

28 April 2020

Mr Brett Whitworth
Deputy Secretary Greater Sydney, Place and Infrastructure,
Department of Planning, Industry and Environment
Locked Bag 5022,
PARRAMATTA NSW 2124

By email: brett.whitworth@planning.nsw.gov.au

Dear Sir,

**RE: 55 COONARA AVE, WEST PENNANT HILLS
PLANNING PROPOSAL PP_2-17_THILL_006_00**

I refer to various discussions and meetings in reference to the above Planning Proposal.

As you know the approval process has been on-going for close to 5 years. The yield has been negotiated with Council over a period, from an initial submission for over 1200 dwellings down to 600. The 600 dwelling scheme has been endorsed by Council staff and Councillors several times through the Planning Proposal process. The Council officers' final report found the proposal to be of merit and recommended it for approval. However, contrary to their previous endorsements, in November 2019 the Councillors voted against the recommendation of the officers in a 6/6 vote, with the Mayor casting the deciding vote.

The Proposal has now been referred back to the Department, we understand that the outstanding items delaying its finalisation are those raised by EES. After satisfying them on many of their initial queries, two unresolved items remain and are copied below from EES's most recent advice to the Department.

EES recommendations to achieve protection of the biodiversity values on the site

1. *In terms of protecting the Powerful Owl, EES recommends:*
 - *the sports field / RE1 zoned land (shown as 1a on Attachment 3) is relocated elsewhere on the site, and EES suggests it is relocated to the north western side of the site which is currently proposed to be zoned R3 and adjacent to existing residential development*
 - *the '1a' section of RE1 zoned land (as shown on Attachment 3) is zoned E2 for consolidation with the adjoining bushland reserve lands. This would allow for the land to be rehabilitated and revegetated and provide a better area to boundary ratio. This would mean biodiversity values would be less prone to external effects.*
2. *The proposed development footprint/ APZ is amended so it does not impact 0.23ha of CEEC.*

Please find following a table that outlines the opportunity to move the Planning Proposal forward and the commitments Mirvac is willing to make in order to enable the delivery of a housing development of exceptional design quality that down-zones the existing site and protects the forest with the highest form of environmental zoning. Mirvac takes its community responsibilities seriously and would not be proposing this opportunity if it did not believe in the positive outcome that can be delivered.

Item No	Item	EES Contention	Final Response	Rationale	Commitment
1	Use of open space	The sports field / RE1 zoned land is relocated elsewhere on the site, and EES suggests it is relocated to the north western side of the site which is currently proposed to be zoned R3 and adjacent to existing residential development	Mirvac are prepared to delete the proposed soccer field and the permitted use under RE1 that allowed for it ie. Recreation Facilities (outdoor). In lieu of this, we propose the open space for community uses including a community farm, passive recreation areas and associated BBQ/picnic areas. We propose the following additional uses to those allowed under E2: <ul style="list-style-type: none"> • Car parks; • Community facilities • Information and education facilities; • Kiosks; • Markets; • Recreation areas; • Restaurants or cafes • Building identification signs; • Business identification signs 	<ul style="list-style-type: none"> • Moving the field cannot be accommodated due to impact on adjoining forest areas and the site topography which features significant cross-falls in all parts of the remainder of the site (other than the area currently proposed). • The use of the open space as we now propose will not be incompatible with adequate protection for the Powerful Owl habitat and believe that the uses strike a suitable balance between the two objectives; • We note that the proposed uses, which also appear in the Permitted with Consent uses under the RE1, are ones that have already been to public exhibition. Given that the "Recreation Facilities (outdoor)" use, which would have allowed a soccer fields is no longer a use being proposed, we believe that EES concerns have been addressed. 	The sports field can be deleted (not relocated), with the area retained with a less active uses as outlined in our "Final Response"
2	Zoning of open space	The section of RE1 zoned land (sports field) is zoned E2 for consolidation with the adjoining bushland reserve lands. This would allow for the land to be rehabilitated and revegetated and provide a better area to boundary ratio.	<p>Rezone area to E2, and as outlined above, allow additional uses in the area indicated on the attached draft Land Use Plan</p> <p>We reject any proposal which requires a full rehabilitation and revegetation to the entirety of this land, or the fencing of it to allow natural regrowth. In both cases this prevents any public open space benefit being provided.</p>	<ul style="list-style-type: none"> • Land could be zoned E2 and allowed to be used for passive recreation as noted. The revegetation and rehabilitation of 0.5Ha would be to provide for 0.23Ha as per Point 3 below. • Rehabilitation and revegetation of the balance of the area is not appropriate on land which has been cleared since pre 1940's and has been subsequently used for agriculture (ie. fruit orchards); • Fencing to enable 'regrowth' is a poor outcome for existing open space that can readily be made available to the community 	<ul style="list-style-type: none"> • RE1 zoning could change to E2 zoning with provisions for time limited community uses; • Revegetation of up to 0.5Ha of land as an offset of 0.23Ha of forest area included in APZ (further outlined in point 3 below).
3	0.23ha of STIF, BGHF	The proposed development footprint/ APZ is amended so it does not impact 0.23ha of CEEC.	0.23ha of APZ within the BGHF/STIF is retained as per the current proposal	<ul style="list-style-type: none"> • The masterplan design was established by existing buildings and existing infrastructure on site which is consistent with the cleared and excavated area established when the IBM development occurred. • The 0.23ha represents only 2.3% of the combined BGHF/STIF on the site, of which more than 56% (1308sqm) is in forest categorised as low condition with very low vegetation integrity; • We have already significantly reduced the area of APZ in forest areas from 0.95ha to the current 0.23ha. • Significant compromises on development yield and design have been made by Mirvac over the years of negotiation between Mirvac and Council. It is not viable to reduce the development area any further by adjusting it to shift the APZ area outside of the 0.23ha. • There are many examples of recent projects where endangered forest areas are included in APZ's e.g. Mt St Benedict's College Pennant Hills Rd Pennant Hills (Hornsby LGA) – see link below: http://hscenquiry.hornsby.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=561003 We are able to provide several others if required. 	<ul style="list-style-type: none"> • Revegetation of up to 0.5ha of the open space land as on offset to 0.23Ha of STIF & BGHF to be included in the APZ zone; • To dedicate or transfer the forest to a State-owned entity in perpetuity for its use as public open space; • To assist the entity in funding the maintenance of the forest for a period of up to 10 years.
4	100m buffer owl nest trees	No recommendation by EES - a reference to a preference for a buffer of 100m from nesting trees	With this not being a recommendation of EES, nor one which is uniformly agreed in the scientific community, we do not believe any action is required.	<ul style="list-style-type: none"> • Current buildings are within 66m from one potential nest tree (which has not been used for breeding by the owls for many years); • In the proposed masterplan we are no closer than 84m at a single location for residential dwellings, with an excess of 100m in other areas; • APZ's will not be precluded from being within the buffer area; • Not an EES recommendation – a preference only. 	

In addition to the abovementioned issues, I also refer to those raised by Gina Metcalf in her email on the 18th April 2020, and responded to by Robert Wilson on the 23rd April 2020. I am aware that you were also copied into these emails, and whilst some of the issues are repeated in the table above, I append these to this letter to ensure these are also closed out with you. Please contact me should you wish to discuss any of these items.

I also bring to your attention our previous offer regarding the dedication of existing forest areas on the site as regional open space. As per our attached letter misdated 28 March 2017 (but issued on 28 March 2018), we have made an offer to dedicate the Forest Area. This is on the basis that the offer will satisfy all NSW government levies, charges and fees or other payments or works related to the proposed development including payments under the EP&A Act ('Act'). We propose that following rezoning, this offer is revised to align with our current Heads of Agreement with Forestry NSW, and the latest agreed zoning plan.

In relation to contributions, as has been demonstrated through the planning process and acknowledged in Council's planning recommendation report, the public benefits provided by our proposal outweighs any levying of Council's 7.12 plan and indeed any site specific 7.11 contributions. The proposal effectively seeks to down zone a site which has a very intensive existing land use. We would suggest a direction from the Minister under Section 7.17 of the Act, however should this not be appropriate it would be greatly appreciated that in DPIE's assessment and recommendation report, that it acknowledges the current use, and that this use is taken into account in relation to contributions. This is important as the Act only allows for any contributions to be levied where it can be demonstrated there is an increase in the demand for public amenities and public services as a result of the development, which we contend is not the case because of the existing intensive use.

In conclusion, we believe that this is an opportunity for the Department to support a proposal that entirely aligns with the Premiers and Planning Minister's publicly announced priorities and policies including:

- Diverse product types at varying price points (attached and detached houses, town homes and larger apartments)
- Quality master planned design by a Tier 1 developer renowned for its commitment to quality and design excellence over the last 48 years.
- Transport orientated regeneration to take advantage of the North West Metro
- Materially enhanced environmental outcome increasing the protection of the forest by zoning to E2 and removing the B7 (Business Zone) with an existing 22m height limit
- An exemplar project to demonstrate the Minister's 'Low Rise Medium Density Housing Code' – the missing middle

Importantly, in relation to the recent announcement by the Minister on criteria of priority projects we make the following commentary:

- Jobs - the proposal will generate approximately 800 full time employment construction jobs over the next 5 years, and 120 professional services jobs, including 40 within the first three months of the Plan being finalised.
- Timing - the remaining tenancies in the existing office buildings come to an end at the end of June 2020. At this time the entire complex will be shut down and remain 100% vacant until commencement of demolition. These works will start as soon as we have a DA consent, for which our submission to Council is ready for lodgement, pending certainty of the LEP being made.
- Public Benefit – the proposal seeks to:
 - Down zone the site by removing the blanket B7 zoning and 22m height limit to various appropriate zonings and adjusted height limits relative to the uses,
 - Allow approximately 50% of the site (13 Ha) that has previously been private to be publicly accessible - including the transfer of the forest (10Ha) currently in private ownership to be in the ownership of the state and protected with the highest zoning possible.

We would welcome the Department now considering Mirvac's positions and commitments and determining the plan to create a quality, viable project which provide the jobs that the state requires.

I look forward to your response.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Toby Long'.

Toby Long
General Manager Residential Development NSW

DPIE issues dated 18 April 2020 (from Gina Metcalf) and Mirvac Responses dated 23 April 2020 (from Robert Wilson)

1. EES recommends removing proposed urban zoning from areas 6b and 5a. This is in line with the principle that asset protection zones should not encroach on any significant vegetation. I note your comments about the quality of the vegetation in some of these locations.

Mirvac Response:

Mirvac request that DPIE reconsider the very small fringe areas being proposed as APZ's which represents only 2.3% of the BGHF/STIF forest on the site, and only 1.6% of the forest categorised as either moderate or good condition (ie. '5/6a' and '5/6b' on the vegetation map). We note that of the total proposed APZ area within zones 5 and 6, approximately 56% is within low condition forest at the north of the site, which is highly modified regrowth forest, densely weed infested and with very low vegetation integrity scores.

2. We propose that the two areas of 5a vegetation at the northern end of the site be linked with an E2 zoning on advice of EES and removing the APZ from these areas.

Mirvac Response:

We note that the proposed zoning map now reflects the vegetation zones mapped agreed with EES and DPIE. We do not believe it is appropriate to link these two E2 zones when the vegetation between them is not consistent with this. Furthermore, we note this area between the two E2 areas is proposed as APZ and do not agree with an inappropriate zoning which may unfairly further impact our developable area in this part of the site. Finally, we note that these two areas are already effectively connected by the Cumberland Forest which is continuous along the eastern boundary which they abut.

3. We note you propose additional urban zoning for area 3a to reflect the intent that it be managed to allow conservation of area 6a. In principle this is supported and we will examine the zoning alternatives for this area.

Mirvac Response:

Noted, thankyou. With respect to zoning alternatives, with continuation of management on this land required for bushfire safety, we understand that a change to E2 zoning is not appropriate. On this basis, we suggest that the current proposed and exhibited zoning be retained. Please advise what alternate advice you have in this regards.

4. EES has requested 100 m buffers for each Powerful Owl nesting site with the following implications for the proposal:

Mirvac Clarification:

We note that the EES has not included such advice in their recent letter dated 2 April 2020, in which the specific recommendations for protection of the Powerful Owl were listed. Notwithstanding this, ESS refer to an 'approximate' 100m buffer recommendation which on average is provided.

- a) The area intended for use for community purposes was exhibited with a draft R4 zoning which does not reflect the intended use. While the area falls within the buffer of two nest sites EES and the Department support community use of the area. The Department will investigate, with its legal team, an E2 zone for this area that permits community uses or an alternative statutory mechanism. Please advise of any

key permissible uses to enable your potential community facilities and bushfire hazard reduction management practices to be implemented.

Mirvac Response:

We welcome the advice that EES and DPIE support community use of this area. This is being proposed for private recreation, including a tennis court, swimming pool, amenities (WC, change rooms), associated storage / pool plant room, and BBQ areas. As noted under item 3 above, we understand that E2 is not appropriate given the need for continuation of management for bushfire safety.

- b) The proposed RE1 zoning falls within the 100 m buffer for two sites and intensification of use is not supported by EES. The future use of this area would be subject to future negotiations with Forestry NSW and potentially the Hills Shire Council. We discussed an E2 zone for this area or alternative and will consider potential uses for a land use table in line with the above principle.

Mirvac Response:

Mirvac can accept the change of zoning from RE1 to E2 subject to agreement on permissible uses for this area. In considering permissible uses, we note that a significant portion of this area is outside of any owl nest buffer zones. On this basis and in acknowledging that EES and DPIE support community facilities within the area discussed in item 4a) above, (including within the owl tree buffer zones), we would similarly like this area mapped to accommodate 'outdoor recreation' as additional permitted use which could include a community farm (potentially to be dedicated to Hills Council) including associated structures required for its operation, as well as passive recreation ie. picnic areas and the retaining of the current carpark.

- c) The nesting site adjoining area 3a is affected by a small area of urban zoning proposed by you as an addition but for hazard reduction purposes only.

Mirvac Response:

Correct.

- d) Area 6b adjoins proposed higher rise buildings. We appreciate that the intent of the APZ is to manage vegetation and retain canopy trees that would form part of and function as a Powerful Owl nest buffer. RFS noted in its submission on the proposal that greater asset protection zones may be required for high rise buildings. We agreed that before the Department's officers made a final recommendation to the delegate on the interpretation of EES advice for the zoning plan, you would confirm the scale and nature of the APZs in this location with your bushfire consultant.

Mirvac Response:

We note the confusion and have consulted with our bushfire consultant who advised that the RFS comment is a general statement not specific to this proposal. He has reconfirmed his advice on the size of the APZs in this area (as per the APZ overlay on our vegetation plan). He has also acknowledged that in the unlikely event of this increasing, the E2 zone objectives cannot allow this from occurring in this zone. This advice is attached for your information.

5. As active recreation is not supported by EES within the forest, based on the likely impact on Powerful Owl nesting sites, DPIE requested at its meeting in December and subsequently that you consider how active recreation needs could be met within the proposed urban footprint of the site. The Department does not support EES' request to relocate a functional

playing field within the urban footprint. However, meeting active recreation needs is important for the intended residents' and could include multi-use courts where topography of the site permits. Your advice will inform any other recommendations on a final zoning plan.

Mirvac Response:

The masterplan will provide significant areas of recreational open space in the form of parks for the use of residents, in addition to the community facilities as noted under 4a) and b) above. We believe this will meet the needs of the residents without the need for additional active recreation facilities. It is also our understanding from discussions with Council that a single multi-use court or the like is not an amenity that Hills Council have a need for, nor do we think such a publicly accessible facility in close proximity to homes is appropriate.

6. In relation to the future ownership and use of the forested and cleared parts of the proposed non-urban land we note that this was subject to further discussion. At the one extreme of potential uses EES has noted the potential for excluding public access and fencing of the area to permit active or natural regeneration. Should the area be dedicated to NSW Forestry or an alternative State government land manager other passive recreation opportunities could be considered, including walking trails. The Department would welcome the opportunity to discuss your VPA offer with you in more detail.

Mirvac Response:

With regards the forested areas, we have previously submitted an offer to the Department of Planning in March 2018 (copy attached, though please note it is dated 2017 which was an error). Whilst no formal response was ever received, we were subsequently directed to Forestry NSW with whom we have reached a Heads of Agreement for the dedication of approximately 8.9ha of land, being the majority of the existing forest. Obviously, progressing this agreement is dependent on the rezoning of the subject land. We are more than happy to meet and discuss this offer with the Department, but suggest that resolving a VPA should not be a prerequisite for the rezoning to be finalised.

With regards the open space, we do not agree with the proposal to fence this. We also note that in our brief discussions with Forestry, there is no interest to take dedication of non-forested areas. That being the case, whilst we can agree to zoning this as E2, it is on the basis that it can permit uses as noted in our response to item 4b) above. As noted, we would like to discuss further with Hills Council regarding potential suitable uses and the potential dedication to them of all or part of this land.

In respect to the ownership of both the forested and open space, we believe the finalisation of the Planning Proposal should not be dependant on either of these being resolved.

In summary the actions for Mirvac are to provide:

- additional information in relation to the APZ adjoining the powerful owl nest site (near vegetation area 6b)

Mirvac Response:

As noted in the attached letter from our bushfire consultant, the APZ impacts include reduction to a maximum of 15% canopy cover and 10% of shrubs as ground cover. This will aim to retain as many of the established trees as possible within this criteria.

With respect to the nest tree, we note that EES letter dated 2 April 2020 did not recommend that 100m buffers are to be strictly adhered to, nor did it state that the buffers are to be fully forested. We note our previous clarification on this matter that our proposed built form provides a greater buffer than the current situation.

- feedback on the uses to support community facility use on the boundary, described as managed lands on your plan

Mirvac Response:
As noted under 4a) above

- advice on opportunities to meet active recreation needs within the site

Mirvac Response:
As noted under 5 above

- any other comment or question subsequent to our discussions

Mirvac Comments:

1. We note that the Minimum Lot size map, which has been co-ordinated with the previous zoning map will need to be updated once zoning map agreed. We request that the minimum lot size noted for the area identified as AB1 (currently aligning with the E2 zone) will need to be co-ordinated with the area currently proposed to be dedicated to Forestry.
2. With regards a change from the RE1 zone to E2, we request that the minimum lot size in this area be co-ordinated with the possible end uses (as proposed under 4b) above), and the potential future transfer / dedication to Hills Council to all or part thereof.
3. To assist the Department in progressing finalisation of the Planning Proposal, we will proceed with amending the Zoning and Minimum Lot Size maps as per the above and share with you for your review. These can be issued in the coming days.

28 March 2017

Ann-Maree Carruthers
Director, Sydney Region West
Department of Planning and Environment
10 Valentine Avenue,
Parramatta, NSW 2150

Dear Ann-Maree,

**RE: 55 Coonara Avenue, West Pennant Hills
PP_2-17_THILL_006_00
Regional Open Space – Planning Agreement Offer**

In accordance with Section 7.4 of EP&A Act we write to offer to enter into a Planning Agreement with the NSW Government, associated with the proposed rezoning of the site at 55 Coonara Avenue, West Pennant Hills.

The planning proposal which received a Gateway Determination on 31 October 2017, has a range of strategic benefits to the current and future community not least of which is the preservation of approximately 10 hectares of high quality open space containing a variety of significant vegetation ("Forest Dedication Area").

The Forest Dedication Area is adjacent to a proposed area of 2.493 hectares of additional active open space which has been the subject of discussions with the Hills Shire Council. In totality, these areas represent a significant opportunity to provide a regional open space facility in close proximity to the new Cherrybrook Metro station that will be impossible to replicate in the locality.

Mirvac has received significant feedback from the local community entailing direct consultation events and through correspondence. An overwhelming majority of this feedback has expressed a community desire for the protection and preservation of the Forest Dedication Area. Mirvac's proposal is consistent with this community desire, and Mirvac is of the view that the transfer of this land to public ownership and dedication for regional open space would provide a significant benefit to the area and an ongoing community resource for current and future generations. This outcome is also consistent with the Greater Sydney Commission's strategic aspirations of a "Green Grid" and the State Government's recent emphasis on the importance of open space particularly in infill urban areas.

It is noted that the Gateway Determination for the site makes reference to a requirement for "satisfactory arrangements" to be made for provision for contributions to State public infrastructure. The proposed change of use from Business Park to Residential reduces the demand on State public infrastructure, and therefore there would not be any contributions to State public infrastructure required.

The Coonara Avenue proposal has demonstrated that load on the traffic network will be reduced as a result of the proposed development compared to its current uses. It has also been determined that the proposal will have a negligible effect on the demand for educational services in the locality. The NSW Department of Education has also advised that the site is not a suitable location for a public education facility.

While we do not consider that the proposed development generates a demand for State infrastructure, in the spirit of meeting community expectations, we propose to dedicate the Forest Dedication Area as regional open space to the Minister for Planning.

We also note that, if contrary to our view, DPE considers that a special infrastructure payment and/or infrastructure works are warranted, dedication of the Forest Dedication Area will constitute a substantial contribution that would, in value, far exceed the cost, if any, of providing State infrastructure and any payment and/or infrastructure works required by any other NSW agency.

Section 7.22 of the EP&A Act describes what can be provided as a special infrastructure contribution and Section 7.24(5) allows for the dedication of land in lieu of payment of a special infrastructure contribution. The proposed dedication is entirely consistent with the intention of this part and represents good value for the State of NSW and a substantial public benefit for the community.

The offer to dedicate the Forest Dedication Area is therefore made on the basis that it will fully satisfy all NSW government levies, charges, fees or other payments or works related to the proposed development including payments under the EP&A Act.

We note that Mirvac has also offered to enter into a VPA with the Hills Council under which public benefits of a value substantially exceeding the contributions that would otherwise be payable under s7.11 of the EP&A Act will be delivered.

Mirvac is proud to be working with Council and the NSW government to deliver a development that will provide much needed homes adjacent to the proposed metro station and valuable open space that will benefit not only the development's future residents but the broader community.

Mirvac is in possession of more detailed information regarding the environmental attributes of the land and would be happy to make this information available on request.

The land is wholly owned by Mirvac and the following table describes the proposed terms of the Planning Agreement;

Parties	Mirvac and Minister for Planning
Description of the land (s7.4(3)(a))	Lot 61, DP737386
Description of the development application (s7.4(3)(b)(i))	Rezoning of a 25.87 ha site to 600 dwellings comprising 200 housing and 400 apartment dwellings ranging from 2 to 6 storeys in height plus identification of conservation and open space areas.
Nature and extent of the provision to be made by the developer, and the times and manner in which the provision is to be made (s7.4(3)(c))	The following dedication is to be provided by Mirvac in relation to the Planning Proposal: <ul style="list-style-type: none"> 1. Forest Dedication Area, for the purpose of regional open space. To be dedicated to the Minister for Planning in perpetuity prior to the issue of the Occupation Certificate for the final stage of the proposed development.* (A plan is attached at Appendix 1 detailing the proposed Forest Dedication Area".)
Exclusion of s7.24	The VPA should contain provision to exempt the site from payment of any future NSW government levies, charges, fees, works or other payments related to the proposed development including payments under the EP&A Act.
Relationship to s7.11 and 7.12	Section 7.11, 7.12 of the EPA Act are <u>not</u> excluded as they apply to the payment of local contributions for the development. A separate VPA is being negotiated with Council at this time.
Enforcement of the agreement by a suitable means (s7.4(3)(g))	Mirvac will register the Planning Agreement on the title to the land, to be removed from title, on dedication of the Forest Dedication Area. By way of further security Mirvac will consent to the imposition of a clause allowing compulsory acquisition of the Forest Dedication Area for one dollar if there is a breach of the agreement in regard to the timing of dedication.

* Services and drainage easements may be required over the Forest Dedication Area in order to facilitate the development.

Mirvac will agree to paying the Department's reasonable costs for VPA preparation up to a maximum amount of \$20,000.

We look forward to your response in relation to the above offer, and can be contacted at any time on 9080 8765.

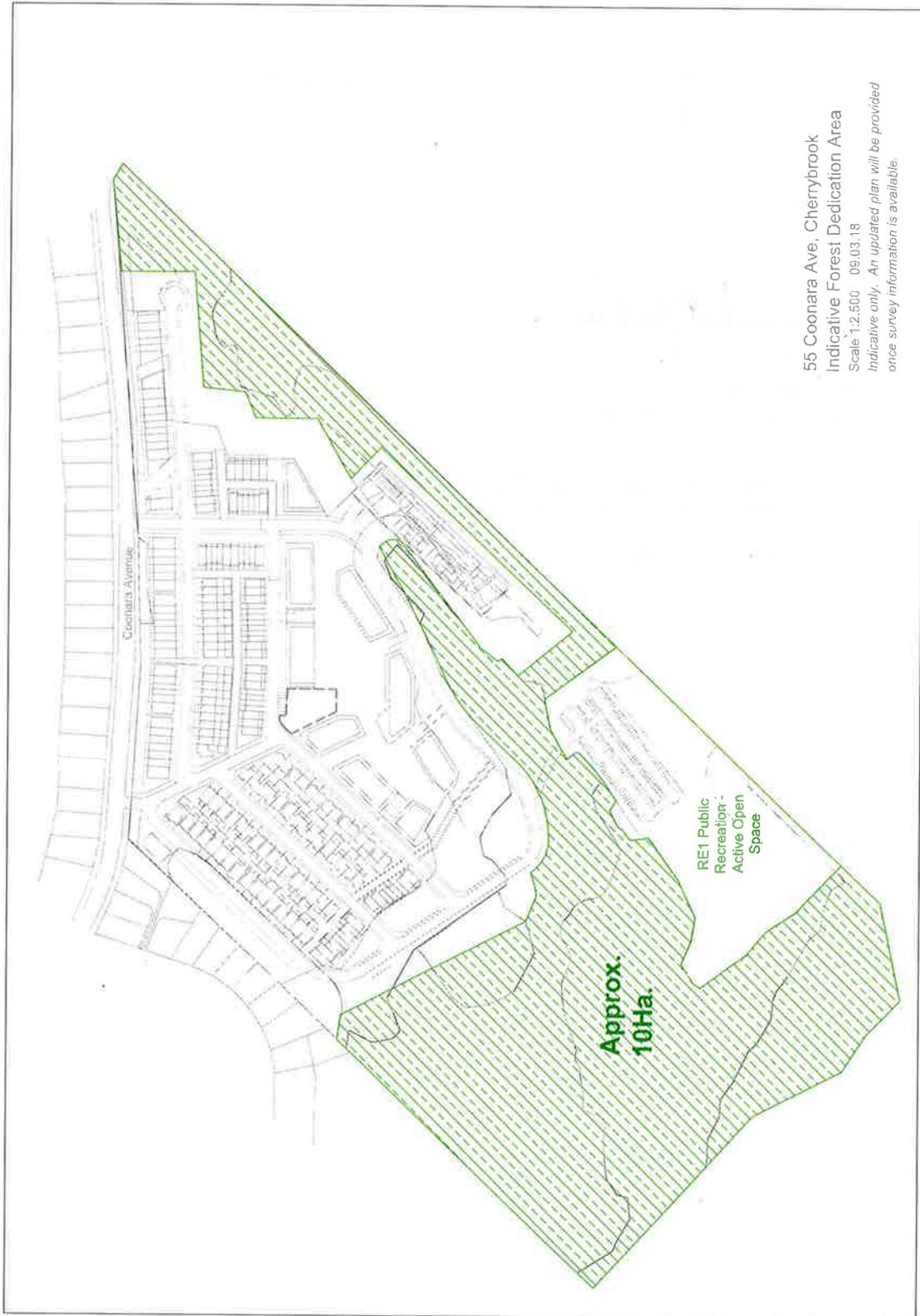
Yours sincerely,



Amanda Blake
Senior Development Manager

cc. Adrian Hohenzollern, Department of Planning and Environment
Sebastian Tauni, Department of Planning and Environment
Adrian Checchin, Mirvac
Michael File, FPD

Appendix One – Indicative Forest Dedication Area Map



55 Coonara Ave, Cherrybrook
Indicative Forest Dedication Area
Scale 1:2,500 09.03.18
Indicative only. An updated plan will be provided once survey information is available.

Appendix Two – Indicative Proposed Asset Protection Zones

