

Farrell Heidelberg Pty Ltd

23 January 2017

The General Manager
Yass Valley Council
PO Box 6
YASS NSW 2582

Dear Mr Rowe

Development Application Yass Valley Way

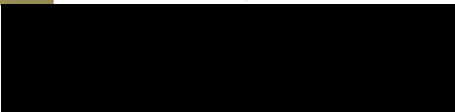
Farrell Heidelberg Pty Ltd is the owner of the Freeway Service Centre at Lots 1-4 DP 852715 Yass Valley Way and a substantial ratepayer of the municipality. Notice has been received of an application for consent under the Yass Valley Local Environmental Plan 2013 in respect of Lot 1, LP 842644, known as 1 Yass Valley Way, Yass. Farrell Heidelberg Pty Ltd intends to lodge a submission in respect of the application.

The applicant for consent is Yass Industrial Park Pty Ltd (ACN 608 954 365). A search of ASIC records shows that the directors of the applicant are Brendan James Abbey and Rohan Peter Arnold. The shareholders of the applicant are Mr Abbey and Pyrtee Pty Ltd, a company owned by Mr Arnold. The application quite properly discloses that The Mayor of Yass Valley, Rowena Abbey, is the spouse of Mr Abbey.

In all the circumstances and especially after considering ICAC Position Paper *Corruption Risks in NSW Development Approval Processes, September 2007*, and the Model Code of Conduct, Farrell Heidelberg Pty Ltd expects that the Council will not allow the application to be considered under delegation, notwithstanding the delegation policy DA-POL-18. Further, Farrell Heidelberg Pty Ltd expects that the Council will, in these unusual circumstances, appoint an independent probity adviser to assure the Council and other parties that all proper procedures have been followed.

We look forward to your advice confirming the process.

Yours sincerely


Owen S Lennie
Director

cc Chris Berry, Director Planning & Environmental Services

[ACN 147 265 316]

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468 St Kilda Road
MELBOURNE VIC 3004
613 9856 4577
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30 January 2017

Our Ref: N-17001

Mr David Rowe
General Manager
Yass Valley Council
PO BOX 6
YASS NSW 2582

Dear Mr Rowe,

RE: SUBMISSION TO DEVELOPMENT APPLICATION NO.5.2016.280.1 - PROPOSED
SERVICE STATION, CAFÉ, RESTAURANT TAKE AWAY FOOD AND DRINK PREMISES ON
LOT 1 DP 842644, YASS VALLEY WAY, YASS

INTRODUCTION AND SUMMARY

City Plan Strategy & Development with the assistance of GTA Consultants has prepared this submission on behalf of Farrell Heidelberg Pty Ltd, the registered proprietor of the adjacent highway service centre at 1713 Yass Valley Way, in response to the public exhibition of Development Application No.5.2016.280.1. The subject Development Application (DA) relates to the proposed construction of a mixed use development comprising a service station and fast food outlets/cafes/take away food and drink premises on the subject land. After reviewing all available documentation associated with the proposed development we wish to object to the proposal on two principal grounds.

City Plan Strategy & Development is of the view that the Statement of Environmental Effects submitted in support of the Development Application has incorrectly characterised the development as a mixed use development comprising a 'service station' and 'fast food outlets', 'cafes' and 'take away food and drink premises'. We are of the firm opinion that the development is in fact more appropriately defined as a 'highway service centre' as defined under clause 1.4 and the 'Dictionary' within Yass Valley Local Environmental Plan 2013 (YVLEP). Consequently, given the site is zoned IN1 General Industrial, the proposed development is prohibited on this site and therefore is unable to be approved by the Council as the consent authority.

In addition, City Plan Strategy & Development is of the opinion that the proposed mixed use development would be an inappropriate use of industrially zoned land. Specifically, the development would be inconsistent with two of the applicable zone objectives applying to the site and Council, as the consent authority, must have regard to these zone objectives when considering any development proposal.

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Q:\CPNEWS01\PROJECTS 2017\N-17001 YASS VALLEY WAY OBJECTION\03. CPDS DOCUMENTS\CPDS_SUBMISSION TO YASS VALLEY

PERMISSIBILITY

Land Use Definition

The subject development application relates to a site within Zone IN1 General Industrial under the Yass Valley LEP 2013 (YVLEP).

The Statement of Environmental Effects for the proposed development provides that the development comprises a 'service station', café, take away food and drink premises, restaurants, and other unidentified ancillary development. The development of a 'service station' is permissible with consent in the IN1 zone. 'Restaurants or cafes' and 'take away food and drink premises' are also permissible with consent in the IN1 zone.

Notwithstanding, in considering the Statement of Environmental Effects and supporting documentation, City Plan Strategy and Development is firmly of the view that the development is in fact more appropriately characterised as a 'highway service centre'. As per clause 1.4 and the 'Dictionary' within YVLEP, a 'highway service centre' is defined as follows:

a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) service stations and facilities for emergency vehicle towing and repairs,*
- (d) parking for vehicles,*
- (e) rest areas and public amenities.*

By way of comparison, a service station is defined in YVLEP as:

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
- (b) the cleaning of motor vehicles,*
- (c) installation of accessories,*
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) the ancillary retail selling or hiring of general merchandise or services or both.*

Based on the grounds detailed below, City Plan Strategy & Development consider that the proposed development seeks to "provide refreshments and vehicle services to highway users". In addition, we are of the opinion that the proposed development seeks to provide 'rest areas

and public amenities', 'parking for vehicles', 'take away food and drink premises' and a 'restaurant / café' typically associated with a Highway Service Centre.

Statement of Environmental Effects

The Statement of Environmental Effects submitted in support of the Development Application (prepared by Geolyse Pty Ltd) contains several statements/arguments that we believe demonstrates that the proposal has been designed to provide refreshments and vehicles services to highway users. The relevant sections of the Statement of Environmental Effects have been extracted below in support of this view:

1. Section 4.8.2 Yass Valley Section 94 Rural Roads Contributions Plan (page 24)
 - a) "The development does not generate traffic impacts upon rural roads in the Yass Valley LGA, **on the basis that 75% of traffic utilising the development is coming to the site from, and returning to the Hume Highway**" (bold added for emphasis).
 - b) **"the nature of the proposed land use more logically aligns with a highway service facility....**It is therefore arguable that the Rural Roads S94 Plan, by virtue of the land use proposed, does not apply" (bold added for emphasis).
2. Section 5.2 Context and Setting (page 25)
 - a) "Due to its location near Yass close proximity to the highway, the subject site is well placed to provide for the demand for services from passing trade"
 - b) "The existing service centre (opposite the subject site) is located close to the highway, which avoids a long diversion into town, making it desirable to people travelling on the Hume Highway."
 - c) **"Provision of an alternate facility in a proximal location provides an ideal opportunity to split the volume of traffic into two facilities, making the location more desirable as a stopping off point,** and improving the efficiency of the road system" (bold added for emphasis).
 - d) "The proposed development has been internally design to provide **amenities such as outdoor and indoor play areas, caravan parking, off-leash dog walking areas, coach drop off and parking, high quality heavy vehicle driver amenities and communal eating facilities,** to attract patrons" (bold added for emphasis).
3. Section 5.3 Access, Transport and Traffic (page 26)
 - a) "The Traffic Impact Assessment (prepared by Traffix) concluded that: In summary Traffix has been commissioned by Yass Industrial Park Pty Ltd to undertake **a Traffic Impact Assessment in support of a Development Application relating to the development of a Highway Service Centre**" (bold added for emphasis)".
4. Section 5.8.2 Food and Drink Premises (page 30)
 - a) "The facility provides patron amenities including toilets and showers for truckers".

Traffic Impact Assessment

GTA Consultants were engaged by Farrell Heidelberg Pty Ltd to review the traffic engineering matters applicable to Development Application No.5.2016.280.1. GTA Consultants have advised the following in relation to the proposed development:

5. The Traffic Impact Assessment prepared by TRAFFIX is titled 'Highway Service Centre, Yass'.
6. Section 6.1.2 Existing Service Centre (page 14)
 - a) The proposed development utilises surveys of the existing Yass Highway Service Centre (located opposite the site) to determine the anticipated traffic generation of the proposed use.
7. Section 6.1.3 Predicted Site Generation (page 15)
 - a) The report outlines that the proposed development will draw on the same customers as the existing Highway Service Centre and assumes that the combined traffic generation of both 'Highway Service Centres' will be 10% higher than the existing Yass Highway Service Centre. In essence, the traffic report assumes that all traffic to the proposed development will be drawing from passing traffic on Hume Highway which is already stopping at the existing Yass Highway Service Centre.
8. Section 7.1.2 Site Access (page 18)
 - a) "It is noted that Section 5.7.2 of the RMS Guide to Traffic Generating Developments states that Service Stations and Convenience Stores must not have more than two driveways in any one street frontage. This Clause is considered to be appropriate for urban and suburban Service Stations **but not appropriate for the requirements of a regional Highway Service Centre**, incorporating a heavy vehicle truck stop. It is considered the benefits of separating heavy and light vehicle movements outweighs the requirement to restrict the number of accesses provided." (bold added for emphasis).

Based on the matters outlined above, GTA Consultants have concluded that the submitted development plans and associated traffic report have been prepared on the basis that the proposed development is a 'highway service centre' and that the development has been designed to provide refreshments and services to highway users.

Development Plans

The development plans submitted in support of the development application were prepared by RJ Sinclair Pty Ltd Building Design. As shown in the image below, the plans are titled '**Proposed Highway Service Centre**'. GTA Consultants have advised the following in relation to the plans:

9. The plans include a significant separate parking areas (with separate access) for B-Doubles and B-Triples which is consistent with a highway service centre as opposed to an urban service station and convenience restaurant.
10. Neither a swept path assessment nor concept plan of the roundabout has been prepared. Specifically, the adequacy of the roundabout to accommodate turning movements by vehicles up to, and including, a B-triple has not been addressed.

Consequently, the development has not demonstrated that the existing roundabout can accommodate B-Triple movements or addressed whether mitigating works are required

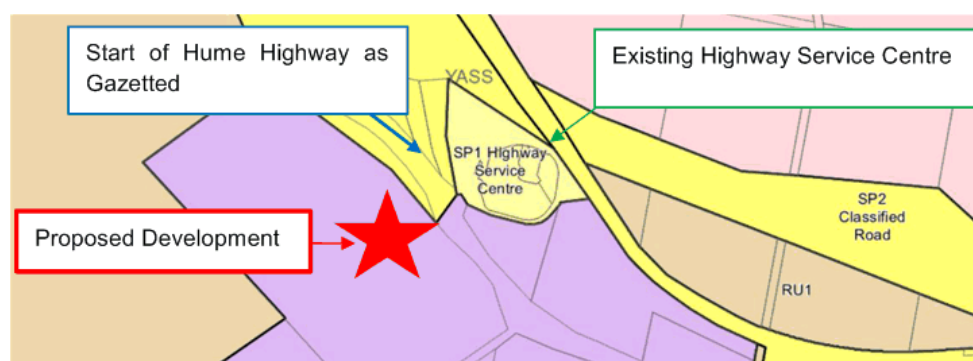


to cater for these movements.

Source: Development plans titled 'proposed highway service centre' prepared RJ Sinclair Pty Ltd Building Design in support of the subject Development Application No.5.2016.280.1

Adjoining Land Use - Highway Service Centre

An existing highway service centre known as the 'Yass Highway Service Centre' is located on the northern side of Yass Valley Way, within 70m of the subject site. The existing Yass Highway Service Centre is located on land zoned SP1 Special Activities. The SP1 Special Activities zone permits development that is shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose. As shown in the YVLEP zoning map extract below, the existing Yass Highway Service Centre located opposite the subject site is shown on the YVLEP Land Zoning Map as a 'SP1 Highway Service Centre'.



Source: YLEP Land Zoning Map

The proposal applied for under the DA is strikingly similar in form and layout to the existing highway service centre at 1713 Yass Valley Way. Considering the form and layout of the

proposed development, as well as the proximity to the Hume Highway, it is hard to escape the conclusion that the proposal is for a highway service centre.

Conclusion

Before a consent authority can determine the question of permissibility of a development proposal, it is necessary to first characterise the development, in accordance with the principles in *Chamwell Pty Limited v Strathfield Municipal Council* (2007) 151 LGERA 400. (The court's reasoning in this case was approved of by the NSW Court of Appeal in *Abret Pty Ltd v Wingecarribee Shire Council* [2011] NSWCA 107).

In *Chamwell*, the Court said:

- in planning law, use must be for a purpose (at par [27]);
- the purpose is the end to which land is seen to serve (at par [27]); and
- the characterisation of the purpose of a use of land should be done at a level of generality which is necessary and sufficient to cover the individual activities, transactions or processes carried on, not in terms of the detailed activities, transactions or processes (at [36]).

Applying the principles in *Chamwell* to the facts set out above, the correct characterisation of the proposal is "highway service centre", which is a prohibited use in the IN1 Zone

PLANNING MERITS

Zone objectives

Clause 2.3 of YVLEP provides that "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". Consequently, development should occur only where the consent authority is satisfied that the development will be capable of meeting the objectives of the zone.

The objectives of the Zone IN1 General Industrial are listed in the YVLEP as follows:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*

City Plan Strategy & Development considers that the proposed development is inconsistent with two of the zone objectives, namely:

To provide a wide range of industrial and warehouse land uses.

To support and protect industrial land for industrial uses.

Objective No. 1 - To provide a wide range of industrial and warehouse land uses.

The Statement of Environmental Effects for the proposed development provides that the development will include a mixed use development comprised of a service station, café, take away food and drink premises, restaurants, and other unidentified ancillary development. Once established, the development could reasonably be expected to cater to local residents, tourists and drivers of commercial freight vehicles.

Planning Circular PS 11-011 issued by the Department of Planning on 10 March 2011 identifies each of the proposed land uses as either being within the group term of 'commercial premises' or as commercial land uses outside the group term. The corollary being that the proposed development does not provide for "industrial or warehouse land uses" or any other type of industrial activity. Rather, the development provides for a commercial activity.

In considering the question of consistency with zone objectives, the NSW Land & Environment Court has adopted the approach in *Schaffer Corporation V Hawkesbury City Council* (1992) 77 LGRA 21, where it was determined that a development is generally consistent with an objective then it is not antipathetic to an objective. Given that the proposed development is demonstrably comprised of commercial land uses, not industrial or warehouse land uses, it follows that the proposed development should be considered antipathetic to, and inconsistent with, this zone objective.

Objective No. 4 - To support and protect industrial land for industrial uses.

Planning Circular PS 11-011 provides clear direction on the intent of zones within the Standard Instrument. In relation to Zone IN1 – General Industrial, PS 11-011 outlines that the intent of the General Industrial zone is to provide for industrial land uses and that the standardised zone objectives were written to specifically reflect this intention.

As outlined above, the proposed development would be comprised of commercial land uses as opposed to industrial uses. More specifically, the proposed development seeks to dedicate approximately 60% - 65% of the 2.74 hectare site for at-grade car parking, tourist coach parking and a drive-through area for a fast food outlet. The remainder of the site would be for commercial activities associated with the service station and food outlets. It therefore follows that the proposed development fails to protect industrial land for industrial uses as required by the objective of Zone IN1 – General Industrial.

An existing highway service centre is located within 100m of the proposed development on the northern side of Yass Valley Way. The existing Yass Highway Service Centre is located on land zoned SP1 Special Activity, which permits development that is shown on the Land Zoning Map. As outlined previously, the Land Zoning Map states that a "SP1 Highway Service Centre" is permitted on the land, which clearly demonstrates that the existing service centre and ancillary services were specifically zoned to permit this activity. City Plan Strategy & Development contends that the existing centre is demonstrably adequate to support the industrial development land located on Yass Valley Way as there is minimal development in the IN1 zone in this vicinity. As a result, it cannot be argued that the components of the proposed development are designed for servicing other developments in the IN1 zone. Consequently, there does not appear to be a sound economic or social justification to substantially erode the supply of industrially zoned land for future industrial uses by granting consent to a (prohibited) commercial activity, when such a service to industrial uses already exists in close proximity.

It follows that the development fails to support the future use of industrial land for industrial uses. The proposed development is therefore considered to be antipathetic to, and inconsistent with, this zone objective.

CONCLUSION

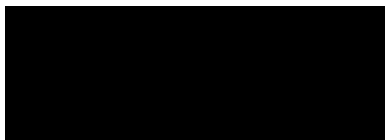
Based on our review of Development Application No.5.2016.280.1, City Plan Strategy & Development is of the opinion that the proposed development has been incorrectly characterised as a mixed use development comprising a 'service station' and 'fast food outlets', 'cafes' and 'take away food and drink premises'. Instead, the proposed development should be categorised as a 'highway service centre', as defined by per clause 1.4 and the 'Dictionary' within YVLEP. Consequently, given the site is zoned IN1 General Industrial, the proposed development is prohibited on this site and therefore is unable to be approved by the Council as the consent authority.

In addition, City Plan Strategy & Development maintains that the proposed development is antipathetic to, and inconsistent with two objectives of the IN1 General Industrial Zone. The proposal does not seek to support or protect industrial land for industrial uses, rather it seeks to establish a commercial land use in an industrial zone. Moreover, there does not appear to be sufficient grounds to justify eroding the supply of industrial land for commercial land uses by supporting the proposed development. Consequently, City Plan Strategy & Development is of the view that it would be inappropriate for development consent to be granted to DA No.5.2016.280.1.

We thank Council for their consideration of this submission. Please contact me should you wish to discuss any aspect of my assessment of this matter.

In addition to any other notice the Council is required to give, please advise me by e-mail when the DA has been determined.

Yours sincerely,



Garry Fielding
Senior Consultant

From: 
Sent: Monday, 30 January 2017 4:08 PM
To: Records
Subject: DA 5.2016.280.1 - Yass Valley Way

Dear Sir/Madam

I am writing in regards to the exhibition of Development Application No. 5.2016.280.1 for the erection of a service station, ancillary infrastructure, and three fast food outlets.

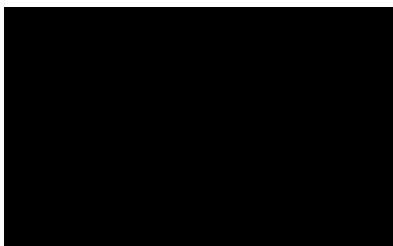
While I have no concerns with the project in principle, I would like to highlight the potential cumulative effect that this development, along with other developments both previously and presently occurring has on the residents of Black Range Road.

We have recently purchased property along Black Range Road, and already we are very aware of the very dangerous situation residents are faced with daily. What used to be a safe left hand turning lane onto Black Range Road has been modified/remarked as a right hand merge lane as a result of the SELX development, and I can only foresee the situation being exacerbated from a high traffic generating development.

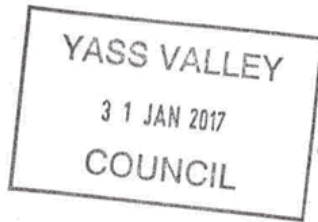
A vehicle, most especially a fully loaded stock truck exiting the saleyards, plus a resident attempting to move left to turn left onto Black Range Road with a vehicle close behind trying to go straight ahead and becoming frustrated because they simply do not understand what is going on is not going to end well at some point in the future.

We would ask that consideration to this increasingly dangerous and unsatisfactory arrangement be addressed before further development proceeds within the area.

Kind regards



This email has been scanned by the Symantec Email Security.cloud service.



Elmside Pastoral Company

To The General Manager
Yass Valley Council
P.O. Box 6
YASS NSW 2582

30th January, 2017

Dear General Manager,

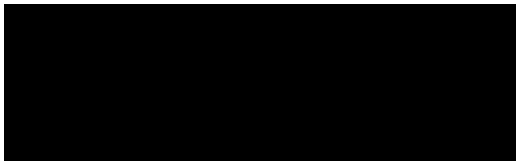
RE: Development Application no. 5.2016.280.1

As the landholder around the proposed service station we would like to request that a security fence be erected around the service station so that our stock especially at lambing time is protected. As I am sure you can understand this is our livelihood which we need to protect. We would also ask that the fence is maintained to a high standard throughout the future.

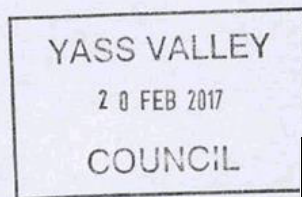
It would be very much appreciated if Yass Industrial Park Pty Ltd would consider protecting our stock with security fencing in any future development in the industrial area.

We also have concerns with the water runoff, as the watercourse from this site currently feeds into our stock water dam and then flows into the Derrungullen Creek. What plans are there in place to stop contamination of this stock water?

If you wish to discuss these issues please contact me.



David Rowe
General Manager YVC.
Comur St YASS 2582



[REDACTED]
YASS NSW 2582
16 February 2017

Dear David,

*Matter; Traffic safety for the Black Range Residents.
Development Yass Council NSW Yass Industrial Park

The Bypass was to save Yass Town, but the new Industrial Development has introduced heavy transports accessing from YASS Town and the Freeway Southern approach.

Trafficking heavy transport via the Yass Service Centre and from Yass to access the new Bellevale Road, Yass Valley Way, is inhibiting the safety turn at Black Range Road.

- (1) DP 5. 2014,6.1 South East Livestock Exchange SELX Co Pty.
- (2) Martins Fertiliser Bellevale Road – extension.
- (3) Yass Industrial Blocks east of Black Range Rd.
- (4) Bellevale Cattle Co.

NOTE The residents of Black Range are in trepidation over safety issue as the Mayor Mrs Abby (a Developer) and you as General Manager, are proposing the Black Range Residents use the **Bellevale Road industrial access to join the Black Range Road to the Western side of the Black Range Road Development**.

This is unacceptable for the safety of commuting daily residents and school bus in such heavy trucking 24/7.

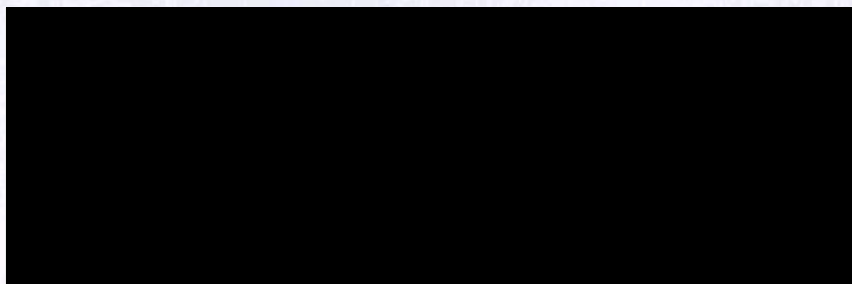
Further development (5) & (6) to the West on Black Range Road will add to the congestion and safety and the residential users have not been considered.

(5) DA 5. 2016. 280.1 YASS VALLEY WAY. Yass Industrial Park. A large DA will add congestion and hazards for traffic in and out the Southern freeway.

(6) DA 5.2016.202.1 traffic increased use of existing Air Strip McIntosh Black Range, would require access from the Bowning Common Road to avoid further congestion.

PLEASE PUT ON NOTICE the BLACK RANGE RESIDENTS SERIOUS CONCERN.
Wanting existing Private Black Range Road Maintained separate to all the existing and planned DA Industrial and new DA development plans.

We ask matters be regarded as urgent.





30 May 2017

Our Ref: N-17001

Mr David Rowe
General Manager
Yass Valley Council
PO BOX 6
YASS BSW 2582

Dear Mr Rowe,

RE: SUBMISSION TO DEVELOPMENT APPLICATION NO.5.2016.280.1 - PROPOSED SERVICE STATION INCLUDING A CAFÉ, RESTAURANT, TAKE AWAY FOOD AND DRINK PREMISES, TRUCK AND CAR WASH, VEHICLE REPAIRS AND SERVICING, TYRE SERVICING AND CAR PARKING ON LOT 1 DP 842644, YASS VALLEY WAY, YASS.

City Plan Strategy & Development has prepared this submission on behalf of Farrell Heidelberg Pty Ltd, the registered proprietor of the adjacent highway service centre at 1713 Yass Valley Way, in response to the public exhibition of Development Application No.5.2016.280.1.

City Plan Strategy & Development previously provided a submission to the original development application (dated 30 January 2017), which is provided at Appendix 1. It is understood that the Development Application (DA) was subsequently amended to include a modified Statement of Environmental Effects (SEE), amended architectural and landscape plans, and an updated traffic report.

It is our understanding that the modified DA seeks to include an additional 1.09 hectares of land located to the west of the site. In addition to the service station, café restaurant, and takeaway food and drink premises originally proposed, the proponent is now also seeking consent for two additional buildings to accommodate a vehicle repair station, comprising separate car and truck workshop/wash facilities, as well as parking for light and heavy vehicles.

After reviewing all available documentation associated with the proposed development, as modified, City Plan Strategy & Development is of the view that the matters identified in our original submission (dated 30 January 2017) have still not been addressed. Furthermore, the modified DA raises additional concerns. We are writing to reiterate the points of our original submission, and highlight additional issues associated with the modified DA.

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CITY PLAN STRATEGY & DEVELOPMENT PTY LTD ABN 68 123 501 774

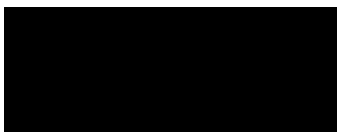
The submission that follows is structured around three discussion points to conclude:

1. **Permissibility.** The component elements of this development, as proposed, would function as a Highway Service Centre, and each appear to be intended to attract highway users. While each separate proposed element may, in its own right, be permissible in the current zoning, a Highway Service Centre is prohibited, and is considered an inappropriate use of industrial land. Even if the development is not considered to be a Highway Service Centre, the proposed food and beverage uses are of a scale sufficient to reasonably be considered independent from the service station. On this basis, the proposal would be considered a Mixed-Use development, which is also prohibited under the current zoning.
2. **Planning merit, and strategic need.** The development is proposed on lands currently zoned IN1 General Industrial. The objectives of this zoning reflect a strategic intention to provide for industrial uses, with some allowance for other uses that complement that industrial users' needs. As detailed in Point 1, the attributes of the proposed development demonstrate it is intended to primarily cater for highway users. The area is already well-provided with similar uses, noting the existing Highway Service Centre nearby, as well as three petrol stations located in the wider Yass area. On this basis, the proposal is considered an inappropriate use of industrial-zoned land.
3. **Planning assessment.** The planning assessment of additional uses specified in the modified SEE, and accompanying studies, do not adequately consider or address the likely impact of the development. Specific deficiencies include considerations for groundwater vulnerability and terrestrial biodiversity. On this basis, it would be inappropriate for development consent to be granted for the development, based on current information.

City Plan Strategy and Development are of the opinion that the development should not be approved on the basis of the above three points. We thank Council for their consideration of this submission, and would welcome further discussion any aspect of our review of this matter on behalf of our client. Please do not hesitate to get in touch with Garry Fielding, senior consultant at City Plan Strategy and Development, or myself in this regard.

Finally, in addition to any other notice the Council is required to give, please advise City Plan Strategy and Development by e-mail when the DA has been determined.

Yours sincerely,



Amanda Wetzel
Regional Director, Newcastle

1. Permissibility

1.1 Identifying the purpose of the development

Before a consent authority can determine the question of permissibility of a development proposal, it is necessary to first characterise the development. The principles established in determining *Chamwell Pty Limited v Strathfield Municipal Council* (2007) 151 LGERA 400 are relevant in this regard. The court's reasoning in this case was approved of by the NSW Court of Appeal in *Abret Pty Ltd v Wingecarribee Shire Council* [2011] NSWCA 107.

In *Chamwell*, the Court said:

- in planning law, use must be for a purpose (at par [27]);
- the purpose is the end to which land is seen to serve (at par [27]); and
- the characterisation of the purpose of a use of land should be done at a level of generality which is necessary and sufficient to cover the individual activities, transactions or processes carried on, not in terms of the detailed activities, transactions or processes (at [36]).

The case also outlined that the task of characterising a proposed development must also be done in a 'common sense and practical way'.

The case of *Chamwell* suggests that regardless of how a proponent may describe the proposed development in their development application, or an amended development application, the true question is how one legally characterises what is proposed. Consequently, it is critical to determine the dominant purpose of the proposed development.

In this regard, a 'land use' must have a purpose, and the words 'use' and 'purpose' are not interchangeable. The above mentioned judicial authorities distinguish between 'use', being the use of land in planning terms and 'purpose', being a reference to the purpose for which the land is intended to be used. The use of land consists of the physical acts by which the land is made to serve some purpose.

The land use term used to describe the development, for the purpose of considering permissibility, is best understood through determining the dominant purpose of the proposed development. The argument that follows demonstrates that the proposed development is appropriately defined as a highway service centre, rather than a service station and restaurant/café and take away food and drink premises. This recognises how the development's attributes, as proposed, have been established to provide "*refreshments and vehicle services to highway users*"; consistent with the LEP definition of the term, as opposed to providing a mix of uses including a service station.

1.2 Defining the land use to determine permissibility

The SEE for the proposed development, as modified, identifies that the separate development components comprise a 'service station', 'restaurant or café', 'take away food and drink premises', 'car park', 'vehicle repair and servicing' and other unidentified ancillary developments. The subject DA relates to a site to which the Zone IN1 General Industrial currently applies, under the Yass Valley LEP 2013 (YVLEP). Table 1 identifies that each of the proposed uses are separately permissible under the current zoning.

Table 1: Summary of YVLEP land use terms, definitions and permissibility

Land use term	YVLEP Dictionary definition (as per clause 1.4)	Permissible in IN1 zoning?
Car park	A building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not	Yes
Restaurant or café	Premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises. This is a sub-term of food and drink premises.	Yes
Service station	A building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following: (a) the ancillary sale by retail of spare parts and accessories for motor vehicles, (b) the cleaning of motor vehicles, (c) installation of accessories, (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration), (e) the ancillary retail selling or hiring of general merchandise or services or both.	Yes
Take away food and drink premises	A building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided This is a sub-term of food and drink premises.	Yes
Vehicle body repair workshop	A building or place used for the repair of vehicles or agricultural machinery, involving body building, panel building, panel beating, spray painting or chassis restoration.	Yes
Vehicle repair station	A building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.	
Highway service centre	A building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following: (a) a restaurant or cafe, (b) take away food and drink premises, (c) service stations and facilities for emergency vehicle towing and repairs, (d) parking for vehicles, (e) rest areas and public amenities.	No
Mixed use development	A building or place comprising 2 or more different land uses	No

Highway service centre

In considering the SEE and supporting documentation, City Plan Strategy and Development is of the view that the development more appropriately characterised as a 'highway service centre'. Table 1 identifies the definition of that term in accordance with clause 1.4 and the dictionary contained within YVLEP 2013. Table 2 provides a review of the component elements of the proposed development relative to the definition of a highway service centre, demonstrating the high level of consistency with the term.

Table 2: Review of proposed development against YVLEP definition of Highway Service Centre

YVLEP land use term definition	Proposed development attribute	Consistent
A restaurant or cafe	- A café and restaurant/take away food and drink premises containing 349m² of gross floor area and a 146-seat communal dining area; and 2 x counter order only restaurants containing 101m² and 101m² gross floor area.	Yes
Take away food and drink premises	1 x drive-through tenancy containing 101.9m² gross floor area.	Yes
Service stations and facilities for emergency vehicle towing and repairs	8 x car refuelling lanes with capacity for 16 cars to refuel simultaneously; 4 x truck refuelling lanes with capacity for 4 trucks to refuel simultaneously; and - A separate undercover fuel area for heavy and light vehicles.	Yes
Parking for vehicles,	121 x at grade light vehicle parking spaces; 38 x heavy vehicle parking spaces; and 1 x coach drop off parking area.	Yes
Rest areas and public amenities.	- Picnic seating around the site perimeter; - Outdoor kids play area; - Separate female and male amenities; - Two disabled toilets; - Dog walking areas; - Truck driver dining lounge; and - Truck drivers only amenity blocks.	Yes

The Roads and Maritime Service (RMS) policy paper titled *"Highway Service Centres Along the Pacific Highway Policy Review May 2014"* (the RMS Policy Paper) also identifies a range of attributes typically reflective of highway service centres. Whilst the RMS Policy Paper specifically applies to highway service centres along the Pacific Highway, it is considered to provide highway service centre attributes suitable to any location.

Table 2 provides a review of the proposed development's attributes relative to RMS Policy Paper's description of a highway service centre, further demonstrating the high level of consistency with the term.

Table 2: Roads and Maritime requirements for highway service centres

RMS Policy Paper Attribute	Proposed development attribute	Consistent
That the centre is open 24 hours a day, seven days a week	The development is proposed to be open 24 hours a day, seven days a week.	Yes
That all traffic arrangements are safe and efficient	All traffic arrangements appear to be designed for the safe and efficient movement of heavy and light vehicles.	Yes
At least 25 heavy vehicle parking spaces (nominally to suit B-Doubles, with capacity to expand to cater for longer combinations in the future) be provided	At least 38 heavy vehicle parking spaces (nominally to suit B-Doubles, with capacity to expand to cater for longer combinations in the future) are proposed. The extensive area provided for parking of B-Double trucks is not considered consistent with a typical service station and convenience restaurant.	Yes
A number of parking spaces for recreation vehicles and coaches	Over 121 parking spaces are provided, including spaces for recreational vehicles and coach drop off.	Yes
The provision of children's play areas and tourist information	An outdoors children's playground is proposed. It is anticipated that tourist information would be provided as required.	Yes
That use of toilets and other amenities be free of obligation to purchase goods or services	That use of toilets and other amenities appear to be designed as being free of an obligation to purchase goods or services.	Yes
Separate undercover fuel areas for heavy and light vehicles	A separate undercover fuel areas is provided for heavy and light vehicles.	Yes
That no alcohol be sold on site.	Alcohol is not proposed for sale on site.	Yes

An existing highway service centre known as the 'Yass Highway Service Centre' is located on the northern side of Yass Valley Way, within 70m of the subject site. The existing Yass Highway Service Centre is located on land zoned SP1 Special Activities. The proposal applied for under the DA is strikingly similar in form and layout to the Yass Highway Service Centre.

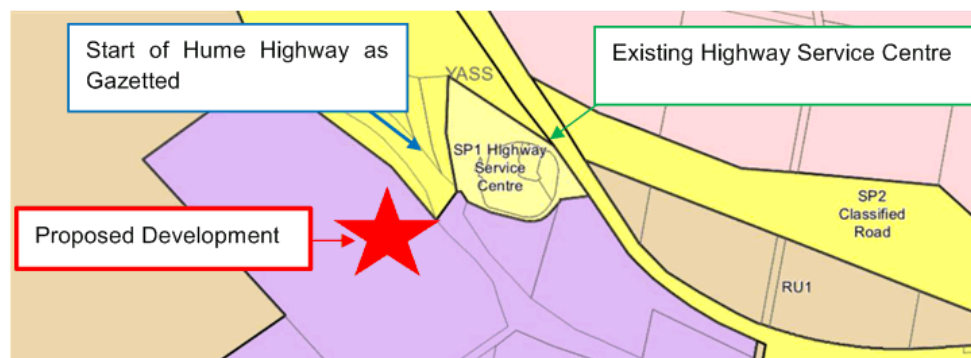


Figure 1: Location of the subject site relative to the existing Yass Highway Service Centre (Source: YVLEP Land Zoning Map)

A detailed consideration of the development's component elements reveals that the dominant purpose of each is to attract and cater for highway users, rather than the local catchment. This is evident from the location of the proposed development, being less than 400m to the on-ramp of the Hume Highway, as well as the scale of each component element.

Service station - catering for highway users

City Plan Strategy and Development are of the opinion that the proposed service station is intended to cater predominantly to highway users, providing a scale of services that far exceed the needs of local residents and industrial occupiers. This recognises:

For light vehicles:

- The township of Yass already accommodates three petrol stations, located along Comur Street. Based on the residential subdivision pattern of Yass, residents located north of Yass River are typically within a 1.8km radius of an existing service stations. Properties located south of Yass River are on average within a 1.2km radius of an existing service station. To access the subject site, residents north of Yass River would, on average, be required to travel 4.1km, and residents south of the Yass River would be required to travel 6.7km.
- The SEE states that there are eight (8) residential properties within a 2km radius of the proposed development. These properties are also located within 2km of the existing highway service centre providing re-fuelling services, located within 70m of the subject site. Assuming that demand arising from the surrounding residential catchment is split between the two facilities, the proposed development can be considered to cater for around two (2) households.
- It is reasonable to assume residents would predominantly use the proposed service station, as opposed to existing service stations, either before or after using the Hume Highway or in conjunction with other services proposed to be included in the development.

- Despite the limited residential catchment surrounding the subject site, the development proposes 8 x car refuelling lanes with capacity for 16 cars to refuel simultaneously. This is considered excessive to the local light vehicle demand, and demonstrates the intended purpose of the development to attract and cater predominantly to highway users.

For heavy vehicles:

- The SEE identifies the only substantial existing industrial development in proximity to the subject site is the South Eastern Livestock Exchange (SELX). Section 4.8.3 of the SEE states that the development *"merely provides a service to existing heavy vehicles utilising the SELX facility and the surrounding industrial subdivisions, which already utilise the current road network. Minor generation associated with heavy vehicles providing refilling services amounting to no more than **3-4 trucks per week**"* (bold added for emphasis).
- The Traffic Impact Assessment accompanying the DA states that the development provides for refuelling for four trucks simultaneously, allowing up to 24 trucks to refuel in any one hour across all four lanes. Given that the site is seeking approval to operate on 24 hours per day basis, 7 days a week, the development, in theory, enables over 4,000 trucks to refuel per week. This is clearly excessive to the local heavy vehicle demand, and demonstrates the intended purpose of the development to attract and cater predominantly to highway users.

The Traffic Impact Assessment (TIA) prepared by TRAFFIX (December 2016) submitted in support of the original development application provided a survey of the existing highway service centre located within 70m of the subject site. From a transport planning perspective, the traffic survey of the existing highway service centre was intended to provide a sound basis for assessing the expected trip generation of the subject site, as the existing highway service centre is similar in size, scale, and location to the proposed development.

The results of the TRAFFIX survey for both the weekday and weekend peak hour provided in the TIA are reproduced in Figure 2. This demonstrates that 83% (960 vehicles) of all light vehicles traffic generation and 83% (62 vehicles) of all heavy vehicles traffic generation was from the Hume Highway. Conversely, only 17% of heavy and light vehicles using the existing highway service centre were considered 'non-highway users'.

It is reasonable to assume the proportion of non-highway users utilising the proposed development would be even lower, given the location of the subject site in relation to existing similar facilities. City Plan Strategy and Development conservatively estimate that up to 90% of all customers accessing the site should be considered 'highway users'. This further emphasises the intended purpose of the service station is to attract highway users.

Road	Type of vehicle	Entering	Exiting	Total
Yass Valley Way (Yass)	Light	50	58	108
	Heavy	2	5	7
Yass Valley Way (Hume Hwy)	Light	210	191	401
	Heavy	23	14	37
Total				553

Road	Type of vehicle	Entering	Exiting	Total
Yass Valley Way (Yass)	Light	49	43	92
	Heavy	2	4	6
Yass Valley Way (Hume Hwy)	Light	280	279	559
	Heavy	13	12	25
Total				682

Figure 2: Traffic Survey results for existing Highway Service Centre located opposite the subject site
(Source: TRAFFIX)

Further to this, the modified DA includes two additional buildings that are proposed to contain a truck workshop and car workshop. The amended TIA prepared by TRAFFIX (April 2017) concludes in relation the car workshops (page 25) that "the workshop is not expected to generate substantial traffic, and car washing will be done by hand as opposed to an automated wash with higher turnover." The report provides a similar conclusion in relation to the truck workshop noting that "when accounting for the low proportion of heavy vehicles compared to car volumes a 50% reduction factor has been applied [to trip volumes]". It follows that the inclusion of the additional uses would not significantly alter the results of the applicants December 2016 traffic survey.

Food and beverage premises - catering for highway users

Traditionally, highways passed through many towns such as Yass, providing a basis for establishing services to offer fuel and food to travellers. As towns were bypassed by new highways, travellers needed to either leave the highway to obtain services in the bypassed centres, or make use of highway service centres, where available.

Highway services centres, therefore, are designed to provide for the food, vehicle service and rest needs of travellers on the highway in a single location convenient to Highway access points. This provides a basis for understanding why the 'highway service centre' as defined in the Standard Instrument (Local Environmental Plans) Order 2006 includes uses such as a restaurant, café, take away food and drink premises and car parking, whilst a stand-alone 'service station' does not.

The proposed development co-locates a café/restaurant and take away food and drink premises, including a 146 seat communal dining area, with a service station that is clearly intended to attract and cater predominantly to highway users. On this basis, City Plan Strategy

& Development consider it is evident that the separately-listed 'service centre', 'restaurant/café' and 'take away food and drink premises' are interrelated uses of a scale and intensity that justifies their collective characterisation of a highway service centre.

City Plan Strategy and Development also consider it evident that the 'restaurant/café' and 'take away food and drink premises' are of such a scale that, if not considered form part of a highway service centre, they should be categorised as independent uses from the service station. In accordance with NSW Planning Circular PS 13-001, where a component serves its own purpose, *"it is a dominant use in its own right. In such circumstances, the development could be described as a 'mixed use development'."*

Both highway service centres and mixed-use development are not considered permissible in the IN1 General Industrial zone.

Car park - serving as a highway rest area

Heavy vehicles typically use highway service centres for refuelling, refreshments and as rest areas to take long and short breaks, use amenities and check loads and vehicles. Heavy vehicle drivers must conform to fatigue management legislation that specify strict resting requirements. To fulfil these requirements, drivers need access to suitable rest area facilities that are regularly spaced along key freight routes.

In recognition of the importance of providing appropriate facilities for heavy vehicles, in January 2010 the NSW Roads and Traffic Authority released the *"The RTA Strategy for Major Heavy Vehicle Rest Areas on Key Rural Freight Routes In NSW"* (the RTA Rest Area Strategy). The RTA Rest Area Strategy identifies the Hume Highway as a key freight route, and identifies all 'major heavy vehicle rest area' along the Hume Highway. The RTA Rest Area Strategy specifically identifies the existing 'Yass Highway Service Centre' as a 'major heavy vehicle rest area'.

Table 1 – Targeted level of major heavy vehicle rest area provision relative to daily truck volumes (total in both directions)

	Daily truck volumes (AADT)		
	HIGH >1000	MEDIUM 500-1000	LOW <500
Provision on both sides of the road	Yes	As appropriate	No
Truck parking spaces	10-20	6-12	4-8
Toilets	Up to 4	Up to 2	Up to 2

Source: Adapted from the RTA's 'Highway rest area strategy background report' (RTA 2001).

Figure 3: Targeted level of heavy vehicle rest area provision (Source: RTA)

The RTA Strategy provides for specific targeted levels of provision of facilities and amenities for heavy vehicle rest areas based on high, medium and low levels of heavy vehicle demand, as illustrated in Figure 3. The subject development, as proposed, exceeds the requirements specified for an RTA heavy vehicle rest area by providing 38 heavy vehicle parking spaces and 11 toilets. The development also seeks to provide substantial truck drivers lounge and separate amenities for truck drivers.

It is important to note in this regard that the Yass Valley Council's Off-Street Carparking Policy (ENG-POL-8) does not require any parking bays for B-Double trucks, coach drop off areas or the provision of facilities and amenities for truck drivers.

Given the proposed scale of the heavy vehicle refuelling facilities, truck driver amenities areas, specialized B-Double parking rest areas and proximity to the Hume highway, it is evident that the proposed development has been designed to provide a similar level of heavy vehicle rest area facilities to those found in the adjoining approved Yass Highway Service Centre. Given that the purpose of the existing Yass Highway Service Centre is to unquestionably provide facilities to heavy vehicle highway users, it follows that the dominant purpose of the proposed development is also to service heavy vehicle highway users.

2. Planning Merits

2.1 Consistency with zone objectives

Clause 2.3 of YVLEP provides that *"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"*. Consequently, development should occur only where the consent authority is satisfied that the development will be capable of meeting the objectives of the zone.

The objectives of the Zone IN1 General Industrial are listed in the YVLEP as follows:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.

City Plan Strategy & Development considers that the proposed development is inconsistent with two of the zone objectives, namely:

- To provide a wide range of industrial and warehouse land uses.
- To support and protect industrial land for industrial uses.

Objective No. 1 - To provide a wide range of industrial and warehouse land uses.

The Statement of Environmental Effects for the proposed development provides that the development will include a mixed-use development comprised of a service station, café, take away food and drink premises, restaurants, and other unidentified ancillary development. Once established, the development could reasonably be expected to cater to local residents, tourists and drivers of commercial freight vehicles.

Planning Circular PS 11-011 issued by the Department of Planning on 10 March 2011 identifies each of the proposed land uses as either being within the group term of 'commercial premises' or as commercial land uses outside the group term. The corollary being that the proposed development does not provide for "industrial or warehouse land uses" or any other type of industrial activity. Rather, the development provides for a commercial activity.

In considering the question of consistency with zone objectives, the NSW Land & Environment Court has adopted the approach in *Schaffer Corporation V Hawkesbury City Council* (1992) 77 LGRA 21, where it was determined that a development is generally consistent with an objective then it is not antipathetic to an objective. Given that the proposed development is demonstrably comprised of commercial land uses, not industrial or warehouse land uses, it follows that the proposed development should be considered antipathetic to, and inconsistent with, this zone objective.

Objective No. 4 - To support and protect industrial land for industrial uses.

Planning Circular PS 11-011 provides clear direction on the intent of zones within the Standard Instrument. In relation to Zone IN1 – General Industrial, PS 11-011 outlines that the intent of the General Industrial zone is to provide for industrial land uses and that the standardised zone objectives were written to specifically reflect this intention.

As outlined above, the proposed development would be comprised of commercial land uses as opposed to industrial uses. More specifically, the proposed development seeks to dedicate approximately 60% - 65% of the 2.74 hectare site for at-grade car parking, tourist coach parking and a drive-through area for a fast food outlet. The remainder of the site would be for commercial activities associated with the service station and food outlets. It therefore follows that the proposed development fails to protect industrial land for industrial uses as required by the objective of Zone IN1 – General Industrial.

2.2 Social or economic need for the proposed development

Section 79C of the Environmental Planning and Assessment Act 1979 compels consent authorities to consider the merits of a proposal on the basis of economic or social benefit, or public interest.

The existing Yass Highway Service Centre is located opposite the proposed development on land zoned SP1 Special Activity. The YVLEP Land Zoning Map clarifies that a highway service centre is permitted on the land, which clearly demonstrates that the existing service centre and ancillary services were specifically zoned to provide for this use. Arguments provided above demonstrate that the existing highway service centre is adequate to supporting the needs of local residents and occupiers of nearby industrial areas, as well as passing Highway trade. The development, as proposed, seeks to duplicate many of the commercial uses already provided in the existing highway service centre.

Furthermore, the RTA Rest Area Strategy identifies that no new heavy vehicle rest areas are required on the Hume Highway (Figure 4). There does not appear to be a sound economic, social or public interest justification to substantially erode the supply of industrially zoned land for future industrial uses by granting consent to a (prohibited) commercial activity, when such a service to already exists in close proximity.

Freight route	Length (km)	Existing no. of major HV rest areas	No. of HV rest area upgrades required	No. of new HV rest areas required
Pacific Hwy	790	18	7	2
Hume Highway	498	18	4	0
GVVH/Mitchell Hwy	348	2	7	0
Mitchell/Barrier Hwy	827	14	3	2
Sturt Hwy	614	10	7	1
Newell Hwy	1060	23	17	4
New England Hwy	585	11	6	0
Princes Hwy	484	3	5	6
Golden Hwy	314	2	5	0
TOTAL	5520km	101	61	15

Figure 4: Identified need for new rest areas on the Hume Highway (Source: RTA)

3. Planning Assessment

Groundwater Vulnerability

Section 4.5.2.2 of the SEE prepared by Geolyse states the following in relation to ground water vulnerability:

"A geotechnical assessment of the site has been completed by Douglas Partners, attached as Appendix D. The investigation was completed during a period of very wet weather and a number of encounters with groundwater occurred. The geotechnical investigation has taken account of this and provided recommendations for the final design to accommodate this. It is also noted that much of the site would be in fill, providing an improved buffer to groundwater levels."

Notwithstanding the above, the Douglas Partners Geotechnical Assessment does not address the additional 1.09 hectare of site area that has been included in the amended development application. In addition, that amended plans now proposes new bulk earthworks in the untested section of the site, including additional cut of up to 2m in the south-east corner of the site. The proposed new works have therefore not been subject to any geotechnical investigations.

Given the above, City plan Strategy and Development is of the view that a suitably detailed assessment of the likely short term and long-term impacts of the proposed development on groundwater resources in the vicinity of the project site has not been provided. The proposal therefore presents significant risks for vulnerable ground water reserves and is considered to be inconsistent with Clause 6.4 of YVLEP 2013. Consequently, City Plan Strategy & Development is of the view that it would be inappropriate for development consent to be granted to DA No.5.2016.280.1.

Terrestrial Biodiversity

Section 4.5.2.6 of the SEE prepared by Geolyse states that the northern extent of the site is mapped as containing sensitive terrestrial biodiversity. The SEE states that the removal of four trees within proposed Lot 1 was approved via DA 5.2014.283.1. Notwithstanding this, the amended Development Application proposes the removal of nine (9) trees.

The SEE prepared by Geolyse does not provide an assessment of the additional five trees to be removed. Existing trees should be evaluated by a qualified Consulting Arborist (AQF Level 5) as part of the site analysis. This should be undertaken prior to any detailed design work so as to inform the site layout and design.

In addition, the SEE fails to address Clause 5.9 of the YLEP in regards to the proposed removal of five additional trees that are mapped as "Biodiversity" on the Natural Resources Biodiversity Map. Without a proper assessment of the trees or their value, it is irresponsible to conclude that the development would not have any adverse impact on the importance of the vegetation on the land. The proposal therefore presents significant risks to terrestrial biodiversity and is considered inconsistent with Clause 6.3 of YVLEP 2013. Consequently, City Plan Strategy & Development is of the view that it would be inappropriate for development consent to be granted to DA No.5.2016.280.1.

CONCLUSION

Based on our review of Development Application No.5.2016.280.1, City Plan Strategy & Development is of the opinion that the proposed development has been incorrectly characterised as a mixed use development comprising a 'service station' and 'fast food outlets', 'cafes' and 'take away food and drink premises'. Instead, the proposed development should be categorised as a 'highway service centre', as defined by per clause 1.4 and the 'Dictionary' within YVLEP. Consequently, given the site is zoned IN1 General Industrial, the proposed development is prohibited on this site and therefore is unable to be approved by the Council as the consent authority.

Further to the above, City Plan Strategy & Development if the development was not considered to be a highway service centre, the proposed 'restaurant/café' and 'take away food and drink premises' are of such a scale and intensity that they should be categorised as independent uses from the service station. In accordance with NSW Planning Circular PS 13-001, the development should therefore be categorised as a 'mixed-use development', which is a prohibited land use in the IN1 General Industrial zone. Consequently, given the site is zoned IN1 General Industrial, the proposed development is prohibited on this site and therefore is unable to be approved by the Council as the consent authority.

On the basis of the above, City Plan Strategy & Development maintains that the proposed development is antipathetic to, and inconsistent with two objectives of the IN1 General Industrial Zone. The proposal does not seek to support or protect industrial land for industrial uses, rather it seeks to establish a commercial land use in an industrial zone. Moreover, there does not appear to be sufficient grounds to justify eroding the supply of industrial land for commercial land uses by supporting the proposed development. Consequently, City Plan Strategy & Development is of the view that it would be inappropriate for development consent to be granted to DA No.5.2016.280.1.

Lastly, City Plan Strategy & Development is of the opinion that the Statement of Environmental Effects submitted in support of the development application does not adequately consider or address the likely impacts of the development, including environmental impacts on groundwater vulnerability or terrestrial biodiversity. Consequently, City Plan Strategy & Development is of the view that it would be inappropriate for development consent to be granted to DA No.5.2016.280.1.



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Our Ref: 215418_LET_004C.docx

26 April 2017

The General Manager
Yass Valley Shire Council
PO Box 6
Yass NSW 2582

Attention: Kate McGrath

Dear Kate

AMENDMENTS TO DA 5.2016.280.1 AND RESPONSE TO PUBLIC SUBMISSIONS

We write further to the email from Council's Development Planner of 31 January 2017 in respect of the above matter and the attached public submissions from City Plan Services dated 30 January and Elmside Pastoral Company also dated 30 January.

We have reviewed the content of the two submissions.

In respect of the submission from Elmside, we note the following:

- The proposed service station development is located on land within the northern extent of the subdivided site, well clear of shared boundaries with properties containing grazing stock. The land is zoned to permit the proposed use.

The site is bounded on two sides by public roads. A request from the adjacent land owner to the south or west for the erection of fencing to separate the land is more logically requested in relation to the subdivision of the land (and may in fact have been).

Notwithstanding, as the developer of both the industrial subdivision and the subject service station development, our client confirms that appropriate perimeter fencing would be erected in conjunction with establishment of the subdivision, and this would be negotiated with the land owner/s in this regard.

- The proposed service station development proposes installation of a class 1 oil and water separator that would manage potentially contaminated stormwater from all refuelling areas. The details of this system are described in detail in Section 5.14 of the SEE.

This is an industry standard system that has been satisfactorily installed on many service station sites within NSW and Australia and would ensure the suitable treatment of stormwater to ensure no onward contamination of the local water environment. This is managed by Council as the Appropriate Regulatory Authority for non-scheduled activities with respect to the *Protection of the Environment Operations Act 1997*.



• Civil, Environmental & Structural Engineering • Surveying • Environmental • Planning • Architecture





In respect of the submission from City Plan Services, we provide the attached amended statement of environmental effects together with updated reporting and drawings.

We confirm that the lodged development application seeks consent for a service station, including truck and car wash, vehicle repairs and servicing, tyre servicing, food and drink premises and car parking. These uses are all permissible with the IN1 – General Industrial zone and are therefore industrial uses. The development is considered to be generally consistent with the intent of the objectives of the IN1 zone, as reflected via Section 4.5.2.4 of the attached amended SEE (215418_SEE_001E.pdf).

The enclosed amended information is provided to Council pursuant to Clause 55 of the Environmental Planning and Assessment Regulations 2000.

We also refer to the content of Council's email correspondence of 3 February 2017 and note the following:

- The detail in the plan reflecting the capacity of the site to accommodate vehicles up to B-triple in size was intended only to identify that the internal site arrangement had been designed such that this size vehicle could be accommodated at the site at such future point when they are lawfully able to travel on the surrounding road network.

This is not currently the case and it is not the applicant's intention to promote such an outcome, given that there is no control over the broader road network. References within the plan to b-triple parking have therefore been removed to avoid any confusion.

The enclosed traffic study provides details of sensitivity testing conducted in respect of the current and predicted operation of the roundabout and has demonstrated that it has sufficient capacity to accommodate an over doubling in predicted traffic numbers without the need for further upgrade. No upgrade of the roundabout is therefore proposed or intended.

- We note the comments regarding headworks contributions and expect these will need to be revised in light of the details of this amended application.

We trust that the above and enclosed is sufficient to respond to the comments raised via the public two submissions and Council's later email of 3 February, however please do not hesitate to contact the undersigned in the event further clarification is required.

Yours faithfully
Geolyse Pty Ltd

DAVID WALKER
Senior Town Planner

No. of Attachments – 3:

1. Updated signed development application form
2. 6 x copies of the amended statement of environmental effects
3. A CD containing a digital copy of all supplied amended information





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Our Ref: 215418_LET_006E.docx

14 June 2017

The General Manager
Yass Valley Shire Council
PO Box 6
Yass NSW 2582

Attention: Kate McGrath

Dear Ms McGrath

DA 5.2016.280.1 - RESPONSE TO PUBLIC SUBMISSIONS

We write further to the email from Council's Development Planner of 5 June 2017 in respect of the above matter and the attached public submission from City Plan Services dated 30 May.

We have reviewed the content of the submission. We note that the submission is centred on three core objections to the development application. These relate to permissibility, planning merit and strategic need and planning assessment. We address each of these matters in turn below.

PERMISSIBILITY

The purpose of characterising a proposed development is to ascertain whether the proposed development accords with the parameters and criteria of a particular use or purpose identified in a Planning Instrument (the LEP). If a use is permissible with consent, the inquiry is as to the identification and definition of that permissible use, per the LEP; and thereafter whether what is proposed accords with that use.

Here, relevant to the present application, the uses permitted with consent in the IN1 General Industrial zone include:

- car parks;
- restaurants or cafes;
- service stations;
- take away food and drink premises;
- vehicle repair stations.



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"Service station" is defined in the Dictionary to the LEP as:

"service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
- (b) the cleaning of motor vehicles,*
- (c) installation of accessories,*
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) the ancillary retail selling or hiring of general merchandise or services or both."*

The Dictionary also defines "food and drink premises":

"food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or café,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar."*

(For completeness, the Dictionary defines "highway service centre" as:

"highway service centre means a building or place used to provide refreshments and vehicle services to highway users. It may include any one or more of the following:

- (a) a restaurant or café,*
- (b) take away food and drink premises,*
- (c) service stations and facilities for emergency vehicle towing and repairs,*
- (d) parking for vehicles,*
- (e) rest areas and public amenities.")*

Each of the uses for which consent is now sought (as set out in Part 3.1, page 5 of the Statement of Environmental Effects (SEE), dated 26 April 2017) are permissible with consent. Although they are integrated within the single area of land, and are uses which provide a synergy, each with the other, the





particular individual uses are separate and independent. The purpose of zoning is not to be frustrated or mocked¹.

In addition to the uses allowed by a highway service centre, the proposed development also includes the servicing and washing of light and heavy vehicles. These are uses associated with a service station and not provided for in the definition of a highway service centre. This further reinforces the development is more appropriately defined as a service station.

The development as conceived aims to support the approved industrial areas in the immediate locality, including the operating South Eastern Livestock Exchange, via provision of a service station development and associated food services, located within an approved subdivision.

The site is not visible from the highway, has no direct access from/to the highway and only indirect access to Yass Valley Way via an approved internal subdivision road. Highway users must pass the existing highway service centre to access the subject site. For all of these reasons, the development is not considered to be a highway service centre and is instead best defined in the terms outlined via the application for consent, being a service station, including truck and car wash, vehicle repairs and servicing, tyre servicing, food and drink premises and car parking (see the comment regarding highway service centre uses versus the uses sought via this application at the top of this page).

Development consent is sought via this application for the proposed use of the site as a service station, including truck and car wash, vehicle repairs and servicing, tyre servicing, food and drink premises and car parking. These are permissible uses within the IN1 – General Industrial zone. The site is most appropriately characterised on the above terms as the use most appropriately satisfies the definition of a service station.

The objection by City Plan (30 May 2017) argues that the proposal:

- (i) will attract highway users; and
- (ii) as a food and beverage facility could stand independent from the other uses,

and therefore it is a "*mixed use*" development, which is prohibited in the zone.

This, in our submission, is an erroneous, obfuscating and confusing approach. Were it correct, many "*mixed use*" developments would be illegal.

It is irrelevant that the proposal is for a number of different uses for the site. That is what the *permissible uses* within the IN1 zone contemplate, viz. a number of different uses

If there are two or more different land uses, with each proposed use fitting within a nominated category of "*permissible use*", then it is irrelevant, once that classification has occurred, to take the step of cobbling together one or more of the uses to claim impermissibility due to *mixed use* being a prohibited use in the zone.

Additionally, and as outlined in LEP Practise Note 11-003, the purpose of the term 'mixed use development' is to aid in the interpretation of clauses or other land use definitions and is not a land use definition *per se*. Explicitly, Attachment 3 of PN11-003 identifies 'mixed use development' is a term not to be used in Land Use Tables.

¹ Taylor v Hornsby Shire Council 1990 69 LGRA 28





Additionally, 'mixed use development' is not listed under Direction 5 of the *Standard Instrument (Local Environmental Plans) Order 2006* (the Order), which sets out the types of development that may be included in the Land Use Table of an LEP. Clause 2.5 of the Order states that:

Direction 2.

A type of development may be included in Schedule 1 only if it is a type of development listed in Direction 5 at the beginning of the Land Use Table.

For the above reasons, even if the development were characterised as a mixed use development (which we submit it is not), it would follow that the development is not prohibited, as 'mixed use development' is not a land use definition and its absence from the Land Use Table is due to legislated direction, not to imply prohibition of this as a land use type.

We do not disagree that the development could conceivably be characterised as a mixed use development however we disagree that mixed used developments are prohibited in the zone, or that such classification is relevant to the present application.

With regard to the various comments in respect of traffic generation and impacts, see the attached response from Traffix (**Attachment 1**).

PLANNING MERIT AND STRATEGIC NEED

(i) Zone objectives

The proposed land use types are all permissible with the IN1 – General Industrial zone and are therefore industrial uses. To suggest they are in fact commercial uses misrepresents Council's strategic intent in making these uses permissible within the industrial zone. By the logic of the submission, a development application proposing a hotel in the IN1 zone cannot be approved, despite a hotel or motel accommodation being explicitly listed as permissible with consent at Part 3 of the IN1 Land Use Table.

The antithesis of the objectors submission is reflected in NSW Caselaw including *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC 399, where McClellan CJ opined at [117] that "...planning decisions must generally reflect an assumption that in some form, development which is consistent with the zoning will be permitted...", and at 118:

118 In most cases it can be expected that the Court will approve an application to use a site for a purpose for which it is zoned, provided of course the design of the project results in acceptable environmental impacts.

As demonstrated throughout Section 5 of the SEE, environmental impacts associated with the proposed development are minor and manageable such that they are acceptable.

(ii) Social and economic impact: s.79C(1)(b)

There is also discussion within the submission about social or economic impact. Social and economic impact has been considered in various forums in the context of planning law in NSW. One of the key decisions was that of the High Court in *Kentucky Fried Chicken v Gantidis* (1979) 140 CLR 675 in which it was stated:





'...mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development proceeded with, will not be a relevant town planning consideration'

This approach has been applied in subsequent decisions, including *Australian Turf Club v Liverpool City Council (No 2) [2014] NSWLEC 1099* in which Moore SC opined:

12 The position that arose in (and has been conventionally understood to arise from) Kentucky Fried Chicken is that, in circumstances where a business is proposed to be established that is similar to a business that is operating with existing approval in a local area it is not to be inhibited merely because there is a generally like-for-like competition being introduced into that area. The competition is the operation of conventional market forces and is not a proper planning matter. Proper planning matters, however, can arise, as I have always understood Kentucky Fried Chicken, when a business or an activity is proposed to be approved and it has unacceptable economic impacts on other activities of an entirely different nature.

This approach was also adopted by Pearlman CJ in *Cartier Holdings v Newcastle City Council*.² There a rival shopping centre owner challenged the approval of a competing supermarket. Following Lloyd J in *Fabcott v Hawkesbury City Council*,³ Pearlman CJ observed that what Lloyd J concluded at [32] was that:

"Economic impact of a proposed development upon private individual traders is not of itself a planning consideration and what is required by s.90(1)(d) (now s.79) is a wider and more general consideration of economic impact in the locality."

In the present circumstances, all that is complained of is impact on the business of the existing Highway Service Centre – an individual trader, being no impact on the wider community, the *locality* relevant in a planning sense.

Impacts associated with the proposed use in relation to other activities are considered to be positive by virtue of supporting a growth industrial area through provision of suitable local facilities. As such social and economic impacts on the locality and region are considered generally positive.

Arguments that the proposed use is similar to an existing use, and for this reason should be refused, amount to arguments of competition. As above, this is not a valid consideration in planning terms and should therefore be disregarded.

The proposal represents an appropriate use of industrial zoned land on the basis that it proposes uses that are permissible in the zone and will be necessary to support the growth of the area.

PLANNING ASSESSMENT

The objection suggests deficiencies in the SEE assessment specifically with respect to biodiversity and groundwater vulnerability.

It is considered that the information submitted within the SEE and available to Council are sufficient to enable a decision to be made in this matter. If Council requires further information, please let us know.

² [2001] NSWLEC 170

³ (1997) 93 LGRA 373





We trust that the above is sufficient to respond to the comments raised via the public submission, however please do not hesitate to contact the undersigned in the event further clarification is required.

Yours faithfully
Geolyse Pty Ltd

DAVID WALKER
Senior Town Planner

Attachments: 1 – Correspondence from Traffix dated 13 June 2017





Reference: 16.475r03v02

13 June 2017

Yass Industrial Park
C/- Lineaire Projects
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NORTH SYDNEY NSW 2059

Attention: Mr Michael Kaluza, Director

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Re: Proposed Service Station, Yass - Response to Objection

Dear Michael,

We refer to the subject proposal which is under exhibition. TRAFFIX has been forwarded a letter prepared by City Plan Strategy & Development, on behalf of the occupant for a highway service centre at 1,713 Yass Valley Way.

We note that there are no direct objections raised in relation to any external traffic impacts arising from the proposal. Nonetheless, some elements within the Traffic Impact Assessment report prepared by TRAFFIX are drawn upon, to argue that the proposed development is primarily intended to cater to highway users.

Responses to each relevant comment are provided below, and are intended to supplement a wider response from a planning context.

Comment 1

"The township of Yass already accommodates three petrol stations, located along Comur Street. Based on the residential subdivision pattern of Yass, residents located north of Yass River are typically within a 1.8km radius of an existing service stations. Properties located south of Yass River are on average within a 1.2km radius of an existing service station. To access the subject site, residents north of Yass River would, on average, be required to travel 4.1km, and residents south of the Yass River would be required to travel 6.7km."

TRAFFIX Response

Service station developments typically rely on linked trips on the road network and are intended to be an intermediate stop en-route to a final destination. It is considered more likely that a customer will refill at a service station that is located directly on their route, rather than a service station that requires a diversion. The viability of such a development is therefore considered to be more dependent on an arterial road position, as opposed to proximity between a place of residence or work.



The proposed service station is located within a growth area that accommodates the South East Livestock Exchange (SELX) and approximately 40 approved industrial lots. Demand for fuel and services will therefore be expected to grow rapidly as these developments grow and expand, and lot take up moves forward. This development is conceived to respond to this growth. We also note for clarity that one of three service stations stated to be located in Yass has recently closed.

Comment 2

"The SEE states that there are eight (8) residential properties within a 2km radius of the proposed development. These properties are also located within 2km of the existing highway service centre providing re-fuelling services, located within 70m of the subject site. Assuming that demand arising from the surrounding residential catchment is split between the two facilities, the proposed development can be considered to cater for around two (2) households."

TRAFFIX Response

The Traffic Impact Assessment report has documented the following customer base split:

- 35% residing from Yass (approaching from Yass Valley Way east of the site)
- 20% residing within 10km east of the site (approaching from Yass Valley way as no nearby Hume Highway ramps are located)
- 25% residing within 10km west of the site (approaching partially from Hume Highway from Bowning Road and Lachlan Valley Way)
- 20% residing further than 10km of the site (from Hume Highway)

This catchment area has been established from information from the applicant and with consideration of the arterial road network. As mentioned, the proximity of the service station to residential areas is considered irrelevant, with the site positioned to primarily respond to the growth of the immediate locality for industrial land uses within the two approved subdivisions and from the growing use of the SELX facility.

Comment 3

"It is reasonable to assume residents would predominantly use the proposed service station, as opposed to existing service stations, either before or after using the Hume Highway or in conjunction with other services proposed to be included in the development."

TRAFFIX Response

As noted previously, industrial subdivisions have been approved in proximity to the site, which is positioned to take advantage of this growing source of local traffic.

Comment 4

"Despite the limited residential catchment surrounding the subject site, the development proposes 8 x car refuelling lanes with capacity for 16 cars to refuel simultaneously. This is considered excessive to the local light vehicle demand, and demonstrates the intended purpose of the development to attract and cater predominantly to highway users."



TRAFFIX Response

The provision of 16 bowsters has been determined with consideration for accommodating peak demands, with car refuelling activities (and convenience store patronage) assessed to generate 484 vehicle trips per hour under the trip generation rates published by the Roads and Maritime Services.

While it is expected that the proposed service station development may not experience this full potential of traffic flows, customer patronage is expected to rise with future growth in traffic volumes on Yass Valley Way. In this respect, the above capacity is considered appropriate and will assist in alleviating any queuing of vehicles which could cause blockages on the external road network.

Comment 5

*"The SEE identifies the only substantial existing industrial development in proximity to the subject site is the South Eastern Livestock Exchange (SELX). Section 4.8.3 of the SEE states that the development "merely provides a service to existing heavy vehicles utilising the SELX facility and the surrounding industrial subdivisions, which already utilise the current road network. Minor generation associated with heavy vehicles providing refilling services amounting to no more than **3-4 trucks per week**" (bold added for emphasis)."*

TRAFFIX Response

Further clarification is sought whether it is implied that the SELX facility will generate only 3-4 trucks per week. The website for SELX indicates that the facility has the capacity to sell 3,800 cattle and 30,000 sheep on any given sale day. Sales of lamb and sheep are held every Wednesday and sales of cattle are held every Thursday. As such, the trip generating potential for this particular development is considered to be high and regular, including for other days during the week where livestock may be transported to the facility.

Customer demand for heavy vehicle refuelling is not limited to the SELX, and will include newly industrial subdivisions formed in vicinity of the site, as well as logistics deliveries servicing the Yass township.

Comment 6

"The Traffic Impact Assessment accompanying the DA states that the development provides for refuelling for four trucks simultaneously, allowing up to 24 trucks to refuel in any one hour across all four lanes. Given that the site is seeking approval to operate on 24 hours per day basis, 7 days a week, the development, in theory, enables over 4,000 trucks to refuel per week. This is clearly excessive to the local heavy vehicle demand, and demonstrates the intended purpose of the development to attract and cater predominantly to highway users."

TRAFFIX Response

Again, the provision of four (4) truck bowsters has been made in order to accommodate peak demands. In this case it is especially critical given that articulated trucks will be refuelling, with queuing to cause detrimental blockages.



Comment 7

"The results of the TRAFFIX survey for both the weekday and weekend peak hour provided in the TIA are reproduced in Figure 2. This demonstrates that 83% (960 vehicles) of all light vehicles traffic generation and 83% (62 vehicles) of all heavy vehicles traffic generation was from the Hume Highway. Conversely, only 17% of heavy and light vehicles using the existing highway service centre were considered 'non-highway users'.

It is reasonable to assume the proportion of non-highway users utilising the proposed development would be even lower, given the location of the subject site in relation to existing similar facilities. City Plan Strategy and Development conservatively estimate that up to 90% of all customers accessing the site should be considered 'highway users'. This further emphasises the intended purpose of the service station is to attract highway users."

TRAFFIX Response

City Plan Strategy and Development have argued that the percentages derived from first hand survey results should be modified given that the existing highway service centre already provides a similar facilities. Whilst customer patronage may be shared between the two developments, this does not take away that there is demonstrated demand for refuelling associated with local traffic, for which the highway service centre is presently benefiting from.

The proposed service station development will also experience increased local patronage arising from future growth in the region. This includes the Yass township as well as nearby industrial development.

Summary

In summary, continued support for the proposed service station is provided on traffic engineering grounds, which is considered to be suitably located to cater for local demands.

It is emphasised that the proposal is not expected to generate any adverse traffic impacts, with the provision of facilities designed so as to avoid queuing.

We trust the above is of assistance and please contact the undersigned should you have any queries or require any further information.

Yours faithfully,

traffix

Kedar Ballurkar
Senior Engineer