

Development Assessment REPORT DA 17/2021

Application Summary

Application No:	DA 17-2021
Title Details:	Lot 285 DP 751694 Lot 5537 DP 1197514 Lot 7 DP 934282
Address:	432 Regulator Rd, Yanco
Applicant:	Murrumbidgee Irrigation
Date Application Received:	1 February, 2021
Owner:	Murrumbidgee Irrigation
Site Area:	
Zoning:	
Existing Use:	Farmland
Proposed Development:	Excavation and Establishment of a 5,000ML Water Storage Facility and Associated Infrastructure to function as a surge reservoir and support MI'S Irrigation Network. The reservoir will operate as a gravity inflow/outflow with pump assist to utilise full capacity.

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Executive Summary

The applicant is seeking development consent for the Excavation and Establishment of a 5,000ML Water Storage Facility and Associated Infrastructure to function as a surge reservoir and support Murrumbidgee Irrigation's (MI) Irrigation Network. The purpose of a surge reservoir is to manage the demand for water as well as playing a role in water recycling and flood mitigation.

The proposed development is classed as Designated Development and Integrated Development.

The proposal is to include the following:

- the excavation and establishment of a 5,000ML artificial body, and associated infrastructure covering 140ha;
- it will have gravity inflow/outflow with pump assist to utilise full capacity. Inflow will be from MI's Main Canal. Outflow will be to MI's Main Canal above and below Roaches Regulator;
- it will be remotely operated by connection to MI's automated network;
- It will operate under the existing Combined Water Supply Work Approval and Water Use Approval 40CA403245 issued by the Department of Primary Industries, Water;

It will also include the following key features:

- Embankment
- Inlet structure
- Outlet structure
- Outlet channel
- Main canal entry structure
- Drainage bypass
- Drainage Subway
- Floodway inlet
- Overfill protection
- Pump station.

It is estimated that construction will take ten months to complete.

The DA has been accompanied by an Environmental Impact Statement prepared by SMEC.

The site located on Regulator Rd approximately six kilometers south west of Yanco and has an area of 170ha, of which approximatey 140 ha is proposed to be used for the projecct..

The land is zoned as RU1 Primary Production.

It is an integrated DA. General Terms of Approval have been issued by Heritage NSW and the Natural Resources Access Regulator.

Based on the Section 4.15 assessment detailed in this report, the development application is recommended for approval subject to the conditions provided in draft format for the consideration of the Western Regional Planning Panel.

1. INTRODUCTION

1.1. Scope of this report

This report has been prepared to provide an overview of the proposal and the statutory assessment procedure used during the processing of the development application. An assessment of the key issues of the development is then provided.

1.2. The Development

The applicant is seeking development consent for the Excavation and Establishment of a 5,000ML Water Storage Facility and Associated Infrastructure to function as a surge reservoir and support Murrumbidgee Irrigation's (MI) Irrigation Network. The reservoir will operate as a gravity inflow/outflow with pump assist to utilise full capacity. The purpose of a surge reservoir is to manage the demand for water as well as playing a role in water recycling and flood mitigation.

The proposed development is classed as Designated Development and Integrated Development.

As a result of it being Designated Development, an Environmental Impact Statement (EIS) was prepared by SMEC dated January 2021. As part of the investigations, four sites were investigated as potential sites for the reservoir at locations within the Murrumbidgee Irrigation Area. The Roaches Regulator site was ultimately chosen for the construction of the reservoir for a number of reasons based on the storage capacity, ease of integration into the existing irrigation network, is close to infrastructure, the suitability of the clay soil for construction of a reservoir and the area of land availability.

The proposal is to include the following:

- the excavation and establishment of a 5,000ML artificial body, and associated infrastructure covering 140ha;
- it will have gravity inflow/outflow with pump assist to utilise full capacity. Inflow will be from MI's Main Canal. Outflow will be to MI's Main Canal above and below Roaches Regulator;
- it will be remotely operated by connection to MI's automated network;
- It will operate under the existing Combined Water Supply Work Approval and Water Use Approval 40CA403245 issued by the Department of Primary Industries, Water;

It will also include the following key features:

- Embankment
- Inlet structure
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- Outlet channel
- Main canal entry structure
- Drainage bypass

- Drainage Subway
- Floodway inlet
- Overfill protection
- Pump station.

It is estimated that construction will take ten months to complete.

The project and its component parts can be seen from Figure 1.

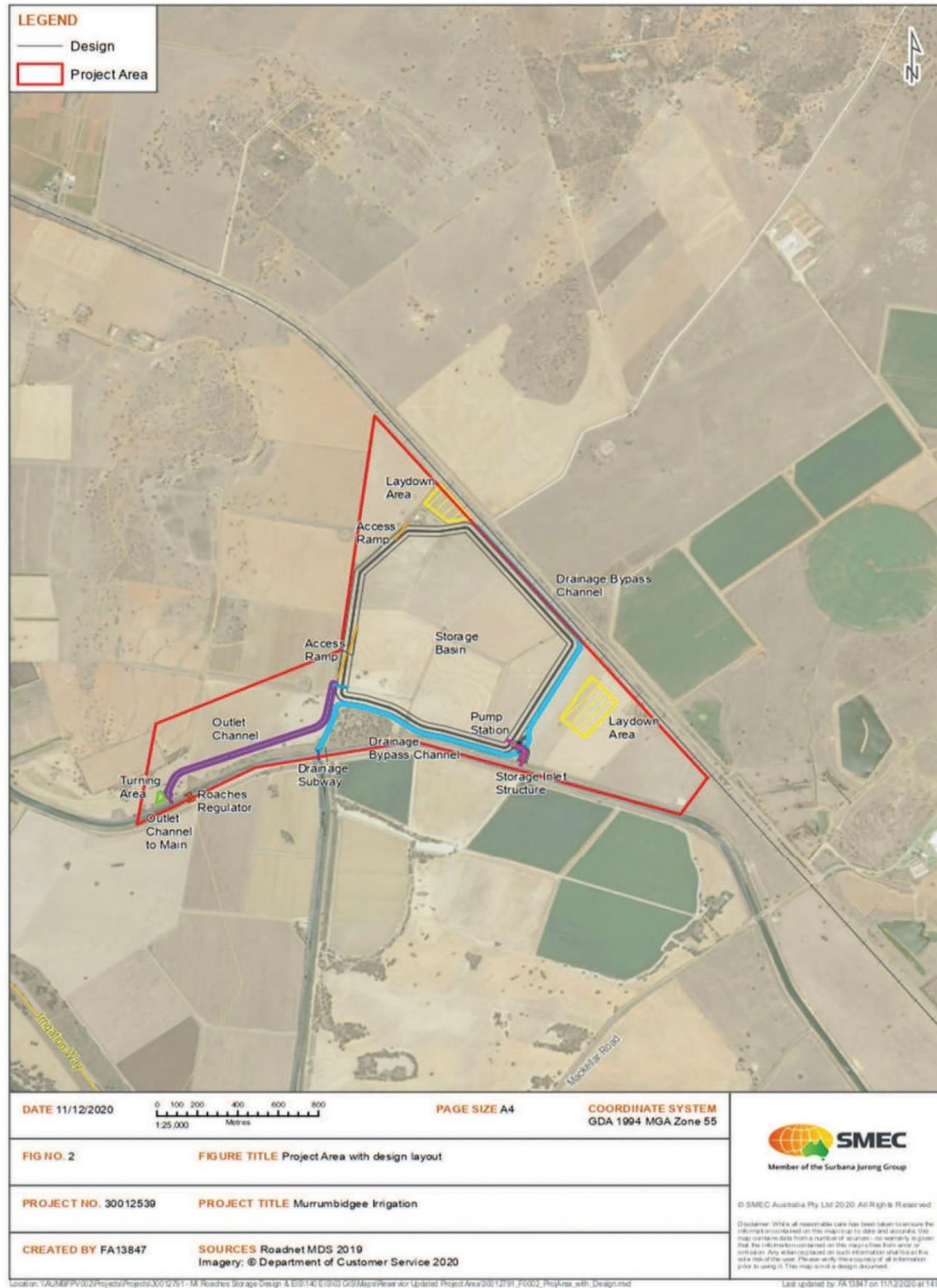


Figure 1: Site Plan

1.3. Site description and surrounding land use and development context

The site located on Regulator Rd approximately six kilometers south west of Yanco as can be seen from **Figure 2**

It is located between Regulator Rd and the M1 Main Channel and has an area of approximately 170ha.

It is surrounded by farmland which is used for a mixture of irrigated and dryland cropping. On the opposite side of the road is a feedlot.



Figure 2 Location of Subject Land

The site is zoned RU1 Primary Production under the provisions of Leeton LEP. The zoning of the site and surrounding land is shown on figure 3.

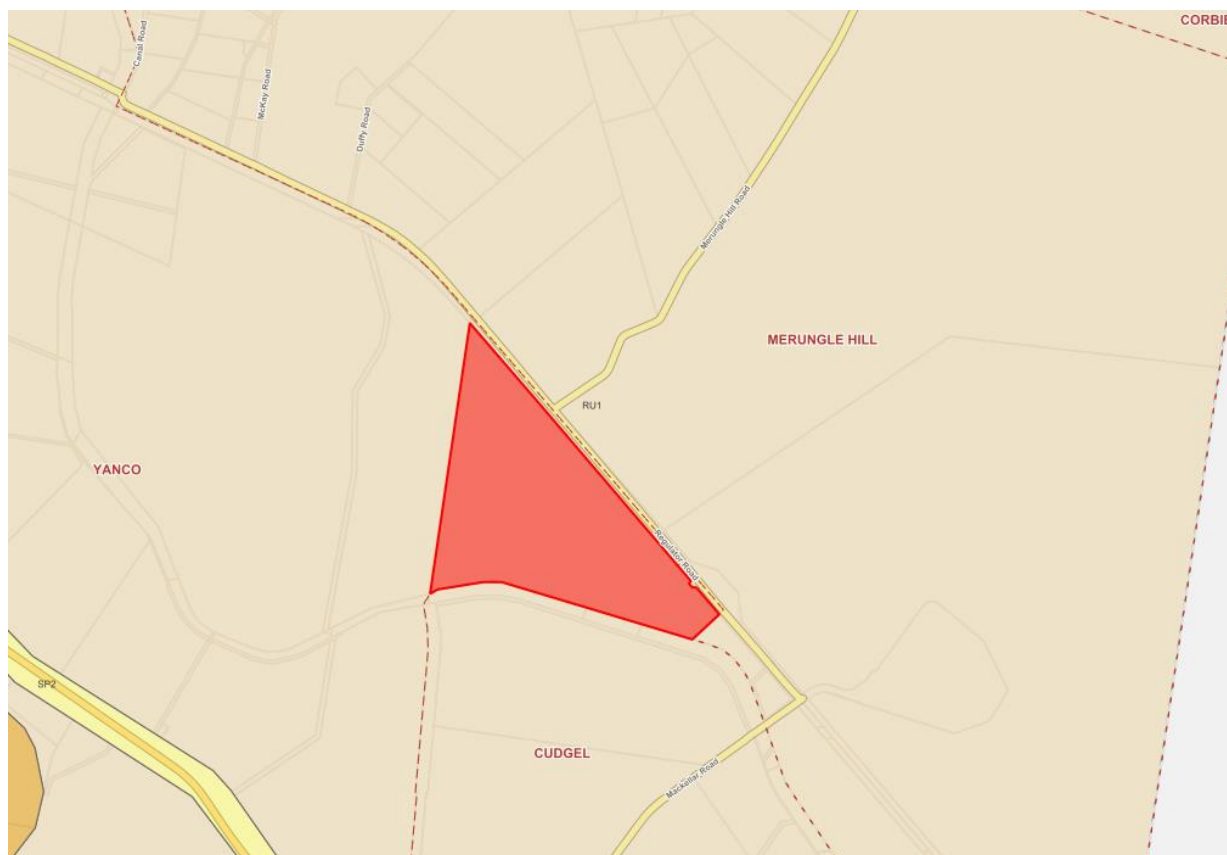


Figure 3: Zoning of the Site

2. STATUTORY DEVELOPMENT ASSESSMENT FRAMEWORK

2.1. Legislation

Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)

The provisions of the Environment Protection and Biodiversity Conservation (EPBC) Act only relates to proposed actions which have the potential to significantly impact on Matters of National Environmental Significance or the environment or Commonwealth owned land.

There are no matters of National Matters of Environmental Significance within the Shire.

The EIS states that the proposed development is not expected to directly impact on Matters of National Environmental Significance.

Environmental Planning and Assessment Act 1979

Approval to undertake development in NSW is governed by the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Environmental Planning and Assessment Regulation, 2000.

The EP&A Regulation specifies certain development to be designated in Schedule 3. The proposal falls under the definition of artificial waterbodies which is as follows:

Artificial waterbodies

(1) Artificial waterbodies—

(a) that have a maximum aggregate surface area of water of more than 0.5 hectares located—

(i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or

(ii) in an area of high water table or acid sulphate, sodic or saline soils, or

(b) that have a maximum aggregate surface area of water of more than 20 hectares or a storage capacity of more than 800 megalitres, or

(c) from which more than 30,000 cubic metres per year of material is to be removed.

(1A) Artificial waterbodies located on relevant irrigation land—

(a) that have a storage capacity of 100 megalitres or more and are in an environmentally sensitive area, or

(b) that have a storage capacity of 800 megalitres or more.

Relevant irrigation land is land that is in the area of operations of an irrigation corporation stipulated in The Water Management Act, 2000. Murrumbidgee Irrigation is an irrigation corporation under that Act and the proposal is to have 5,000 ML of storage so it falls under the provisions of clause 1A.

State Environmental Planning Policy (Infrastructure) 2007 applies to the land, however the provisions do not apply to this proposal because it only applies to water supply systems carried out on behalf of a public authority and MI is not a public authority.

State Environmental Planning Policy (Primary Production and Rural Development) 2019 applies to the land. Part 3 refers to artificial water bodies. Clause 13A states that the SEPP does not apply to artificial water bodies with a storage capacity between 15 and 100 ML and are in environmentally sensitive land. The land is not environmentally sensitive land and as it has to meet both parts, of subclause (2), the SEPP does not apply. It is also noted that the reservoir is greater than 100ML.

The Leeton LEP 2014 defines the proposal as follows:

water storage facility means a dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment.

This is included in the definition of water supply system which is defined as follows:

water supply system means any of the following—

(a) a water reticulation system,

(b) a water storage facility,

(c) a water treatment facility,

(d) a building or place that is a combination of any of the things referred to in paragraphs (a)–(c).

As identified in Clause 2.2 of Leeton Local Environmental Plan 2014, the subject land is zoned RU1 Primary Production under the provisions of Leeton Local Environmental Plan 2014.

Water storage facilities are part of a water supply system are permitted with consent in the zone.

Clause 5.17 of the LEP deals with artificial water bodies in environmentally sensitive areas within irrigation corporations. Murrumbidgee Irrigation is an irrigation corporation for the purposes of the LEP. Subclause (3) states that consent is required if the storage capacity is between 15 and 100 ML and it is to be carried out in an environmentally sensitive area. The storage capacity is proposed to be 5,000 ML and the land is not an environmentally sensitive area as defined in clause 1.5 of the SEPP Exempt and Complying 2008. Therefore, this clause does not apply to the proposal.

Clause 5.21 refers to development in a flood planning area. The development is on land that is within a flood planning area and so this clause applies to the development.

Clause 6.3 refers to land that has terrestrial biodiversity identified on it. The subject land has areas of biodiversity on it and so this clause applies to the land. It is noted that the EIS did not refer to this clause, however a comprehensive biodiversity assessment has been carried out.

Clause 6.4 refers to land that has groundwater vulnerability. The subject land is partially covered by the Groundwater vulnerability map.

The proposal is integrated development because it impacts on indigenous heritage as well as being a controlled activity. General terms of approval were requested and received from the relevant approval agencies as follows:

- NSW Office of Heritage.
- Natural Resources Regulator.

Both agencies have issued General Terms of Approval.

In accordance with the provisions of the EP&A Act and Regulations, the development was publicly exhibited from 5 February 2021 TO 6 March 2021. No public submissions were received.

It is noted that the EIS has made errors and omissions from the EIS dealing with the legislative aspects of the approval process.

1. Section 3.2 deals with the Environmental Planning & Assessment (EP&A) Regulations and specifically part 1 of schedule 3. It makes reference to clause 4 dealing with artificial waterbodies and states that clause 4(1) applies when in fact it is clause 4(1A) applies because the proposal is an artificial waterbody of more than 800 ML that is on relevant irrigation land which is defined in clause 38 of the Schedule as land within the area of operation of an irrigation corporation, which includes Murrumbidgee Irrigation.

2. Section 3.4 deals with SEPP Primary Production and Rural Development. The EIS uses the note in clause 13A (which refers to the designated development schedule of EP&A regulations) to say that it does not apply. A note in a SEPP has no legal standing and therefore reference to the note is not a reason why the clause does not apply. As clause 13A(2) states, it does not apply because the proposal has a capacity of more than 100 ML and is not carried out in an environmentally sensitive area, as defined in clause 1.5 of the SEPP Exempt and Complying Development Codes 2008.
3. Section 3.6 deals with the Leeton LEP. The EIS fails to acknowledge that the Clause 6.3 Terrestrial Biodiversity clause and the associated map applies to the site.
4. Section 3.8.4 deals with Water Management Act 2000. The EIS refers to the Water Management (General) Regulation 2011 when the most recent Regulation is dated 2018. It states that public authorities are exempt from the requirement for a controlled activity approval pursuant to clause 38, thus inferring that Murrumbidgee Irrigation is a public authority. Murrumbidgee Irrigation is a private shareholder owned company, and therefore not a public authority and not exempt from the controlled activity provisions. The same clause is in the 2018 regulation but it is clause 41 and it is still not exempt. This has implications for the Integrated Development process and the application has been referred to the Natural Resources Access Regulator, which has provided General Terms of Approval so this error has not impacted on the approval process

A letter has been sent to Murrumbidgee Irrigation after the matter was discussed with the Planning Panel Secretariat, requesting them to have the errors in the IES addressed and an appropriate correction document prepared. This has been included as a condition of consent.

2.2 Chronology of events and public notification and statutory referrals

DA lodged	Lodged 22 January 2021
DA advertised, site signposted	5 February 2021
Newspaper notices	5 February 2021 and 19 February 2021
Period of public notification	5 February 2021 to 6 March 2021
Referral agency letters	Environmental Protection Authority, Transport for NSW, WaterNSW Heritage Office, Department of Primary Industry (Environment, Energy and Science), Department of Primary Industry (Crown Lands), Natural Resource Access Regulator, Australian Rail Track Corporation and Roads and Maritime Authority
Neighbour notifications	19 Neighbours were notified

3. SECTION 4.15 ASSESSMENT

3.1. (a)(i) Environmental Planning Instruments

3.1.1. Leeton Local Environmental Plan 2014

The site is located within the RU1 Primary Production Zone. The development is defined as 'water storage facility' and is a development permitted with consent.

water storage facility means a dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment.

This is included in the definition of water supply system which is defined as follows:

water supply system means any of the following—

(a) a water reticulation system,

(b) a water storage facility,

(c) a water treatment facility,

(d) a building or place that is a combination of any of the things referred to in paragraphs (a)–(c).

The following provisions of the LEP apply:

- Clause 1.2: Aims of Plan
- Clause 2.3: Zone objectives and land use table
- Clause 2.3 subclause 1: land use table
- Clause 5.21 Flood Planning
- Clause 6.3 Terrestrial Biodiversity
- Clause 6.4 Groundwater Vulnerability

Clause of LEP	Comments
Clause 1.2 Aims of Plan	
(1) This Plan aims to make local environmental planning provisions for land in Leeton in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.	
(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,	The Proposal complies
(a) to encourage sustainable economic growth and development,	The Proposal complies
(b) to preserve rural land for all forms of primary production,	The Proposal complies
(c) to identify, protect, conserve and enhance Leeton's natural assets,	The Proposal complies
(d) to identify and protect Leeton's built and cultural heritage assets for future generations,	Not Applicable

(e) to allow for the equitable provision of social services and facilities for the community,	Not Applicable
(f) to provide housing choices for the community,	Not Applicable
(g) to minimise land use conflicts and adverse environmental impacts,	Not Applicable
(h) to promote ecologically sustainable development.	The Proposal complies
Clause 2.3 Zone objectives and Land Use Tables	
The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.	The development has been assessed in accordance with the RU1 Primary Production zoning. The assessment considers that the development is consistent with the RU1 Primary Production zone objectives.
Clause 2.3 subclause 1 objectives of zone Objectives are as follows:	
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal will improve the delivery of water resources to primary industry production and it will be done in such a way that maintains the natural resource base.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	The proposal encourages diversity in primary industry enterprises by improving the delivery of water resources in the area.
To minimise the fragmentation and alienation of resource lands	Not Applicable
<i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>	Not Applicable.
<i>To provide opportunities for intensive and extensive agriculture in appropriate locations consistent with the environmental capability of the land and access to irrigation water.</i>	The proposal improves the delivery of irrigation water to the area.
<i>To allow the development of processing, service and value-adding industries related to agriculture and primary industry production.</i>	Not Applicable
<i>To protect and enhance the water quality of receiving watercourses and groundwater systems so as to reduce land degradation</i>	The proposal will have a minimal impact on the receiving and groundwater systems and is not anticipated to lead to land degradation.
Clause 5.21 Flood Planning	
(1) The objectives of this clause are as follows— (a) to minimise the flood risk to life and property associated with the use of land,	Chapter 18 of the EIS deals with hydrology and has assessed the flooding

<p>(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,</p> <p>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.</p> <p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development,</p>	<p>potential of the land by undertaking a flood impact assessment.</p> <p>It has found that the land is land that is within the flood planning area.</p> <p>The EIS found that the proposed reservoir would form a blockage in the floodplain and it carried out modelling and analysis to gauge the impact of this blockage on the flood behaviour and impact on other properties. This assessment also considered the impact of a breach of the reservoir on nearby properties.</p> <p>To mitigate the impact of flooding upstream of the site, it is proposed to construct a drainage channel 20m wide around the northern and eastern sides of the reservoir. This will drain the water from the rail culverts to drain to an existing culvert under the Main Canal which is to be upgraded to reduce the impact of flooding upstream.</p> <p>The overall severity of a failure of the proposed reservoir is considered to be minor.</p> <p>It is considered that the proposed development is compatible with the flood function and behaviour of the land and it will not adversely affect flood behaviour in a way that has a detrimental impact on surrounding properties.</p> <p>It is also not considered to adversely affect the safe evacuation routes and it incorporates appropriate measures to manage the risk of flooding.</p> <p>The proposed development is not considered to adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p>
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<p>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>	
<p>Clause 6.3 Terrestrial Biodiversity</p>	
<p>(1) The objective of this clause is to maintain terrestrial biodiversity by—</p> <p>(a) protecting native fauna and flora, and</p> <p>(b) protecting the ecological processes necessary for their continued existence, and</p> <p>(c) encouraging the conservation and recovery of native fauna and flora and their habitats.</p> <p>(2) This clause applies to land identified as "Biodiversity" on the Terrestrial Biodiversity Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider—</p> <p>(a) whether the development is likely to have—</p> <p>(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and</p> <p>(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</p> <p>(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</p> <p>(iv) any adverse impact on the habitat elements providing connectivity on the land, and</p> <p>(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid any</p>	<p>The EIS has addressed Biodiversity and it was informed by a specific Biodiversity Development Assessment Report (BDAR), which was prepared in accordance with the Biodiversity Assessment Methodology developed by the Office of Environment and Heritage in 2017.</p> <p>The BDAR carried out an assessment of the biodiversity on the site which then informed the final design of the development. The proposed development avoids as much as possible trees and other vegetation.</p> <p>The BDAR notes that the proposal will have an impact on 108ha of grassland that is exempt land from a biodiversity point of view as well as having minimal tree cover. The proposal has been modified to ensure that 4 ha of moderately intact Grey Box Grassy Woodland which is an Endangered Ecological Community.</p> <p>The proposal will result in the removal of eleven mature paddock trees, eight of which have hollows or fissures that could be habitat, however the BDAR has concluded that the loss of these trees will have a negligible impact on hollow dependent fauna because of the small number of trees as well as the native vegetation to be retained in the surrounding landscape.</p> <p>The BDAR has also recommended a biodiversity offset strategy which includes the retiring credits based on the like-for-like rules of the Biodiversity Conservation Regulation.</p> <p>The BDAR has been referred to the Department of Planning, Industry and Environment Biodiversity and Conservation Division who after seeking some revisions to the BDAR are satisfied</p>

<p>significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>	<p>that it meets the requirements in the SEARS.</p> <p>It is considered that the proposal has been sited and designed and will be managed to avoid any significant adverse environmental impact.</p>
<p>Clause 6.4 Groundwater Vulnerability</p>	
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to maintain the hydrological functions of key groundwater systems,</p> <p>(b) to protect vulnerable groundwater resources from depletion and contamination as a result of development.</p> <p>(2) This clause applies to land identified as “Groundwater vulnerable” on the Groundwater Vulnerability Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider the following—</p> <p>(a) the likelihood of groundwater contamination from the development (including from any on-site storage or disposal of solid or liquid waste and chemicals),</p> <p>(b) any adverse impacts the development may have on groundwater dependent ecosystems,</p> <p>(c) the cumulative impact the development may have on groundwater (including impacts on nearby groundwater extraction for a potable water supply or stock water supply),</p> <p>(d) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p>	<p>The Groundwater Vulnerability Map applies to the western part of Lot 5537 DP1197514 and it is noted that the proposal only incorporates a small part of this lot.</p> <p>The EIS has carried out an assessment of the groundwater using the Analytical Aquifer Simulator software and covering an area of 224 km² which is the catchment area of the proposed reservoir.</p> <p>The assessment found that the construction phase of the proposed reservoir is not expected to interfere with any groundwater aquifers and is unlikely to impact on groundwater flows.</p> <p>The assessment of the groundwater model also found that after it is constructed an operational, the reservoir will lead to a rise in groundwater as a result of the development, however it will have minimal interaction with groundwater because of the clay lining.</p> <p>Management measures have been developed to avoid or minimise impacts on groundwater as far as is practicable. These include monitoring during construction and then regular monitoring and inspection on a monthly basis once the reservoir has been built.</p> <p>It is considered that the development has been designed and sited and will be managed to avoid any significant adverse environmental impact.</p>

<p>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>	
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3.2 State Environmental Planning Policies (SEPPs)

There are no relevant SEPPs that have an impact on this DA

3.2. 1(a) (ii) Draft Environmental Planning Instruments

There are no draft Environmental Planning Instruments to be considered in this assessment.

3.3. Any development control plan

Leeton Shire Council does not currently have a Development Control Plan (DCP).

3.4. The Likely Impacts of the development

The proposed reservoir is located in rural land adjacent to the Murrumbidgee Irrigation Main Canal. The proposed reservoir will have minimal impact on the scenic quality of the area and it is not considered that it will lead to any loss of amenity to surrounding land holders.

Access is not considered to be an issue during the operational phase but during construction there may be some impact on the local road system as a result of construction traffic, however this will be managed appropriately.

The land is not currently used for any intensive agricultural use and is a grazing property and it will not lead to the loss of any productive agricultural land. In fact, the benefits to the demand management of water supply to intensive plant and animal uses in the wider region is considered to outweigh any adverse impacts.

It is not considered that the proposal will have an adverse impact on groundwater or flooding as well as flora and fauna, which have all been assessed in detail in the EIS.

It is anticipated that the proposed reservoir will have a positive impact on the economy because it will help with the demand management of irrigation water which is a key aspect of the Leeton and wider regional economy.

3.5. The Suitability of the Site

The subject land is a grazing property and it is adjacent to the Main Canal which is a key part of the infrastructure of Murrumbidgee Irrigation. The proposed reservoir will form a key part of that infrastructure and therefore the site is considered to be suitable for the proposed development

3.6. Submissions

There were no public submissions.

3.7. The Public Interest

The proposal is in the public interest because it will improve the demand management of the water supply to the irrigation sector, which is a key part of the local and regional economy.

4. CONCLUSION

The proposal is to construct a surge reservoir and associated infrastructure to improve the demand management of irrigation supply.

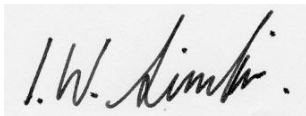
The proposal is designated development and a comprehensive EIS has been prepared. The EIS was sent to relevant government agencies for comment and it has been found to be satisfactory.

This assessment has considered the impacts and found it to be acceptable.

The development application was processed in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

Based on the above assessment of the proposal, it is recommended to the Western Region JRPP that the development application for Lot 14 DP 758606 and Lot 46 DP 12628, at 104-118 Pine Street Leeton be approved subject to the conditions listed in Appendix A.

Assessing Officer:



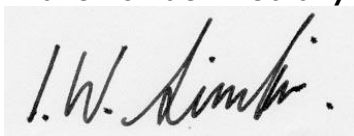
Ian Sinclair
Consultant Town Planner

Date: 1 October 2021

Francois Van Der Berg
Manager Planning, Building & Health

Date: 1 October 2021

I have not identified any conflicts of interest in this process.



Ian Sinclair
Consultant Town Planner

Date: 17 May 2021

Appendix A Conditions

GENERAL CONDITIONS

Approved Plans

1. Approval is granted for Excavation and Establishment of a 5,000ML Water Storage Facility and Associated Infrastructure to function as a surge reservoir and support MI'S Irrigation Network. The reservoir will operate as a gravity inflow/outflow with pump assist to utilise full capacity.at Lot 285 DP 751694, Lot 5537 DP 1197514, Lot 7 DP934282, 432 Regulator Rd, Yanco to be undertaken generally in accordance with the Environmental Impact Statement prepared by SMEC and any other approved documentation except where modified in red or by any of the following conditions:

Title	Author	Ref no:	Dated:
Environmental Impact Statement Roaches Surge Reservoir and Appendices	SMEC	30012791	19 January 2021
Air Quality Impact Assessment, Roaches Surge Reservoir	Northstar Air Quality	20.1048FR IV1	4 December 2020
Biodiversity Development Assessment Report Roaches Surge Reservoir	SMEC	30012791	9 December 2020
Biodiversity Development Assessment Report Roaches Surge Reservoir	SMEC	30012791	9 August 2021
Cultural Heritage Assessment Roaches Reservoir	Cultural Heritage Managemen t Australia		9 October 2020
Noise Assessment Roaches Reservoir	Muller Acoustic Consulting	MAC1909 8101RP1	September 2020
Flooding Impact and Dam Consequence Assessment Roaches Surge Reservoir	SMEC	30012791	10 December 2020
Transport Assessment Roaches Surge Reservoir	SMEC	30012791	2 December 2020
Greenhouse Gas Assessment Roaches Surge Reservoir	Northstar Air Quality	20.1048FR IV1	3 December 2020
Soil and Water Report Roaches Surge Reservoir	SMEC	30012791	10 November 2020
Waste Management Report Roaches Surge Reservoir	SMEC	30012791	4 December 2020
Visual Impact Assessment Roaches Surge Reservoir	SMEC	30012791	15 December 2020
Aquatic Ecology Assessment Roaches Surge Reservoir	SMEC	30012791	11 December 2020

Assessment of Storage Impacts on Groundwater Roaches Surge Reservoir	SMEC	30012791	10 December 2020
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{Reason: To ensure that the development is undertaken in accordance with that assessed}

1. The EIS prepared by SMEC is to be updated to reflect the errors and omissions dealing with the legislative aspects of the approval process.

{Reason: To ensure that the development is assessed having regard to the appropriate legislation}

2. The proposed retention dam is to be designed and located to ensure that any potential breaches of the water body direct and store water away from the road reserve of Irrigation Way.
3. Any works associated with the development shall be at no cost to Transport for NSW

{Reason: To ensure that the development does not have any adverse impact on the surrounding land}

4. The detailed design phase must assess and address the effect of the proposal on flooding south of, and further downstream of the Main Canal.
5. The design and future operation of the reservoir and associated flood mitigation structures is required to minimise flood impacts and risks to both the south and further downstream in the Main Canal.
6. The detailed design process includes consultation with NSW State Emergency Services, Leeton Shire Council and Griffith City Council to ensure flood impacts and risks in downstream areas are appropriately assessed and mitigated.
7. Operating protocols for the development are to be appropriate and transparent and developed through consultation with NSW State Emergency Services, Leeton Shire Council and Griffith City Council.

{Reason: To ensure that the development does not have any adverse impact on the surrounding land}

8. Prior to operational commencement the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
9. The requirement to retire credits in condition 8 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)¹.

10. Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of condition 8 must be provided to the consent authority prior to operational commencement.

Impacted plant communitytype	Number of ecosystem credits	IBRA subregion	Plant community type(s) that can be used to offset the impacts from development
Yellow Box – River Red Gum tall grassy riverine woodland	2	NSW South Western Slopes Riverina	
Western Grey Box – Poplar Box – White Cypress Pine tall woodland	9	Cobar Penneplain	
Mixed Eucalypt Woodlands	1	Cobar Penneplain	

Table 1: Ecosystem credits required to be retired – like for like

11. All building work shall be carried out in accordance with the provisions of the Building Code of Australia.

{Reason: Prescribed statutory condition under EP&A Act}

12. No activity is to be carried out on site until the Construction Certificate has been issued, other than:

- Site investigation for the preparation of the construction, and/or
- Implementation of environmental protection measures, such as erosion control etc that are required by this consent.

{Reason: To ensure the construction certificate is issued prior to the commencement of works.}

Contributions and Fees

13. In accordance with the Leeton Shire Council Section 94A levy Plan, the applicant shall pay the following section 94A monetary contribution:

(a) Amount of Contribution is \$250,000 (1% of the development cost)

(b) Timing and Method of Payment

(c) The contribution shall be paid in the form of cash, credit or bank cheque made out to Leeton Shire Council. Evidence of payment to Leeton Shire Council shall be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

(d) Indexing

(e) The contributions will be adjusted in accordance with the requirements of the Leeton Section 94A Levy Plan

{Reason: To meet the demands for public services and facilities as a result of the development within the Leeton Shire}

14. Access driveway is required for this development, it shall be constructed from the road carriageway to the property boundary in accordance with the requirements of Council
15. The proposed retention dam is to be designed and located to ensure that any potential breaches of the water body direct and store water away from the road reserve of Irrigation Way.
16. Any works associated with the development shall be at no cost to Transport for NSW.
17. A site rubbish container shall be provided on the site for the period of the construction works prior to commencement of any such work.
{Reason: Council requirement to prevent pollution of the environment by wind-blown litter}
18. Access to water closet facilities is to be provided throughout the course of construction of the water storage facility.

{Reason: Preservation of healthy conditions}

19. Public access to the site is to be prevented when the construction work is not in progress or when the site is unoccupied.

{Reason: To ensure the construction and excavation works and/or associated work practices are undertaken in a safe manner and complying with requirements of Safework NSW}

20. Clearing of land, excavation, and/or earthworks, building works, and the delivery of building materials shall be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm.

No work on Sunday

{Reason: Compliance with the Protection of the Environment Operations: Noise Control Regulation 2017}

PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

21. Any new or existing access driveway off Regulator Road is to:
 - i. Have upgraded the existing culvert located front of the Regulatory Road in accordance with Council's Engineering Guidelines.
 - ii. Be constructed to a width to carry out applicable vehicle movements in accordance with Council's Engineering Guidelines and Standard Drawing number RS-056. Prior to S138 approval, design and drawings showing turning paths must be submitted to the council.
 - iii. A 20m sealed access driveway to be constructed from the Regulator Road boundary and the remaining length of the access of driveway to be constructed by gravel surface till property boundary but still John Holland approval required for rail crossing area for the access.

- iv. The alignment of the access driveway across the verge shall be at right angles to the Regulator Road.
- v. The access driveway shall have satisfactory clearance to any power pole or telecommunications pole, manhole cover or marker, or street tree. Any relocation, alteration or replacement required shall be in accordance with the requirements of the relevant Authority and shall be at the Developer's expense.
- vi. The access driveway shall be of adequate thickness to accommodate Light truck loading or maximum Semi-Trailer combination.
- vii. The access driveway shall be provided with a non-slip finish;
- viii. The access driveway shall meet Australian Standard 2890.1 for vertical clearance.
- ix. The verge adjacent to either side of the access driveway shall be reinstated to surrounding conditions and finished flush with the new vehicle access driveways.

22. All other accesses to be upgraded in accordance with Council's Engineering Guidelines and as "Construction of Rural Type Property Access" Guidelines. However, due to the proximity of rail, Type 1 A-Double Train will not be permitted.

Advisory Note:

Currently Regulator Road is restricted to use vehicles maximum Semi-Trailer combination, any requests for larger vehicles must be submitted to the National Heavy Vehicle Regulator (NHVR) and be approved.

The installation of the vehicle access driveway is an approved structure in accordance with Section 138 of the Roads Act 1993. The ongoing maintenance and/or repair of the vehicle access driveway is the responsibility of the developer in accordance with Section 142 of the Roads Act 1993.

{Reason: to provide for a suitable vehicular access to the development in accordance with Council's minimum standards and minimize impact on pedestrian access facilities.}

PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

23. A separate Council approval under Section 138 of the Roads Act 1993 is required prior to any works commencing within the road reserve, including the construction of access driveways for this development. An application must be submitted to Council and approved prior to Issue of Construction Certificate.

The Section 138 application is to include:

- i. Detailed construction plans, including a long section where appropriate;
- ii. Details of the contractors engaged to undertake works within the road reserve. The contractor must maintain public liability insurance cover to the minimum value of \$20 million. The policy shall specifically indemnify Council from all claims arising from the execution of the works. Documentary evidence of the currency of the policy shall be provided to Council prior to the commencement of work and upon request, during the progress of the work.
- iii. A Traffic Control Plan (TCP) that has been prepared by a person with the applicable certification from Roads and Maritime Services (RMS) in accordance with AS1742.3-2009 and the RMS current version of the "Traffic Control at Worksites" manual.

{Reason: Compliance with Roads Act 1993 Section 138 for undertaking work on a public road reserve}

DURING WORKS

24. Vehicles used in the construction of the development are to be managed such that they do not inhibit traffic flow within the road reserve. At no time are construction or delivery vehicles to block the road or private accesses without prior approval of Council through a Section 138 Application under the Roads Act.

{Reason: to ensure traffic effects are minimised.}

25. Prior to the commencement of any works within the road reserve, approved Traffic Control Plans are to be implemented. Approved TCP's are to be maintained for the full duration of works.

{Reason: to protect the public where interruptions to normal traffic flow for vehicles and pedestrians are expected.

26. Any damage to Council infrastructure in, on or under the road reserve as a result of works undertaken for the development site shall be rectified by the Developer to the satisfaction of the Council so as to ensure the integrity of public infrastructure. Any damage to Council's infrastructure which is obvious before construction is to be immediately notified to Council to avoid later conflict.

{Reason: To ensure that any damage to Council's property is at the full cost to the developer. Environmental Planning & Assessment Act 1979 Section 4.15 (6) (a)}

27. Erosion and sediment control measures shall be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out.

28. {Reason: To ensure no detrimental effects are caused to Council infrastructure.}
29. Materials from the site are not to be tracked into the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road.
{Reason: To protect and council infrastructure and to ensure all system functions remain in good working order.}

PRIOR TO THE ISSUE OF ANY OCCUPATION CERTIFICATE

30. Application for any Occupation Certificate shall be submitted to and approved by the Certifying Authority prior to the use of the dam or structure.
{Reason: Compliance with section 6.9 of the Environmental Planning & Assessment Act 1979.}
31. Access Driveway construction and surrounding works shall be completed prior to the issue of an Occupation Certificate.
{Reason: to ensure suitable vehicular access to the development is available to the development.}
32. Prior to the use of the dam, a compliance certificate must be submitted to the Certifying Authority, certifying that the dam has been constructed in accordance with the recommendation of the Aitken Rowe Geotechnical Engineers Report (GS17-131) dated 2 November 2017.
33. *{Reason: to ensure the dam is constructed to a suitable standard to limit future potential hazards}*

ONGOING USE

34. Sealed and gravel surface of vehicle access driveway is to be maintained at all times.
35. {Reason: to ensure the access remains suitable and the Road Reserve is maintained safe with no obstructions.}
- 36. Construction Conditions**
37. The dam shall be constructed in accordance with all the recommendations and method stipulated in the geotechnical report from Aitken Rowe Geotechnical Engineers (GS17-131) dated 2 November 2017.
38. *{Reason: to ensure the dams are constructed to a suitable standard to limit future potential hazards}*

HERITAGE NSW : GENERAL TERMS OF APPROVAL FOR DA 17-2021

Based on the information that has been provided to Heritage NSW we provide the following General Terms of Approval (GTAs):

Aboriginal Cultural Heritage Regulation conditions

- • An Aboriginal Heritage Impact Permit (AHIP) under section 90 of the *National Parks and Wildlife Act 1974* must be sought and granted for Aboriginal objects to be harmed by the development prior to the commencement of works.
- • The AHIP application must be accompanied by appropriate documentation and mapping as outlined in *Applying for an Aboriginal Heritage Impact Permit: Guide for applicants* (OEH 2011) and with reference to the requirements of *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales* (OEH 2011).
- • Consultation with the Aboriginal community undertaken as part of an AHIP application must be in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010). Full documentation of this process is required including presentation of copies of consultation correspondence sent and received to and from agencies and RAPs. We recommend updates on the project are provided to the RAPs every 6 months to ensure the consultation is continuous.
- • The application must include complete records satisfying the requirements of the *Code of Practice for Archaeological Investigation in NSW* (DECCW 2010).
- • The AHIP application must be supported by a copy of Development Consent issued under Part 4 of the *Environmental Planning and Assessment Act 1979*.
- • Consideration of issues raised by Leeton and District Local Aboriginal Land Council regarding mitigation of harm to Aboriginal objects and values from the proposal is to occur within the AHIP application. This may include a need for additional consultation to resolve issues raised.
- • Consideration is to be given to protective measures for the parts of sites 49-5-0234 and 49-5-0235 proposed to be avoided by works, such as temporary fencing during construction.

GENERAL TERMS OF APPROVAL FROM NATURAL RESOURCES ACCESS REGULATOR

Reference Number:	IDAS1132881
Issue date of GTA:	27 April 2021
Type of Approval:	Controlled Activity
Description:	The development involves the excavation and establishment of 5000ML Water Storage Facility (Water Storage Dam) and associated infrastructure to function as a surge reservoir and support MI's Irrigation network. The reservoir will operate as a gravity inflow/outflow with pump assist to utilise full capacity. Inflow will be from MI's main canal.
Location of work/activity:	432 REGULATOR ROAD YANCO 2703
DA Number:	DA 17-2021
LGA:	Leeton Shire Council
Water Sharing Plan Area:	Murrumbidgee Unregulated River Water Sources 2012

The GTA issued by NRAR do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to NRAR for the relevant approval **after development consent** has been issued by Council **and before** the commencement of any work or activity.

Condition Number

Design of works and structures

GT0080-00001

Details

The turkeys nest storage dam must be constructed in a manner to prevent harvesting of water from either rainwater runoff or overland flows.

Erosion and sediment controls

GT0021-00003

The proposed erosion and sediment control works must be inspected and maintained throughout the construction period of the water supply work(s) and must not be removed until the site is fully stabilised.

Plans, standards and guidelines

GT0001-00004

A. The application for a water supply work(s) approval must include the document(s) listed in Schedule 1. B. The document(s) must be prepared by a suitably qualified person.

GT0032-00041

The application for a water supply work approval must include the following document(s): A. site plan, map and/or surveys, detailed design and construction plans, Construction Environmental Management Plan (including ESCP, Site Rehabilitation Plan and Soil and Water Management Plan), Works Schedule, operational management plan.

GT0033-00009

A. This General Terms of Approval (GTA) only applies to the proposed water supply work described in the plans and associated documents found in Schedule 1, relating to Development Application 17.2021 provided by Council to Natural Resources Access Regulator. B. Any amendments or modifications to the proposed water supply work may render the GTA invalid. If the proposed water supply work is amended or modified, Natural Resources Access Regulator, Deniliquin Office, must be notified in writing to determine if any variations to the GTA will be required.

Rehabilitation and maintenance

GT0023-00002

Vegetation clearance associated with the proposed water supply work(s) must be limited to

where the water supply works is to be constructed,
as shown on the AP

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by NRAR for integrated development associated with DA 17-2021 as provided by Council:

- Development Application DA17-2021
- EIS for Murrumbidgee Irrigation - DA17-2021 - for storage dam assessment.