

Appendix I

City of Swan Ordinary Council Meeting 5 June 2019 Item 4.1



4.1 MANAGEMENT OF PUBLIC OPEN SPACE - LOT 102 FARRALL ROAD, STRATTON

Ward: (Midland/Guildford Ward) (Asset Management)

Disclosure of Interest: Nil

Authorised Officer: (Executive Manager Operations)

Cr Catalano declared an impartiality interest in Item 4.1 - Management of Public Open Space - Lot 102 Farrall Road, Stratton as she is a member of the Blackadder Catchment Group that made a submission on the Movida development.

KEY ISSUES

- Lot 102 Farrall Road is currently owned by PEET Stratton in freehold.
- Under the WAPC approved structure plan, Lot 102 is categorized as public open space. It encompasses a Conservation Category Wetland area, is categorized as Guildford Complex (which is listed as a priority to preserve under the City's Draft Local Biodiversity Strategy) and includes an area of banksia woodland listed by the State and Federal Government as a threatened ecological community.
- The designation of a Conservation Category Wetland requires a minimum buffer of 50m. The buffer is limited to revegetation and conservation, limiting its use as public open space, with no turf, structures or facilities to be located within the buffer. Lot 102 will be surrounded by conservation fencing, offering minimal benefit for recreation or use for surrounding residents.
- The State and Federal Governments have designated the site as Bush Forever; however do not wish to take management of the site, preferring instead for the reserve to be vested to local government, with the City carrying the costs of management.
- Specific maintenance will be required in the buffer and Lot 102, to preserve the threatened ecological community to reduce weeds, fire risk, litter rubbish dumping and pests and diseases at the site.
- PEET Stratton has proposed to undertake all revegetation and maintenance works for Lot 102 for the life of Movida Estate (5-7 years). At the completion of Movida Estate, they propose the City to maintain the site in perpetuity.
- The City maintains over 1250Ha of natural reserves and foreshore areas, with priority given to areas with the largest biodiversity, ecological importance and appropriate condition.
- The City undertakes programmed maintenance on less than 20% of these reserves, tending to the remaining 80% on a reactive basis only.

- There is minimal benefit for the City of Swan to accept management of this reserve. However, if the City does not accept management, the area will not be maintained by anyone and may become dilapidated.

It is recommended that the Council authorise the CEO to enter into an agreement which will allow the Crown to vest management of the site to the City, given the following conditions are agreed upon;

- a. The developer to develop and implement an environmental management plan to the satisfaction of the CEO;
- b. The developer to set up a "friends of group" in conjunction with the City, to assist with management of the site.
- c. The developer to maintain the site for the full life of the estate to the satisfaction of the CEO, before gifting the site to the City.

BACKGROUND

Prior to new structure plans being approved, developers are required to undertake an assessment of the development site. The assessment includes an Environmental Assessment and Management Strategy.

The Structure plan and Environmental Assessment is evaluated by the City, Western Australian Planning Commission (WAPC) and relevant State Government Agencies, such as the Department of Biodiversity and Conservation (DBCA) and Department of Water and Environmental Regulation (DWER).

The City pays particularly close attention to the layout, percentage and type of public open space (POS) proposed in the development area. The City will also provide comment on whether it is prepared to accept management of these areas once the development is complete.

There may be cases where the City does not wish to maintain Crown land. There are various reasons why the City may not wish to maintain Crown land, with the most common being the level of benefit it presents to the public.

Although rare for parks, it isn't uncommon for the City to decline management of natural areas or undeveloped Crown land if it presents minimal benefit to the public, is too small to have an environmental benefit or through resource constraints.

If the City and other State Government Departments refuse management of a site, the site reverts to unmanaged Crown Land and its ownership falls to the Department of Lands.

The City maintain over 1250Ha of natural reserves and foreshore areas, with priority given to areas with the largest biodiversity and ecological importance and appropriate condition.

The City undertakes programmed maintenance on less than 20% of these reserves, tending to the remaining 80% on a reactive basis only.

DETAILS

The Movida Structure Plan was approved by the WAPC in 2016, and provides the intended subdivision layout for the future development of the residential estate.

The Structure Plan included Lot 102 and designated an area of public open space in the southern extent of Lot 102 to provide for the retention of existing environmental values and attributes present which included:

- A Conservation Category wetland (which is also consistent with the boundary of Bush Forever Site 309).
- An area of banksia woodland that at the time was considered possibly representative of Floristic Community Type 20c (FCT). This FCT is listed as a Threatened Ecological Community (TEC) by the State and Federal Governments.

The Environmental Protection Authority (EPA) outlined they would require independent advice on impacts from the development to the TEC.

An independent TEC assessment, undertaken by Dr Eddie van Etten from Edith Cowan University, acknowledges the significance of the TEC patches within the site but also indicates that small patches of the TEC within an urban matrix would be difficult to maintain. Smaller sections of bushland are more prone to weeds and degradation.

Dr Eddie van Etten also notes that the TEC could be viable in the long term if an effective vegetated buffer is provided to the TEC patch in this location.

PEET Stratton has proposed to undertake all revegetation and maintenance works for Lot 102 for the life of Movida Estate (5-7 years). At the completion of Movida Estate, they propose the City to maintain the site in perpetuity.

The State and Federal Governments have designated the site as Bush Forever; however do not wish to take management of the site, preferring instead for the reserve to be vested to local government.

Lot 102, is a small section of Bushland that will be fenced off, offering minimal public benefit to local residents. In addition, it will require City resources for maintenance which will reduce resources for maintenance of existing sites.

If the City does not accept management of the site, the area will not be maintained by anyone and may become dilapidated. This will include degradation to conservation wetland, Guildford complex vegetation and the threatened banksia woodland.

Therefore, the City has two options;

- 1) Authorise the CEO to enter in an agreement which will allow the Crown to vest management of the site to the City, given the following conditions are agreed upon;
 - a. The developer to develop and implement an environmental management plan to the satisfaction of the CEO;
 - b. The developer to set up a "friends of group" in conjunction with the City, to assist with management of the site.
 - c. The developer to maintain the site for the full life of the estate to the satisfaction of the CEO, before gifting the site to the City.

Or

- 2) Refuse to accept management of the site.

CONSULTATION

Discussions between the City, PEET Stratton and the Department of Lands around ownership and management have been ongoing. PEET Stratton have proposed to assist in setting up a "friends of group", a volunteer group consisting of local residents to help manage the site. These groups do assist City staff in maintaining natural areas throughout the City. This group is only possible if the City accepts management, as the Department of Lands has no framework for volunteer groups on Crown land.

ATTACHMENTS

Emerge Letter

STRATEGIC IMPLICATIONS

Protection of the Natural Environment is a strategic priority for the City.

STATUTORY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

It is difficult to estimate maintenance costs for natural bushland as it is dependent on the site condition. Maintenance will comprise of rubbish removal and weed pulling and spraying. Estimated cost will be approximately \$10,000 per year.

VOTING REQUIREMENTS

Simple majority

RECOMMENDATION

That the Council resolve to:

- 1) Authorise the CEO to enter into an agreement which will allow the Crown to vest management of the site to the City, given the following conditions are agreed upon;
 - a. The developer to develop and implement an environmental management plan to the satisfaction of the CEO;
 - b. The developer to set up a “friends of group” in conjunction with the City, to assist with management of the site.
 - c. The developer to maintain the site for the full life of the estate to the satisfaction of the CEO, before gifting the site to the City.

CARRIED

Document Reference: EP16-009(21)—100A CKK

Emerge contact: Jason Hick

12 April 2019

PERTH OFFICE
Suite 4, 26 Railway Road
Subiaco
Western Australia 6008

P +61 8 9380 4988
F +61 8 9380 9636
emergeassociates.com.au

Emerge Environmental Services Pty Ltd ABN
57144772510 trading as Emmerge Associates

Attention: Mr Mike Foley
Chief Executive Officer
City of Swan
2 Midland Square
Midland

Delivered by email to: mike.foley@swan.wa.gov.au

Dear Mr Foley

PUBLIC OPEN SPACE MANAGEMENT AND TENURE – LOT 102 FARRALL ROAD, MIDVALE

Further to our meeting at your offices on Tuesday 12 March 2019, this letter is a formal request for the City of Swan to confirm the future management arrangements for a proposed public open space area located within the southern portion of Lot 102 Farrall Road, Midvale.

The area in question is proposed as public open space, as guided by the Farrall Road Structure Plan No. 42 (the Structure Plan). This Structure Plan was approved by the Western Australian Planning Commission (WAPC) on 15 September 2016 and is attached as **Appendix A**. The future public open space area within Lot 102 is shown within an attached figure (**Appendix B**). We are seeking confirmation that this area will be ultimately ceded to and managed by the City of Swan as is usual for areas of designated public open space, however in this case there are a number of additional commitments being made by the developer to ensure that this does not bring about any unreasonable ongoing management burden on the City, which is detailed further below.

Background

As outlined above, the Structure Plan was approved by the WAPC in 2016, and provides the intended subdivision layout for the future development of the residential estate now known as 'Movida'. The Structure Plan included Lot 102 located east of Farrall Road, and designated an area of public open space in the southern extent of Lot 102 to provide for the retention of existing environmental values and attributes present within Lot 102 which included:

- A wetland area commensurate to a Conservation Category wetland (which is also consistent with the boundary of Bush Forever Site 309).
- An area of banksia woodland that at the time was considered possibly representative of Floristic Community Type 20c (FCT 20c) *Shrublands and Woodlands of the eastern Swan Coastal Plain*. This FCT listed as a Threatened Ecological Community (TEC) by the state and federal government.

In addition, the Structure Plan shows an 'area subject to future planning investigation', identifying an additional area possibly representative of FCT20c (the TEC), which required further assessment and consideration prior to any future development. As part of resolving this 'area subject to future

planning investigation', the proponent, Peet Stratton Pty Ltd (Peet Stratton) prepared and submitted a Section 38 referral pursuant to the *Environmental Protection Act 1986* (EP Act) and a referral pursuant to Section 68 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). These referrals described the future subdivision and development of Lot 102 and included the retention of native vegetation within the southern public open space area.

Following submission of the referral, the Environmental Protection Authority (EPA) determined that the proposal required assessment and the Department of Environment and Energy (DoEE) determined the proposed action was a controlled action but would be considered via an accredited assessment under the EPBC Act, with the EPA coordinating the environmental assessment. In October 2018, the EPA identified that additional information was required to clarify impacts to

- Flora and vegetation
- Fauna
- Hydrological processes and inland waters.

The EPA also outlined they would require independent advice on impacts from the development to the TEC. This independent TEC assessment has subsequently been completed by Dr. Eddie van Etten from Edith Cowan University (van Etten 2019), and will be included in the environmental assessment documentation due to be imminently released for public comment.

The independent TEC assessment acknowledges the significance of the FCT 20c TEC patches within the site but also indicates that small patches of the TEC within an urban matrix would be difficult to maintain. The small northern TEC patches (of which there are three, all located outside of the proposed public open space area) would be particularly vulnerable to threats and edge effects (weed invasion, fire, rubbish dumping, recreational impacts, pests and disease). The independent TEC assessment concluded that the southern TEC patch (as included in the public open space extent as shown in **Appendix B**) is less vulnerable to edge effects because of its size and connectivity with other retained vegetation, such as the wetland area (within Bush Forever Site No. 309).

The independent TEC assessment also acknowledges that the southern TEC patch could be viable in the long term if an effective vegetated buffer is provided to the TEC patch in this location. Peet Stratton have therefore modified the proposed southern public open space configuration to incorporate this recommendation and will implement extensive revegetation (and monitoring and maintenance) of the TEC buffer as discussed further below to ensure that this recommendation is effectively implemented and achieved prior to management handover.

This revegetation and management is expected to be required as a future subdivision condition for the preparation (and implementation) of a Rehabilitation and Vegetation Management Plan. This is consistent with the 'Conditions of subdivision approval' documented in the Structure Plan. This requirement is also likely to be reflected in any approval granted to Peet Stratton under the EP Act (via a resultant Ministerial Statement) and EPBC Act, and would place legally binding obligations on the proponent (Peet Stratton), but not any subsequent future land manager (i.e. the City of Swan) once the proponent has demonstrated that the necessary revegetation and management requirements have been satisfied.

Public open space establishment and developer management

Currently Lot 102 is owned in freehold by Peet Stratton who will develop the land in accordance with the Structure Plan. Peet Stratton currently undertake routine ongoing management and maintenance works over Lot 102, including slashing of weed species to reduce the fire risk, removal of any dumped rubbish, installation of firebreaks and routine security inspections.

Following approval of the subdivision proposal under the EP Act and EPBC Act, Peet Stratton will establish the public open space area and undertake the necessary revegetation and rehabilitation works. This will involve:

- Creation of a separate lot and associated road access for the public open space area through the subdivision process.
- Installation of signage, a pathway network and fencing to restrict access to conservation areas of the public open space area (the banksia woodland and wetland).
- Extensive rehabilitation of the wetland and TEC and buffer areas incorporating:
 - Weed control
 - Direct vegetation transfer and vegetation establishment (planting of tubestock and direct seeding)
 - Pest control.
- Creation of a low maintenance, waterwise landscaped open space area for recreation in the northern portion of the public open space area.

While it is usual for areas of public open space to be maintained for two to three years following creation/establishment, in this particular situation Peet Stratton propose to retain the ongoing maintenance and management responsibilities for this public open space area for the life of the Movida estate development (expected to be at least five to seven years). During this time it is expected that the areas of banksia woodland and wetland will be demonstrated to be resilient, stable vegetation communities with minimal weed invasion and will only require minor and generally routine ongoing maintenance similar to other areas of public open space incorporating wetlands and/or bushland within the City of Swan.

Public open space handover and ongoing management

It is anticipated that as a condition of subdivision, the southern public open space area within Lot 102 will be required to be reserved for recreation and vested in the Crown under Section 152 of the *Planning and Development Act 2005*. The land would be ceded to the Crown free of cost.

Peet Stratton will be entirely responsible for implementing any conditions of approval associated with a resultant Ministerial Statement arising from the EPA's assessment under the EP Act or under the EPBC Act, including the revegetation and rehabilitation works discussed above. There will be no conditional obligations transferred to the City of Swan as part of any environmental approval for the proposal, and this is not practically possible under the process in any case, as the only party that can be legally bound is the proponent.

Following creation and establishment of the public open space areas, revegetation and landscaping works and an extended maintenance period undertaken by Peet Stratton, it is anticipated that the future management of the public open space area will be transferred to and then undertaken there forward by the City of Swan. A management order will be created to allow the City of Swan to undertake the care, control and management of this public open space area.

To facilitate the transfer of ownership, Peet Stratton are currently preparing an ongoing maintenance management plan for the City of Swan to clarify the required ongoing maintenance requirements. This plan will outline the environmental and open space assets within the public open space area, the maintenance requirements and the frequency of maintenance. Given the significant investment and up front management undertaken by Peet Stratton (well beyond the standard developer maintenance period), it is anticipated that any ongoing maintenance by the City of Swan will be well understood and routine and consistent with other existing public open space assets within the City.

Future community involvement

As requested by the City, Peet Stratton agree to assist with facilitating community involvement in the ongoing management of the environmental values within the public open space area. This would involve assisting in the creation of a 'Friends of' type group and this group, with the aim being to formally establish this group prior to management handover of the public open space area to the City of Swan. It is anticipated that this community group would only need to provide a generally low-level of ongoing support (small grant funding, in-kind time contributions) as major rehabilitation works (and associated maintenance) will already have been undertaken by Peet Stratton as part of development and in accordance with legally binding approval requirements.

It is anticipated that this community group will form part of the broader and currently ongoing community engagement initiatives being undertaken by Peet Stratton for the entire Movida residential estate.

Summary and closing

As part of the currently progressing environmental assessment and approval process, the focus has been on retaining the viable and more intact areas of remnant vegetation, and not retaining the smaller more fragmented areas. This ensures that the future management requirements to maintain the associated biodiversity values are minimised. This approach has been supported by an independent TEC assessment, and is in accordance with generally accepted biodiversity management principles.

As part of the proposed future subdivision and development of Lot 102, Peet Stratton will undertake a comprehensive revegetation and weed control program over the southern public open space area for the life of the Movida project. The requirement for revegetation (through the preparation and implementation of a Rehabilitation and Vegetation Management Plan) is expected to be required as a condition of subdivision, and also as part of environmental approvals currently being progressed. There will be no obligations passed on to the City of Swan as part of any future environmental approvals for the proposal granted under the EP Act or the EPBC Act.

The comprehensive developer revegetation and extended maintenance period will ensure that any future maintenance requirements for the City of Swan are well known, routine/standard, ultimately minimised and consistent with other public open space areas within the City.

Peet Stratton will provide a maintenance management plan for the City of Swan to guide expectations regarding these routine ongoing maintenance works, consistent with other bushland assets within the City. Furthermore, Peet Stratton commits to working with the City to facilitate the formation of a community group to assist with the ongoing management of the environmental assets within the public open space area, with the aim being for this group to be in place prior to management handover of the public open space area to the City of Swan.

On this basis, and further to our meeting on Tuesday 12 March, Peet Stratton seek to confirm the above understanding of future management arrangements for the southern public open space area within Lot 102 Farrall Road, Midvale following the completion of the Movida development. We would appreciate your response in writing to this request at your earliest convenience.

If you have any questions regarding the above, or wish to discuss this matter further, please do not hesitate to contact the undersigned on 9380 4988 or 0488 223 306.

Yours sincerely
Emerge Associates

A handwritten signature in blue ink, appearing to read 'JH', with a long horizontal flourish extending to the right.

Jason Hick

DIRECTOR, PRINCIPAL ENVIRONMENTAL CONSULTANT

cc: Craig Raynor, Peet Limited
Stephen Carter, CLE Town Planning and Design

End: Appendix A. Farrall Road Structure Plan No. 42
Appendix B. Figure 1. Southern Public Open Space Area within Lot 102

General References

van Etten, E. 2019, *Independent Study of Threatened Ecological Community, Lot 102 Farrall Road, Midvale.*

Appendix A

Farrall Road Structure Plan No. 42



LEGEND**LOCAL RESERVES**

-  Public Open Space
-  Utilities / Infrastructure
Western Power

ZONES

-  Residential - R30/R40/R60/R80

The allocation of residential densities shall be in accordance with the following locational criteria:

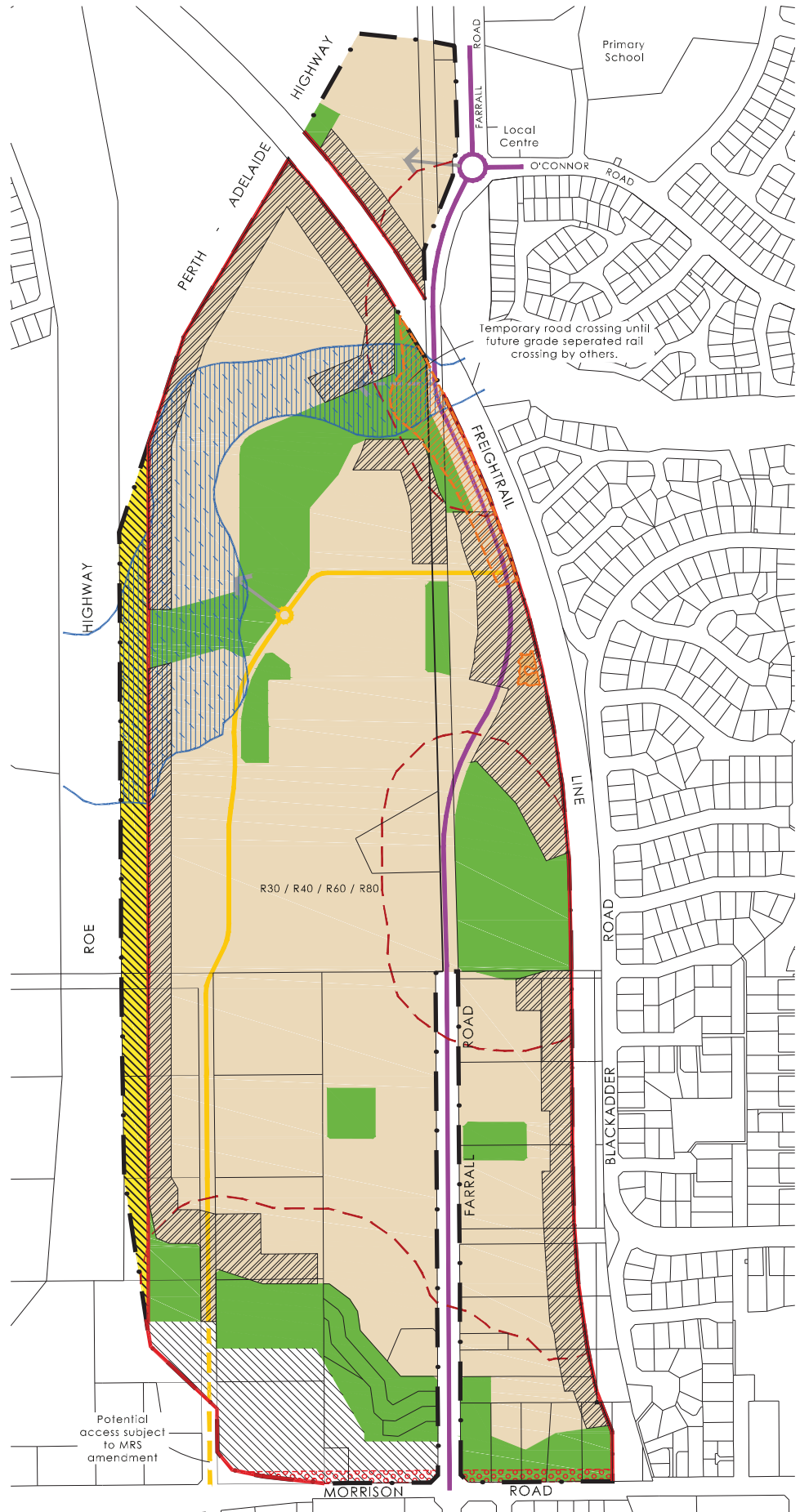
- 1) The R30 density code shall apply as the base code to all 'Residential' zoned lots, with the exception of those lots coded R40 – R80 as set out in 2), 3) and 4) below.
- 2) The R40 density code shall apply to 'Residential' zoned lots where:
 - i) The lot is located within 800m of community centres;
 - ii) The lot is located within 400m of public open space; or
 - iii) The lot is located within 250m of public transport or neighbourhood connector routes.
- 3) The R60 density code shall apply to 'Residential' zoned lots where:
 - i) The lot is located within 400m of community centres;
 - ii) The lot is located within 200m of public open space;
 - iii) The lot is located within 200m of public transport or neighbourhood connector routes.
- 4) The R80 density code shall apply to 'Residential' zoned lots that meet one or more of the criteria set out in 3) above and where:
 - i) The lot is abutting or directly adjacent to public open space not less than 3,000m² in area; or
 - ii) The lot is greater than 800m², excluding balance of title lots.

OTHER

-  Structure Plan Boundary
-  District Distributor B
-  Neighbourhood Connector
-  Access Street
-  Area subject to Future Planning Investigation.
-  Area subject to future investigation for grade separated railway crossing
-  Area Subject to Further Investigation
-  Designated Bushfire Prone Area (100m setback from bushfire hazard)
-  Western Power Easement (16m wide) (Local Development Plan required)
-  Flood Prone Areas (Local Development Plan required)
-  Dwellings subject to Quiet House Design principles (Local Development Plan required)
-  Noise Wall (indicative)

Notes:

1. Local road network and public open space is indicative only and subject to change and refinement at subdivision stage.
2. Notwithstanding any statement to the contrary with AS3959-2009, (or relevant equivalent) any Class 1, 2 or 3 buildings or a class 10a building or deck associated with a Class 1, 2 or 3 building to be erected on residential lots within Structure Plan 42, that are either partly or wholly within 100 metres of the 'extreme' or 'moderate' Bushfire risk areas as identified in 'Appendix 8 - Fire Management Plan' or shall comply with the requirements of AS3959-2009, or equivalent Australian Standard.

**PLAN A: LOCAL STRUCTURE PLAN**

Appendix B

Figure 1. Southern Public Open Space Area Within Lot 102



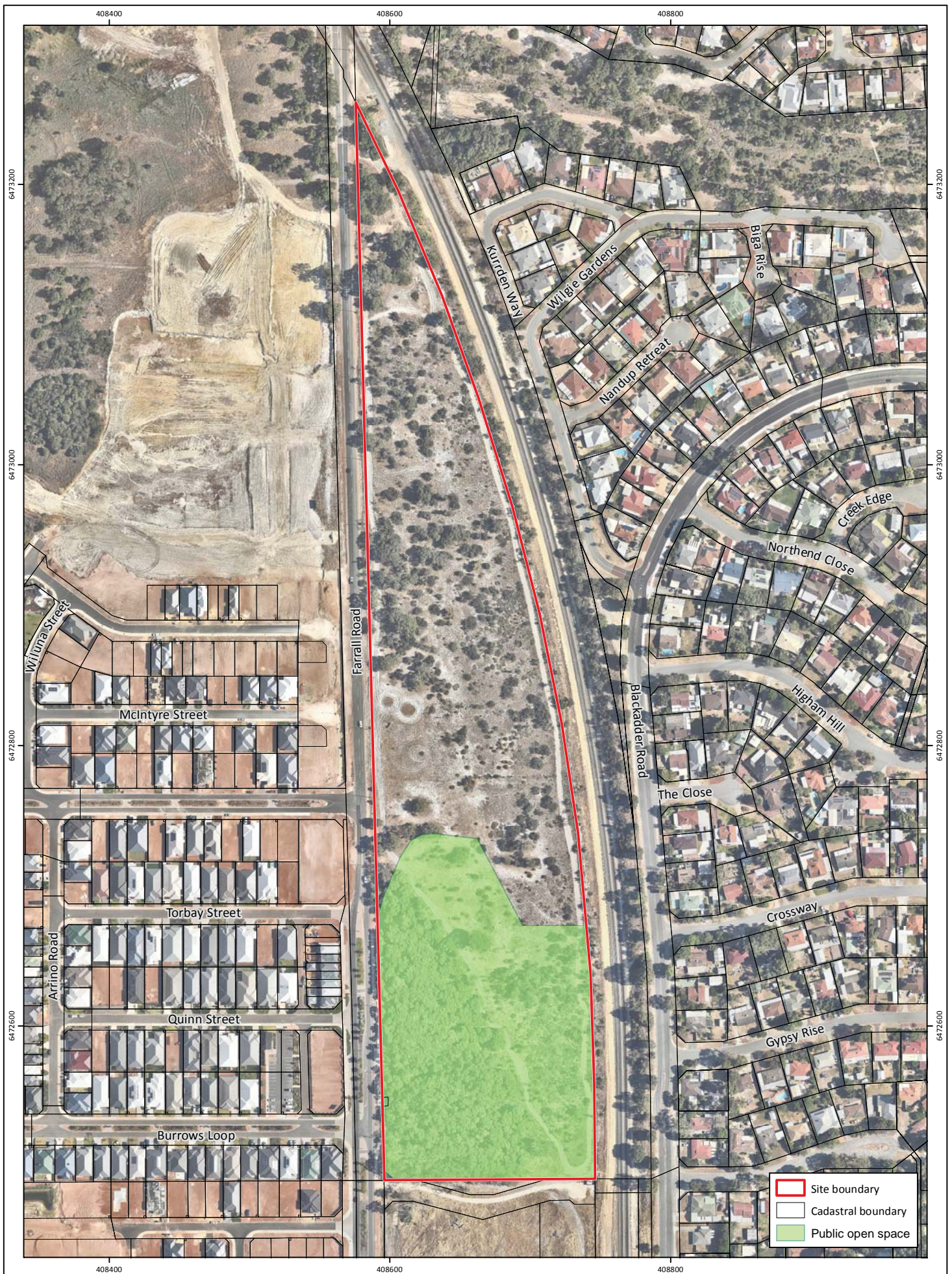


Figure 1: Southern Public Open Space Area Within Lot 102

Project: Lot 102 Farrall Road, Midvale

Client: Peet Stratton Pty Ltd

Plan Number:
EP16-009(21)--F120a
Drawn: KNM
Date: 12/04/2019
Checked: CKK
Approved: CKK
Date: 12/04/2019



0 50 100
Metres
Scale: 1:3,500@A4
GDA 1994 MGA Zone 50

