

**INQUIRY INTO ALLEGATIONS OF IMPROPRIETY
AGAINST AGENTS OF THE HILLS SHIRE COUNCIL AND
PROPERTY DEVELOPERS IN THE REGION**

Name: Name suppressed
Date Received: 22 January 2023

Partially
Confidential

Upper House Inquiry – Submission - January 2023

My interactions with Hills Shire Council (HSC) and NSW State Government have been centred around the former IBM Business Park at 55 Coonara Avenue, West Pennant Hills, generally called, “the Mirvac site” by the local community. And more recently, around the Cherrybrook Precinct Plan (CPP).

My focus has been for the wildlife being impacted on the Mirvac site and I have been looking into the processes and standards that are put in place to mitigate any harm to the diverse species that have inhabited this Critically Endangered Forest for many decades. When IBM managed this site as a Business Park, there were strict rules about how IBM and its employees could interact with the surrounding wildlife. With this site now destined for residential housing, it will be near impossible for anyone to ensure the impact here is not detrimental to the Threatened and native species that inhabit this site and in the adjacent Cumberland State Forest.

This is the Mirvac site at the moment following Stage 1 of the DA’s, the demolition – with a further 3 DA’s approved to remove a further 1,877 trees due to start imminently. There are more DA’s still to come and this project is expected to go for several more years. This photo featured in a Sydney Morning Herald article dated 4 September 2022 attached herewith (<https://www.smh.com.au/national/nsw/property-developer-will-raze-thousands-of-trees-despite-local-distress-20220831-p5beah.html>)



Thousands of trees will be bulldozed as part of Mirvac’s plan to redevelop the old IBM site at West Pennant Hills. NICK MOIR

It has seemed that since I began investigating this site and the proposed development that everything to do with the planning approvals and DAs appears to be ‘non-standard’.

By that I mean, whenever the community has credible objections and arguments regarding the rezoning and development of this site – there always seems to have been a way that these can be overlooked, side-stepped or disregarded.

The community has come to believe that no matter what they do, this development will go ahead because a decision has been made 'somewhere' that defies all logic and environmental dictate. Everyone knows this forest should not be being touched, and yet it is – and for what? Housing that could literally be built anywhere else but here – destroying a unique and precious ecosystem that has been formed over many, many decades and that supports endangered species.

Over 4,130 submissions were received from the community for the rezoning and another 545 for the Demolition DA. Key issues raised in submissions relate to the appropriateness of the proposed development, impact on local character, consistency with strategic planning framework, traffic generation, environmental impacts, availability of local services and jobs, impacts associated with the proposed synthetic playing fields and adequacy of the VPA offer.

I believe that whatever happens on the Mirvac site will help set a precedent for any future development in this district.

I will divide this submission into 2 parts – planning and fauna – for ease of understanding.

Planning: -

- 1 Mirvac site 'fast-tracked'
- 2 Hills Shire councillor and Mayor removed
- 3 Mirvac site was included in the 'Saving our Species' program
- 4 Removal of Blue-Gum High Forest (BGHF) and Federal Referral
- 5 Not a Serious and Irreversible Impact
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- 14 VPA for Open Space Area under-valued
- 15 3 DA's for the Construction Phase handled at one Planning Panel meeting
- 16 Local & State Planning Panel decisions

Fauna: -

- 17 Regeneration and maintenance of the site is not occurring
- 18 Authorising Authority for Fauna Management
- 19 Council 'extends an Animal Research Authority to cover euthanasia'
- 20 Request for 'Stop Work Order' ignored
- 21 Powerful Owl Monitoring Cameras removed
- 22 Fauna Reporting is insufficient
- 23 Statutory Complaint to DPI took 7 months
- 24 POCTAA applies
- 25 Timing of renewal of ARA for Ecologist

Part A – Planning

1) Mirvac site ‘fast-tracked’

It is my understanding that the Mirvac site was not originally included on the list put forward by the Urban Taskforce to promote developments that were ‘shovel-ready’ and that it had been ‘added in later’.

The Hills Local Planning Panel approved the Demolition DA 585/2021/HC in **June 2021** after Hills Shire Council rejected the rezoning in November 2019 and the site was added to the list that fit the criteria to be ‘fast-tracked’. Yet this project has still not commenced construction as of January 2023 so how ‘shovel-ready’ was it?

I hope this inquiry can investigate how exactly this site came to be included in the list of projects submitted to State Government that could be ‘fast-tracked’ due to the pandemic.

The link below is the letter dated 31 March 2020 sent from Urban Taskforce Australia to

Executive Director – Economic Strategy Division, NSW Treasury.

<https://www.urbantaskforce.com.au/wordpress/wp-content/uploads/2020/04/200408-Treasury-DPIE-Submission-Public-version-1.pdf>

The letter starts with the following statement: -

“I write with this further **updated submission** in response to your request for Urban Taskforce members to provide a list of “shovel-ready” projects that have been caught up in the any area of the NSW planning system, that could assist with getting the NSW economy through the COVID 19 economic recession and the post virus recovery. **Please discard previous versions of this document.**”

The Urban Taskforce ranked the Mirvac site with ‘Ranking B’ which relates to ‘projects which could start on the ground in 6-12 months and be a significant contributor to a post virus pipeline of economic and construction activity’.

The Covid pandemic should not have been used as an excuse to power through Development Applications which were not required or wanted in the local areas.



Mirvac | Project: Coonara Avenue, West Pennant Hills

Address: 55 Coonara Avenue, West Pennant Hills

Strategic Merit

- Growth corridor.
- Gateway approval.
- Council officer support.
- Diversity of Housing
- Within walking distance of Cherrybrook Metro station

Readiness

- Works on site could commence immediately following vacant possession in October 2020
- DA's could then be lodged with Hills Shire Council
- Rezoning plan required to be made by DPIE
- Demolition could commence towards the end of this year with new construction thereafter

Economic / Housing Value

Circa \$600m of end value.
600 new homes and apartments over approximately 5 years of construction work

2) Hills Shire Mayor and councillors removed

The Liberal Mayor of the Hills Shire Council, **Dr Michelle Byrne** cast the deciding vote in the council meeting in November 2019 to reject the rezoning of the Mirvac site for residential use – yet the State Government was able to overturn this decision due to the ‘Fast Tracking’ process under Covid rules, and Dr Byrne subsequently lost her seat on the council. For seemingly standing up for what the community was asking in the thousands of submissions Hills Shire Council received objecting to the loss of this endangered forest.

This story was covered in the Hills Shire Times on 30 September 2021

(<https://www.dailytelegraph.com.au/newslocal/hills-shire-times/bid-to-eject-hills-shires-liberal-mayor-councillors-factional-plan-to-oust-michelle-byrne/news-story/08cf38551069b4d835d496cf1936b426>)

The article stated that, “the Liberal Party’s Local Government Oversight Committee were asked by the State Executive to make recommendations on a series of selection processes for as many as 10 councils across the state on Monday.” “In the Hills, the LGOC recommended Peter Gangemi as the mayoral candidate, while also returning councillors Alan Haselden and Mike Thomas”. The article goes on to say, “the current council is not fighting (for the big issues)”.

3) Mirvac site was included in the Saving Our Species Programme

This site was so rich in biodiversity that in 2016, the NSW State Government included it in their ‘Saving Our Species’ programme to highlight its significance. This was **only one of six sites in NSW that were given this protected status at this time**. Again, I feel we should question exactly how such a precious area, containing Critically Endangered Ecological Communities of Blue Gum High Forest and Sydney Turpentine-Ironbark Forest, can be razed to the ground for housing.

Recent correspondence with DPE, Biodiversity & Conservation Division which manages the SoS programme states that it is, “a conservation program responsible for managing critical threats to threatened species”, “to secure a species or ecological community in the wild for 100 years for every listed entity” but states that “although the strategy recommends the Cumberland State Forest and Reserve site for management, no actions within the strategy have been implemented”. It also states that they are, “not a regulatory body and do not have authority for development consents”.

My question to the Inquiry is how can one division in a department in State Government declare an area as ‘environmentally significant’ and another division give approval to ‘clear it and build housing’? This question could be asked of **Threatened Species, DPE** if further understanding was required or to information@planning.nsw.gov.au. This department stated that, “the development would not result in a Serious and Irreversible Impact on Blue Gum High Forest or Sydney Turpentine-Ironbark Forest, which make up the Cumberland State Forest and house some of the native fauna”.

Further information on the ‘Saving Our Species’ programme can be found on this link.

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program>

4) Removal of Blue-Gum High Forest (BGHF) and Federal Referral

On Thursday 16th September 2021, **Federal Environment Minister Sussan Ley** made the controversial decision that the removal of the BGHF was not a ‘controlled action’. However, the

information provided to the Federal Minister was provided by Mirvac who stated that **just 134 sqm** of pristine forest would be affected.

The actual area to be impacted was **1.85 hectares** as identified by HSC staff and documented in the Local Planning Panel document for the Panel meeting on 15 September 2021.

Table 3: Ecosystem Credits

Plant Community Type (PCT)	Zone/Data source	Vegetation Integrity Score	Area of Impact (ha)	Credits required
1237 Blue Gum High Forest	Keystone	46.9	0.47	14
	Council	49.9	1.38	43
		Total	1.85	57

Please refer to page 59 of the attached Local Planning Panel Agenda.

The at HSC has concluded that there will be 1.85 hectares of BGHF to be cleared as part of the Demolition DA alone – with further removal likely in the subsequent DA's – but HSC was still happy to recommend the rezoning. And when it was pointed out that the Federal Minister had been misinformed of the amount of BGHF to be removed by Mirvac in their Referral, this was not addressed by the HSC and complaints by the community were ignored.

<https://www.thehills.nsw.gov.au/Council/Meeting-Agendas-Minutes/Local-Planning-Panel-LPP/Local-Planning-Panel-2021-Archive>

This indicates to me that HSC have conceded to the Developer and have not challenged the disputed the difference noted in the vegetation classification yet this is in relation to Critically Endangered Ecological Community.

5) Not a Serious and Irreversible Impact

On 15th September 2021, the Mirvac site Local Planning Panel meeting for the rezoning was held by zoom requesting the demolition of existing structures and to clear vegetation on the former IBM Business Park.

There had been a lot of community, environmental and political opposition to the rezoning of this site – even the National Trust submitted objections to the idea of this site being rezoned (<https://www.nationaltrust.org.au/news/national-trust-opposes-west-pennant-hills-redevelopment/>).

Prior to the meeting, the Panel were briefed by the following Council staff: -

The Panel were briefed by Council staff on 15 September 2021.

Group Manager Development & Compliance
Manager Development Assessment
Coordinator Development Assessment
Manager Environment & Health
Environment Coordinator
Senior Biodiversity Officer

The Planning Panel meeting had 27 objectors, including HSC Liberal Mayor Michelle Byrne, and council received 545 submissions, most objecting to the Demolition of the IBM Site building which had won awards for excellence in design when first constructed.

The Minutes of the Local Planning Panel meeting held on 15 September 2021, page 5 states that the Council's _____ gave detailed advice to the Panel that the rezoning was "**unlikely to result in a Serious and Irreversible Impact on the BGHF and STIF**" (see para below).

- Having regard to the relevant provisions of the Biodiversity Act, 1979 and the detailed advice provided by Council's Senior Biodiversity Officer, the Panel is satisfied that the development the subject of the DA is unlikely to result in a serious and irreversible impact on the Blue Gum High Forest or on the Sydney Turpentine-Ironbark Forest.

It would be good to question _____ regarding this determination and advice given to the Planning Panel. Who determined the removal of this vegetation was not an SAI in this instance?

6) Federal Environment Minister's determination

On **18th August 2021**, Mirvac lodged Federal Referral number 2021/8995 to the Federal Minister for the Environment, Sussan Ley.

On **15th September 2021**, the Local Planning Panel meeting for the approval of the Demolition DA of the site was held by zoom.

On **16th September 2021 - *the following day*** - The Federal Minister, made her determination that the removal of BGHF on this site was not a "controlled action".

This timeline seems very short and it seems very questionable why the determination coincided so neatly with the approval by the Minister - immediately following the panel meeting. The Minutes of the meeting were not even published by the 16th September when Sussan Ley would have made her determination.

On **20th September 2021** the decision was published by HSC to the community.

An article in the Hills Shire Times dated 21 September 2021, stated that, "several community speakers told the panel to not make a determination until a response from the Federal Environment Minister Sussan Ley as to whether protected trees can be cleared on the site". So the Federal Minister's decision was perfectly timed so the panel could make their decision within days of the panel meeting.

An estimated 450 large mature trees which are species of a Critically Endangered Ecological Community have been felled already as part of the Demolition DA – yet Mirvac referral stated just **134 square meters of BGHF would be impacted** in their referral documents.

The community asked for an independent assessment of the CEEC's on the site to be carried out in their numerous submissions and letters to HSC but this was never done. **Yet the councils own reports confirmed the presence of 1.85 hectares of BGHF to be impacted.**

The EPBC Act is Australia's national environment law and ensures that 'nationally significant species are identified and any potential negative impacts are carefully considered before developments are approved.

Mirvac's General Manager of NSW Residential Development at this time, _____ was reported in the following article as stating that, "***in the interest of transparency***", given the extent of community feedback received" he confirmed a referral application had been lodged and was

“undergoing due process. He refuted claims that 3 hectares of forest would be affected and said the figure ***was closer to 0.01 hectares.***” The community refutes this figure and is upset that ***an independent assessment of this CRITICALLY ENDANGERED ECOLOGICAL COMMUNITY was not instigated by HSC.***

https://www.dailytelegraph.com.au/newslocal/hills-shire-times/west-pennant-hills-mirvac-development-minister-to-make-call/news-story/e7754aa5a41fd78f57ca68feb7c2b612?rsf=syn:news:nca:nl:spa:edm&utm_source=DailyTelegraph&utm_medium=email&utm_campaign=Editorial&utm_content=NL-HST_LATESTNEWS_BREAKING-CUR_01&net_sub_id=335711901&type=curated&position=1&overallPos=1

As part of the subsequent 3 DA’s for the construction phase of this development (DA’s 859, 860, 861/2022/JP) a further 0.39 hectares of BGHF has been documented as being removed from this site. That takes us to approximately ***2.24 hectares of BGHF being cleared for housing at this site.***

At the November 2022 Sydney Central State Planning Panel meeting for the 3 DA’s for Construction, ***Mirvac states that their ecologist, Keystone Ecology has stated that there is 795ha of BGHF remaining.*** This is materially untrue but was verbalised at the panel meeting.

Approved Commonwealth Conservation Advice for BGHF says there is less than 140ha remaining.

7) Height Exceedances Approved

After years of collaboration between Mirvac, DPIE and HSC, the maximum permitted heights for any development on the Coonara Avenue site were stipulated as 9m, 12m and 22m as part of any DA approval.

Yet, in the most recent DA documents (859,860 & 861/2022/JP) for the construction phase, Mirvac argued that the restrictions put in place for the height limits on the apartment blocks are ***“unreasonable and unnecessary”*** and HSC agreed and recommended the approval. ***These height limit breaches were approved at the Sydney City Planning Panel in November 2022.***

The plan for the upcoming Cherrybrook Precinct has a height limit of 5 storeys in the area immediately adjacent to the station with any development further than 400m from the station gradually diminishing in height to blend into the surrounding neighbourhoods.

As part of their documentation, Mirvac submitted a Clause 4.6 Height Variation report saying that, ***“the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.”*** The community does not concur that any height exceedances are in the public interest and have made this known quite definitively. The rationale for HSC to agree that the limitations were ‘unnecessary and unreasonable’ are not justified when you consider the rationale for keeping the Cherrybrook Precinct to just 5 storeys.

On the Mirvac site, 37 out of the 60 houses proposed will exceed the height limits imposed. Some by 49% - that’s one a half times the height limit for the tallest house in this set. The apartments are also ***set to be 8/9 storeys tall instead of the 6 storeys that was approved.***

I fear that by allowing Mirvac to exceed the height limits, it is setting a precedent for developers who, I understand, have significant land stockpiled in the Castle Hill Road area. In 2020, it was

announced that there is approximately 72 hectares of land that has been 'land banked' by developers in the area ready for the Cherrybrook Precinct to get the go ahead and that developers will be looking to build high density housing if they can (see Appendix F for a map showing the area around Castle Hill Road that is 'land-banked'). This figure might well be higher now.

SCCPP Report for the Concept DA, 860/2022/JP, page 29 shows the height exceedances for the apartments.

The specific heights for the proposed buildings are summarised in the below table:

Building	Maximum LEP height	Proposed height (exc. plant and parapets)	Extent of variation	Maximum height (including plant and parapets)	Extent of variation
Building A	22m	24.5m	2.5m	26.4m	4.4m (20%)
Building B	22m	25m	3m	27.1m	5.1m (23.2%)
Building C	22m	24.3m	2.3m	24.9m	2.9m (13.2%)
Building D	22m	26m	4m	26.6m	4.6m (20.9%)

Page 37 states the reasons HSC recommended the height exceedances:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.
- Strict compliance with the development height standard is considered unreasonable and unnecessary in this instance.

8) Are they 'In' or 'Out' of the Cherrybrook Precinct?

When it came to getting their rezoning to residential use and their subsequent construction DAs approved, Mirvac documents made reference to the fact that they are part of the Cherrybrook Metro Precinct and the extra housing was something the district required.

Yet, in the DA documents submitted by Mirvac they make reference to not being in the precinct and argue that the height restrictions should not apply. Mirvac seems to want 'in' when it suits them, and 'out' when it doesn't and this has been 'accommodated' by HSC and State Government.

The Cherrybrook Precinct Strategy Plan states the development approvals will, "be guided by the following planning principles: an urban form, scale, height and character that is compatible with and integrates with the existing leafy low density surrounding area" yet this same principle has not been applied to the Mirvac site where this developer has been given approval to build apartments that are 8/9 storeys high and exceed the 22m height restriction in their original rezoning approval. It will be difficult for the State Government to be able to justify the Cherrybrook development height limitations if the Mirvac site is allowed to exceed their height restrictions.

Greater Sydney Region Plan – A Metropolis of Three Cities

The Greater Sydney Region Plan, *A Metropolis of Three Cities* has been prepared by the NSW State Government to set a 40 year vision and established a 20 year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. The Plan sets a new strategy and actions to land use and transport patterns to boost Greater Sydney's liveability, productivity and sustainability by spreading the benefits of growth. The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). The subject site is located within 800m of the **Cherrybrook** Metro Station which opened on 26 May 2019.

The proposed development is considered to be consistent with this objective as it will assist in maximising housing supply within the **Cherrybrook** Station Precinct which will have direct access to high frequency public transport services.

The subject site is located within the area mapped as the Cherrybrook Station Precinct Draft Place Strategy. The Strategy will enable up to 3,200 homes, 140 new jobs, 2.37ha of extra open space and new walking and cycling paths. Land around the existing Cherrybrook Metro Station has been recommended to be re-zoned medium density residential and have a maximum building height of 5 storeys. The Plan does not provide for recommended building heights, FSR or minimum lot sizes for the subject site, as the site is located outside of the mapped area for these controls.

Anything that happens on the Mirvac site could set a precedent for any further development in this district and around the Cherrybrook Metro station.

9) Mirvac site over 800m from Cherrybrook Metro

The most recent Cherrybrook Station Precinct Place Strategy (December 2022), page 7 states that the strategy focuses on, "the area surrounding the local centre and generally within 400m and 4-5 minutes of the Metro station" and that "the remainder of the precinct will stay unchanged, with careful transitions at the edge of the green village".

The border of the Mirvac site along just one side is 800m from the Metro station and yet in the Draft Strategy Plan for the precinct, the Mirvac site was included despite the site itself being further than 800m from the metro. Mirvac have argued that it is within pedestrian commuter distance yet the steep topography of the site, and the fact that any housing will be over 1 km from the metro makes it highly unlikely that many pedestrians will consider it a pleasant walk, up a steep hill, to get to the station. I do not consider many will walk to Cherrybrook Metro station from this area once it is housing.

Appendices A & B attached show how the border of the Cherrybrook Precinct has changed since December 2022 to remove the Mirvac site from the Precinct Strategy but for the past few years, the Mirvac site has been included as part of the precinct and this inclusion has no doubt helped Mirvac secure the rezoning from Business Park to Residential.

Once rezoning was approved, it may not have suited Mirvac to continue to be included in the precinct and page 28 of the Strategy Plan shows the reasons why. Statements include: -
"Retaining and enhancing the precincts green, leafy landscape character, while also providing environmental benefits, such as improved air quality, a way to absorb carbon and rainfall, a cooler local environment, and a place for wildlife."

“Retain all significant trees where possible, in addition to protecting and preserving all Blue Gum High Forest threatened species.”

“Aim to increase canopy cover to contribute to the Greater Sydney target of 40% canopy cover.”

“Ensure future rezoning demonstrates the recommended canopy cover targets can be achieved.”

None of these aims are in alignment with the fact that over 3,000 mature trees with hollows for wildlife are being removed at the Mirvac site in a Critically Endangered forest. None. Which could be why the development at the Mirvac site could no longer be considered as part of the precinct. So it's just 'gone' now whereas it has been included in the precinct Draft Strategy for the previous few years. A very impressive disappearing act.



10) Forest Dedication to NSW Planning Minister

Throughout the Mirvac site negotiations, Mirvac has stated that the 10-hectare area at the south of the site given C2 Conservation Zoning, will be dedicated to NSW Forestry Corp to be given back to the community by being incorporated back into the Cumberland State Forest.

In October 2022, at the Subdivision VPA Planning Panel hearing, it came to the attention of the local community that this forest dedication had been altered, discreetly, to change the dedication from Forestry Corp to the 'Planning Minister'. Why would this occur? And why would it happen just 2 days before the panel hearing with no visibility to either the HSC or the community groups. Indeed, the dedication change was so late that many of the documents were still stating the dedication was **to** Forestry Corp.

Worryingly, clauses in the Draft VPA include the statements that the Planning Minister can, at his "absolute discretion" change the boundaries of the conservation zoned land and that any land no longer bound by the conservation zoning could be sold off by Mirvac. This agreement does not seem to be in the good spirit of conserving this area 'in perpetuity' for the good of the local community as has been used as justification for the building of housing on this site for the past few years.

Instead, this change was done in such a manner as to try and fly under the radar and to hide the fact that whilst Mirvac has used this 'forest dedication' to justify why their development should be approved, and why their removal of over 3,000 mature trees will not be completely devastating for the impacted wildlife, the area is not safe from future development because the decision for its future is left in the hands of a Minister with the word "Planning" in front of his title. This strikes me as a 'deal', the true implications of which, are not being declared in their entirety to the Australian people.

Huge red flags exist around this change in the dedication. HSC did not notify any of the speakers of this change before the Planning Panel meeting so the community was oblivious that this change had occurred. (Appendix G shows the correspondence Mirvac sent to HSC to inform them of the change of dedication – note that the phrase used is, “minor amendment”).

The SCCPP Report for the Concept DA 860/2022/JP, page 24 shows one example of the language used for this forest dedication throughout all communications up until the planning panel meeting:

The proposal is considered to be consistent with the stated objectives of the zone in that the proposal will seeks to maintain the C2 Environmental Conservation zoned land. As identified above the applicant is seeking to dedicate some of the C2 Environmental Conservation zoned land to Forestry Corporation NSW.

I believe _____ of DPIE was the employee responsible for drafting the VPA for the Forest Dedication

11) HSC Rejected Open Space Area

Under GIPA, correspondence was recently obtained between _____ a Forestry Corp employee since May 2018 (formerly a Mirvac employee up until March 2018) and **Project Director, Mirvac Residential.**

In ‘document 7’, dated 15 June 2021 (attached in Appendix C), there is discussion of Open Space Area on the Mirvac site. On page 3, there is a statement that “Council have indicated they are no longer interested in the land” and offering it back to Forestry Corp for their use. The potential uses for this land are documented, and Mirvac makes the statement that the community’s first preference was for a Dog Park. **Yet, HSC had rejected the offer of the land** and the email discusses whether Forestry Corp have a use for it.

However, HSC is presently proposing a Dog Park at Colbarra Place in West Pennant Hills, which may well be causing vegetation clearing which will impact on habitat for echidnas. Due to community opposition, the Council is now doing further impact studies on whether this site at Colbarra Place is suitable. The vegetation at Colbarra Place was also formerly included in the NSW Saving Our Species program.

I would query why HSC rejected this offer of an open space area (currently used as an overflow carpark at the Cumberland State Forest) when one use was specified as a possible Dog Park and council are in need of one in this district?

Document 7, page 3: -

Open Space Area

- _____ said that the Council have indicated that they are no longer interested in the land and would it be something that Forestry Corporation would be interested in? _____ said that they would be interested subject to agreeable terms and conditions.
- Potential use - _____ suggested that Forestry would potentially use it for picnic areas, BBQ facilities, children’s playground (toilets possibly not required due to proximity of visitor centre). _____ said we had gone out to community and asked the question. Response was first and foremost dog park but then children’s playground, bike path, BBQ facilities. Mirvac is also considering regenerating some forest in the space. Use of local species and seeds was discussed.
- _____ said that we envisage the timing of this to be separate to the other lots for dedication
- _____ confirmed happy for overflow parking to continue

It does not seem logical for HSC to have rejected the offer of this Open Space for the local community and an explanation should be forthcoming from HSC staff and/or T

12) HSC hands planning decisions to State Govt

On 4 September 2022, a Sydney Morning Herald article titled, "Property developer will raze thousands of trees despite local distress" was published.

The HSC Liberal mayor Peter Gangemi is quoted as saying that he was disappointed the council's rejection of Mirvac's plans for the site had been overturned by the NSW government. He states, "it's incredibly disappointing that councillors have been sidelined and unable to make decisions on local planning matters, especially on issues which residents feel passionate about", he said.

The Cherrybrook Precinct spans both Hills Shire and Hornsby districts so both councils have been given options of how best the project should be run, as follows:-

Option 1 State Government to lead the rezoning of both Council areas.

Option 2 Each individual Council to prepare their own planning proposals to implement the rezoning.

Option 3 Individual planning proposals to be brought forward by landowners.

Considering the Mayor's stance on being sidelined by State government, why has the HSC opted to let State government run the entire Cherrybrook Precinct and not allow their local community to have any say in a major development happening in their district? This seems contradictory.

The HSC Ordinary Meeting of Council Agenda, dated 23 August 22, pages 11 & 12 state that HSC would support the State Government taking the lead in the rezoning process for the entire precinct (see below for excerpt).

2. Council indicate a preference for implementation of the outcomes in the exhibited Place Strategy by way of exhibited "Option 1", being that the State Government lead the rezoning process for the entire precinct, which would involve the preparation and exhibition of LEP amendments, concurrent with a supporting Development Control Plan and Contributions Plan.

Page 15 of the same Council Agenda shows the following table indicating anticipated growth in the area of the Cherrybrook Precinct: -

A comparison of the anticipated growth identified within the existing strategic planning framework and the draft Place Strategy is provided below.

	NWRL Corridor Strategy¹	Hills Corridor Strategy	Draft Place Strategy
Zoning¹	Medium Density Residential	Medium Density Residential	Medium Density Residential
Max FSR¹	1:1-2:1	0.96:1 to 1.44:1 (96 – 144 dw/ha)	1.4:1
Max HOB¹	3-6 Storeys	4-8 Storeys	5 storeys
Residential Yield¹	1,600 additional	1,643 additional	1,275 additional
Employment Yield¹	45 additional	0	0

Table 1

Strategic Planning Framework (note: yield figures refer to outcomes in The Hills LGA only).

¹ The Hills LGA

In force 1 December 2022

13) Former Deputy Mayor on the Mirvac CRG

In 2022, Mr Haselden applied, and was accepted onto, the Mirvac CRG (Community Reference Group) yet as a Licensed Wildlife Rescuer have twice been rejected by Mirvac to represent the community on this same group.

I believe Mr Haselden changed his vote whilst he was a Hills Shire Councillor – he was against the development, and then changed his mind to become a highly vocal supporter of it.

13

14) VPA for Open Space Area under-valued

On 27th September 2022, a local Voluntary Planning Agreement between Mirvac and HSC was approved at the council meeting. This VPA was to ensure an infrastructure contribution and as part of that Mirvac was offering a monetary contribution towards the provision of active open space in the district. The proposal by Mirvac was for \$2million dollars.

There were many objections by Greens and Labor councillors at the meeting, founded on the belief that this offer was highly under-valued when compared to other contributions made under VPA's within the Shire which the council report stated are approximately between \$1300 to \$15,000 per dwelling.

The council report for the meeting stated that, "the VPA offer of \$2 million (\$4,662 per dwelling in addition to the 1% general contribution under S7.12) towards active open space is within this range (*albeit at the lower end*).

Considering Mirvac is building 417 dwellings on this site and is failing to create much of the infrastructure requirements that were part of the DA approvals, it seems illogical for HSC to accept this first, low-ball offer by Mirvac, especially when expected profit for this luxury residential housing complex is estimated to be \$300 million.

Clr. Mark Hodges appeared especially eager that this contribution be accepted and rejected Clr. Kasby's Motion that Mirvac be asked to increase this contribution to at least \$4 million.

This development is highly environmentally destructive but it is obvious this was not a consideration as every Liberal councillor voted to accept this low offer. Our Threatened and native species are obviously worth so very little that this destruction can be done so quickly and easily.

15) 3 DA's for the Construction Phase handled at one Planning Panel meeting

The community contacted HSC to object to the fact that 3 substantial DA's for this development, which included the proposal for 4 Residential Apartment Blocks, 61 Houses and the Concept Plan, were all handled at the one Planning Panel meeting (DA's 859, 860 & 861/2022/JP).

That means speakers objecting to the proposal would only get one 3-minute slot to speak if they were an Individual, and one 10-minute slot as a community group, and yet they would have to speak about all 3 Development Applications in that time.

This is obviously a better outcome for the developer than for the community and is, in effect, a way of silencing objections.

16) Local & State Planning Panel decisions

The planning system presently in place works quite obviously in favour of developers. I have been shocked to find out the extent of the bias.

Following the Mirvac Demolition DA Planning Panel meeting, I found out that there is no way for any community members to contact the panel members, and in fact, it's declared as 'against the rules' to contact any of the members directly.

YET, the developers can have a meeting with the Panel members prior to the Planning Panel meeting to communicate their case and discuss the proposed development.

The Planning Panel members have a Community Representative as part of the 3-man team yet for the HSC and Mirvac Planning Panels, the community member has been someone who has had a career in building and construction and often has a relationship with the local council. For the Mirvac Demolition DA Planning Panel, the members were (Chair), (Expert), (Expert) and (Community Representative).

The panel were briefed by Council staff prior to the Planning Panel meeting and no doubt, had a briefing by Mirvac some time the week beforehand. Yet, the community members who have written submissions and asked to speak get 3 minutes to speak if they are an Individual, and 10 minutes if they represent a Group. However, at the start of the meeting, the Chair will ask that no community speakers REPEAT ANY ISSUES otherwise they will be interrupted.

For the latest 3 DA's for the construction phase at the Mirvac site, at the Sydney Central City Planning Panel meeting, over 30 objectors spoke for over 2 and a half hours and the panel members asked maybe 3 questions at the end (one was about Saturday construction working hours) and did not engage with any of the serious environmental and construction concerns raised by the local community. Panel members were (Chair),

There is no method for community members to then discuss any concerns arising from the panel meeting once the meeting has finished. The Panel members make their determination and then just 'disappear into the ether' because they are not part of local council, and are not part of State Government. Their decisions and/or their rationale cannot be challenged.

I find the entire Planning Panel – fly in and fly out methodology – to be completely biased in the developers favour. I would question what amount of time they have with the developer prior to the panel meetings and then certainly ask what qualifies the 'community representative' to be sitting on the panel when I have not witnessed any of these members do anything to assist the local community's concerns.

I attach the links for the Sydney Central City Planning Panel meeting Minutes and Reasons for Determination: -

<https://www.planningportal.nsw.gov.au/planning-panel/construction-four-residential-flat-buildings-and-basement-carparking>

<https://www.planningportal.nsw.gov.au/planning-panel/integrated-housing-development-comprising-torrens-title-subdivision-and-construction-61-attached-and-detached-dwellings>

<https://www.planningportal.nsw.gov.au/planning-panel/concept-development-application-0>

I would like to make it clear that I am in no way suggesting that any person, business or organisation has done, or is doing, anything untoward or illegal.

Upper House Parliamentary Inquiry – Part 2

Part 2 – Fauna

The forest at 55 Coonara Avenue had been allowed to flourish for many decades under the strict administration of IBM whilst it was a Business Park. With only employees using the facilities, there were not any domestic dogs and cats on the site, it was quiet at night and the wildlife was given a lot of consideration. IBM also engaged the National Trust Bushland Management Service to maintain the site.

Once this site becomes housing, the impact on the biodiversity value of the area will be seriously detrimental – with a knock-on effect at the adjacent Cumberland State Forest. The impact of the construction will also be huge and as can be seen from the near ‘quarry-like’ image at the start of this submission – the wildlife will not know what has hit them! This area is also a ‘stopping point’ for many birds and bats which travel long distances or migrate and **the loss of over 3,000 mature trees** is going to cause significant harm to our native animals. Whilst Mirvac may comfort themselves that they are not removing all the BGHF and STIF, the development itself will significantly harm the surrounding forest and native fauna.

Under the Biodiversity Conservation Act, Mirvac must 'avoid, mitigate and minimize' any harm to the protected native fauna that inhabits this forest which contains mature trees, many with valuable hollows that are scarce in the vicinity, and that provide housing for so many species including Threatened Powerful Owls that are known to inhabit this site.

As one of the Conditions of Consent for the Demolition DA, Mirvac had to prepare and submit a Fauna Management Plan. This plan has come under intense scrutiny and many failings have been highlighted since it was first published 12 November 2021, with the final amended version being published 13 January 2022. Both of these documents are published on the Hills Shire Council website for the DA 585/2021/HC.

Fauna Index: -

- 17 Regeneration and maintenance of the site is not occurring
- 18 Authorising Authority for Fauna Management
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17) Regeneration and maintenance of the site is not occurring

Since Mirvac obtained the site, it discontinued using the National Trust and has done hardly any maintenance (if any) of the Critically Endangered Ecological Communities they know are on the site. The local community has let both Mirvac and HSC know that this cannot be tolerated and that regeneration of the site is desperately needed – yet HSC has not instructed Mirvac to undertake any such works.

Mirvac have advised the local advocacy group ForestinDanger that prior to the dedication of the C2 conservation zoned forest at the south of the site, they have been instructed by Cumberland State Forest to complete a suite of works which includes removing weed growth, rebuilding bridges and repairing walking tracks. Mirvac has not even started these works. The forest dedication has been delayed, and delayed, and is even now still not approved.

Mirvac correspondence obtained under GIPA seems to indicate that Mirvac does not intend to dedicate the forest until at least 2025.

An email dated 17 Nov 2021 from
states: -

(Mircvac) to

(Forestry Corp NSW)

In order to progress the documentation, we are seeking your confirmation that you would be happy with a position where CPI could be applied on the \$500k, however from a base date of March 2022 (this date has been selected by us as it is approximately between when there was an offer made/agreed and the likely land handover date, and also when the VPA is likely to be finalised).

As the Heads of Agreement was negotiated in 2019 and AC suggests that March 2022 is the midway point, it seems to suggest that ***Mirvac does not intend to hand over the 10 hectares of C2 Conservation Zoned land until at least 2025.***

If this land is allowed to fall even further into disrepair in this time, the CEEC's will be degraded along with the understorey and the biodiversity it supports will become less valuable. Perhaps this is what Mirvac is hoping will happen?

HSC is the Managing Authority for this site and I do not understand why more is not being done to ensure the health of this Critically Endangered ecosystem is not being better maintained. By allowing this developer to ignore their responsibilities with regards the maintenance of the CEEC and the biodiversity on this site, I believe HSC is failing in their duty to oversee development applications in their jurisdiction.

18) Authorising Authority for Fauna Management

My understanding of the Fauna Management Plans and the part they play in NSW Planning Policy is that **local councils are the sole Authorising Authority** for ensuring that animal welfare standards for all our legally protected native fauna are described comprehensively in the FMP's and followed by the developer and their consultants. Therefore, HSC is responsible for the handling and treatment of all the various species that inhabit this site and for ensuring the developer and their agents comply with the protocols as they are written.

Due to the amount of Threatened and protected native fauna on this site, the Mirvac Fauna Management Plan must be extremely comprehensive and properly supervised.

The species known to inhabit this site include over 40 species of birds, including many raptors, reptiles, possums, gliders, echidnas and bats. There are numerous Threatened species including Powerful Owls, microbats, Dural Land Snail, Eastern Pygmy Possums and Flying Foxes and Glossy Black Cockatoos are recorded foraging here.

Yet, despite knowing this, and that the Demolition DA for this site would require the removal of over 1,253 mature trees, it is my understanding that the HSC have only once sent any staff to visit the site. I do not believe any staff have visited to ensure that the correct protocols are in place and that the FMP is being followed *since the demolition started* in April 2022.

At one point in correspondence with HSC staff member, _____, dated 7 July 2022, I was informed that, ***"the onus is on these ecologists to provide the appropriate level of supervision and reporting."*** This was in response to concerns being raised with HSC regarding the level of fauna reporting and the belief that the current level of oversight is not sufficient.

Furthermore, with the current 3 DA's for the construction phase having been approved, it has been necessary to write to HSC once again to point out that there are protocols missing from the Conditions of Consent for the native fauna resulting from the State Planning Panel meeting held in October 2022.

Mirvac has specified in their Biodiversity Development Assessment Report (BDAR) for the site that they will be paying Biodiversity Offset credits for **Eastern Pygmy Possums** being 'impacted' (ie. injured, killed and displaced) when the 1,877 trees are removed YET **there are no Targeted Surveys that have been requested as a Condition of Consent.**

The same applies to **Threatened microbat species** that have been specified in the BDAR, and had Biodiversity Offset credits applied, yet no Condition of Consent has been put in place requesting expert input and targeted surveys to identify their roosting spots prior to vegetation clearing.

This is a fundamental problem which will allow the developer to likely injure and kill Threatened species by not first having surveyed for them. **Mirvac has stated in their BDAR that no surveys have been done as their 'Presence is presumed'.**

It seems to me that HSC is allowing Mirvac ecologists to basically manage themselves with little, or no, oversight to ensure the FMP is being followed and that animal welfare standards and protocols are being followed.

HSC are **the ONLY AUTHORISING AUTHORITY managing wildlife welfare** for this development – which contains such high levels of biodiversity this site was identified by the NSW Government for Saving our Species recognition. Even if this does not provide legal protection, it should certainly indicate to any one impacting on it that they should do so with utmost rigour. **I do not believe this has been the case on this development site to date which is concerning as we are about to commence another huge period of vegetation removal. How heartbreaking.**

HSC must be held to account for why the surveys for Threatened and precious native species, such as echidnas, are not being demanded as part of the building approvals for this development.

19) **Council 'extends the scope of Animal Research Authority' to cover euthanasia**

Due to concerns regarding the handling of protected native fauna on the Mirvac site, correspondence with HSC took place questioning how the Fauna Management Plan could give approval for the project Ecologist to euthanise native wildlife on site and to query what checks the council had taken to ensure anyone carrying out such a procedure was appropriately trained and licensed to do so.

Overall licensing of the project Ecologist for the Mirvac site and the appropriateness of their credentials to handle wildlife has been a subject for scrutiny over the past 18 months.

The FMP for this site allows the project Ecologist to capture, contain, release and 'euthanise wildlife if considered too badly injured to travel to a vet' – all of which is extremely concerning when you note that in the original FMP submitted by Mirvac, there was no requirement to liaise with wildlife rescue organisations or mention of taking wildlife to vets.

The FMP starts with a statement by Cumberland Ecology that their ecologists are working under 'Scientific and Animal Ethics Licences'.

It has been determined through persistent investigation that the Animal Ethics Licence does not apply to Demolition and Vegetation Clearing works for the purposes of development – because none of these works constitute 'research'.

A 'scientific' licence alone is not sufficient to cover the scope of works detailed in the FMP so the question of what licence the works are actually being handled under is now in question.

In correspondence with HSC regarding the lack of an appropriate licence for the scope of works identified as happening on this site, , **at HSC has made the following worrying statements: -**

“the developer has been reminded of their responsibilities. They have indicated they are very clear about the conditions of consent that relate to this development. We are regularly receiving their work schedule detailing the works that occurring on site. We have no evidence to suggest that there has been any breach of the FMP”.

On 12th May 2022, approximately one month after demolition began, _____ stated the following:

*“Following our review and our discussions with DPI, we have confirmed that Cumberland Ecology have approval on their Animal Research Authority (ARA) to undertake euthanasia. **Council acknowledges that the ARA does not cover fauna rescue work related to development applications**, as this is not considered to be “research” but given that DPI believe CE have the appropriately experienced staff to approve euthanasia under their ARA, **Council is prepared to extend this approval for the purpose of implementing the FMP**”.*

When asked what Statutory Provision council could extend the scope of an ARA, _____ replied that:

“CE have approval on their ARA to undertake euthanasia. As the Consent Authority and given that DPI has granted approval for work considered ‘research, Council staff are satisfied that this can be extended to include tree removal works/demolition works associated with this DA” and “The ARA was issued by the Animal Care and Ethics Committee, Chief Scientist Branch of the DPI. If you wish to obtain a copy of the ARA that has been provided to Council you will need to formally apply to Council under the GIPA Act.”

On 22nd May 2022, _____ was contacted by the community stating there was a requirement for an “independent inspection of the works taking place currently” considering the sensitive and abundant amount of protected native wildlife on the site.

On 30th June 2022, _____ and the HSC staff and councillors were contacted stating there were serious concerns regarding the impacts on the fauna at the site. The reporting was insufficient and lacked details and the timing of reports was delayed several weeks after the actual works had taken place. Animals have perished on this site and details of this are included in the reports that have been sent to HSC but it is not known whether HSC staff have ever attended the site since demolition works began, to ensure that the animal welfare standards were appropriate and to confirm that the FMP was being followed appropriately.

I would like for this Inquiry to ask _____ how it is that local council can extend the scope of an Animal Research Authority which is issued by Department of Primary Industries. And to ask whether Council reads the Fauna Reports when they are received from the Developer and ever requests further information.

20) Request for ‘Stop Work Order’ ignored

In October 2021 a complaint was lodged to DPIE that Mirvac had started works on the site prior to the release, and approval of, their Fauna Management Plan and certification of the works.

DPIE Request 217841 was activated and a 'Potential Breach of Development Consent' notice sent to **Group Manager Development & Compliance** at HSC and copied to other council staff and all the following Hills councillors (Clr. Tracey, Clr. Russo, Clr. Collins, Clr. Demasi, Clr. Gangemi, Clr. Thomas, Clr. Jethi, Clr. Haselden, Clr. Jackson, Clr. Hay, Clr. Uno).

The consent conditions stipulate that the FMP first has to be approved, followed by the survey being undertaken, the fauna relocated and the ecologist's certification of these works submitted to Council for endorsement **two weeks PRIOR to ANY work commencing**.

Yet Mirvac issued a statement to the WPH local community declaring their intention to start demolition and clearing as soon as November 2021. This timeline communicated by MIRVAC was entirely unrealistic if thorough surveys and provisions were to be put in place for the best protection of all the fauna on this unique site.

Council were asked to ensure no works commenced on this site unless the Conditions of Consent were all met. It took numerous communications and the lodging of a complaint to DPIE to ensure Mirvac did not start any official work in mid-November as indicated and that they would wait until the FMP was lodged and approved.

However, some **Site Establishment works commenced on 25th October 2021**, including installation of site sheds, erecting hoardings, installing fencing and general site enabling works, which to the local community all constituted "*working on the site*". The community indicated that they believed these works were also in contravention of the DA conditions in emails sent the week of 28th October – 3rd November.

corresponded with community on this matter and communicated that, "*Mirvac feel that they are entitled to undertake some site establishment works under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 irrespective of the conditions of consent*". Yet in his communication dated 1 Nov 2021, stated that, "*Mirvac have been contacted and asked that no work occur on the site until conditions of consent have been further discussed with them*" and that he agrees, "*the intent of the consent is to prevent works connected to the consent from occurring until the Fauna Management Plan has been submitted to, and approved by Council staff, and then required Fauna surveys being undertaken*".

The community requested that a Stop Work order be put in place as the site establishment works were in breach of the conditions of consent as below: -

Fauna Management Plan (Jan 2022), Item 38 states:

The pre-clearance survey, fauna relocation and installation of nest boxes (items 1-5) are to be undertaken strictly in accordance with the approved plan and implemented in accordance with the approved timelines. Certification by the project Ecologist shall be submitted to Council's Manager – Environment & Health for endorsement two weeks prior to any work commencing.

Council replied that Mirvac had, "indicated that no work will occur on site until these matters are further discussed with Council staff" but did not issue a Stop Work order.

This was despite earlier community complaints regarding Mirvac's poor record of environmental responsibility regarding this site, in relation to the apparent poisoning of STIF species along the Western boundary, and the removal of dozens of large STIF species along the Coonara Avenue boundary because Mirvac stated the trees were supposedly unhealthy or at risk of dropping

branches despite local residents comments to the contrary. Without a Stop Work order, the community was fearful that Mirvac would once again just continue their 'taking care of business' approach.

Some of the area Mirvac was impacting with these Site Establishment works were within the Threatened Dural Land Snail habitat and prior to surveys and their relocation to a safer location – as was required in the consent conditions.

Some of the fencing installed was likely to impact on the habitat of the Threatened Southern Myotis (or fishing bat) and also impacted on the Tree Protection Zones (TPZs) of many trees to be retained, apparently carried out without the supervision of the project arborist as required in consent conditions 25 & 32.

Additionally, the fencing Mirvac was installing at this time was not considered 'wildlife friendly' despite Mirvac and HSC both being fully aware that this site contains two Critically Endangered Ecological Communities as well as several Threatened and protected native species.

Correspondence with HSC then went on to advise that they must ensure all Conditions of Consent are strictly adhered to. At the time of these unauthorised works, Condition 15 – Management of Demolition Waste was also being ignored with rubbish spotted strewn all around the areas where the public exclusion fencing had been erected. Photos of all these issues are available and were forwarded to _____ and the HSC staff at the time.

On 3 November 2021, _____ and all councillors and DPIE were informed that at the most recent CRG meeting, _____ **Mirvac**, indicated that if Council doesn't agree with the works being done, they should issue a Stop Work order and issue fines – which seems to indicate that Mirvac had not stopped work pending discussions with council and that these damaging works were still impacting on the habitat of fauna and the vegetation at the site.

Any suggestion by a developer, implied or otherwise, that they will challenge a Stop Work order or fines issued must not be allowed to influence the decisions that a local council makes to ensure compliance. **Consent conditions to a DA are put in place to ensure legislation is complied with and to protect ecologically sensitive species and to mitigate harm to our native animals.**

On 5th November, _____ stated that there were no grounds to issue a Stop Work Notice at this time whilst also admitting that HSC “do not agree with the extent of works they feel Mirvac are entitled to undertake at this time” and that they have asked Mirvac to “provide further correspondence to outline their intentions”.

I do not know if HSC ever followed this up further. _____, HSC would be the person to ask on this matter.

This situation was not satisfactorily resolved because HSC ignored the community concern, and failed to act decisively with the developer, Mirvac, who were obviously flouting the rules under which they received this development approval.

ANY ACTIVITY CARRIED OUT ON THIS UNIQUE SITE FULL OF THREATENED AND NATIVE FAUNA SPECIES WOULD OBVIOUSLY IMPACT ON FAUNA WITHIN THE SITE BOUNDARY AND TO CARRY OUT THESE WORKS WITHOUT FIRST HAVING SURVEYED THE SITE SEEMS HIGHLY IRRESPONSIBLE OF MIRVAC – AND HILLS SHIRE COUNCIL.



21) Powerful Owl Monitoring Cameras removed

In February 2022, it was noted that Mirvac had documented in their amended FMP that they were stopping monitoring for 2 of the trees on the site originally earmarked as Powerful Owl habitat. Not only had they stopped monitoring the cameras, but they had also changed all the numbers of the monitoring points between the first draft of the FMP, and the amended FMP which seemed a bizarre thing to do.

Mirvac's explanation of the above was that, *"subsequent to the FMP dated 12 Nov 2021, recent additional climbing inspections have confirmed that 2 of the 6 previously nominated Monitoring Points (previously referred to as MP1 and MP2) have been verified as no longer requiring monitoring as these were assessed as being unsuitable as Powerful Owl habitat in early December 2021 to reflect this."*

And at the earlier Local Planning Panel meeting, , Mirvac had stated, "there are no Powerful Owls – there haven't been any for years" at which point a local community member shouted 'liar'.

As a result of this reduction in monitoring for the owls, Birdlife Australia were contacted and asked for their opinion. They immediately sent out a volunteer who that very same night, was able to spot **THREE POWERFUL OWLS**, both in and just outside the Mirvac site.

Mirvac and HSC were contacted immediately, and subsequent changes were made to the proposed development to accommodate these sightings. This Threatened species IS being impacted by this development – how could it not? Yet, this developer was reducing the monitoring they were carrying out and telling the local community the owls had not been sighted for years.

The local community hear the owls frequently – and they are closely monitored by Birdlife Australia. And it seems, these experts are the only ones that actually know how to spot this species considering the Mirvac consultants had declared the habitat as unsuitable.

The community requested that Birdlife Australia be permitted entrance onto the site during the future works to ensure minimal impact on this species but this request was ignored, both by HSC and by the Planning Panel and going forward it will only be the Mirvac consultants monitoring for the activities of this vulnerable species from within the site boundary at 55 Coonara Avenue. HSC should be asked why they have not insisted that Birdlife Australia is permitted to enter the site to monitor the Powerful Owls? Especially when Mirvac has demonstrated they are unable to find them when in plain sight.

FMP, January 2022 – Figure 3. Powerful Owl Habitat Trees and additional monitoring points out to 150m from the Demolition Footprint



22) Fauna Reporting is insufficient

It is clear that the Fauna reporting for this development site and the works being carried out are completely inadequate if they are to, in any way, prevent unnecessary suffering and injury to our protected native fauna species.

Since the Animal Ethics Licence is not appropriate for these works on development sites, we now know that **no Government department is ensuring the correct animal welfare protocols and checks are in place** before any wildlife is impacted. **The only Authorising Authority is Hills Shire Council.**

Demolition began on this site in April 2022. Pre-clearance survey reports were sent to council dated 4th February, 22nd March, 4th April and 10th May. However, the **first report sent once actual demolition had begun was dated 6th June and covers the period until 31st May**. That means the wildlife handling – capture, containment and release – was not reported to HSC until at least 6 weeks after works had commenced. The fauna report submitted in October covered the 4 months prior – 4 months! Can you imagine the damage that could have occurred to native animals in that time? How could HSC know what protocols were in place if no reports were received until several weeks after the fact?

At the same time, Council have acknowledged that “council staff are responsible for enforcing conditions of consent”.

It was pointed out to Council that some issues were not documented in the earlier Pre-clearance survey reports and that **‘accurate and full reporting is essential considering the vast biodiversity present on the site’**.

On 6th June, fauna reports stated that 19 Sugar Gliders had been trapped and released yet no details of the capture or release were given in the “report”. Another report states that a Licence to Harm may be required to relocate a BT possum living in Bldg E – did HSC even verify that this licence was obtained?

The current level of oversight and reporting of animal intervention is inadequate and HSC is not ensuring ‘responsible management’ and ‘oversight of the animal welfare’ for the many Threatened and native protected fauna on this site.

Details such as credentials of consultants, especially in Wildlife handling & identification, and verification of licensing, the protocols for each species and immediate reporting of injured and deceased wildlife MUST be ensured. Codes of Practice for animal welfare must be adhered to and oversight of the developer and their agents must be regularly included as part of the responsibility of holding the position as the Authorising Authority for Fauna Management.

Questions must be asked of _____ and _____ as to how this current lack of detail and sporadic fauna reporting is supposed to provide the necessary protections that are required on this site. Why is Mirvac not being asked any questions by Council staff and why are they being accommodated when their responses are obviously not satisfactory.

23) Statutory Complaint to DPI took 7 months

In May 2022, a Statutory Complaint was lodged with Department of Primary Industries (DPI), Animal Research Compliance Investigations Unit to consider whether ‘demolition and vegetation clearing’ constituted “research”.

Statutory complaints can be a slow process as the Panel Reviews only occur quarterly. However, the outcome of this complaint was not received until early December whilst the Panel Review was held on 29th September. Perhaps this is how long a Determination takes but considering the demolition at the Mirvac site commenced in April, the complaint was ineffective in being able to provide guidance for the works occurring on the site in relation to animal handling and welfare standards.

The demolition of existing buildings and the significant clearing of 1,253 mature trees with hollows occurred between **April to November 2022**, more or less the entire time the complaint was with DPI.

However, as a result of this complaint, **HSC has now been informed by DPI that the project Ecologist is NOT WORKING under an ARA on this development site. The only actions taken by HSC when informed that the license was not appropriate was to take an action that they are not qualified to do and ‘extend the inappropriate licence’.**

This inquiry must investigate whether HSC is authorised to ‘extend the scope of an Animal Research Authority’ and if not, ask why this was the action taken in 2022 for the Mirvac site. Under what Statutory Provision was this decision made?

24) POCTAA applies

Since the outcome of the Statutory Complaint has been issued with confirmation that the Animal Research Act 1985 does NOT cover the scope of works that are carried out for development, we now know that Prevention of Cruelty to Animals Act 1979 (POCTAA) applies to the activities that

have occurred on the Mirvac site. Not even the Pre-clearance survey work is considered to be 'research'.

The Authorising Authority for the animal welfare management on the site is Hills Shire Council.

The FMP for any future works must now ensure that all consultants handling protected native fauna on this site hold an appropriate license to do so and that they are reporting injuries and deaths of fauna immediately to HSC so that works may be stopped if necessary.

It would also be appropriate for regular welfare checks to be carried out by HSC staff to ensure correct protocols are in place for the variety of species that are known to live on this site.

And there must surely be an expectation that targeted surveys are carried out prior to any works being carried out for each of the native species we know presently flourish on this site. This includes echidnas, Eastern Pygmy Possums, Sugar and Feathertail gliders, possums, the various species of Microbats known to inhabit this area including Threatened Southern Myotis and Large Bent-winged Bats, plus the many other species that will be impacted when 1,877 mature trees are cleared.

The HSC staff need to consider and detail how they will be ensuring the application of POCTAA for this development and ensuring animal welfare safeguards are in place before any further works commence.

The inquiry should ask HSC staff why they are not making sure this developer and their agents are abiding by current legislation and ensuring the welfare of the many hundreds of protected fauna on this site. This is especially pertinent when they are fully aware of just how environmentally sensitive this site is and how much this development is upsetting the local community.

When Mirvac put up the huge black fence around the site blocking all visual intrusions ie. oversight of the works, the community in West Pennant Hills was appalled. No developer puts such a fence around their sites and there were numerous complaints lodged with HSC that this fence was ugly, dangerous and had also removed the pedestrian pathway. I believe it was later acknowledged by that this fence had not been given approval but the community request to remove the fence was ignored and the fence was given retrospective approval.

Such a visual blockade of this precious forest does not inspire confidence that Mirvac and their agents are doing 'the right thing' by the wildlife. HSC have not been overseeing these works appropriately and the Fauna reports submitted to HSC document deaths and injuries to protected native fauna. Once again, I reiterate that POCTAA applies to the activities on this development site.

The fauna reports are available on the council website under the Demolition DA 585/2021/HC.

25) Timing of renewal of ARA for Ecologist

The project Ecologist at the Mirvac site is Cumberland Ecology and they have a general Animal Research Authority which authorises them to interact with Australian fauna for 'research purposes'.

Their ARA at the start of the Mirvac development was valid from 11 October 2021 to 10th October 2022.

On 12th September 2022, the Secretary's Animal Care & Ethics Committee considered the renewal for the ARA and the **on 21st September 2022, NSW DPI Chief Scientist** authorised the new ARA valid from 11/10/22 to 11/10/23.

However, the timing of this renewal struck me as the Statutory Complaint lodged with DPI regarding the scope of the ARA for the ecologist on the Mirvac site was due to be reviewed at the DPI Panel Review **on 22nd September 2022**.

The renewal being authorised one day prior to the panel review, when the expiry was not until the 10th October stands out.

HSC would not have been involved in this renewal of the ARA but they had been discussing the query about the scope of the ARA with DPI, as acknowledged in correspondence with and his decision to 'extend the scope of the ARA to cover the approvals in the FMP'. **It may that asking about the conversations held with DPI on this matter might shed some light on how this renewal timing was so appropriate for Mirvac and Cumberland Ecology to continue their work on site without any pause.**

26) Permitting anecdotal information to be included in BDAR

In July 2022, it was pointed out to **HSC staff member,** that there was a paragraph included in the BDAR which mentioned statistics from the WIRES (Wildlife Information Rescue and Education Service) database regarding vehicle strikes around the development site.

BDAR page 93/94 states the following:-

5.4 Vehicle Strike

The numbers of vehicle movements experienced by the site since its original redevelopment from an orchard to office space have been significant and constant.

The open air and multi storey car parks dominate the existing site's development, with over 1,600 car parking spaces provided. This is a testament to the reliance on car travel for the large numbers of staff that populated the IBM buildings every day. The site was used day and night, 7 days a week, but most vehicle movements occurred in the morning and late afternoon / early evening from Monday to Friday, when the majority of the workforce arrived and left the site.

After the departure of IBM as the primary tenant, the vehicular use of the site continued with a variety of activities such as those associated with the Northconnex site office (including a workers car park, works compound and heavy machinery depot), sewer works, and the COVID-19 testing site. The on site traffic continued through the night for shift changeovers and truck and machinery movements.

Death by fauna from vehicle strike has not been reported on site despite this high number of vehicular movements, but the surrounding busy roads – particularly Castle Hill Road – feature heavily in the WIRES database records.

When asked to produce the statistics, the response from the project Ecologist to HSC stated that, "database searches are done periodically throughout the year" from the www.environment.nsw.gov.au/atlaspublicapp/UI_Modules/ATLAS_AtlasSearch.aspx webiste, and not from WIRES databases.

On 26th August, stated that, *"the advice provided by the developer is that this comment was made following direct **conversations that the developers ecologist has had with WIRES**. We recognise your concerns as to how such a statement can be made if it is not substantiated. **We acknowledge that we have not verified this information** from the discussions however we are satisfied that the prescribed impacts for vehicle strike have been adequately considered and appropriate measures have been identified to avoid, minimise and mitigate this impact".*

It was pointed out to that without any written correspondence from WIRES, or the production of the 'database statistics' being referenced, the comment constituted an unsubstantiated verbal conversation and could not be included in the BDAR where it added credibility to an assertion by Mirvac and their agents that the development was not causing more vehicle strikes in the area.

Worryingly, it also confirmed that when asked to verify statements made in the BDAR, council staff were once again happy to take the word of the ecologist/developer rather than examine the information and the source themselves.

This must surely be a concern because if this fact is not verified, we cannot be assured that other facts in the BDAR are also substantiated and accurate. HSC ignored information that the assertion in the BDAR was unsubstantiated and argued that this lack of detail was adequate and acceptable.

This highlights a concern regarding the accuracy of the documents submitted by Mirvac and by the level of oversight offered by HSC to these documents. It is indicative of a problem and I believe questions must be asked regarding how HSC staff have verified other statements in the Mirvac documentation.

After further written exchanges, _____ agreed that the phrase should be removed from the BDAR.

I hope the information provided proves helpful and that the planning practices detailed above can provide assistance to the Inquiry.

There has been a lack of environmental consideration given to the Mirvac site by the Hills Shire Council which must surely be of great concern to everyone looking to ensure that development follows current laws and regulations. Animal welfare legislation is there to provide protection from unnecessary harm and suffering and must be recognised and adhered to. The loss of the forest, and the biodiversity it supports, at the Mirvac site will be a devastating blow to our natural world – and to the local community.

There is much that must be clarified and I believe calling the people that have been named herein, to answer the queries raised, is the only way to ensure best practices and environmental protection plays a key part of all future growth of our cities.

Best regards.





I would like to make it clear that I am in no way suggesting that any person, business or organisation has done, or is doing, anything untoward or illegal.