

<b>JRPP No</b>	<b>2010WES004</b>
<b>Development Application No</b>	<b>2010/0286</b>
<b>Proposed Development</b>	<b>Subdivision of land into 5 allotments within subsequent development for the purposes of a service station, McDonalds Restaurant, Kentucky Fried Chicken Restaurant, Service Station and Bulky Goods Retail Development</b>
<b>Applicant</b>	<b>Stevens Group</b>
<b>Land</b>	<b>Pat O'Leary Drive, Kelso</b>

## **ASSESSMENT REPORT AND RECOMMENDATION**

### **EXECUTIVE SUMMARY**

The Development Application involves the subdivision of land into 5 development lots for subsequent redevelopment. Development of the resultant lots includes a Service Station, McDonalds and KFC Restaurants and a number of buildings for use as "bulky goods retail". It is proposed that the development will occur in 2 stages.

The subject land is zoned 4(a) Industrial pursuant to Bathurst Regional (Interim) Local Environmental Plan 2005. The development is permissible with consent although the bulky goods component of the development is subject to the additional test that it would not usually be consistent with the zone objectives.

The development has an estimated capital investment of \$21 million. Accordingly the Joint Regional Planning Panel is the consent authority pursuant to State Environmental Planning Policy (Major Development) 2005.

The subject land has access onto and will require upgrading of the Great Western Highway. The Great Western Highway is an RTA controlled road. The RTA has advised that it will not object to the development subject to upgrading of the intersection of Pat O'Leary Drive and the Great Western Highway.

The development also involves works within 40 metres of Raglan Creek. The Development Application has been referred to the NSW Office of Water as "Integrated Development". The NSW Office of Water has issued its General Terms of Approval to the application. The Development Application is not inconsistent with those GTA's.

The Development Application was placed on public exhibition as required by the Environmental Planning and Assessment Act 1979. One submission was received from an adjoining owner centred around the impact of Highway upgrading works on their access. This issue has been addressed through conditions imposed by the RTA and in the conditions of consent.

The Development Application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 and is considered acceptable.

It is therefore recommended that the Joint Regional Planning Panel approve Development Application 2010/0286 subject to conditions as included in **attachment 8** to this report.

### **PROPOSED DEVELOPMENT**

The development involves the subdivision of the land into 5 allotments. The subdivision is to take place in 2 stages. The resultant allotments are to be developed by the respective tenants as follows:

#### *Lot 1*

Lot 1 is to be developed as a Service Station and associated convenience store of approximately 87 square metres with passenger vehicle parking for 8 spaces.

The service station is to operate on a 24 hour basis.

All ingress to the service station is to be via newly constructed deceleration lane on the Great Western Highway. Egress from the site will be to the Great Western Highway.

Heavy vehicle egress is via the internal access road constructed off Pat O'Leary Drive. Access between the service station and the remainder of the development will be restricted to heavy vehicles by way of a boom gate.

#### *Lot 2*

Lot 2 is to be developed as a McDonalds Restaurant of approximately 500 square metres, passenger vehicle parking for 36 cars and drive through facilities. Seating capacity is 110 persons 75 of which are located indoors.

The restaurant is to operate on a 24 hour basis.

Access to the site will be by way of a new internal access road constructed off Pat O'Leary Drive.

#### *Lot 3*

Lot 3 is to be developed as a Kentucky Fried Chicken Restaurant of approximately 290 square metres, passenger vehicle parking for 29 cars and drive through facilities. Seating capacity is 82 persons 60 of which are located indoors.

The restaurant is to operate on a 24 hour basis.

Access to the site will be by way of new entrance from Pat O'Leary Drive.

#### *Lot 4*

Lot 4 is to be developed for the purposes of bulky goods retail ("Building D") of approximately 1,075 square metres and 2 food outlets of 140 square metres each. Tenancies have not been identified.

Parking facilities for 64 vehicles is provided for on Lot 4.

Access to the site will be by way of an internal access road constructed off Pat O'Leary Drive.

#### *Lot 5*

Lot 5 is to be developed for the purposes of bulky goods retail consisting of 3 buildings totalling 15,560 square metres.

"Building A" has floor area of 3,479 square metres, "Building B" has a floor area of 9,235 square metres and "Building C" has a floor area of 2,490 square metres.

Parking facilities for 274 vehicles is provided for on Lot 5.

Access to the site will for cars and heavy vehicles by way of Pat O'Leary Drive

A one way service road will be provided around the perimeter of the site to service Buildings A, B, C and D.

A full set of plans are provided at **attachment 1**.

## **STAGING**

The subdivision is to be constructed over 2 stages.

Lots 1 (service station), Lot 2 (McDonalds) and Lot 3 (KFC) are to be developed as part of stage 1.

Lot 4 (Building D) and Lot 5 (Buildings A, B and C) are to be developed as part of stage 2.

## **THE SUBJECT LAND**

The subject land currently consists of 2 allotments of land known as Lots 4 and 5 in DP 838537.

In total the site is approximately 5.8 hectares.

Constructed on Lot 4 is an industrial building and holding yard previously used for the purposes of a plant hire business (Clarks Plant Hire). That use has ceased and the site is currently not occupied.

Lot 5 is vacant except for a derelict building.

Access to the land is currently via Pat O'Leary Drive.

Located in the north western corner of the site is Raglan Creek

Directly adjoining the rear boundary is the Great Western Railway line.

## **THE LOCALITY**

The subject land is located on the southern side of Sydney Road (Great Western Highway) in the suburb of Kelso.

The site is bound to the north by Sydney Road and to the south by the Great Western Railway.

To the east and west of the site are predominately industrial uses most notably Devro located to the east.

Directly opposite on Sydney Road is a small commercial/bulky goods precinct.

Three smaller sites share access from Pat O'Leary Drive being the former Tri Steel Sheds site, Kelso Fire Brigade and Blatch Smash Repairs.

A locality plan is provided at **attachment 2**.

## **PREVIOUS CONSENTS**

In the recent past there have been a number of Development Applications approved for the redevelopment of the land. These proposals are summarised as follows:

### *Development Application 2000/0122*

Development Application 2000/0122 was approved on 23 November 1999 and involved the demolition of existing buildings and the construction of a new hardware and homeware centre of approximately 8,248 square metres. The development related to Lot 4 only. Access to the development was by way of Pat O'Leary Drive.

The Development Application has since lapsed with no works undertaken.

### *Development Application 2002/0118*

Development Application 2002/0118 was approved on 3 September 2001 and involved the subdivision of Lot 5 into 17 industrial allotments. Access to the allotments was by way of an extension of Pat O'Leary Drive.

The Development Application has since lapsed with no works undertaken.

### *Development Application 2004/0485*

Development Application 2004/0485 was approved on 27 February 2004 and involved the construction of a new tavern of approximately 800 square metres on part of Lot 4. Access to the tavern was by way of Pat O'Leary Drive.

The Development Application has since lapsed with no works undertaken.

### *Development Application 2004/0488*

Development Application 2004/0488 was approved on 9 February 2004 and involved the construction of a new bulky goods development incorporating bulky goods and industrial tenancies (14,790 square metres), new medical centre (700 square metres) and café (200 square metres). Access to the development was to be by way of Pat O'Leary Drive.

The Development Application has since lapsed with no works undertaken.

It is noted that all of the proposals have not physically commenced. No current consent exists for the development of the land.

## **PLANNING PROVISIONS**

In determining a Development Application the consent authority is to take into consideration such of the matters outlined in Section 79C of the Act as are relevant to the application.

The relevant matters are outlined below.

### **ANY ENVIRONMENTAL PLANNING POLICIES**

### **STATE ENVIRONMENTAL PLANNING POLICIES**

### **SEPP (INFRASTRUCTURE)**

## **PROXIMITY TO THE GREAT WESTERN RAILWAY LINE**

Immediately adjoining the rear (southern) boundary is the Great Western Railway line.

Clause 86 of SEPP (Infrastructure) is as follows:

- (1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
  - (a) within or above a rail corridor, or*
  - (b) within 25m (measured horizontally) of a rail corridor. Or*
  - (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) Before determining a development application for development to which this clause applies, the consent authority must:*
  - (a) within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and*
  - (b) take into consideration:*
    - (i) any response to the notice that is received within 21 days after the notice is given, and*
    - (ii) any guidelines issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) Subject to subclause (4), the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARTC.*
- (4) In deciding whether to provide concurrence, the chief executive officer must take into account:*
  - (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
    - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
    - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
  - (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*
- (5) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:*

- (a) *the consent authority has given the chief executive officer notice of the development application, and*
- (b) *21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant concurrence.*

The development is located within 25 metres of a rail corridor (Great Western Railway) and involves excavation in excess of 2 metres.

The Development Application and accompanying documents were forwarded to the Australian Rail Track Authority as part of the exhibition process.

The ARTC raised no significant concerns regarding the development subject to the incorporation of the following matters as conditions of consent:

- An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the ARTC Interim Guidelines for Applicants in the consideration of rail noise and vibration from the adjacent rail corridor.
- Drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from ARTC.
- During excavation the applicant is to observe extreme care to prevent water from collecting on or near ARTC infrastructure.
- The boundary fence must be of a sufficient standard that it does not allow unauthorised entry into the rail corridor by any stock or persons, and the applicant must ensure that adequate safety measures are taken whilst work is carried out.

A copy of the ARTC correspondence is provided in **attachment 3**.

### **TRAFFIC GENERATING DEVELOPMENT**

Clause 104 of SEPP (Infrastructure) is as follows:

- (1) *This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:*
  - (a) *new premises of the relevant size or capacity, or*
  - (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*
- (2) *In this clause, **relevant size or capacity** means:*
  - (a) *in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
  - (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite*

*that development in Column 3 of the Table to Schedule 3.*

- (3) *Before determining a development application for development to which this clause applies, the consent authority must:*
- (a) *give written notice of the application to the RTA within 7 days after the application is made, and*
  - (b) *take into consideration:*
    - (i) *any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and*
    - (ii) *the accessibility of the site concerned, including:*
      - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
      - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
    - (iii) *any potential traffic safety, road congestion or parking implications of the development.*
- (4) *The consent authority must give the RTA a copy of the determination of the application within 7 days after the determination is made.*

In accordance with Clause 104 the development requires referral to the RTA as it exceeds the thresholds established.

The Development Application was supported by a Traffic Impact Statement prepared by Thompson Stanbury Associates.

Following referral the Western Region Development Committee provided advice to Council opposing the Development Application on the grounds that it failed to adequately assess the impact of the proposed development on the surrounding road network.

The Committee also raised a number of issues associated with internal parking and traffic arrangements. These issues have been addressed by the applicant with amendments made to the plans during the assessment process.

A copy of the WRD Committee's submission is provided in **attachment 3**.

Following receipt of advice from the Committee and the RTA further discussions were held between the applicant, the RTA and Council to discuss the issues raised. This included receipt of amended plans to address the issues raised and revisions to the Traffic Impact Statement. The amended documentation was referred to the RTA for further comment and is discussed below.

### **DEVELOPMENT WITH FRONTAGE TO CLASSIFIED ROAD**

Clause 101 of SEPP (Infrastructure) is as follows:

- (1) *The objectives of this clause are:*
  - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
  - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
  - (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) *the design of the vehicular access to the land, or*
    - (ii) *the emission of smoke or dust from the development, or*
    - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The Development Application and accompanying documents was initially referred to the RTA due to the potential for the development to impact on the Great Western Highway.

The RTA initially supported the Western Region Development Committees objection to the development citing the need to update the submitted Traffic Report to reflect the significant development which has occurred and is proposed in the area particularly near the intersection of Pat O'Leary Drive and the Great Western Highway.

The RTA also noted that it is currently investigating options to widen the Great Western Highway through Kelso. As part of this investigation it is proposed to build a 4 lane divided carriageway similar to that existing within other areas of Bathurst. Acquisition of land may be required from the road frontage in the vicinity of the proposed development to accommodate the proposed upgrade.

The RTA also commented that it is investigating options for the relocation of the current entrance to Devro from the Great Western Highway to Pat O'Leary Drive to eliminate issues associated with right turn traffic entering the Devro site. This comment subsequently led to significant concerns being raised by Devro regarding any proposal that resulted in the alteration and/or relocation of their access to and from the Great Western Highway.

The RTA requested that a meeting be held between the applicants, Council and the RTA once the revised traffic study had been prepared.

Following receipt of advice from the Committee and the RTA further discussions were held between the applicant, the RTA and Council to discuss the issues raised. This included



receipt of amended plans to address the issues raised and revisions to the Traffic Impact Statement.

In particular the plans were amended to include:

- Increasing the building line to Great Western Highway from 10 to 16 metres to accommodate up to 6 metres of road widening along the street frontage.
- Alterations to “Building A” to accommodate the possibility of providing alternate access to Devro should the RTA desire it at some point in the future.
- Provision of pedestrian crossing facilities on the Great Western Highway to accommodate pedestrian movements between the Kelso residential estate and the development.
- Upgrading of the intersection of Pat O’Leary Drive and the highway during stage 1 to a “CHR” type intersection treatment.
- Provision of a signalised intersection during stage 2.

A copy of the amended Traffic Impact Statement is provided at **attachment 4**.

The Traffic Impact Statement identified the need to upgrade the intersection of Great Western Highway and Pat O’Leary Drive to accommodate traffic movements to and from the site.

The RTA subsequently provided advice that it will not object to the proposed development subject to the following:

#### *Stage 1 intersection treatment*

- For stage 1 of the development based on the traffic generation figures provided, the intersection of Pat O’Leary Drive and the Great Western Highway is to provide opposing channelised right turns, left turn into Pat O’Leary Drive and a deceleration lane for traffic turning left into the service station. The intersection is to be in accordance with the RTA Road Design Guide.
- The minimum separation between Pat O’Leary Drive and the start of the diverge taper for the deceleration lane into the service station is to be 20m.
- The advertising signage will be subject to a separate application which will require referral to the RTA in accordance with State Environmental Planning Policy No 64 – Advertising and Signage.

#### *Stage 2 intersection treatment*

- Based on the traffic generation figures provided, the intersection of Pat O’Leary Drive and the Great Western Highway is to be upgraded to provide a signalised intersection for Stage 2 of the development. The intersection is to be in accordance with the RTA Traffic Signal Design Manual and RTA Road Design Guide. The intersection treatment is to be completed prior to the occupation of the premises.

#### *General*

- A copy of the construction plans for the proposed roadworks is to be submitted to the RTA for approval. As the works are located on a highway, the developer is required to enter into a Works Authorisation Deed (WAD) with the RTA in order to carry out the proposed work. Any new pavement forming part of or joining the highway is subject to RTA approval which will form part of the WAD.
- The intersection treatment for Stage 1 and 2 is required to cater for the turning paths of the largest vehicle anticipated to access the site. This is to be demonstrated on design plans.
- The intersection treatment for Stage 1 and 2 is to retain a minimum width of 6.5 metres on the Highway for traffic to manoeuvre around a vehicle waiting to turn right into property accesses.
- Pedestrian facilities are to be located within the road reserve, not within private property.
- Road Safety Audits are to be conducted at the design and pre-opening stages in accordance with *Austroads (2009) Guide to Road Safety Part 6: Road Safety Audit*. The developer is responsible for mitigating deficiencies identified within the audit report.
- The application provides turning paths for a 12.5 m rigid as the largest class of vehicle to service the McDonalds development, therefore access by vehicles larger than 12.5m will not be permitted.
- Any proposed landscaping, signage and fencing are not to impede sight lines of traffic and/or pedestrians within the development, or when entering or leaving the development.
- All activities associated with the loading and unloading of goods associated with the development must be carried out on site. All vehicles including delivery vehicles are to enter and exit the site in a forward direction.
- Environmental Assessment of roadworks required as a result of the development will be required in the assessment by Bathurst Regional Council.
- A Road Occupancy Licence is required prior to any works commencing within 3 m of the travel lanes of the Great Western Highway. Submission of a traffic control plan is required as part of this licence.
- All works associated with the development are to be at no cost to the RTA.

A full copy of the RTA's revised comments is provided in **attachment 3**.

Of particular note is the proposal to stage the upgrading of the intersection commensurate with the staging of the development such that the CHR intersection treatment is provided to service Stage 1 of the development and the signalisation will occur as part of stage 2.

As a matter of practicality the CHR treatment will occur as part of the initial subdivision works enabling the subsequent tenants to take advantage of the works once completed. The conditions of consent have been structured such that Construction Certificates authorising the construction of the buildings identified in Stage 1 (McDonalds, KFC and the Service Station) cannot be issued until such time as the plan of subdivision has been registered. This will ensure that the roadworks necessary for Stage 1 have been completed and are in

place as required by the individual tenants.

Likewise it will be necessary for the Stage 2 roadworks to be implemented prior to the completion of Buildings A, B, C or D. The consent has likewise been structured to ensure that evidence of the applicant entering into the RTA WAD is provided prior to the issue of any Construction Certificates for Buildings A, B, C or D and that all roadworks are completed prior to the issue of any Occupation Certificates for Buildings A, B, C or D.

The other requirement of note is the condition requiring the retention of a minimum width of 6.5 metres on the Highway for traffic to manoeuvre around a vehicle waiting to turn right into property accesses. This requirement will ensure that the entrance to Devro will remain unaffected by the proposed upgrading works.

### **SEPP (MAJOR DEVELOPMENTS)**

In accordance with Part 3 of SEPP (Major Developments) 2005 development that has a capital investment value in excess of \$10 million is to be determined by the Joint Regional Planning Panel.

The JRPP was notified to the Development Application on 11 November 2009.

An informal briefing to discuss the Development Application was held on 11 January 2010 at Bathurst.

The briefing was attended by JRPP members Kibble, Fagan and Grayson and Council's Manager Development Assessment, Richard Denyer. Apologies were received from the Council delegates Toole and Sherley.

The briefing included a review of the plans, a discussion of the general locality, the significant issues raised during the exhibition process and a site visit.

### **SEPP 55 – REMEDIATION OF LAND**

A review of the site history reveals certain uses which give rise to the potential for the land to be contaminated beyond the levels suitable for its intended commercial and industrial use. These previous uses included the use of the land for orcharding, the plant hire facility and associated fuel storage areas and unknown fill stockpiled on the land.

A Detailed Site Investigation report of the site has been undertaken by Environmental Earth Sciences to accompany the Development Application. In particular it was noted that two above ground fuel storage tanks and a waste oil storage area were located on the Clarks Plant Hire site. Hydrocarbon staining and odour was observed at the base of these tanks.

Based on the results of the Detailed Investigation the following conclusions were reached:

- Slightly elevated concentrations of organochlorine pesticides in soil beneath the Greenfield area associated with the former orchard although these were below the threshold levels of commercial, industrial and residential usage.
- Concentrations of petroleum hydrocarbons were identified in two locations beneath Clarks Plant Hire site however were below the threshold levels of commercial, industrial and residential usage.
- Concentrations of petroleum hydrocarbons within the soil bund beneath the above ground diesel tanks in the Clarks Plant Hire yard were above the threshold criteria of

commercial, industrial and residential usage.

A copy of the Detailed Site Investigation is provided at **attachment 5**.

It will be necessary for the area surrounding the above ground diesel tanks to be remediated to a level suitable for its intended use for commercial/industrial usage.

Conditions of consent should therefore be imposed requiring:

- Preparation of a detailed Remediation Action Plan clearly outlining the scope and methodology of remediation works.
- That remediation is undertaken in accordance with the Remediation Action Plan.
- That site validation testing is undertaken confirming that the site is suitable for commercial/industrial usage.
- That remediation and site validation occur under the supervision of a Site Auditor accredited by DECC and that a site audit statement be completed certifying the site is suitable.

## **SEPP 64 – ADVERTISING AND SIGNAGE**

As part of this Development Application signage is proposed on each the respective buildings as noted on the submitted plans.

Initial plans submitted as part of the proposal included the provision of a pylon signs along the Great Western Highway.

The pylons signs (including the overall site pylon containing advertising of the respective tenancies and the service station price boards) have since been deferred to a later Development Application to enable proper assessment against the criteria established in SEPP 64.

The remaining signs may be characterised as “building identification signs” and “business identification signs” for the purposes of SEPP 64. The signs are not therefore considered “advertising signs” for the purposes of assessment under SEPP 64.

The signs themselves are considered appropriate given the nature of the development and the general signage in the locality.

## **BATHURST REGIONAL (INTERIM) LOCAL ENVIRONMENTAL PLAN 2005**

The subject land is zoned 4(a) Industrial under the provisions of Bathurst Regional (Interim) Local Environmental Plan 2005.

Clause 6(3) of BRILEP 2005 provides as follows:

*Consent must not be granted to the carrying out of development within a particular zone unless the consent authority has taken the objects of the zone into account and:*

- (a) is satisfied that the proposed development is consistent with one of more of those objects, or*
- (b) if the proposed development is development of the kind that is identified by this plan as usually not consistent with those objects – is satisfied that, in the*

*particular circumstances of the case, it is appropriate that the proposed development be carried out.*

The objectives of the 4(a) Industrial zone are as follows:

- (a) *to provide fully serviced land that is suitable for industrial uses, and*
- (b) *to encourage development which will contribute to economic growth and employment opportunities, and*
- (c) *to ensure that industrial or other permitted development is consistent with the provisions of any development control plan adopted by the Council for localities within the zone, and*
- (d) *to permit retail development to cater for the needs of the workforce within the industrial area, if such development does not prejudice the status and viability of the business areas within the City, and*
- (e) *to promote development that does not adversely impact on the natural and built environment, and*
- (f) *to provide and protect a passenger and freight transport corridor, transport terminals and other associated activities, and*
- (g) *to protect and conserve the scenic quality of the area.*

The development would be variously defined as “refreshment room” (McDonalds, KFC and the food outlets), “service station” and “bulky goods salesroom or showroom” (Buildings A, B, C and D).

All proposed uses are permissible with consent with the development zone although it is noted within the zoning table that development for the purposes of bulky goods salesroom or showroom is usually not consistent with the objectives of this zone. Consent should therefore not be granted to the bulky goods component of the development unless the consent authority *is satisfied that, in the particular circumstances of the case, it is appropriate that the proposed development be carried out.*

In terms of satisfying itself in relation to the zone objectives, consistency does not necessarily mean to conform to or promote and does not require a positive finding of compatibility. Council, or in this case the JRPP, need only satisfy itself that the development is not “antipathetic, nor incompatible or inconsistent with” the stated objective to be consistent.

On the whole it is considered that the development inclusive of the bulky goods component of the development is not “anti” the zone objectives nor is it inappropriate in this location given the mixture of industrial, bulky goods commercial and highway associate uses occurring in the general locality and on 4(a) Industrial zoned land occurring on Sydney Road.

It must also be acknowledged that there is a history of support for bulky goods development of the site evidenced by the various approvals granted in the recent past. All of these approvals were granted whilst the land was zoned 4(a) Industrial.

## **DEVELOPMENT CONTROL PLAN – INDUSTRIAL DEVELOPMENT**

Development within the 4(a) Industrial zone is generally governed by Council's Development

## Control Plan – Industrial Development.

Compliance with the relevant standards are assessed in the table below

Development Standard	Proposal	Compliance
<b>Siting considerations</b>		
Front building setback from any road shall be no less than 10 metres.	The development includes in excess of the 10 metre wide setbacks to the Great Western Highway.	The development generally complies with the 10 metre setback taking into account the 6 metres of road widening required by the RTA.
The setback from a side street shall be 5 metres.	The development includes a setback of greater than 5 metres to Pat O'Leary Drive.	The development exceeds Council standards in relation to setbacks to Pat O'Leary Drive.
Side and rear setbacks should otherwise comply with the Building Code of Australia.	The buildings are generally setback beyond the perimeter service road. These setbacks range from approximately 11.25 metres to 25 metres.	The development exceeds the Council standards in relation to setbacks from the side and rear boundaries.
The floor space ratio should not exceed 1:1.	The floor space ratio is in the order of 0.3:1.	Complies
<b>Parking</b>		
<p>Vehicular parking is to be provided behind the building line.</p> <p>Parking areas may be permitted within 3 metres of the front property boundary where Council is of the opinion that it will not adversely impact on the surrounding streetscape.</p>	<p>Parking areas have been setback at least 10 metres from the Great Western Highway and at least 5 metres from Pat O'Leary Drive. Whilst not located behind the building line it is, with the inclusion of landscaping as outlined in the vegetation management plan, considered adequate.</p>	<p>Adequate subject to landscaping as proposed.</p>
<b>Retail development</b>		
<p>Major retail development shall not be approved where it detracts from the status and viability of the business areas of the City.</p> <p>The floor area of a retail development is not to exceed 1,000 sq m.</p> <p>Retail developments shall not obtain direct access to a highway or major local road.</p>	<p>The development exceeds the 1,000 sq m recommended for retail developments.</p> <p>Access to the highway is proposed for the service station component of the development only.</p>	<p>The development is however unlikely to detract from other business areas in the City including the CBD and other bulky goods areas.</p> <p>Concurrence has been received from the RTA in relation to access onto the Great Western Highway.</p>

## LIKELY IMPACTS (NATURAL AND BUILT ENVIRONMENTS AND SOCIAL AND ENVIRONMENTAL IMPACTS)

## BATHURST RETAIL STRATEGY

In 1999 a Retail Strategy was prepared by Ratio Consultants for the Bathurst City LGA.

The objectives of the Study included advice on the future distribution and hierarchy of retail floorspace so as to optimise growth and investment potential for the period of 1998 to 2021.

The Retail Strategy made a number of observations relative to this application:

- Bulky goods floorspace is undergoing suburbanisation. There are developing precincts in the Kelso area and in the service trade centre located on the Mitchell Highway in West Bathurst. The progressive suburbanisation of bulky goods developments has resulted in the Bathurst CBD only accounting for around 60% of floorspace in this category.
- The City's bulky goods facilities have a comparatively high level of suburbanisation and it is likely there will be increasing demands for further facilities in the Kelso and West Bathurst areas.
- A bulky goods precinct (or precincts) with a total net additional floor space provision of approximately 9,700 m<sup>2</sup> gla over the period of 1998 – 2011.
- 9,730 m<sup>2</sup> gla represents the calculation of sustainable bulky goods and retail services floor space for the City of Bathurst over the next 13 years. Thus in the case of the recommended provision of bulky goods floor space, this is the recommended quantum floor space which is deemed sustainable in the period to 2011.
- The City of Bathurst Structure Plan (1994) set out two key areas for future bulky goods development being one located in the western suburbs of Bathurst (the current Service Trade Centre) and one located on the Mid Western Highway at Kelso (now Stocklands Drive). This study endorses these locations. The research also indicates that no additional land will be required to meet the bulky goods requirements to the City over the period 1998-2021.

Since the preparation of the Retail Strategy there have been a number of approved and constructed developments catering to the bulky goods sector. These notably include:

- Development of the Stockland Drive area including Bunnings and The Goods Guys as key tenants.
- Development of the GWH complex at 230-240 Sydney Road with Fantastic Furniture and BCF as key tenants.
- Approval granted by the Minister for Planning under Part 3A of the Gateway development (opposite Harvey Norman/GWH) which includes a significant component of bulky goods retail development.

The Stockland Drive area was originally subdivided into 5 development lots by Stocklands in 2001.

Since that time the land has been developed by individual tenants for a mixture of bulky goods retail, hardware store and as a service station. The complex in total consists of approximately 15,500 square metres.

The Stockland Drive/Lee Street area is zoned a mixture of 3(b) Service Business and 4(a) Industrial.

The majority of the tenancies in the Stockland Drive precinct are tenanted although at the time of preparation some vacancies exist at the complex at 14 Stockland Drive (1/5 tenancies are currently vacant) and at 15 Sydney (1/3 tenancies are currently vacant)

The GWH complex is located approximately 470 metres to the east of the subject land.

The GWH complex is located on land zoned 3(b) Service Business which is specifically aimed at bulky goods/highway usage.

The complex consists of 7 tenancies with a gross floor area in the order of 7,500 square metres. Major tenants in the complex include Fantastic Furniture and BCF. All tenancies are currently occupied.

The proposed development is in certain respects strikingly similar to the recently approved Gateway development site approved by the Minister under Part 3A.

The Gateway site is located approximately 200 metres to the east of the subject land.

The Gateway site is currently zoned 1(a) Inner Rural. Bulky goods developments are similarly noted within the zoning table as being not generally consistent with the zone objectives in the same way as it is in the 4(a) Industrial zone.

The Gateway site includes the construction of 2 fast food restaurants (operating 24 hours), a new service station and a series of highway/bulky goods uses of approximately 10,300 square metres. The significant difference between the Gateway development and the proposed development is that the highway frontage uses on the Gateway site is "tied" to the development of the site as a regional rail freight terminal. Conditions imposed on the Ministerial consent mean that the development of the highway frontage uses are not to be operational until such time as the rail freight component is developed.

Recent developments have therefore resulted in an increase in bulky goods retail floor space of some 23,000 sq m (Stocklands + GWH). This represents more than double (236%) the floor space recommended in the Retail Strategy of 9730 sq m. The more recent concept plan approval granted by the Minister for the Gateway development increases the bulky goods floor space to 33,300 sq m. This represents more than 3 times (342%) the floor space recommended in the Retail Strategy.

Whilst there has been a numerical oversupply in the amount of bulky goods retail floorspace relative to the Retail Strategy recommendations there remains a relatively high level of occupancy within each of existing centres.

Council is currently calling for expressions of interest to revisit the Retail Strategy given the recent completion of the Bathurst City Centre shopping complex in the CBD.

## **BATHURST URBAN STRATEGY**

The longer term provision of bulky goods retail floor space was most recently re-examined as part of Council's Urban Strategy.

The Urban Strategy made the following observations regarding the longer term provision of bulky goods retail floor space.



- The Bathurst Retail Strategy identifies two key existing areas of service business development – the Service Trade Centre, Robin Hill and Sydney Road, Kelso and concludes that no additional land will be required to meet the bulky goods requirements of the City over the period 1998 – 2021.
- The dominant type of development within these precincts is service business/industries at the Service Trade Centre and bulky goods retailing along Sydney Road. Whilst the Retail Strategy concludes that no additional land is required for service business activity in the City, this is not supported in terms of bulky goods retailing.
- The Service Trade Centre has not proved to be an attractor for bulky goods retailing development. Whilst it has continued to develop as a service business/trade/industry centre it has not attracted bulky goods developments. The Sydney Road area has proved the key location for retail bulky goods development and Council has faced increased pressure to approve these developments on rural and industrial land at this location due the insufficient land zoned service business.
- The Service Trade Centre contains adequate undeveloped land to cater for the next 12 year period as a service/trade business precinct. Whilst sufficient land is available at this location for this type of development, additional pressure for bulky goods (retail) expansion will be concentrated in the Kelso precinct and further additional land should be zoned within this locality to cater for existing pressures and restrict further “spot” developments approved on rural and industrial lands at this location.

The Urban Strategy ultimately recommended the rezoning of some 40 hectares of land for the purposes of bulky goods. The majority of this land centres around the land approved by the Minister for the Gateway proposal (29ha), a further 6 hectares of land directly to the east of the Gateway site (the former sawmill site), 0.5 hectares of land adjoining the existing Harvey Norman site and approximately 4.5 hectares adjoining Stockland Drive (currently zoned as industrial).

The Urban Strategy also recommended the prohibition of bulky goods development on rural and industrial land.

It is noted that the subject land was not specifically examined for potential rezoning to bulky goods purposes although it contains many of the aspects considered desirable in that:

- The sites adjoin or are adjacent to existing bulky goods (retail) precincts and will encourage the consolidation of like business that provide regional level attraction.
- The land is currently able to be serviced with water and sewer.
- The sites maintain direct access to the State Highway Network and are within close proximity/adjoin the rail corridor.
- The sites are subject to development pressure/existing bulky goods (retail) development on site or application received by Council for bulky goods (retail) development.

## **PARKING**

An assessment of the development relative to Council's adopted standards (Off Street Carparking Code) and the RTA's Guideline to Traffic Generating Developments is outlined in the table below.

Component	Floor area	Parking requirement	Parking required	Parking provided
Service station	87sq m	5 spaces per 100 sq m of convenience store <sup>1</sup>	5	8
McDonalds	500 sq m	1 space per 2 internal seats <sup>1</sup>	38	36
KFC	290 sq m	1 space per 2 internal seats <sup>1</sup>	30	29
Building A, B, C & D	16,915 sq m	1 space per 50 sq m	338	338
<b>TOTAL</b>			<b>411</b>	<b>412</b>

Note that the figures used for the Service Station, McDonalds and KFC are those contained in the RTA Guide to Traffic Generating Developments (2002).

With the exception of a slight under supply of parking relative to Council's standards for McDonalds (2 spaces) and KFC (1 space) the development provides a sufficient number of spaces on site.

### **UNDERGROUND PETROLEUM STORAGE SYSTEMS (UPSS)**

The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 came into effect on 1 June 2008.

Under the UPSS system the owner/operator is required to have in place:

- A system for monitoring and detecting leaks.
- Groundwater monitoring wells and a system for measuring them.
- An Environment Protection Plan for the site.
- Systems in place for record keeping, reporting of leaks and notifying council when the UPSS is decommissioned.

DECCW has been declared the appropriate regulatory authority for the implementation of the UPSS Regulation until 31 May 2012. After this date responsibility will revert to Council.

The DECCW Guideline on UPSS (Planning and Development Process for Sites with Underground Petroleum Storage Systems) recommends that:

- DECCW be advised of any approvals that involve the installation of UPSS.
- It is not expected that the planning authority's technical expertise should extend beyond a broad understanding of the applicable industry specifications.
- The planning authority may choose to include a broad condition of consent that the minimum requirements of the UPSS Regulations are met.

It is therefore proposed that the following conditions of consent be imposed:

- That the underground petroleum storage system be installed to meet the minimum requirements of the POEO (Underground Petroleum Storage Systems) Regulation 2008 inclusive of the following:

A new UPSS must prior to commissioning:

- Be appropriately designed, installed and commissioned by duly qualified persons in accordance with the UPSS Regulation.
- Have minimum mandatory pollution protection equipment installed, consistent with the Regulation, comprising non-corrodible secondary containment tanks and associated pipework and overfill protection devices.
- Have groundwater monitoring wells installed and tested in accordance with the Regulations.
- Have a certificate showing that any equipment integrity test (EIT) has been carried out in line with the written directions of duly qualified persons.

## **CRIME PREVENTION**

Bathurst Council has in place a protocol with the NSW Police (Bathurst Branch) for referral of major and potentially significant Development Applications for assessment against the principles of Crime Prevention Through Environmental Design (CPTED).

In accordance with the CPTED protocol the Development Application was referred to the Bathurst Police for comment. Comments were subsequently provided by the Crime Prevention Officer.

On the whole the development was identified as being a high crime risk.

The NSW Police have made a number of recommendations inclusive of:

- Installation of CCTV throughout the development.
- Lighting of all pathways, carpark and related areas.
- Signage reinforcing public areas, speed zones and general safety.
- Establishment of a graffiti management plan.
- Landscaping should reduce opportunities for concealment.
- Limiting access to the site particularly after hours.

The most significant concern raised by the NSW Police related to the 24 hour operation of the fast food restaurants (McDonalds and KFC). The Police point to evidence associated with historical armed robberies and stealing associated with the Go 24 service station, considerable “activity” in the Kelso housing estate and anecdotal evidence from other commands of a marked increase in robbery and other violent crimes occurring with the operation of 24 hour fast food restaurants in support of their position.

The Police have recommended that a condition be imposed on the development “that 24 hour trading be reviewed every 6 months to gauge and monitor any increase in criminal activity/anti social behaviour in the area”. Local Police and Council may then review and address these issues at their bi-monthly Crime Prevention Committee Meeting.

A copy of the NSW Police response is provided in **attachment 3**.

In response to the concerns raised by the NSW Police the applicants commissioned Barker Ryan Stewart (BRS) to provide a further assessment of the development relative to CPTED. The intention of the report was to address the issues raised by the Police and confirm design treatments agreed to by the applicants.

The Barker Ryan Stewart Crime Prevention Assessment is provided at **attachment 6**.

The BRS makes recommendations based on 4 areas namely surveillance, access control,

territorial reinforcement and space management.

These recommendations are summarised in the table below:

<b>Surveillance issues</b>	<b>Recommendation</b>
The area to the rear of McDonalds restaurant is not overlooked from the restaurant and is not visible from Great Western Highway	<p>The area shall be well lit at night in accordance with the Australian Standard for lighting in commercial areas.</p> <p>Consideration should be given to the installation of Close Circuit TV (CCTV)</p>
The rear and delivery sides of the KFC restaurant is not overlooked and is not visible from surrounding areas.	<p>The area shall be well lit at night in accordance with the Australian Standard for lighting in commercial areas.</p> <p>Consideration should be given to the installation of Close Circuit TV (CCTV)</p>
The pathway to the rear of the service station building is adjacent to the creek line and may be screened from view by existing and proposed landscaping.	<p>Minimise density of planting in this area to maintain clear sightlines.</p> <p>Install sensor lighting.</p> <p>Consideration should be given to the installation of Close Circuit TV (CCTV)</p>
The truck delivery lanes to the rear of the bulky goods outlets will not be visible from the proposed buildings, car park or nearby roads.	Prevent vehicle access to these areas by installing lockable barriers at designated areas to prevent car access out of standard business hours. The barriers should be locked by management at the close of each business day.
Positioning of CCTV cameras	<p>Position CCTV at places where the offender/s is most likely to have to pass or want to access, such as building entry/exit points, cash registers, rear storerooms or areas where high value items are kept.</p> <p>CCTV should be clearly visible to deter potential offenders.</p> <p>Places at a height that captures a full view of the offenders face whilst not being obscured by other interferences.</p> <p>In areas where image capture will not be compromised by insufficient lighting.</p>
General recommendations	<p>Lighting should be vandal resistant.</p> <p>Lighting should satisfy the Australian Standard.</p> <p>Signs should be erected in areas which are restricted, prohibited or under surveillance to discourage criminal or anti-social activity.</p> <p>Consider contracting a local security firm for</p>

	<p>regular inspections of the site.</p> <p>Minimise posters on shop windows (where possible) to ensure visibility to and from the car park is maintained.</p> <p>Ideally stand alone shelves within the service station store should be no more than 1.6 metres high thereby enabling clear visibility throughout the floor area by staff.</p> <p>Prune all trees and shrubs around buildings to enable clear visibility.</p>
<b>Access control</b>	<b>Recommendations</b>
The opportunity exists for offenders to hide at the rear of the service station building and at the rear of the bulky goods outlets.	<p>Secure fencing should be constructed to prevent access from neighbouring properties.</p> <p>Prevent vehicle access to these areas by installing lockable barriers at designated areas to prevent car access out of standard business hours. The barriers should be locked by management at the close of each business day.</p> <p>These areas should be regularly inspected by the security contractor.</p> <p>Install sensor lighting.</p>
Ram raids	<p>Bollards, large rocks or planter boxes should be installed at the service station frontage and entries to prevent ram raids.</p> <p>ATM's should be located within the buildings to minimise ram raid risk and use of explosives to access the ATM's.</p>
Landscaping	Avoid planting large trees adjacent to building to prevent use of "natural ladders" for access to roofs.
General matters for consideration.	<p>Ensure all back and side doors and windows are kept secure.</p> <p>Predetermine and designate escape routes and safe areas for employees to move to when required.</p> <p>Ensure that staff members are aware of security and armed robbery procedures and what to do in the case of such an event. This routine should be regularly practiced as with any other type of emergency drill.</p> <p>Make use of signage and stickers promoting security measures such as time delay locks, video surveillance and minimum cash held on premises.</p>

<b>Territorial reinforcement</b>	<b>Recommendations</b>
Neighbouring land uses	Erect quality fencing to restrict access from neighbouring properties.
Way finding	<p>Provide clear signage for pedestrians and motorists from the car park.</p> <p>Clearly identify access from the shops.</p> <p>Introduce a public address system to assist with security and management of emergencies.</p>
Central car park	<p>Barriers should be installed to prevent access to the central car park area.</p> <p>The barriers should be locked by management at the completion of trading for the bulky goods outlets.</p>
General recommendations	<p>Consider installation of a monitored security alarm system.</p> <p>Predominantly display any signs indicating the presence of a security system, the continual surveillance of the premises and any other security measures present.</p> <p>Fully secure all external doors and windows with good quality locking devices. Make sure they are regularly maintained. All doors should be of solid construction and well fitted.</p> <p>Consider installation of security bars, screens, grills or roller shutters to vulnerable windows and/or skylights, subject to BCA compliance.</p>
<b>Space Management Issues</b>	<b>Recommendations</b>
Waste storage	Garbage bins and waster storage receptacles should be regularly emptied to prevent overflowing rubbish.
Graffiti	<p>Remove graffiti as quickly as possible to minimise potential for cumulative graffiti and vandalism occurs.</p> <p>Install vandal resistant lighting where applicable.</p>
Toilets	<p>Toilets should be regularly maintained and kept clean at all times.</p> <p>Lighting should be consistent and even to maximise visibility.</p> <p>Consider installing vandal proof mirrors.</p>
Lighting repair	The management regime should ensure that lighting is repaired as soon as possible after any lighting failure or damage.

Cleanliness and maintenance	<p>The management regime shall ensure that the site is kept clean and tidy at all times.</p> <p>Clear all building perimeters including fences of rubbish and potential climbing aids.</p> <p>Maintain well built and adequately secured boundary gates and fences.</p>
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Whilst the many of the recommendation made relate to ongoing management practices the recommendation made in relation to the installation of CCTV, minimising access to rear areas and to the carparks out of operating hours and installation of lighting should be imposed as development consent to ensure that they are implemented into the development.

It would appear that the issue of 24 hour trading of fast food outlets is a vexed issue across the state with many proposals for expansion being opposed by resident groups citing reasons relating to noise, traffic, litter and anti-social behaviour. Likewise there appears to be no general consensus as to the appropriate responses to 24 hour trading with decisions varying from acceptance, to restrictions on trading hours subject to increases in security levels to refusal of the applications.

Review of various documents particularly cites the influence that alcohol has in relation to potential antisocial behaviour.

The following extract from *Garlick v Randwick City Council [2009] NSWLEC 1012 (15 January 2009)* perhaps best describes the issues associated with late night trading and anti social behaviour.

*28 There is no denying that the late-night and early morning trading licenced premises in this part of Coogee attract considerable numbers of people to the area and that many of these people become affected by alcohol. Some become seriously intoxicated and behave in an antisocial or criminal manner. Antisocial behaviour seems to occur on a frequent basis. Assaults and resulting attendances by the Police are not uncommon.*

*29 Some of this inappropriate and unlawful behaviour occurs outside the existing take-away food shops in Coogee Bay Road including the pie shop. However I have not been persuaded that this behaviour can be directly attributed to these shops that simply seek to cater for the demand for take-away food. It is nevertheless likely that many of the people attending these shops late at night or in the early hours of the morning are affected by alcohol. At times when there are groups of such people purchasing or consuming take-away food on the footpath tempers can and do flare for various reasons and altercations can occur. If alcohol were not involved such occurrences I expect would be far less likely. Hence it is unreasonable to simply lay the blame for inappropriate behaviour on the take-away food shops. Despite this if the take-away food shops were closed late at night and in the early hours of the morning when it seems people are more likely to be affected by alcohol it would be less likely that people would gather in groups in the street and would instead be more likely to disperse.*

*30 Having reviewed the evidence in relation to late-night and early morning behaviour, it seems to me that the vast majority of the patrons of the licenced premises come to this area to enjoy themselves and behave appropriately or at least in a non-offensive manner. Part of this enjoyment seems to involve the consumption of take-away food before going home. It is only a small number of people who cause problems.*

*31 The question that thus arises is whether allowing this pie shop to remain open for an additional two hours in circumstances where other take-away food shops can and do trade at the same time would result in changes of any significance to the behaviour of the patrons of licenced premises that would adversely affect the amenity of residents or other passers-by. Whilst some people might come to this area late at night or in the early hours of the morning to purchase food from the take-away food shops I agree with Mr Betros that it would be unlikely that an increase in the opening hours of the pie shop would make any difference. The existing time of closure simply sends purchasers to the neighbouring take-away food shops.*

*32 I also agree with Mr Betros that the extended trading hours as sought will not increase the number of patrons of the licenced premises and will make little difference to their behaviour. Conversely by providing greater food choice and quicker service, queuing and congestion could be reduced. I do not expect that there will be any adverse cumulative effect by increasing food choice.*

*33 In these circumstances I have not been persuaded that the additional opening hours would adversely affect the amenity of this area. In reaching this conclusion I have taken into account what Mr Betros said about the 24 hours a day trading of the premises that has otherwise operated without any objections or complaints since it became Garlo's Pies in August 2004.*

*34 Finally, in response to the concerns about discarded food and food wrappings on the footpath causing a safety hazard I have decided to include a new condition in the consent to ensure the maintenance of the footpath in a clean and tidy condition. Also, to assist in the management and supervision of persons in the immediate vicinity of the premises I have included a second new condition requiring the maintenance of existing security cameras and the retention of recordings. I also agree to the removal of conditions 8 and 9 of the consent that presently enable use of the footpath area for outdoor dining in the interest of reducing footpath congestion.*

It is noted that there are no licensed premises located in the immediate vicinity of the site. The nearest licensed premises is the Kelso Hotel located approximately 1km to the east of the site.

Likewise there are no residences directly adjoining the subject land. The nearest affected residences are those located on the opposite side of the Great Western Highway. The closest of these dwellings are approximately 90 metres to the north.

In an effort to address the concerns raised by the Police through the CPTED process, a Plan of Management has been prepared for the McDonalds restaurant site and is included in the Barker Ryan Stewart. The Plan of Management addresses issues associated with the use of CCTV cameras, alarm systems, lighting, security personnel, cleaning and maintenance etc.

The other uses proposing 24 hour operations (i.e. the service station and KFC) have not at this time lodged separate Plans of Management. It is possible however to impose conditions of consent requiring preparation of their own Plan of Management in a similar vain to that prepared for McDonalds.

## **SITE SUITABILITY**

### **PAT O'LEARY DRIVE**

Pat O'Leary Drive is currently designed as an industrial roadway in accordance with Council's Engineering Guidelines comprising a 13 metre carriageway within a 20 metre wide



reserve.

At present it provides for a designated travelling lane and parking lane in each direction.

Overall it is considered that Pat O'Leary Drive will be able to adequately accommodate the additional traffic movements expected to be generated by the development.

One area of concern however remains with the potential impact of turning movements (particularly heavy vehicles into and out of the site) on the parking arrangements in Pat O'Leary Drive. Currently those businesses on the eastern side of Pat O'Leary Drive have the benefit of unrestricted parking on both sides of Pat O'Leary Drive but most importantly along their own frontages.

It is unclear from the submitted plans and especially the vehicle manoeuvring plans as to whether alterations to parking on the eastern side of Pat O'Leary Drive will be necessary to accommodate these heavy vehicles.

It is therefore proposed that the following condition of consent be imposed to address this concern:

*All traffic movements and modifications to Pat O'Leary Drive are to retain the kerbside parking lane on the eastern side of Pat O'Leary Drive.*

*Documentary evidence is to be provided that heavy vehicle movements turning right into the site (i.e. via the internal access roadway and into KFC) and left turn into the rear service lane can be accommodated without encroaching onto the parking lane.*

## **WATER**

The subject land is currently serviced by a 150mm water service located in Pat O'Leary Drive.

This should be adequate to service the development.

## **SEWER**

The subject land is connected to Council's reticulated sewer mains by way of a separate connection to each allotment. The existing Clarks Plant Hire building is connected to the Council sewer main.

The site is notable in that it is traversed by 2 Council sewer mains being a 225 mm carrier main and a 375/450 mm carrier main. The location of the sewer mains are noted on the existing site survey plan included with the submitted plans.

The mains in the current locations would pass beneath the awning associated with the service station.

In accordance with Council's Guidelines for Engineering Works (Part 5.3.8.5 Building over Council Sewer Mains) the following applies to the proposal for building over the sewer mains.

*No building shall be constructed over Council's sewer reticulation system without the expressed approval of the Director of Engineering Services.*

*Where permissible, sewer reticulation mains of up to 225 mm diameter may be built over, provided that the following conditions are met:*

- (i) *The main shall be inspected using CCTV at the developers cost and a VHS video tape present to Council for inspection. The survey length is to extend 3m either side of the proposed development.*
- (ii) *If the sewer main is in an acceptable condition, Council may allow the main to remain in position. If the main is in an unacceptable condition, then Council will require that the main be replaced with material of Council's nomination.*
- (iii) *No building loads are to be imposed on the sewer main. This will require the use of piers or as detailed by a practising structural engineer. Where loads upon the sewer main are unavoidable, Council may that the main be concrete encased in accordance with Council's standard drawing number EN 7902.*

*No buildings will be permitted to be built within the zone of influence of any sewer rising main.*

In accordance with Council's policy it will therefore be necessary to relocate the 375/400mm sewer main wholly clear of the buildings associated with the development.

## **STORMWATER**

There is no formal piped drainage system located on the subject land or within Pat O'Leary Drive.

The significant drainage features of the site are a drainage line which takes water from upstream of the Railway line and Raglan Creek in the north western corner of the site. Raglan Creek will form the ultimate destination of all stormwater from the site.

It is proposed that stormwater from the railway land will be collected in an open drain and diverted around "Buildings B & C" before being discharged to Raglan Creek.

The remainder of the site is to be served by way of a piped interallotment drainage system discharging to Raglan Creek.

Preliminary plans have been supplied indicating erosion and sedimentation controls during the construction phase

## **TRADE WASTE**

It is expected that there is potential for trade waste to be generated with the operations of the service station and the respective food related premises. It would be appropriate for conditions of consent to be imposed in respect of trade waste issues.

## **DEVELOPER CONTRIBUTIONS**

Council has adopted a Section 94 Contributions Plan for Raglan Creek Stormwater Drainage Management. The contribution plan provides for the contributions towards the upgrading of various drainage lines within the Raglan Creek catchment. This includes works to Raglan Creek which traverses the site.

Based on the Section 94 Plan contributions will be payable based on the additional impervious (hardstand) areas. The current contribution rate (2009/2010) is \$17,553.20 per hectare of impervious area.

It is therefore proposed that the following conditions of consent be imposed:

- The payment to Council for stormwater drainage management in accordance with Council's Section 94 Contribution Plan "Raglan Creek Stormwater Drainage Management"
- In order to determine the Section 94 Contribution for "Raglan Creek Stormwater Drainage Management Council will require the submission of a survey plan prepared by a registered surveyor clearly indicated the area of additional impervious areas.
- The amount of contribution will be based on the impervious area by the contribution rate adopted in Council's Management Plan (\$17,553.20 per hectare for the 2009/2010 financial year).
- The contribution may be staged in accordance with staging proposed in the Development Application.

## CONSULTATION AND SUBMISSIONS

The Development Application is considered as "other advertised development" for the purposes of Environmental Planning and Assessment Regulations 2000.

In accordance with the obligations imposed under the Regulations public consultation involved:

- Public exhibition for a period of 30 days (16 November 2009 to 16 December 2009).
- Referral of the Development Application and accompanying documents to the NSW Office of Water as the "approval body".
- Referral of the Development Application and accompanying documents to other Government agencies including ARTC, NSW Police, RTA and the Western Region Development Committee.
- Advertising in the Western Advocate.
- Notification of all directly adjoining property owners.

As a result of this exhibition, referral and consultation process submissions were received from:

- NSW Office of Water
- RTA
- NSW Police
- ARTC
- Western Region Development Committee

One late submission was received from Devro Pty Ltd (an adjoining owner) regarding the proposal to relocate their existing access (as foreshadowed in correspondence from the RTA) from the Great Western Highway to Pat O'Leary Road.

A summary of the submission are provided below

SUBMISSION	ISSUES
Devro Pty Ltd PO Box 659 Bathurst 2795	<ul style="list-style-type: none"> <li>• Extreme concern at RTA proposal to relocate access to the Devro factory to Pat O'Leary Drive.</li> <li>• Object to any plans for access relocation in the strongest possible terms.</li> <li>• Significant and adverse impact on day to day operations and on future plans.</li> </ul>

	<ul style="list-style-type: none"> <li>Proposals are being discussed without any consultation or involvement of Devro.</li> <li>Request involvement in further discussions with RTA and the developer.</li> </ul>
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A copy of the submission from Devro is provided in **attachment 3**.

Subsequent to the receipt of the submission from Devro the RTA provided a separate response regarding the issue of relocating the Devro access to Pat O'Leary Drive.

A copy of the RTA response to Devro is provided in **attachment 3**.

In addition it is proposed that a condition of consent be imposed on the consent requiring the retention of a minimum 6.5m on the Highway for traffic to manoeuvre around a vehicle waiting to turn right into property accesses. This effectively maintains the status quo for Devro.

## **PUBLIC INTEREST**

### **OTHER APPROVALS**

The Development Application has been considered as "Integrated Development" for the purposes of Section 91 of the Environmental Planning and Assessment Act 1979.

The development involves undertaking controlled activities (buildings, roadways and earthworks) within 40 metres of Raglan Creek being a designated water course.

The Development Application was referred to the NSW Office of Water requesting their General Terms of Approval.

The applicant originally prepared a Landscape concept plan and Vegetation Management Plan and a separate Flood Study for the site. The VMP included details for the proposed treatment of land within the vicinity of Raglan Creek.

The Office of Water initially recommended that the proposal be amended and the additional information be provided on:

- A revised weed removal process.
- Identify areas of erosion and proposed rehabilitation and stabilisation through bank erosion control works and re-vegetation to restore the creek to its natural profile.
- Supply amended plans that provide for a minimum 10 metre CRZ measured from the top of the high bank and showing that no infrastructure is located within the CRZ.
- Provide details of landforming requirements within 40 metres of the creek. This is to include pre and post landform grades and example cross sections.
- Identification of the 1 in 100 year flood levels.
- Pre and post assessment of the impact the proposed landforming will have on the distribution of overland flows and floodwaters.
- Supply stormwater outlet design plan and details including intended scour protection.
- Details of construction details of monitoring bores and result of water quality analysis to identify groundwater contamination issues.
- Details of water supply for irrigation of vegetated buffer.

A copy of the Office of Water's initial response is provided in **attachment 3**.

The applicants subsequently provided an amended Vegetation Management Plan and revised Flood Study for further consideration by NSW Office of Water.

A copy of the revised amended Landscape and Vegetation Management Plan and Flood Study is provided at **attachment 7**.

The VMP describes the Creek as being in a poor state with willows, apple trees, Chinese elm and other exotics forming the upper strata and the lower strata being comprised of blackberry and African box-thorn and introduced grasses. The creek banks are unstable with erosion evident where the root systems of the willows are not stabilising the soil. Detritus stuck in the trees indicates that in a heavy rainfall the creek can have heavy flow rates. Aquatic and macrophyte weeds are evident in the creek itself with Bullrush and *Alternanthera Spp* being identified on site.

As part of the redevelopment revegetation works are to be undertaken during and after construction as follows:

- Planting of native riparian species along creek banks.
- Planting of native species in a vegetated buffer.
- Removal of exotic species, including retention of willow root systems (after poisoning) to increase bank stability.

Indicative cross sections are provided in the Vegetation Management Plan.

Regeneration works undertaken during and after construction of the proposed development will involve the primary and secondary weed removal and management.

Ongoing maintenance of the creekline regeneration works is to occur from practical completion in accordance with the table outlined below

Management Activity	Frequency	Responsibility
Litter removal	Opportunistically	Bush Regenerator
Weed control/inspection	Every 3 months (considering life cycle of species)	Bush regenerator and Landscape Architect
Plant replacement	Every 3 months	Bush Regenerator
Irrigation	Initial deep watering of at least 20 litres per plant then as required until plant establishment.	Bush Regenerator
Pest and diseases	Monitoring every 3 days for first four weeks and then every 3 months	Bush Regenerator
Maintenance inspections	Initial and 3 monthly	Bush Regenerator, Council and Land Architect

The Office of Water subsequently provided its GTA's to the development. The significant issue of note is that whilst the Office has granted its GTA's it does not accept the proposed method of discharging stormwater to Raglan Creek as outlined in the Flood Study. Specifically the proposed "dispersed overland flow" of water discharging from the settling basin and from the south western diversion channel does not provide a suitably controlled flow, and presents a risk to erosion of the creek bank. Alternatively the Office would consider a piped outlet incorporating a geotextile and rip-rap bed prior to discharge a more appropriate treatment.

The other issue noted by the Office of Water is that although removal of weeds is not considered ideal if bank stability is caused, the proposed hand removal of some weeds will be considered acceptable provided that areas subject to manual weed removal are stabilised.

The development proposed is not inconsistent with the GTA's as issued by the Office of Water. The matters raised by the Office including its proposal for alternate treatment of the stormwater discharge points can be dealt with through the consent mechanism.

## **CONCLUSION**

An assessment of the Development Application has been carried out in accordance with Section 79C of the Environmental Planning and Assessment Act. It is considered that the development warrants approval subject to conditions to address the environmental impact.

A copy of the draft conditions of consent are provided at **attachment 8**.

## **RECOMMENDATION**

It is recommended that the JRPP approve Development Application 2010/0286 (2010WES004) subject to those conditions included in this report.