



# Report of Development Application Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

## APPLICATION DETAILS

<b>Application No:</b>	DA20/0143
<b>Council File No:</b>	D/2020/0143
<b>Date of Lodgement:</b>	20/03/2020
<b>Applicant:</b>	BJ Lees 2/19 Walla PI GLENFIELD PARK NSW 2650
<b>Proposal:</b>	Boundary fence
<b>Development Cost</b>	\$2500
<b>Description of Modification:</b>	N/A
<b>Other Approvals:</b>	Nil
<b>Determination Body &amp; Reason:</b>	Officer Delegation 7.39
<b>Assessment Officer:</b>	Victoria Rice

## SITE DETAILS

<b>Subject Land:</b>	2/19 Walla PI GLENFIELD PARK NSW 2650 Lot 3 DP 285985
<b>Owner:</b>	BJ Lees

## REPORT

### DESCRIPTION OF DEVELOPMENT

The proposed development seeks consent for a 1.8m high Colorbond boundary fence to be erected along the eastern side of the lot fronting Walla Place.

### THE SITE & LOCALITY

**Location** - The subject site is located on the south west corner of the bend of Walla Place approximately 140m east of the intersection with Yentoo Drive.

**Area** - 461.40m<sup>2</sup>

**Occupations** - Existing single storey dwelling on site with attached garage and alfresco.

**Constraints and restrictions** - 2m wide easement to drain sewage wrapping around the northern boundary.

**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): R1

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 provide for the housing needs of the community.
- To provide for a variety of housing types and densities.

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

**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 Council's register of contaminated sites.

**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:

### 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 WWDCP. The application was notified between 20 April and 27 April 2020. Three submissions were received.

#### 9.2.3 Corner Lots and Secondary Façade

*C3 A fence on the secondary frontage is permitted to have a height not exceeding 1800mm except in the following circumstances where its height is not to exceed 1200mm:*

- *Where it enters and is within the building line of the primary road - within the building line a fence will be permitted to taper down from 1800mm maximum permitted height to the 1200mm maximum permitted height at the primary road boundary”*
- *Where a dwelling “addresses” the secondary road*

The development proposes a boundary fence along the eastern boundary of the site. The fence is 1.8m in height and will allow for more privacy for the existing dwelling. The fence is located behind the building line on the secondary frontage, the primary frontage faces north onto Walla Place and as such the fence is considered suitable for the proposed location.

#### **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 Notification**

Surrounding properties were notified in accordance with Council’s requirements with submissions due by 27 April 2020. Three submissions were received in relation to the proposed development. The submissions raised the following concerns:

- Concerns over graffiti on the fence and banging on the fence
- Obstruction of view for cars turning the corner

- Inconsistency with streetscape
- Dog in the yard barking at passers by
- Neglect of planting and maintenance of garden at this property
- House price may decline if outlook is to a boundary fence

Concerns were raised over the potential for graffiti of the fence and pedestrians banging on the fence and kicking it. The applicant has provided details of landscaping around the fence in order to soften the look of the fence, this landscaping will also reduce the likelihood of graffiti and pedestrians banging on the fence. Although the submissions raised concerns over neglect of the garden in the past it is not something that Council can enforce.

A submission raised concern about the location of the fence and that it was out of character for the neighbourhood. The fence is located behind the primary building line and is setback from the road. It is not considered to obstruct the sight lines for vehicles on the road. There are other examples in the neighborhood of fences on corner lots it is not considered uncharacteristic for the streetscape. Dogs barking and housing prices are not a matter for consideration under a 4.15 assessment.

Furthermore the erection of a fence along a secondary boundary for 50% of the length of the boundary is exempt under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, subdivision 17 Fence (certain residential zones and Zone RU5) clause 3. The applicant could erect a fence along this boundary 8m long, the proposal is for a 13.38m long fence which is an additional 5.38m in length from what would be exempt. The additional area will provide a useable outdoor area and afford some privacy for the residents.

#### **(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. Three objections were received and have been considered.

### **Recommendation**

It is recommended that application number DA20/0143 for Boundary fence be approved, subject to the following conditions:-

## CONDITIONS

### A. SCHEDULE A – Reasons for Conditions

The conditions of this consent have been imposed for the following reasons:

- A.1 To ensure compliance with the terms of the Environmental Planning and Assessment Act 1979 and Regulation 2000.
- A.2 Having regard to Council's duties of consideration under Section 4.15 and 4.17 of the Act.
- A.3 To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites.
- A.4 To improve the amenity, safety and environmental quality of the locality.
- A.5 Having regard to environmental quality, the circumstances of the case and the public interest.
- A.6 Having regard to the Wagga Wagga Development Control Plan 2010.
- A.7 To help retain and enhance streetscape quality.
- A.8 Ensure compatibility with adjoining and neighbouring land uses and built form.
- A.9 To protect public interest, the environment and existing amenity of the locality.
- A.10 To minimise health risk to neighbouring residents and workers.

### B. SCHEDULE B – Deferred Commencement Conditions

N/A

### C. SCHEDULE C – Conditions

#### Approved Plans and Documentation

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

Plan/DocNo.	Plan/Doc Title	Prepared by	Issue	Date
-	Site Plan & Elevations	Bridget's Design & Drafting Service	-	8/2/2020
-	Statement of Environmental Effects	Brendon Lees	-	20/3/2020

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.

### Requirements before the commencement of any works

C.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.

C.3 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.

C.4 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.

### **Requirements during construction or site works**

- C.5 The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.
- C.6 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.
- C.7 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.
- C.8 All building work must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application).

### **General requirements**

- C.9 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).
- C.10 The fence is to be installed in accordance with the manufacturer's specifications.

## **D. SCHEDULE D – Activity Approval Conditions (Section 68)**

N/A

## **E. SCHEDULE E – Prescribed Conditions**

Conditions under this schedule are prescribed conditions for the purposes of section 4.17 (11) of the Environmental Planning and assessment Act 1979.

- E.1 Fulfilment of BASIX commitments (clause 97A EP&A Reg 2000)

The commitments listed in any relevant BASIX Certificate for this development must be fulfilled in accordance with the BASIX Certificate Report, Development Consent and the approved plans and specifications.

E.2 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 (clause 98 EP&A Reg 2000)

- (1) For development that involves any building work, the work must be carried out in accordance with the requirements of the Building Code of Australia.
- (2) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance shall be in force before any building work authorised to be carried out by the consent commences.
- (3) For a temporary structure that is used as an entertainment venue, the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.

NOTE 1: This condition does not apply:

- (a) to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), subject to the terms of any condition or requirement referred to in clause 187(6) or 188(4) of the Regulation, or
- (b) to the erection of a temporary building, other than a temporary structure to which part (3) of this condition applies.

NOTE 2: In this condition, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:

- (a) development consent, in the case of a temporary structure that is an entertainment venue, or
- (b) construction certificate, in every other case.

NOTE 3: There are no relevant provisions in the Building Code of Australia in respect of temporary structures that are not entertainment venues.

E.3 Erection of signs (clause 98A EP&A Reg 2000)

For development that involves any building work, subdivision work or demolition work, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

NOTE 1: This condition does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

NOTE 2: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

NOTE 3: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained.

#### E.4 Notification of Home Building Act 1989 requirements (clause 98B EP&A Reg 2000)

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

NOTE: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

#### E.5 Entertainment venues (clause 98C EP&A Reg 2000)

If the development involves the use of a building as an entertainment venue, the development shall comply with the requirements set out in Schedule 3A of the Environmental Planning and Assessment regulation 2000.

#### E.6 Maximum capacity signage (clause 98D EP&A Reg 2000)

For the following uses of a building: a sign must be displayed in a prominent position in the building stating the maximum number of persons permitted in the building if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:

- (a) entertainment venue,
- (b) function centre,
- (c) pub,
- (d) registered club,
- (e) restaurant.

NOTE: Words and expressions used in this condition have the same meanings as they have in the Standard Instrument.

**E.7 Shoring and adequacy of adjoining property (clause 98E EP&A Reg 2000)**

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the building, structure or work from possible damage from the excavation, and
- (b) where necessary, underpin the building, structure or work to prevent any such damage.

NOTE: This condition 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.

**F. SCHEDULE F – General Terms of Approval (Integrated Development)**

N/A

<p><b>Report Prepared by:</b></p>  <p>Victoria Rice Cadet Town Planner</p> <p>Date: 22/5/2020</p>	<p><b>Report Approved by:</b></p>  <p>Sam Robins Senior Town Planner</p> <p>Date: 22/5/20</p>
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