

Jason & Jodie Smith
15 Florida Road
Palm Beach NSW 2108

24 May 2021

Ms Anne-Marie Young
Principal Planner
Northern Beaches Council
725 Pittwater Road
Dee Why, NSW 2099

Dear Ms Young,

RE: LETTER OF OBJECTION REGARDING DA2020/1596 – LOT 1 DP 1086858: 6 MITCHELL ROAD, PALM BEACH – DEMOLITION OF EXISTING HOUSE, CONSTRUCTION OF A DWELLING HOUSE, SWIMMING POOL & EXTENSIVE WORKS AND STRUCTURES ON PUBLIC RECREATION LAND ZONED RE1 – AMENDED PLANS DATED 21 APRIL 2021

Firstly, thank you for granting an extension, so we could make a submission to DA2020/1596, which you made via our Planning Consultant – Tomasy Planning.

Secondly, thank you for the opportunity to ONCE AGAIN register our significant and ongoing concerns regarding both the initial and amended Development Applications submitted contained in DA2020/1596. **It is worth noting again that applicant has made NO attempt to consult us on his plans to demolish, excavate, construct and redevelop extensive works and structures on his neighbouring property and that of the Council owned Bible Garden.**

As noted in our previous submissions, we reside at 15 Florida Road, Palm Beach which is the adjoining property to 6 Mitchell Road, Palm Beach. We access our property solely from Mitchell Road via a shared, narrow and very steep right-of-way private driveway to our residences garage (this is not a public ROAD). This private driveway is also regularly used by the owners, families, friends and contractors of 13 Florida Road and 7 Florida Road. Whom we understand have also expressed their legitimate concerns with the extensive works being proposed at 6 Mitchell Road.

Our ongoing concerns regarding DA2020/1596 rely on expert advice that we have commissioned from:

- i) **Tomasy Planning**, Planning Consultants based locally at Collaroy Beach
- ii) **Taylor Consulting**, Civil & Structural Engineers, based locally at Dee Why
- iii) **McCabe Curwood Solicitors**, Martin Place, Sydney
- iv) **Martin Place Chambers** – Dr Steven Berveling, a highly respected Barrister specialising in planning, property and environmental matters.

Acting on our behalf, Tomasy Planning submitted to Northern Beaches Council a 48 page document on 22 February 2021 and another 42 page document on 24 May 2021. Both these documents clearly outline our legitimate concerns objecting to DA2020/1596 (and amendments). Our letters of objection should be viewed alongside the Tomasy submission. These documents clearly identify that:

- i) **The proposed garage, liftwell, stairwell and adjacent structures/works are not permissible on land zoned RE1, Public Recreation.**
- ii) **Numerous design elements are also not in keeping with the heritage listed Bible Garden surrounds (natural rock excavation, vertical solar panels, size & proximity of the garage/liftwell)**

- iii) **Numerous deficiencies, conflicts and inconsistencies** between the architectural drawings and civil engineering documents are contained in the DA, in particular - various side elevations, RL conflicts, unworkable gradient transitions in the reconstructed driveway & fictional turning bay
- iv) **There is a significant lack of detail pertaining to actual site works, construction and traffic management** which will make it impossible to guarantee uninterrupted access to our legally entitled right-of-way and private driveway 24 hours, 7 days a week, 365 days a year
- v) **The existing right-of-way private driveway has significant compliance and safety problems** that will only be exacerbated by increased traffic loadings & materially increase liability concerns
- vi) **Genuine safety issues** for the residents of 7, 13 & 15 Florida Rd as well as residents of Mitchell Rd and Bible Garden visitors, **both during and post construction of the proposed dwelling.**
- vii) **The amended Application lodged by Mr R K Bain makes NO ATTEMPT to address any of these legitimate concerns and legalities. Indeed, the amended application only exacerbates them.**

1. Permissibility

Dr Steven Berveling – Barrister – has extensively reviewed and concluded twice on the non-permissibility of a dwelling on land partly zoned RE1, Public recreation at 6 Mitchell Rd.

Legal opinion 1 provided by Dr Steven Berveling, Barrister:

“...it is my opinion that:

- a) *The Shaw Reynolds advice contemplates a development different from the DA and therefore the Shaw Reynolds advice cannot be relied upon.*
- b) *The Shaw Reynolds advice is incorrect:*
 - i) *the garage and that part of the driveway between the right-of-way and the garage, are not a road;*
 - ii) *the garage and the entry structure are not ancillary to a recreational facility; and*
 - iii) *the garage, entry structure and that part of the driveway between the right-of-way and the garage are prohibited if within the RE1 Public Recreation zone.*
- c) *The location of some of the components proposed to be constructed is unclear relative to the boundary between the 2 zones on the Site. This has a significant impact on their permissibility. -*
- d) *Based on my understanding that the garage, the entry, and the part of the driveway between the right-of-way and the garage, are all within the RE1 Public Recreation zone, then each of them is prohibited.*
- e) *All components of the proposed development are development for the purpose of a dwelling house, and it is incorrect to suggest that any part of the driveway is development for the purpose of a road.*
- f) *It appears that the driveway along the right-of-way is proposed to be reconstructed between Mitchell Road and the elevated part of the driveway. That will preclude access to lots 7 and 8 DP 10167 (15 Florida Road, Palm Beach). Such inability to access would amount to serious interference with the right-of-way and would be a matter to be taken into consideration pursuant to section 4.15(1)(b) and (e).”*

Source: Letter to P Vergotis, McCabe Curwood, dated 18 February 2021 (Please refer to Tomasy Planning submission to Northern Beaches Council dated 22 February 2021).

Conclusion.

- 18) For reason set out above it is my opinion that:
- a) The proposed use of the garage structure for residential purposes is prohibited within the RE1 Public Recreation zone, in which it is located.
 - b) The Amended Plans do not assist in making the garage structure permissible.
 - c) As a result of the Amended Plans, the proposed development relates to Lot 2 (the Bible Garden) as well as Lot 1, and consent from the owner of Lot 2 is required for the lodgement of the DA relying on the Amended Plans.
 - d) I maintain the conclusions in my Previous Opinion:
 - i) the Shaw Reynolds advice dated 4 March 2019 cannot be relied upon:
 - (1) that part of the driveway between the right-of-way and the garage, is not a road;
 - (2) the garage and the entry structure are not ancillary to a recreational facility; and
 - (3) the garage, entry structure and that part of the driveway between the right-of-way and the garage are prohibited if within the RE1 Public Recreation zone.
 - ii) the garage, the entry, and the part of the driveway between the right-of-way and the garage, are all within the RE1 Public Recreation zone in which of them is prohibited.
 - iii) It appears that the driveway along the right-of-way is proposed to be reconstructed between Mitchell Road and the elevated part of the driveway. That will preclude access to lots 7 and 8 DP 10167 (15 Florida Road, Palm Beach). Such inability to access would amount to serious interference with the right-of-way and would be a matter to be taken into consideration pursuant to section 4.15(1)(b) and (e).

2. Impact on the Bible Garden and neighbouring properties

We remain bewildered that the Bible Garden Society hasn't raised significant concerns regarding DA2020/1596. The proposed demolition, excavation and construction of a new residence, garage, liftwell, stairwell, adjacent structures, private driveway and swimming pool will have an enormous impact on the day to day running of the heritage listed Bible Garden for at least 12-24 months. In our previous objection letter, we questioned why Bible Society Members supported DA2020/1596 when there was *"no tenable upside for Bible Garden Society Members, Bible Garden visitors or resident of Mitchell Rd and Florida Rd"*.

Well the amended plans have certainly answered that question – by virtue of another lower tier being added to the existing Bible Garden on top of the proposed garage. **This additional Bible Garden space does NOT change the permissibility of the proposed dwelling and structures on the site. Indeed, it raises even more questions for Northern Beaches Council, as it presents the potential for serious "conflicts of interest" as owner of the Bible Garden, it would need to endorse / agree to the DA.**

The amended proposal would encourage even larger gatherings, increase patronage (with no additional parking), increase genuine safety concerns for residents (Mitchell is already highly congested and narrow) and potentially add even more people inappropriately accessing/using our private roadway (putting our kids, family and guests and even further risk).

The additional tier would also bring the Bible Garden even closer to our dwelling, dramatically increasing noise from gatherings, further encroach on our privacy and ultimately lead to even more beer bottles, champagne corks and rubbish being thrown onto our driveway and door step.

As we have stated in our previous objection letters, The DA proposes that an open temporary fence will be erected up to 2M back from the existing Bible Garden balustrade – presumably this will remain for the duration of the construction works. Why would anyone want to get married or hold a ceremony with a temporary fence obstructing the glorious view of Palm Beach? The proposed large crane (to be sited on land zoned RE1 Public Recreation) would also pose another blight on those intending to get married or hold a function on the Bible Garden site. It is also unclear if the ground beneath the proposed crane is suitable to support its weight. Why would the Bible Garden Society agree to this? That extra Lower Tier! It's the only thing the amended DA has addressed.

Parking is already very restricted on Mitchell Rd. Mitchell Rd is extremely narrow, so much so, that when vehicles are parked on the Palm Beach side of the road, other cars already barely make it past. Where will large, wide and long delivery trucks carrying construction materials safely park? Where will concrete trucks park during construction? Where will construction workers park their cars? Where will construction materials be safely stored, so as to not impede our right-of-way private driveway? The amended DA addresses none of these concerns.

Exiting our garage up the very steep, narrow, single lane private driveway is already very dangerous – it's a non-compliant partially suspended concrete driveway. This will become even more hazardous with increased traffic from construction crews and construction deliveries (not to mention even more people closer to our home under the amended DA). There is already a significant blind spot as we exit the private driveway and turn right onto Mitchell Rd, this will become even more hazardous to Bible Garden visitors and Mitchell Rd residents (both during construction and post construction from increased traffic generated by the new dwelling and its proposed double car garage).

It's also worth noting that the current wall of the Bible Garden already encroaches on the right of way, private driveway by approximately 500mm. Will this be addressed to increase safety for the residents of 7, 9, 11, 13 and 15 Florida Road?

3. Deficiencies, conflicts and inconsistencies

- **The amended DA contains no site works**, construction or traffic management plan. We also worry how much more water drainage will be directed to our property and that of 17 Florida Rd as a consequence of the demolition works, construction and the new swimming pool structure.
- **The amended DA contains no structural integrity report of the design, suitability or strength of the existing suspended driveway** or its 5 pylons to support the increased traffic. Nor does it address how deep the 5 pylons currently go beneath the ground, or how secure they will be during excavation of the site to build the proposed dwelling. The existing driveway is also non-compliant and in a state of disrepair – what is the state of the 5 pylons to be retained?
- Page 58 of the original DA's 88 page document 'Plans – Master Set with Statement of Environmental Effects' shows **15 vertical solar panels will be affixed to the side of the non-compliant driveway**, yet they don't appear in other architectural drawings/elevations. Renderings on pages 68 & 69 don't even show the solar panels. Page 67 depicts stone retaining walls that don't exist in the Bible Garden. How on earth do these solar panels not impact the Heritage Listed aspects of the Bible Garden – they are not sympathetic to the surroundings.
- Page 62 of the original DA depicts how a car will enter the proposed garage (on zoned RE1 land), yet other elevation depicts it entering from other angles (page 72) – this will be implausible based on the existing and/or proposed gradient incline. The architectural drawings don't accurately show the garage door or how access to it will safely function for vehicles to enter and exit. The amended DA addresses none of these real world concerns.
- **Page 4 of the 11 page 'Plans-Engineering' submission shows proposed contour and spot levels that will be unworkable in the reality.** The RLs and gradients of the two planes merging into the left flat corner will likely result in cars bottoming out (if it ever got built). RLs shown on Pages 5-7 of the same document also seem to be pushing the limits and will be unworkable in reality.
- Taylor Consulting concluded that: ***"Proposed amendments to the driveway by Northern Beaches Engineers dated October 2019 do not appear to satisfactorily resolve the transitions through the existing grades and it is the opinion of this office that the proposed turning bay, shown some 7 metres above the ground below is, as drawn, impossible to safely construct."***
- **Indeed, the proposed turning bay doesn't even feature in the architectural drawings of the DA.** Where and how will this 7 metre turning bay be constructed? It doesn't appear in any of the colour renderings of the proposed dwelling. Will it be suspended by magic, we believe not?
- **How can you guarantee access to the right-of-way to Mitchell Rd, when the DA clearly states that the stretch between the existing elevated driveway and the concrete part adjacent to the Bible Garden will be reconstructed with new transitions and gradients? The applicant CAN'T.**

4. No site works, construction or traffic management plan

6 Mitchell Rd is a very difficult, sloping site to build upon. **The single lane right-of-way private driveway from Mitchell Rd to our home's garage is only barely wide enough for one car to use it** (part of this could be resolved if the 500mm encroachment was alleviated). There is not enough width for a car and a pedestrian(s) to use the private driveway simultaneously. How will this right-of-way be maintained with all the additional traffic being generated by demolition crews, construction crews, material deliveries, excavators and so forth? There is no room for a vehicle to traverse down this private driveway, turnaround or safely reverse back up it. There is no mention of how construction materials will be carried to site or subsequently stored on site. This proposes legitimate safety and liability concerns.

5. Problems with the existing right-of-way private driveway will only be exacerbated

The amended DA still proposes to retain the existing suspended concrete driveway. Yet it remains unclear about its suitability for higher traffic loads, the engineering report contained in the Tomasy Planning submission from Taylor Consulting Engineers concluded:

“Analysis of the existing driveway with reference to AS2890.1 2014 Off-Street Parking, found compliance and safety issues that will be exacerbated due to increased traffic loading which would result from the proposed development. We note that the existing concrete crash barrier and galvanised steel handrails either side of the driveway are in a poor state of repair and non-compliant.

The width and grade of the existing right of access driveway are noted to be non-compliant with over 25% longitudinal fall in the steepest sections. Proposed amendments to the driveway by Northern Beaches Engineers dated October 2019 do not appear to satisfactorily resolve the transitions through the existing grades and it is the opinion of this office that the proposed turning bay, shown some 7 metres above the ground below is, as drawn, impossible to safely construct.

Due to the width and grade of drive, it is currently very difficult to safely turn a vehicle and safely pass by a parked vehicle. As this right of access also serves as pedestrian access to the 3 properties, the drive width, grade and difficult line of sight mean access by foot is currently hazardous to pedestrians.

The proposed amendments to the right of access do not satisfactorily address these safety issues. Swept paths provided by NB Consulting on drawing number C30A show a vehicle reversing into the right of access from the proposed garage without any line of sight to traffic entering or exiting the drive from above or below the proposed development. This proposal poses a significant risk to both pedestrians and other vehicles sharing the right of access.

Longitudinal sections of the proposed driveway show the reconstructed section of the right of access being completely demolished and rebuilt. Note that this is the primary vehicular and pedestrian access for the owners of 15 & 15a (sic 13) Florida Road, and the owners of these properties will not have safe access to their homes for the duration of proposed construction. Should the concrete structure be retained, an analysis of the structure and certification by a registered Structural Engineer should be provided including allowable maximum vehicle loads.”

We continue to genuinely and legitimately worry that the proposed new gradients of the sections of the right-of-way private driveway to be reconstructed will make the private driveway even more dangerous than it currently is in dry and wet conditions. In order for cars to enter the proposed new garage of the DA, a flat transition will be needed for a car to enter the proposed garage / adjacent dwelling, this will no doubt result in even steeper gradients on both sides of the driveway past the new level transition. **We still worry our cars will have an increased risk of ‘bottoming out’ and or worse, result in cars rolling back into the driveway balustrade.** Given the increased pedestrian and vehicular use, the existing suspended driveway will need to be widened, the balustrades raised from ~350m to 600m and a separate pedestrian corridor constructed with a 1100m handrail to enable safe passage for increased usage.

Proposed adjacent stairwell/liftwell/garage structure will create even larger blindspot as we exit our garage and drive up the narrow private driveway to Mitchell Rd. Currently we can see if someone is either walking or driving down the private driveway to some extent (about 30-40% line of sight), this limited line of sight vision will totally disappear with the proposed new structure completely hiding the driveway. The very sharp bend at the beginning of the suspended private driveway means it is impossible to safely reverse back down once you have turned onto it. **This will increase the liability of all the owners and users of the right-of-way and unnecessarily increase the risk to both pedestrian and vehicular traffic.**



Source: Rendered East elevation – Architecture

6. Genuine safety issues, increased liability risks

- **It remains unclear if the existing suspended concrete driveway is structurally sound enough to take increased traffic** as noted by Taylor Consulting Engineers. It certainly can't take the weight of concrete trucks or heavy construction delivery trucks – none of which should not be permitted to use the right-of-way private driveway – under any circumstances.
- **The existing suspended private driveway will need to be widened and made compliant with Australian standards to take the extra traffic** (pedestrian and vehicle) arising from the proposed development. Neither of which are addressed in the original or amended DA. Page 51 of 'Plans – Master Set with Statement of Environmental Effects' shows three cars parked at the proposed new garage. The current private driveway simply was never designed to cope with this level of pedestrian or vehicle usage.
- **The new blindspot created by the proposed dwelling exiting our garage enroute to Mitchell Rd is extremely dangerous, unworkable and untenable.** It will significantly raise the prospect of increased liability issues for all legally entitled users of the right-of-way (especially residents of 7, 13 & 15 Florida Rd).
- **Exiting the private driveway into Mitchell Rd (turning right) will become even more hazardous with increased traffic flow** supporting the demolition, excavation and construction of the proposed dwelling and adjacent garage, stairwell, lift well and other structures/works.
- **How the developer/applicant can guarantee access to our right-of-way 24 hours/ 7 days a week/ 365 days a year from our garage to Mitchell Rd remains IMPOSSIBLE,** especially given how steep, narrow and risky it already is.

Thank you once again for considering our real and legitimate concerns pertaining to the amended DA. We look forward to the DA being rejected for all the legal and safety reasons that our Planning, Legal and Engineering Consultants have submitted. The amended DA only exacerbates the safety issues we originally outlined and it doesn't change anything pertaining to the permissibility of the proposed structure on land zoned RE1, Public Recreation.

Yours sincerely

Jason & Jodie Smith