

**Submission
No 162**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Organisation: Protecting Your Suburban Environment Inc.

Date Received: 6 November 2023

Inquiry into the planning system and the impacts of climate change on the environment and communities

Portfolio Committee No. 7 – November 2023

We wish to raise the following matters in relation to the Terms of Reference for the above Inquiry. The issues raised correspond to the (a) to (e) point system in the ToR. Case studies are provided in many instances. It should be noted that where case studies are cited, no suggestion whatsoever of any illegal or untoward actions or dealings are being made. All developments and issues relate to NSW.

Developments proposed or approved:

(a) (i) in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change.

- While all development must consider the Rural Fire Service (RFS) *Planning for Bushfire Protection 2019* under the *Environmental Planning & Assessment Regulation* in 2020, councils in the outer Sydney Metropolitan local government areas permit construction within the flame zones of Category 1 bushfire prone land. Where “Acceptable Solutions” cannot be provided to meet “Performance Criteria”, bushfire consultants are permitted to provide “Performance Based” solutions. Furthermore, the Building Code of Australia does not provide standards that will ensure buildings can withstand flame zone contact. Why then is it permissible to build in flame zones, referred to as Building Attack Level Flame Zone (BAL FZ)?

Building in flame zones should no longer be permitted with climate change causing more extreme conditions.

- The same “Performance Based” solutions are permitted for a range of other risks. For instance, if an Asset Protection Zone (APZ), as determined by the tables in *Planning for Bushfire Protection 2019* (PBP), cannot be provided within the property, APZs of narrower width are frequently approved. We have seen APZs of as little as 3 metres from the risk vegetation being approved. That is not a defensible space.

There should be no “Performance Based” solutions accepted. The PBP “Acceptable Solutions” should have mandatory status to ensure the strongest possible protections .

- Many developers obtain an Arboricultural Impact Assessment (AIA) prior to obtaining a Bushfire Assessment Report (BAR) if the development is in or adjacent to bushfire prone land. The AIA does not then include the trees that need to be removed for a bushfire Inner Protection Area, where there can only be 15% tree canopy coverage. Councils are hard-pressed to quickly assess Development Applications so unless neighbours or community groups are aware of a DA, quite often these are approved without Council making a Request for Further Information (RFI) regarding additional tree removal, which would slow down the approval. The impact on the environment will be significant just from this one 'oversight' alone.

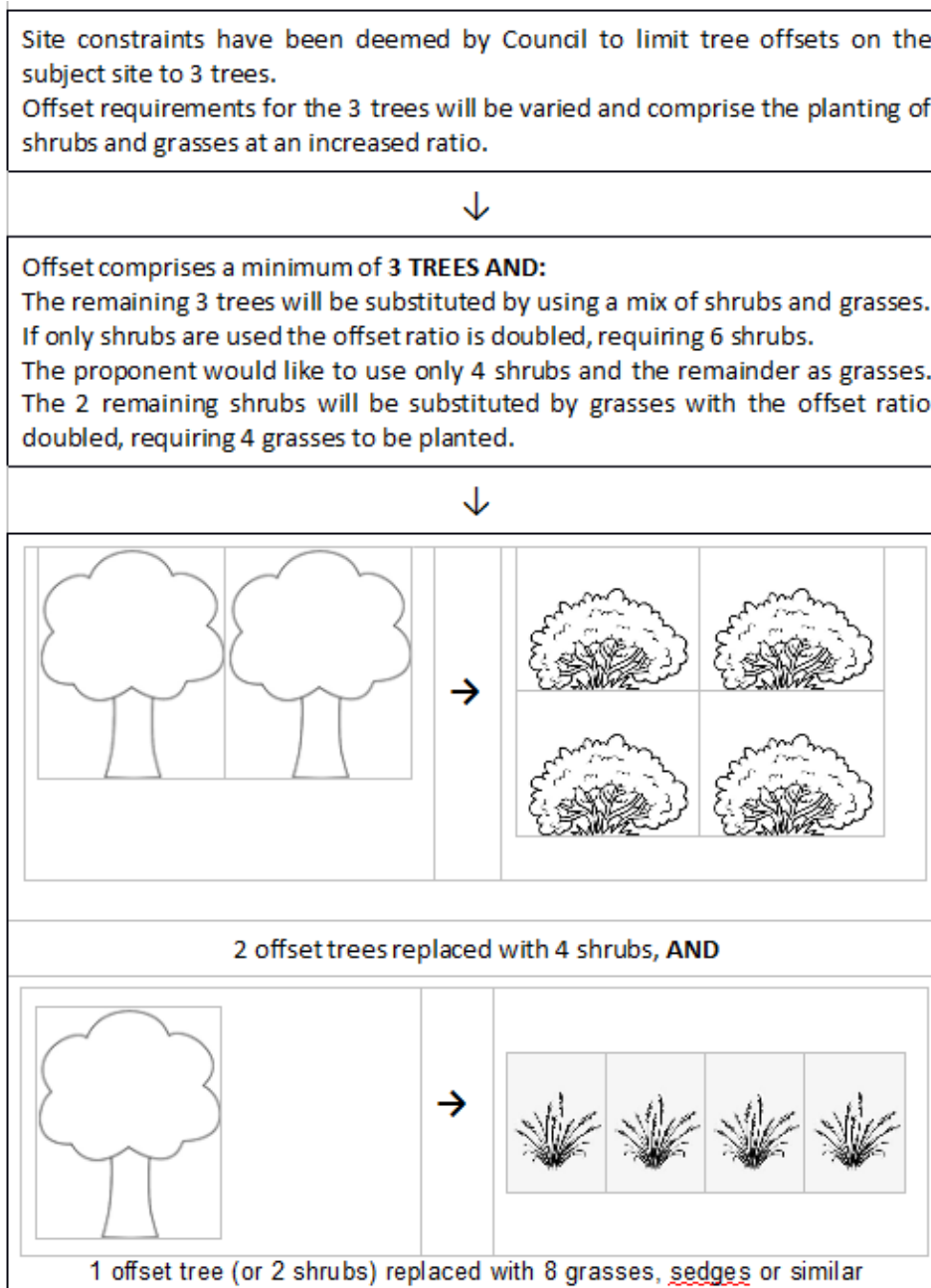
This also raised insurance issues. If the RFS issues a “General Terms of Approval” for a development that states the area around a building has to be maintained as an Inner Protection Area, but the AIA states that trees do not have to be removed, then the owner may be under the misapprehension that no trees need to be cleared. If there is a subsequent bushfire and the building is lost, then the insurance company would be within their rights to refuse coverage because the RFS GTA was not followed.

Arboricultural Impact Assessments must be mandatory for developments in bushfire prone areas and must make reference to the Bushfire Assessment Report, to better preserve the metropolitan and semi-urban tree canopy as climate change deepens.

- Despite attempts by individual councils and state government agencies to increase the tree canopy by planting more trees, the loss of the mature tree canopy, particularly in urban areas, is increasing at a rapid rate. The heat island effect that this is causing with worsening climate change cannot be alleviated by simply planting thousands of saplings that provide limited shade and transpiration for decades.

Developers are being permitted to clear fell whole sites and plant a few saplings and tubestock shrubs and grasses to replace them. "Site constraints" are frequently used as an excuse to not replace trees. Hornsby Shire Council goes one step further – it allows developers to not only plant less replacement trees because of "site constraints", it then allows the requirement for trees to be "*varied and comprise the planting of shrubs and grasses*" instead (table below from Hornsby Council's supposed "Green Offsets Code"). In other words, in Hornsby Shire the developers get to clear fell a site then plant some shrubs and grasses to replace them. It is unclear how local threatened species such as the Powerful Owl can roost in Lomandra grasses.

Trees removed for development must be replaced in equal numbers and like for like, either on the site or on Council-owned land, to ensure climate change is ameliorated.



- There is too high a burden of proof on Councils to fine someone for illegal tree removal or poisoning. Currently Councils have to prove “beyond reasonable doubt”, the criminal standard of proof, that someone has harmed a tree. It should be a civil standard of proof of “on the balance of probability”. Councils are reluctant to issue a Penalty Infringement Notice (PIN) because it may be disputed in Court. This enables people to poison trees, even in their own garden, and councils will not fine them. Hence even more of the urban tree canopy is being lost at a time of climate change when the mature tree canopy is needed.

There should be greater ability for Councils to prosecute illegal tree removal.

(a) (iii) in areas that are threatened ecological communities or habitat for threatened species.

- Many of the threatened ecological communities have specific climatic requirements and a very small distribution, including critically endangered ecological communities (CEECs) such as the Blue Gum High Forest (BGHF) of the Sydney Basin Bioregion and the Sydney Turpentine-Ironbark Forest (STIF). With climate change affecting rainfall and temperature, these CEECs are going to be put at additional stress as their habitat changes.

Yet many of the last remaining stands of BGHF and STIF, which only occur in Sydney, are on public and private land which is being developed for housing or recreational activities. While both of these CEECs are designated under the NSW planning system as being Serious and Irreversible Impact (SAIL) entities, they are being routinely cleared or seriously impacted with the reasoning given being that it's only (another) small area of CEEC.

While the EP&A Act theoretically protects SAIL entities, in reality the Department of Planning and Environment (DPE) advice is that *"The approval authority must not grant approval if they determine the proposal is likely to have a serious and irreversible impact on biodiversity values"*. The *"Guidance to assist a decision-maker to determine a serious and irreversible impact"* provides four Principles to apply, being -

Principles for determining serious and irreversible impacts

An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species (including endangered populations) or ecological community becoming extinct based on the following 4 principles:

- **Principle 1:** The impact will cause a further decline of a species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline
- **Principle 2:** The impact will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size
- **Principle 3:** The impact is made on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution
- **Principle 4:** The impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity, and therefore its members are not replaceable.

These principles are set out in clause 6.7 of the Biodiversity Conservation Regulation 2017.

However, NO size threshold has been determined for these CEECs. The DPE website used to state that where no threshold has been developed then the consent authority should disregard references to considering thresholds when making their determination (see screenshot below). Yet routinely, developers and public authorities alike dismiss any use of SAIL by saying clearing or impacts will not contribute significantly to the risk of a CEEC. This is unacceptable when there is less than 136ha left, as is the case with BGHF.

Impact thresholds for some entities at risk of a SAIL are available in the Threatened Biodiversity Data Collection hosted by [BioNet](#). For other entities, thresholds have not been developed. For example, thresholds have not been assigned to any threatened ecological communities. In the absence of thresholds, the consent authority can disregard references to considering thresholds in the guidance when making their determination.

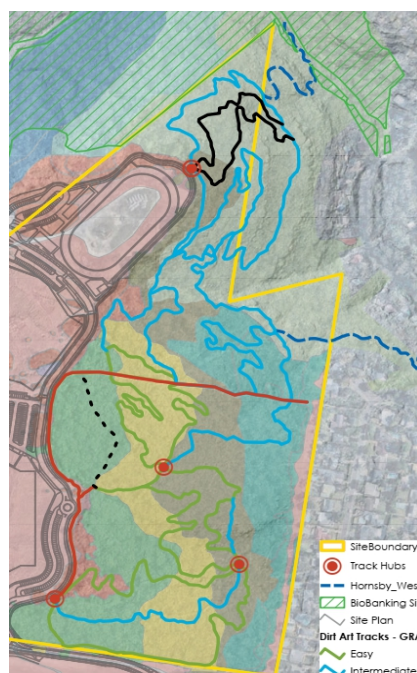
Two cases in point are, firstly, the Mirvac residential development at 55 Coonara Ave, West Pennant Hills. The Hills Shire Council determined that 1.85ha of Blue Gum High Forest would be impacted (cleared), yet even then the consent authority (a Planning Panel with no ecological qualifications on the Panel) determined that clearing the 1.85ha would not have a significant impact. Another .31ha is now proposed to be cleared.

So far a total of 2.16 hectares of the critically endangered ecological community of Blue Gum High Forest is to be cleared on this one site alone at West Pennant Hills.

The NSW planning system does NOT ensure that vulnerable areas of threatened species and communities will continue to exist.

In a second case study, the Hornsby Shire Council, a public authority, owns a site a Westleigh which it intends to convert to a regional sporting complex. On that site is a large area of the critically endangered ecological community of Sydney Turpentine-Ironbark Forest. Despite being aware that mountain bike riders (MTBers) have been illegally clearing STIF to make tracks to ride on and build jumps in, Hornsby Shire Council is now proposing to sanction these tracks. Council is brazenly suggesting that by closing a few hundred metres of the track, it is mitigating the impact of the tracks.

The principle is to AVOID, minimise, and then and only then, mitigate impacts. Council could avoid all impacts on the CEEC by removing all tracks within the CEEC and there would still be over 6 kilometres of tracks in the rest of the bushland on the site for the MTBers. But Council is refusing to do so, thereby ensuring the the impacts are permanent. Below is a diagram of the proposed MTB tracks within the light yellow coloured Sydney Turpentine-Ironbark Forest. Council is even going to build a new MTB track through a Biobank Site which contains STIF !!



If the threatened species and ecological communities are to survive climate change, then there must be no more clearing of critically endangered and endangered ecological communities or areas which contain threatened species.

- Where there is CEEC, EEC or threatened species on a site, the proponent must not be allowed to split up the development application into a series of smaller applications when there is no intention to do a true staged development, only that the development is being done in a natural sequence. By doing a series of smaller DA's the proponent can and does state that each clearing of the CEEC does not constitute a Serious and Irreversible Impact. On the Mirvac site at West Pennant Hills several DA's were lodged, with half the clearing done under one DA (approx 2,000 trees) and half done under another DA (approx 1,800 trees).

Where there are threatened species or habitat on a site, even if several DA's need to be lodged, one DA must be lodged that includes all impacts.

- The Biodiversity Assessment Method (BAM) has no definition of "remnant" native vegetation. The only definition remaining was in the Native Vegetation Act. The West Pennant Hills site provides a case study of why this is a problem.

The initial Mirvac Biodiversity Development Assessment Reports (BDARs) claimed that all the vegetation within the demolition footprint was planted. After historical IBM Landscape documents were published by Hills Shire Council, the subsequent BDARs (there were many versions) acknowledged that some of the vegetation was regrowth. Mirvac's focus then changed to whether regrowth BGHF could be considered as being "remnant" vegetation with regard to the Biodiversity Assessment Method (BAM).

This was important argument because not only would it determine whether Mirvac could provide just a Streamlined BDAR instead of a full BDAR, the BDAR would not have to apply a full assessment of the direct and indirect impacts on the BGHF, nor would it have to consider how to avoid, minimise and mitigate the impacts. Mirvac said the regrowth BGHF did not constitute BGHF for the purposes of the BAM.

Council disagreed and obtained information from the BAM Support Team to support its position. One of the main arguments used by Mirvac was that "regrowth" vegetation did not constitute "remnant" vegetation and that there was no definition of "remnant" vegetation in the BAM.

The BAM Support Team acknowledged the oversight of the lack of a definition of "remnant" vegetation in the BAM and stated that would be considered for rectification in future versions. Council's position was that the legislation that preceded the Biodiversity Conservation Act, the Native Vegetation Act, did contain a clear definition of "remnant" vegetation that could be applied to this development application.

In applying that definition (Native Vegetation Act excerpt below), the vegetation within the demolition footprint would be classified as "remnant", because the regrowth predates 1st January 1990. The Council's view was therefore that the vegetation was "remnant" and a full BDAR was required. As such, the impacts on the BGHF within the demolition footprint would have needed to be considered in that full BDAR. Mirvac refused to accept Council's view that the BGHF within the footprint was "remnant", and therefore refused to provide a full BDAR.

NATIVE VEGETATION ACT 2003 - SECT 9

Meanings of remnant native vegetation and regrowth

9 Meanings of remnant native vegetation and regrowth

(1) For the purposes of this Act,

"**remnant native vegetation**" means any native vegetation other than regrowth.

(2) For the purposes of this Act,

"**regrowth**" means any native vegetation that has regrown since the earlier of the following dates:

(a) 1 January 1983 in the case of land in the Western Division and 1 January 1990 in the case of other land.

The definition of "remnant" as contained in the *Native Vegetation Act 2003* must be included in the Biodiversity Assessment Method. The dates as specified in (2)(a) must be updated to reflect the same 20 and/or 13 year differential as in the NV Act.

Developers must not be permitted to simply refuse to provide information requested by Councils in Requests for Information (RFIs).

- The price of biodiversity offset credits under the market-based Biodiversity Offsets Scheme, varies according to the number of credits being traded. This creates an anomaly whereby in cases such as Sydney Turpentine-Ironbark Forest and Blue Gum High Forest (another TEC), because there are fewer good condition TECs traded than low condition TECs, the price per credit for clearing low condition STIF is higher per credit than for good condition STIF.

It should not be cheaper to clear good condition TECs than it is to clear low condition TECs.

This can be clearly seen in the BDAR tables below for a local Hornsby Shire development. The price per credit is as follows:

- 2.4ha (44 credits) of low condition STIF - \$12,311.14 per credit
- 0.7ha (31 credits) of good condition STIF - \$ 9,281.37 per credit



BAM Biodiversity Credit Report (Variations)

Predicted Threatened Species Not On Site

| |
|------------|
| Name |
| No Changes |

Ecosystem Credit Summary (Number and class of biodiversity credits to be retired)

| Name of Plant Community Type/ID | Name of threatened ecological community | Area of impact | HBT Cr | No HBT Cr | Total credits to be retired |
|--|---|----------------|--------|-----------|-----------------------------|
| 1281-Sydney Turpentine - Ironbark forest | Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion | 0.7 | 31 | 0 | 31.00 |
| 1281-Sydney Turpentine - Ironbark forest | Not a TEC | 2.4 | 0 | 44 | 44.00 |



Biodiversity payment summary report

Ecosystem credits for plant communities types (PCT), ecological communities & threatened species habitat

| IBRA sub region | PCT common name | Threat status | Offset trading group | Risk premium | Administrative cost | Methodology adjustment factor | Price per credit | No. of ecosystem credits | Final credits price |
|-----------------|--|---------------|---|--------------|---------------------|-------------------------------|------------------|--------------------------|---------------------|
| Cumberland | 1281 - Sydney Turpentine - Ironbark forest | Yes | Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion | 18.83% | \$302.25 | 1.7832 | \$9,281.37 | 31 | \$287,722.49 |
| Cumberland | 1281 - Sydney Turpentine - Ironbark forest | No | Northern Hinterland Wet Sclerophyll Forests >90% | 20.69% | \$394.94 | 1.6277 | \$12,311.14 | 44 | \$541,690.38 |

To explain in further detail, the BDAR had assessed that the low condition STIF is not a Threatened Ecological Community (TEC). The low condition STIF is therefore being assessed under the Biodiversity Offsets Scheme as a Threatened Species habitat only (BDAR excerpts below), for which there is a much higher level of trading of credits.

The 'low condition' PCT 1281 vegetation is not an EEC or CEEC but is associated with threatened species habitat and therefore requires an offset for impacts to this vegetation where the VI score is ≥ 17 . The VI for the 'low

An offset is required for the impacts of proposals on the habitat of threatened species assessed for ecosystem credits and associated with a PCT in a vegetation zone with a vegetation integrity score of ≥ 17 . These ecosystem

Because the BDAR does not consider the low condition STIF to be a TEC, for that reason the number of credits per hectare for the low condition STIF is much less than for the high condition STIF. To explain further, for clearing 2.4ha of low condition STIF there are 44 ecosystem credits, whereas for clearing 0.7ha of high condition STIF, there are 31 ecosystem credits.

However, in accordance with the *NSW Threatened Species Scientific Committee Final Determination*, the Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion is a Critically Endangered Ecological Community. **All occurrences, regardless of their condition, are covered by the Determination** (Final Determination excerpts below and in full Appendix D).

So while the *NSW Threatened Species Scientific Committee Final Determination* considers low condition STIF to be a Critically Endangered Ecological Community, the Biodiversity Offsets Scheme does not even consider it to be a Threatened Ecological Community for the purposes of ecosystem credits. This further skews the market-based system of the BOS with regard to the most endangered ecological communities.

NSW Threatened Species Scientific Committee

Proposed Publication date: 31/05/19

Notice of and reasons for Final Determination

The NSW Threatened Species Scientific Committee, established under the *Biodiversity Conservation Act 2016* (the Act), has made a Final Determination to list the Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion as a **CRITICALLY ENDANGERED ECOLOGICAL COMMUNITY** in Part 1 of Schedule 2 of the Act and to remove the Sydney Turpentine-Ironbark Forest from Part 2 of Schedule 2 of the Act. Listing of ecological communities is provided for in Part 4 of the Act.

Part 2. Particular area occupied by the ecological community

2.1.1 The assemblage of species listed in Part 1.1 above which characterises the Sydney Turpentine-Ironbark Forest occurs within the Sydney Basin Bioregion. This Bioregion is defined by SEWPaC (2012) Interim Biogeographic Regionalisation for Australia, Version 7. Department of Sustainability, Environment, Water, Population and Communities.
<http://www.environment.gov.au/parks/nrs/science/bioregion-framework/ibra/maps.html>

2.2 It is the intent of the NSW Threatened Species Scientific Committee that all occurrences of the ecological community (both recorded and as yet unrecorded, and independent of their condition) that occur within this bioregion be covered by this Determination.

The market based Biodiversity Offsets System of credits must be reformed to reflect the scarcity of the TECs, not the scarcity of credit trades.

The Biodiversity Offsets System of credits must align with the NSW Threatened Species Scientific Committee Final Determinations with regard to what constitutes an Endangered Ecological Community, instead of relying on a Vegetation Integrity (low or good quality) score.

In a further case study, Mirvac obtained approval on 15 September 2021 to demolish the building campus on the former IBM site at West Pennant Hills and clear 1.85ha of Blue Gum High Forest (BGHF). The failure of the Biodiversity Conservation Act and Biodiversity Offset Scheme to protect the 1.85ha of BGHF in the demolition area is significant.

Mirvac was required to retire just 57 ecosystem credits for clearing some of the rarest ecological community in the Sydney Basin (approved Conditions of Consent below). Even more disturbing is that because there is very little trading of Blue Gum High Forest ecosystem credits in the Sydney Basin Bioregion, it was understood that the credit price for BGHF was between approximately \$6,000 and \$7,000 per credit. Yet the PCT 1237 is a particular Plant Community Type found only in the Sydney Basin Bioregion.

| Impacted plant community type | Number of ecosystem credits | Offset option | IBRA subregion | Plant community type(s) / species that can be used to offset the impacts from development |
|---|-----------------------------|---------------|---|---|
| PCT 1237 Blue Gum High Forest in the Sydney Basin Bioregion | 57 | Like-for-like | Cumberland, Burragorang, Pittwater, Sydney Cataract, Wollemi and Wyong. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site. | PCT 1237 (HBT – No) |

The Biodiversity Conservation Act failed to prevent the clearing of 1.85ha of BGHF and instead permitted the decision-maker, a Local Planning Panel, to approve its felling and to allow Mirvac to pay an approximate measly \$342,000 under the Biodiversity Offsets Scheme for the privilege of clearing this critically endangered ecological community.

Table 19: Area of each native vegetation community in the Sydney metropolitan area, against each of the major land ownership categories

| Map Unit Code | Map Unit Name | Area (Hectares) on Commonwealth Government Land (Per Cent of Extant Area) | Area (Hectares) on State Government Land (Per Cent of Extant Area) | Area (Hectares) on Local Government Land (Per Cent of Extant Area) | Area (Hectares) on Private Land (Per Cent of Extant Area) | Unknown Tenure (Per Cent of Extant Area) | Total Extant Area (Hectares)* |
|--------------------------------|---|---|--|--|---|--|-------------------------------|
| Rainforests | | | | | | | |
| S_RF01 | Illawarra Escarpment Subtropical Rainforest | 0 +0 (0%) | 2.5 +0 (21%) | 0 +0 (0%) | 9.5 +0 (79%) | 0 +0 (0%) | 12.0 +0 |
| S_RF02 | Coastal Sandstone Gallery Rainforest | 0 +0 (0%) | 158 +0 (72%) | 49.7 +0 (23%) | 11.4 +0 (5%) | 0.3 +0 (0%) | 219 +0 |
| S_RF03 | Coastal Warm Temperate Rainforest | 0 +0 (0%) | 323 +0.1 (83%) | 4.6 +0 (1%) | 62.3 +3.2 (16%) | 0 +0 (0%) | 390 +3.3 |
| S_RF05 | Hinterland Dry Rainforest | 0 +0 (0%) | 0.4 +0.3 (100%) | 0 +0 (0%) | 0 +0 (0%) | 0 +0 (0%) | 0.4 +0.3 |
| S_RF06 | Coastal Dune Littoral Rainforest | 0 +0 (0%) | 19.1 +0.2 (81%) | 1.3 +0 (6%) | 3.1 +0 (13%) | 0 +0 (0%) | 23.5 +0.2 |
| S_RF07 | Coastal Escarpment Littoral Rainforest | 0 +0 (0%) | 34.2 +0 (53%) | 18.6 +0 (29%) | 11.3 +0 (18%) | 0 +0 (0%) | 64.1 +0 |
| S_RF08 | Coastal Headland Littoral Thicket | 0 +0 (0%) | 129 +0 (98%) | 0.6 +0 (0%) | 1.3 +0.3 (1%) | 0 +0 (0%) | 131 +0.3 |
| Wet Sclerophyll Forests | | | | | | | |
| S_WSF01 | Blue Gum High Forest | 0 +0 (0%) | 56.0 +8.6 (20%) | 78.7 +27.6 (27%) | 152 +245 (53%) | 0 +0 (0%) | 287 +281 |
| S_WSF02 | Coastal Enriched Sandstone Moist | 1.5 +0 (0%) | 468 +1.9 (45%) | 321 +3.0 (31%) | 243 +41.2 (23%) | 3.2 +0 (0%) | 1037 +46.1 |

As the credits must be retired prior to any clearing of vegetation (approved Conditions of Consent below), Mirvac simply paid the approx \$342,000 to the Biodiversity Conservation Fund instead. Cash for clearing as it is often referred to.

23. Biodiversity Offsetting Requirements

To offset the loss of biodiversity from the site from the development, the following ecosystem and species credits listed in the tables below must be retired prior to any clearing of vegetation.

The development must purchase and retire credits which may be satisfied by sourcing credits from the Biodiversity Credit market or payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator (The amount payable to discharge an offset obligation will be determined at the time of payment).

The final value of the development was estimated by Mirvac, through the Urban Taskforce in a letter to Michael Gadiel of NSW Treasury on 31st March 2020, as being approximately \$600M. The second tranche of the COVID Fast Track approvals estimated the construction costs to be \$151M (both excerpts are below). The 'book value' of the site in 2019/2020 was approximately \$70M. Add another \$80M for 'incidentals', and the estimated profit for Mirvac from this development is at least a whopping \$300M.

The \$342,000 in Biodiversity Offset funds to clear fell the rare and critically endangered BGHF, is only about 1,000th of the profits that Mirvac will make from this development. No wonder Mirvac was agreeable to paying this relatively paltry amount, even though it submitted to the Local Planning Panel that it did not agree that it was obliged to pay for any Offset credits.

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

Planning Proposals

| Project | LGA | Description | \$\$\$ | Jobs | Proponent |
|--|-----------------|--|--------|------|-----------|
| The Hills LEP 2019 - 55 Coonara Avenue, West Pennant Hills amendment to facilitate residential development | The Hills Shire | A proposal to rezone land currently zoned as Business to Residential and Environmental Conservation to allow up to 600 dwellings and dedication of part of the site for the Cumberland State Forest. | \$151m | 302 | Mirvac |

The developer must themselves find the like-for-like offset for EEC and CEEC forests, when often they are not available. They must not be allowed to simply pay cash to the Biodiversity Conservation Trust, who will be unable to find an offset area.

If an offset area cannot be found for EEC and CEEC, then they simply **MUST NOT BE CLEARED.**

Further recommendations:

Mitigation measures that are proposed for a rezoning or a development application under the Biodiversity Offset Scheme must be actualized for that rezoning or DA, not be allowed to be used for successive DAs without the measures ever being provided for the previous DAs or rezoning.

Mitigation measures must be quantified and qualified, not be couched in vague terms such as a development *"will include open spaces"*.

The number of replacement trees provided to mitigate the impacts of a DA must be a reasonable percentage of the number of trees removed.

Prior poor performance in native vegetation management must not be rewarding by accepting improved vegetation management as a mitigation measure.

Offset credits must not be reduced by taking into account mitigation measures that are not actualized, are undefined or inadequate, or rewards the developer for prior poor performance in native vegetation management.

- Many Councils do not have up to date Terrestrial Biodiversity Maps in their Local Environment Plans (LEPs). Hornsby Shire Council's map for instance, does not even show any Critically Endangered Ecological Communities or Endangered Ecological Communities on private land, only on public land. There is no excuse for this. Current technology provides satellite imagery which can delineate the boundaries of dozens of different vegetation types. As a case study in how not to do things, Hornsby Council obtained this imagery from a consultancy nearly 10 years ago, and STILL has not put it into its LEP. Council has managed to repeatedly bungle making the changes to its LEP, raising questions of just how much interest it has in protecting the threatened species within its boundaries.

All Councils should be required to update their LEP Terrestrial Biodiversity Map immediately, to show CEECs, EECs and regionally significant vegetation on public and private land.

- Councils should be required to rezone all known areas of critically endangered ecological communities (CEEC) and endangered ecological communities (EEC) to C2 Environmental Conservation. Otherwise there is little if any protection for these threatened communities. Again Hornsby Shire Council does it worst. It recently proposed the rezoning of a rural site that it owned for industrial usage, despite there being CEEC Sydney Turpentine-Ironbark Forest on almost half of the site. When confronted with community opposition, Council 'promised' to protect the trees. However as the Hornsby community has seen on numerous other industrial zoned sites across the Shire, specifically in Thornleigh, if the zoning is industrial Council has no qualms about removing STIF ... and replacing it with shrubs and grasses!

All known CEEC and EEC should be rezoned to C2 Environmental Conservation.

- There needs to be a review and redrafting of the NPWS Cycling Policy to remove gravity trail creation, increased removal of illegal trails, and strengthen the ability of NPWS to prosecute illegal trail users and creators. Truthful global scientific evidence of damage done by mountain bikes needs to be acknowledged and the risks considered of what a combination of trail impacts and climate change will have on sensitive ecological communities.

The damage done by mountain bikers is evident in the following case study. Take a bow Hornsby Shire Council, this must be up there as one of your worst examples of abuse of the planning system. For the past 10 years Council has allowed mountain bikers to cut swathes through the CEEC Sydney Turpentine-Ironbark Forest on Westleigh Park for mountain bike tracks. Council has known this has been occurring. Now to add insult to injury (literally), as mentioned above, it is proposing to sanction these illegally built tracks. In a pathetic nod to the planning system, it is suggesting that it is "mitigating" impacts by removing a few hundred metres of track.

Hornsby Shire Council should be made to remove all mountain bike tracks out of the CEEC Sydney Turpentine-Ironbark Forest. Otherwise it will be the first sanctioned tracks in CEEC in NSW. Bye bye National Parks, nothing will be safe.

(e) any other related matters.

- There is an inherent conflict of interest with developers and public authorities being allowed to select their own consultants to write their reports. If a consultant is to continue getting work from developers etc, the consultants must provide them with reports that are favourable to the developers. Otherwise they will get no more work from them. It would be a simple process for DPE to run a system through its Planning Portal, where all developments are now listed, whereby the next available relevant consultant is allocated to a developer. That would prevent developers being able to cherry pick consultants. After all, if Service NSW can run a similar system to service clients, then so can DPE. Failing that, even a monkey could run it by picking random consultants out of the relevant barrels !!

The Westleigh Park regional sporting complex is a good case study of this issue. Again, there is no suggestion being made of any illegal or untoward dealings by any person or organisation. Hornsby Shire Council engaged a planning consultancy to provide the Environmental Impact Assessment for the Development Application. One of the directors of that company is on the Hornsby Local Planning Panel. Theoretically councils should not agree to the appointment of Panel members whose companies undertake work in the local area, let alone those who actually do work for Council. In addition, Council engaged an Aboriginal consultancy to provide an Aboriginal Due Diligence Report, an Aboriginal Cultural Heritage Management Report and a Connecting with Country Framework Report for the Westleigh Park development. The director of that consultancy is/was a Committee Member of Hornsby Council's *Hornsby Aboriginal & Torres Strait Islander Consultative Committee* (HATSICC). Council should have avoided any potential or perceived conflict of interest in the consultants it engaged for this development.

Developers and public authorities should not be permitted to chose their own consultants to write reports.

- It is a requirement under the State Records Act NSW that all documents and correspondence obtained by councils or produced by councils must be recorded. Most councils use a record system similar to the TRIM system (known commercially as Micro Focus Content Manager). However, some councils routinely fail to record documents. As a case study example, a recent application to Hornsby Shire Council for documents under the GIPA (Government Information Public Access) Act, produced the following list of documents. It can be seen from the TRIM numbers that documents that were dated up to a year apart, had TRIM numbers that were only 7 or 8 numbers apart, or at most 25 numbers apart. It would appear therefore that these documents were not logged into the TRIM system when they were received.

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| D06750622 Trailcare Risk Assessment Form - Aug and Oct 2014(2)_Redacted |
| D06750614 Trailcare Risk Assessment Form - 2013_Redacted |
| D06750607 Trailcare Risk Assessment Form - Dec 2012_Redacted |
| D06750556 Trailcare Risk Assessment Form - Feb to Aug 2015_Redacted |
| D06750531 Trailcare Risk Assessment Form - Feb to May 2014_Redacted |

It is essential for transparency and public confidence that public records are up to date.

- There must be penalty mechanisms put in place for instances where consultants provide false and/or misleading information of material significance, or should have known that the information was false and/or misleading. It is regularly seen within a DA where consultants reports conflict with each other or even provide conflicting information within the same report. The case study that illustrates this point is the Westleigh Park development where one consultant states that the development includes RE1 Public Recreation zoned land. It makes this claim by including the council-owned land around the site, which is not included in any other documentation. When the DA is assessed by the Sydney North Planning Panel, the Panel will assume that the site is already zoned for RE1, which it is not – it is zoned R2 Low Density Residential and CE3 Environmental Management. Again, it is not being suggested that any person or organisation is doing or has done anything illegal or untoward.

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