



Report of Development Application

Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

APPLICATION DETAILS

ApplicationNo:	DA19/0468
Council File No:	D/2019/0468
Date of Lodgement:	05/09/2019
Applicant:	Tiverton Partnership 'Pomingalarna' 932 Sturt Highway YARRAGUNDRY NSW 2650
Proposal:	Swimming pool
Development Cost:	36000
Description of Modification:	N/A
Other Approvals:	Nil
Determination Body & Reason:	Delegation
Assessment Officer:	Victoria Rice

SITE DETAILS

Subject Land:	932 Sturt Hwy YARRAGUNDRY NSW 2650 Lot 5 DP 76274
Owner:	J A Jackson Pty Ltd

REPORT

DESCRIPTION OF DEVELOPMENT

This application is for the construction of an inground swimming pool.

THE SITE & LOCALITY

Location - the subject site is located on the northern side of Sturt Highway approximately 1200m west of the intersection with Cummins Drive, San Isidore.

Area - 128.80 Hectares

Occupations - Single storey dwelling, outbuildings, tennis court and associated agricultural use.

Constraints and restrictions - no covenants or restrictions exist on site.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 4.15(1)(a)(i) - The provisions of any environmental planning instrument (EPI)

Wagga Wagga Local Environmental Plan 2010 (LEP 2010)

Zoning of land (cl 2.2): RU1

The development is permissible in the zone (cl. 2.3(1))

The development is consistent with the following objectives of the zone (cl. 2.3(2)):

- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural landscape character of the land.

The development is compliant with the relevant provisions of the LEP 2010. The following provisions have been identified for further discussion:

5.10 Heritage conservation

The site contains the listed heritage item 299, Pomingalarna homestead. This homestead is an example of a substantial federation area homestead and is listed as locally significant. Development consent is required for any alterations or erection of buildings. The swimming pool will not have an adverse affect on the heritage item, it is located away from the dwelling and will not detract from the setting of the item. The proposal is supported and is seen to meet the requirements of this clause.

State Environmental Planning Policy No. 55

There is no indication that the site has previously been occupied by any use that could have led to contamination of the site. Furthermore, the land is not identified on Councils register of contaminated sites.

State Environmental Planning Policy (BASIX) 2004

A valid certificate has been lodged (A355442) with the application and assessed as compliant.

Section 4.15(1)(a)(ii) - any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

There are a number of state environmental planning policies currently subject to review, including some which have involved consultation and notification. With the exception of the following, none of these are applicable to this application.

Remediation of Land SEPP and repeal of State Environmental Planning Policy 55

The draft SEPP will not impact on the assessment of this application under SEPP 55 with regard to the potential contamination of this site and its suitability for the proposed development.

Section 4.15(1)(a)(iii) - any development control plan

Wagga Wagga Development Control Plan 2010

The development is compliant with the relevant provisions of the DCP 2010. The following provisions have been identified for further discussion:

Section 1 - General

1.10 Notification of a Development Application

The application has been notified in accordance with the notification provisions outlined in Section 1.10 of the WWDGP. The application was notified between 3 October and 10 October 2019. No submissions were received.

Section 3 - Heritage Conservation

3.2.4 Development in the vicinity of a heritage item

C2 Development in the vicinity of a heritage item is to minimise the impact on the setting of the item by:

- a) Providing an adequate area around the heritage item to allow its interpretation.*
- b) Retaining original or significant landscaping associated with the heritage item.*
- c) Protecting and allowing the interpretation of archaeological features associated with the heritage item.*
- d) Retaining and respecting significant views to and from the heritage item.*

The location of the swimming pool will allow sufficient separation from the heritage item for its interpretation. It is not proposed to remove any vegetation and all existing landscaping will remain in place. The views will not be altered by the inground swimming pool as it will not be above ground, the pool fencing will have a negligible affect on any views. the siting of the pool will allow the protection of the significance of the item and is considered acceptable.

Section 4.15(1)(a)(iiia) - any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No related planning agreement has been entered into under section 7.4.

Section 4.15(1)(a)(iv) - the regulation

Matters prescribed by the Environmental Planning and Assessment Regulation 2000 have been satisfied, including the addition of prescribed conditions.

Section 4.15(1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The likely impacts of the development have been considered and are deemed satisfactory.

Section 4.15(1)(c) - The suitability of the site for the development

Matters relating to the suitability of the site for this development have been considered and the site is deemed suitable for the development.

(d) - any submissions made in accordance with this Act or the Regulations

No submissions have been received.

(e) - the public interest

It is considered that this application will not have a detrimental affect on the public interest.

Other Legislative Requirements

Section 5AA and Part 7 of the *Biodiversity Conservation Act 2016* (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)

The development is in a residential zone and not removing any vegetation; the development will have minimal impact and not impact on any threatened species in the vicinity. No further assessment is required under this section.

Council Policies

Policy 046 - Processing Development Applications lodged by Councillors, staff and individuals of which a conflict of interest may arise, or on Council owned land.

No declaration has been made that would require action under this policy.

Comments from Internal Referrals

No comments have been received from internal referrals undertaken.

Development Contributions

Contributions were paid at subdivision stage for a single dwelling on this block, therefore no further contributions are required.

Conclusion

The development is considered to be satisfactory based on the foregoing assessment. The proposal complies with the requirements of the Environmental Planning and Assessment Act 1979, the Building Code of Australia (Housing Provisions) and Councils Policies. No objections to the proposal were received.

Recommendation

*That, pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, it is recommended that Development Application No. DA19/0468 be **APPROVED** subject to the following conditions:*

Conditions

Approved Plans and Documentation

1. The development must be carried out in accordance with the approved plans and specifications as follows.

Plan/Doc No.	Plan/Doc Title	Prepared by	Issue	Date
-	Site Plan	Kate Fagan	-	4/9/19
60859	Pool details	SJE Consulting	B	25/9/14
-	Statement of Environmental Effects	Kate Fagan	-	30/8/19
A355442	BASIX Certificate	Ad-Vantage Pool Service	-	9/8/19

The Development Application has been determined by the granting of consent subject to and as amended by the conditions of development consent specified below.

NOTE: Any modifications to the proposal shall be the subject of an application under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

REASON: It is in the public interest that work is carried out in accordance with the approved plans. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

Prior to Commencement of Works

2. Prior to works commencing on site, toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
 - a) a standard flushing toilet connected to a public sewer, or
 - b) if that is not practicable, an accredited sewage management facility approved by Council, or
 - c) if that is not practicable, any other sewage management facility approved by Council.

NOTE 1: The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced and the toilet facility must not be removed without the prior written approval of Council.

NOTE 2: "Vicinity" in this condition is defined to mean within 50 metres of the subject building site.

NOTE 3: The toilet facilities are to comply with all WORK COVER NSW requirements.

REASON: To provide adequate sanitary facilities during the construction phase. Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as amended.

3. **A CONSTRUCTION CERTIFICATE must be obtained pursuant to Section 6.7 of the *Environmental Planning and Assessment Act 1979*, as amended from either Council or an accredited certifying authority certifying that the proposed works are in accordance with the Building Code of Australia PRIOR to any works commencing.**

NOTE 1: No building, engineering, excavation work or food premises fitout must be carried out in relation to this development until the necessary Construction Certificate has been obtained.

NOTE 2: **YOU MUST NOT COMMENCE WORK UNTIL YOU HAVE RECEIVED THE CONSTRUCTION CERTIFICATE**, even if you made an application for a Construction Certificate at the same time as you lodged this Development Application.

NOTE 3: It is the responsibility of the applicant to ensure that the development complies with the provision of the Building Code of Australia in the case of building work and the applicable Council Engineering Standards in the case of subdivision works. This may entail alterations to the proposal so that it complies with these standards.

REASON: To ensure the design of the proposed work may be assessed in detail before construction commences and because it is in the public interest that the development complies with the appropriate construction standards. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

4. **Prior to works commencing a container must be erected on site for the enclosure of all building rubbish and debris, including that which can be wind blown. The enclosure shall be approved by Council and be retained on site at all times prior to the disposal of rubbish at a licenced Waste Management Centre.**

Materials and sheds or machinery to be used in association with the construction of the building must not be stored or stacked on Council's footpath, nature strip, reserve or roadway.

NOTE 1: No building rubbish or debris must be placed, or be permitted to be placed on any adjoining public reserve, footway, road or private land.

NOTE 2: Weighbridge certificates, receipts or dockets that clearly identify where waste has been deposited must be retained. Documentation must include quantities and nature of the waste. This documentation must be provided to Council prior to application for an Occupation Certificate for the development.

NOTE 3: The suitable container for the storage of rubbish must be retained on site until an Occupation Certificate is issued for the development.

REASON: To ensure that the building site and adjoining public places are maintained in a clean and tidy condition so as not to interfere with the amenity of the area. Section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*, as amended.

5. **Prior to the commencement of works erosion and sediment control measures are to be established and maintained to prevent silt and sediment escaping the site or producing erosion. This work must be carried out and maintained in accordance with Council's:-**

- a) **Development Control Plan 2010 (Section 2.6 and Appendix 2)**
- b) **Erosion and Sediment Control Guidelines for Building Sites; and**
- c) **Soils and Construction Volume 1, Managing Urban Stormwater**

Prior to commencement of works, a plan illustrating these measures shall be submitted to, and approved by, Council.

NOTE: All erosion and sediment control measures must be in place prior to earthworks commencing.

REASON: To ensure the impact of the work on the environment in terms of soil erosion and sedimentation is minimised. Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as amended.

6. **A Section 68 Approval must be obtained from Council prior to any sewer or stormwater work being carried out on the site.**

The licensed plumber must submit to Council, at least two (2) days prior to the commencement of any plumbing and drainage works on site a "Notice of Works".

NOTE: A copy of the Notice of Works form can be found on Council's website.

REASON: It is in the public interest that plumbing and drainage work is carried out with the relevant approvals required under the Local Government Act 1993 and the Plumbing Code of Australia. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

7. **Building work (within the meaning of the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development:**

- a) **in the case of work done by a licensee under the Act:**
 - i) **has been informed in writing of the licensee's name and contractor license number, and**
 - ii) **is satisfied that the licensee has complied with the requirements of Part 6 of that Act, OR**
- b) **in the case of work to be done by any other person:**
 - i) **has been informed in writing of the person's name and owner-builder permit number, or**
 - ii) **has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed**

for the purposes of the definition of owner-builder work in
Section 29 of the Act,

and, is given appropriate information and declarations under paragraphs a) and b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either a) or b).

NOTE: A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that the person is the holder of an insurance policy is sufficient evidence to satisfy this condition.

REASON: To ensure the development complies with the requirements of Clause 98 of the Environmental Planning and Assessment Regulations 2000, and Section 4.17(11) of the *Environmental Planning and Assessment Act 1979*, as amended.

8. **Prior to works commencing, a sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:**
- a) stating that unauthorised entry to the site is prohibited, and
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside work hours
 - c) the development consent or complying development consent number, the name and contact details of the Principal Certifying Authority.

Any sign must be removed when the work has been completed.

NOTE: This condition does not apply to:

- a) building work carried out inside an existing building, or
- b) building work carried out on premises that must be occupied continuously (both during and outside work hours) while the work is being carried out.

REASON: To ensure the development complies with the requirements imposed under Clause 98 of the Environmental Planning and Assessment Regulations 2000, as amended, and Section 4.17(11) of the *Environmental Planning and Assessment Act 1979*, as amended.

9. **At least two (2) days prior to the commencement of any works, the attached 'Notice of Commencement of Building or Subdivision Works and Appointment of Principal Certifying Authority', must be submitted to Council.**

REASON: Because it is in the public interest that Council receive notification in accordance with the provision of the *Environmental Planning and Assessment Act 1979*, as amended. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

During works

10. **The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.**

REASON: It is in the public interest that a copy of the Construction Certificate plans are available, and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

11. **All excavation and backfilling associated with the erection/demolition of the building must be properly guarded and protected to prevent them from being dangerous to life or property.**

REASON: It is in the public interest that all building elements are able to withstand the combination of loads and other actions to which it may be subjected. Section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*, as amended.

12. **The permitted construction hours are Monday to Friday 7.00am to 6.00pm and Saturday 7.00am to 5.00pm, excepting public holidays. All reasonable steps must be taken to minimise dust generation during the demolition and/or construction process. Demolition and construction noise is to be managed in accordance with the Office of Environment and Heritage Guidelines.**

REASON: To ensure building works do not have adverse effects on the amenity of the area. Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as amended.

13. **If Council is appointed as the Principal Certifying Authority the applicant must obtain a Compliance Certificate, pursuant to Section 109C of the *Environmental Planning and Assessment Act 1979*, as amended, from Council or an accredited certifying authority, certifying compliance with the Building Code of Australia and the Swimming Pool Act 1992, for the stages of construction listed in Column 1. For the purposes of obtaining the Compliance Certificate the works must be inspected by the accredited certifying authority at the times specified in Column 2.**

	COLUMN 1	COLUMN 2
A	Footings/ Coping	When the pool is in position and all reinforcement has been placed in position.
B	Fencing	When the pool and all fencing, gates and locks have been completed and prior to water being placed in the pool.

NOTE 1: A final Occupation Certificate in relation to the work cannot be issued by Council or an accredited certifying authority until all Compliance Certificates required by this condition have been issued or registered with Council.

NOTE 2: The above Compliance Certificates are required whether or not the work has been inspected by a Structural Engineer, a lending authority or any other person. If the Compliance Certificates are not issued Council may refuse to issue a Building Certificate under Section 149A and D of the *Environmental Planning and Assessment Act 1979*, as amended.

REASON: It is in the public interest that Compliance Certificates be issued for these components of the development. Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

14. All work is to comply with the Building Code of Australia, the Swimming Pools Act 1992 and Swimming Pools Regulations 2008. In this regard the following minimum requirements will apply:

- a) a minimum 1.2 metre high child resistant barrier is to be provided to enclose the swimming pool,
- b) gate/s leading into the pool area is to be fitted with an outward opening, self closing and latching gate,
- c) pool latches are to be located 1.5 metres high above the ground level,
- d) a resuscitation poster is to be affixed within the pool area.

NOTE: Prior to the issue of an occupation certificate, the owner of the property shall supply Council with documentary evidence that the completed swimming pool has been registered at www.swimmingpoolregister.nsw.gov.au as required by the amended Swimming Pool Act.

REASON: It is in the public interest that the provisions of the Building Code of Australia and the Swimming Pool Act 1992 be complied with. Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

15. A 1.8 metre high boundary fence (as measured from the inside of the fence) is required where the property boundary fence is used as a part of the swimming pool barrier. This is to have a 900 mm non climbable zone on the inside face of the fence to comply with AS1926.2012 Swimming Pool Safety Standards.

REASON: It is in the public interest that the provisions of the Building Code of Australia and the Swimming Pool Act 1992 be complied with. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

Prior to release of Occupation Certificate / Prior to Operation

16. An Occupation Certificate, must be obtained pursuant to Section 6.9 of the *Environmental Planning and Assessment Act 1979*, from either Council or an accredited certifying authority, prior to occupation of the building.

In order to obtain this, the “Final Occupation Certificate” form must be completed and submitted to Council with all required attachments - failure to submit the completed Occupation Certificate Application form will result in an inability for Council to book and subsequently undertake Occupation Certificate inspection.

NOTE: The issuing of an Occupation Certificate does not necessarily indicate that all conditions of development consent have been complied with. The applicant is responsible for ensuring that all conditions of development consent are complied with.

REASON: It is in the public interest that an Occupation Certificate be issued prior to occupation of the building. Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as amended.

General

17. Any earthworks (including any structural support or other related structure for the purposes of the development):

- (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
- (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
- (c) retained material must have a gradient of at least 5%, and
- (d) must be constructed in accordance with the approved plans for such work(s).

REASON: It is in the public interest that all building elements are able to withstand the combination of loads and other actions to which it may be subjected. Section 4.15 (1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*, as amended.

18.(1) For the purposes of Section 4.17 (11) of the *Environmental Planning and Assessment Act 1979*, it is a prescribed condition of the development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
 - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.**

REASON: To ensure the development complies with the requirements imposed under Clause 98E of the *Environmental Planning and Assessment Regulations 2000*, as amended, and Section 4.17 (11) of the *Environmental Planning and Assessment Act 1979*, as amended.

19. All backwash water or water discharged from the pool during emptying must be discharged into Council's sewer in accordance with the requirements of AS/NZS 3500 and the Plumbing Code of Australia. Under no circumstances must water be discharged to the street.

NOTE: Discharge from Pools in unsewered areas will be in a method approved by Council.

REASON: To ensure that all swimming pool backwash and water discharged is dealt with in an appropriate fashion. Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, as amended.

20. **The proposed filter and pump must be operated in accordance with the Protection of the Environment Operations (Noise Control) Regulation 2008 which restricts the times of operation. Restrictions apply between 8.00 pm and 7.00 am on weekdays and Saturdays and 8.00 pm to 8.00 am on Sundays and public holidays.**



NOTE 1: The swimming pool water, together with the treatment processes and facilities must comply with the requirements of the Public Health Act 2010 and Public Health Regulation 2012.

In this regards -

- pH needs to be between 7.2 and 7.8
- Alkalinity needs to be between 80mg/L and 200mg/L
- Free chlorine needs to be between 3mg/L and 10mg/L
- Combined chlorine needs to be less than 1mg/L
- Cyanuric acid (if used) must be between 30mg/L and 100mg/L

NOTE 2: For all pools in “septic areas”, the applicant must ensure that water discharged from the pool does not enter the septic tank or adversely impact on the septic disposal area or enter a drainage line.

REASON: To ensure the development does not reduce the amenity of the area. Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as amended.

Report Prepared by:  Victoria Rice Cadet Town Planner Date: 11/10/19	Report Approved by:  Steven Cook Senior Town Planner Date: 11/10/19
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