on the elevations to 2,500mm head height with window sills 1,200mm above finished floor level (FFL)
- Proposed awning windows along the Sydney Road elevation
- Changes to facilitate fire compartmentalisation on each level
- Amended floor layouts, landscaping arrangement, and elevations to facilitate the above modifications.

Following Council's RFI and the Applicant's subsequent response to the RFI, amended plans and an amended Statement of Environmental Effects were received which proposed a reduction in the number of children at the premises to a total of 113, to account for the reduced unencumbered indoor space area as a result of the additional fire egress stairs.

The amended age group breakdown for the premises is as follows:

- 0-2 years: 20 children
- 2-3 years: 28 children
- 3-6 years: 65 children

The submitted architectural and landscape plans are provided in Attachment C.

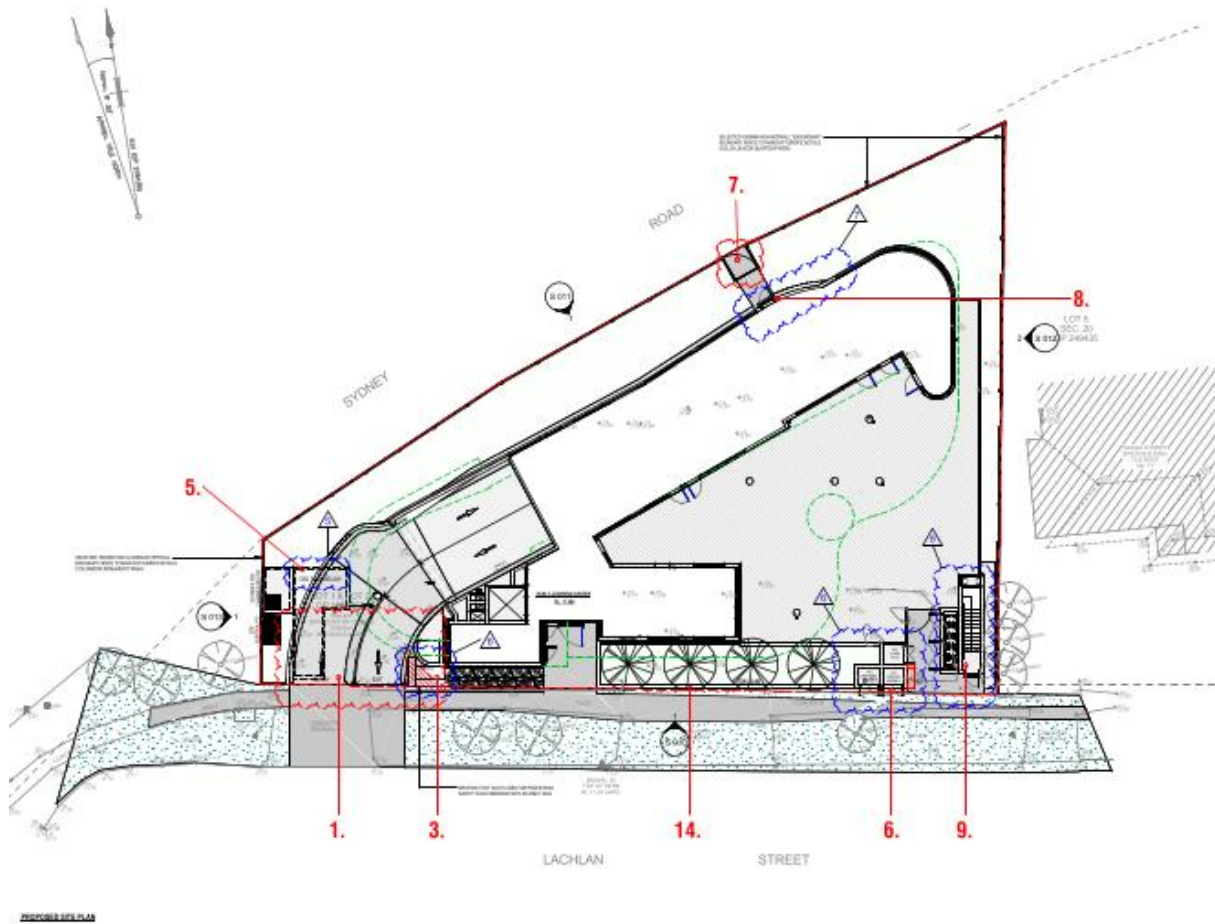


Figure 7: Extract of Site Plan for the proposed modification.

5. PLANNING ASSESSMENT

The application has been lodged pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*, which provides:

4.56 Modification by consent authorities of consents granted by the Court

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
- (a) *it is satisfied that the development to which the consent as modified relates is the same or substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposed modification to the approved development would not change the nature of the approved development, including the overall size and bulk, height and floor space ratio. The building siting and setbacks remain unchanged, with the exception of the added fire egress stairs on the 1st-3rd levels to the north, facing Hume Highway. Whilst the stairwell protrudes out slightly by another 1.6 metres, the overall building footprint and bulk, especially on the ground floor, remains substantially the same. The development as modified has also been assessed and found to generally comply with the relevant planning policies and controls, as detailed in the compliance assessment found in Attachment A. In this regard, it is considered

satisfactory that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted.

- (b) it has notified the application in accordance with—*
- (i) the regulations, if the regulations so require, and*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The proposed modification was notified in accordance with the Liverpool City Council Community Engagement Strategy and Participation Plan 2025 from 14 November 2025 to 2 December 2025.

- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

Comment: The proposed modification was notified as per the above, which included notification to any person who made a submission in response of the relevant development application of the proposed modification via written notice. It is noted that any previous submitters of the original development application were notified via the standard notification process in accordance with the Liverpool City Council Community Engagement Strategy and Participation Plan 2025, as was the case for the original development application.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: One (1) submission was received for the subject modification application as part of the public notification process. The submission objects to the childcare centre development on the grounds of acoustic privacy and traffic and on-street parking impacts. However, as the subject application is a modification application, the childcare centre development as a whole has already been approved under the parent application. The proposed modification application would not result in any car parking deficiencies from that which was originally approved, and the proposed modification would not result in any adverse impacts to the acoustic treatments which were considered and approved under the parent application. Additionally, the proposed modification proposes a reduction in the number of children for the premises, which would result in an improvement to traffic and car parking impacts associated with the childcare facility.

- (1A) In determining an application for a modification of a consent under this section, the consent authority must take the following into consideration—*

- (a) the matters referred to in section 4.15(1), but only so far as the matters are of relevance to the application,*
- (b) the reasons given by the consent authority for the grant of the consent sought to be modified, but only so far as the reasons are of relevance to the application.*

Comment: The relevant matters for consideration under Section 4.15(1) have been taken into consideration, as detailed in section 6 below.

It is also noted that the reasons given by the NSW LEC for the grant of the consent which is being modified under the subject application must also be considered in the assessment of the modification. The judgement issued by the NSW LEC on 7 August 2024 (LEC No.

2023/2023811) is provided as Attachment G. As such, only the relevant matters for consideration under s 4.15(1) relating to the proposed modifications have been considered in this assessment report before.

6. STATUTORY CONSIDERATIONS

6.1 Consideration of the relevant matters in section 4.15

When determining a modification 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') that are of relevance to the modification. These matters as are of relevance to the subject application include the following:

a) 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
 - Child Care Planning Guidelines (September 2021)
- Liverpool Local Environmental 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 107 and 108 - Minimum 3.25 m ² of unencumbered indoor space per child: $113 \times 3.25 = 367.25\text{m}^2$ required GF – 136.3 m ² L1 – 96.72 m ² L2 – 154.63 m ² Total provided = 386.41 m² - Minimum 7 m ² of unencumbered outdoor space per child: $113 \times 7 = 791\text{ m}^2$ required GF – 271.6 m ² L1 – 251.5 m ² L2 – 139.7 m ² L3 – 215.7 m ² Total provided = 878.58 m²	Y
SEPP (Resilience and Hazards) 2021	Chapter 4: Remediation of Land	

	Section 4.6 – Contamination and remediation have been considered and approved under the LEC approval of the parent application. The subject modification raises no further matters for consideration.	Y
SEPP (Biodiversity and Conservation) 2021	Chapter 2: Vegetation in non-rural areas - The proposal does not exceed the biodiversity offsets scheme threshold. Chapter 6: Water Catchments - 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. Conditions of consent are to be amended to ensure appropriate stormwater management on site.	Y Y
SEPP (Transport and Infrastructure) 2021	Chapter 2: Infrastructure - Clause 2.119 – Development with frontage to a classified road - Vehicular and pedestrian via Lachlan Street. No impact to operation of the Classified Road. - Air quality assessment matters were considered and found satisfactory under LEC approval. - Clause 2.120 – Impact of road noise or vibration on non-road development - An acoustic assessment was undertaken and was found satisfactory under the LEC approval. (Refer to Attachment G for LEC judgement). - Clause 3 – Educational establishments and child care facilities - The proposal meets all the requirements of the Child Care Planning Guideline (September 2021) (Refer to Attachment A for a full assessment).	Y Y Y Y
Liverpool LEP 2008	Part 2.2: Permitted or Prohibited Development - Child care centres are permitted with consent in the R4 High Density Residential Zone. CI 4.3: Height of buildings remains unchanged. CI 4.4: Floor Space Ratio - FSR remains well below the maximum permitted ratio of 2.0:1, calculated at 0.74:1.	Y Y Y

	Cl. 7.4: Building Separation in Liverpool City Centre - The development as modified under the subject application continues to meet building separation requirements between buildings. Cl. 7.5: Design Excellence in Liverpool City Centre - It is considered that the proposal would continue to achieve design excellence, as stipulated in the LEC Judgement. The overall built form, bulk and design of the development remains unchanged, with certain materiality changes along the elevations to be conditioned on the modified consent. It is considered that the minor change to the site coverage/deep soil area is acceptable on merit and would not contravene the design excellence requirements under Clause 7.5. (Refer to Attachment A for full assessment).	Y Y
Child Care Planning Guideline (September 2021)	The development as modified under the subject application continues to meet the requirements of the Child Care Planning Guideline (Refer to Attachment A for a full assessment).	Y
Liverpool DCP 2008	The approved development as modified remains generally compliant with the relevant sections of the Liverpool DCP 2008. (Refer to Attachment A for a full assessment).	Y

Given the above, it is considered that the proposed modification does not change the development's compliance with the controls within the above applicable EPI's.

b) Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instruments

No applicable draft EPIs.

c) Section 4.15(1)(a)(iv) – The 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

As such, appropriate conditions covering each stage of the development will continue to apply, as amended, with regard to the above provisions.

d) Section 4.15(1)(b) – The Likely Impacts of the Development

The proposed modification is not considered likely to have any significant adverse environmental impact on the site or on surrounding properties, given that the overall built form, height, and bulk of the approved development remain substantially the same. The development, as modified, is considered to remain generally compliant with the relevant statutory instruments and development controls, as addressed in the assessment above.

e) Section 4.15(1)(c) – The Suitability of the Site for the Development

The proposed modification would not result in any change on the site and its suitability of the approved child-care centre development.

f) Section 4.15(1)(d) – Any Submissions made in relation to the Development

i. Community Consultation

The application was required to be notified in accordance with Clause 4.56(1) of the EP&A Act as well as the Liverpool Community Participation Plan 2025, and was publicly notified for 14 days from 14 November 2025 to 2 December 2025.

One (1) submission was received for the subject modification application as part of the public notification process. The submission objects to the childcare centre development on the grounds of acoustic privacy and traffic and on-street parking impacts. However, as the subject application is a modification application, the childcare centre development as a whole has already been approved by the LEC under the parent application DA-19/2023.

The proposed modification application would not result in any car parking deficiencies from that which was originally approved, and the proposed modification would not result in any adverse impacts to the acoustic treatments which were considered and approved under the parent application. Additionally, the proposed modification proposes a reduction in the number of children at the premises, which would result in an improvement to traffic, car parking and noise-related impacts associated with the operations of the childcare facility.

ii. Internal Referrals

DEPARTMENT	COMMENTS
Land Development Engineering	Supported, subject to amended condition/s of consent
Urban Design	Insufficient information, given the below: <i>1. Accessible parking spot on Level 2 car park is reducing the amount of available waiting space for pedestrians in front of the lift. This can pose risk for the visitors and kids.</i> Note from Assessing Planner: This is a traffic matter which would be reviewed by Council's Traffic Engineer. Council's Traffic Engineer has reviewed all matters related to traffic, access and car parking and have no objections to the proposed modification. Additionally, the basement level 2 car park is predominantly staff car parking, so there is no access issues envisaged for visitors and parents with prams. As such, this matter is resolved. <i>2. Face brick on ground floor is acceptable, however CDPD recommends that the proposed timber-look aluminium battens and dark cladding be of a lighter finish so the development presents itself to be more welcoming and warm for children and reduces the absorption and emission of heat.</i>

	<i>There is still some dark coloured cladding at ground level on the south elevation. It is recommended it is replaced with face brick or the lighter material of the floors above.</i> Note from Assessing Planner: Agreed, however, this minor matter regarding building materials can be resolved via a condition of consent. As such, a condition is recommended to be imposed on the consent (as modified) regarding plan amendments to address the above.
Building	Supported, no condition required
Fire Safety	Supported, no condition required
Traffic and Transport	Supported, no condition required

6.6. Section 4.15(1)(e) – The Public Interest

The proposal as amended would not be contrary to public interest.

7. DEVELOPER CONTRIBUTIONS

As this is a modification application, Section 7.12 contributions are not applicable under the subject modification application, as they were applied under the parent application approval for DA-19/2023.

8. RECOMMENDATION

The subject application has been assessed having regard to the provisions of Section 4.56 of the EP&A Act 1979, and the Environmental Planning Instruments, including applicable state environmental planning policies, Liverpool Development Control Plan 2008, and relevant codes and policies of Council, as outlined in this report.

Given the assessment, it is recommended that DA-19/2023/A, seeking consent for internal and external alterations to an approved centre-based childcare facility, including reduction in the number of children to 113 at 73 Lachlan Street, Warwick Farm, be **approved** subject to **amended** conditions of consent.

The following attachment are provided:

- Attachment A: Compliance Assessment against relevant legislation.
- Attachment B: s4.56 Modification of Consent (draft conditions)
- Attachment C: Architectural Plans and Landscape Plan
- Attachment D: Amended Stormwater Plans
- Attachment E: s4.56 Statement of Environmental Effects (DA-19/2023/A)
- Attachment F: NSW LEC Notice of Determination (DA-19/2023) – 07 August 2024
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