

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1596
----------------------------	-------------

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 1 DP 1086858, 6 Mitchell Road PALM BEACH NSW 2108
Proposed Development:	Construction of a dwelling house, including a swimming pool, driveway and garage
Zoning:	E4 Environmental Living RE1 Public Recreation
Development Permissible:	No - Zone RE1 Public Recreation Yes - Zone E4 Environmental Living
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Roger Keith Bain
Applicant:	Roger Keith Bain

Application Lodged:	25/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/02/2021 to 17/02/2021
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 2,560,000.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

The application seeks consent for the demolition of the existing dwelling and the construction of a new dwelling which includes a double garage, lift and access located on land zoned RE1 Public Recreation. The applicant argument that the garage, lift and entrance to the proposed dwelling are permissible as part of the use of the land as a private road, or is development which is ancillary to the proposed dwelling house is not supported. The development proposed in the development application is properly characterised as a dwelling house, including that part of the development proposed on the RE1 portion of the land. As such, the development is prohibited and Council does not have the power to grant development consent.

The proposal includes work on the shared right of carriageway which provides access to a number of properties. Significant concern has been expressed from neighbours regarding potential impacts on access to private residences along the shared right of carriageway, including impacts during the construction phase. Council's Traffic Engineer cannot support the application as insufficient information has been submitted to confirm that access to other properties serviced by the right of carriageway will not be obstructed. As such, the proposal is not in the public interest.

Insufficient information has been submitted to ensure earthworks will not result in unreasonable geotechnical impacts on the natural and built environment.

Nine (9) unique submissions have been received which raise issues in respect of permissibility, road and pedestrian safety issues, construction impacts, access issues, geotechnical and structural impacts, impacts on residential amenity in terms of view loss, privacy, overshadowing, heritage impacts, overdevelopment (excessive height, bulk and scale) visual impacts on scenic area and issues with the DA documentation. These matters are addressed in this report.

Based on the detailed assessment contained in this report, it is recommended that the application be refused

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises the demolition of the existing dwelling and associated structures and construction of a four-storey dwelling and associated works. The proposed dwelling will be largely located beneath the existing shared driveway. In detail, the proposal comprises:

Ground Level RL61.30

- Formal living and dining
- Kitchen and family room
- Bunk Room with ensuite
- Laundry
- Powder room
- Foyer and lift
- North facing sliding doors provide access to sitting steps

First Floor RL64.30 (top of roof RL 67.20)

- Three (3) bedrooms the western room with an ensuite and walk in robe the eastern with an ensuite
- Study
- North facing timber deck with glass roof with louvres above
- Bathroom an linen store
- Foyer, lift and stairs

Garage RL71.50

- Double garage with landscaped roof / terrace (top of parapet RL74.50)
- Entry garden, pond and stairs and deck (landscape roof to entry RL73.60)
- Existing car parking platform to be demolished and replaced with sandstone paving
- Foyer / entry / lift and stair RL70.30
- Timber balustrade to the northern edge of the paved area to the Bible Garden (RL76.3)
- Stairs and wall to the Bible Garden (RL76.3)

Pool / Deck Level RL60.5

- Plunge pool
- Pool deck either side of pool with BBQ area to the east
- Soft landscaping to the eastern and western sides
- Wild landscaping reveal rock outcrops
- Removal of two trees.

Materials

- Rendered concrete
- Timber privacy screens
- Stone faced walls

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 1.9A Suspension of covenants, agreements and instruments

Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - Schedule 5 Environmental heritage

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

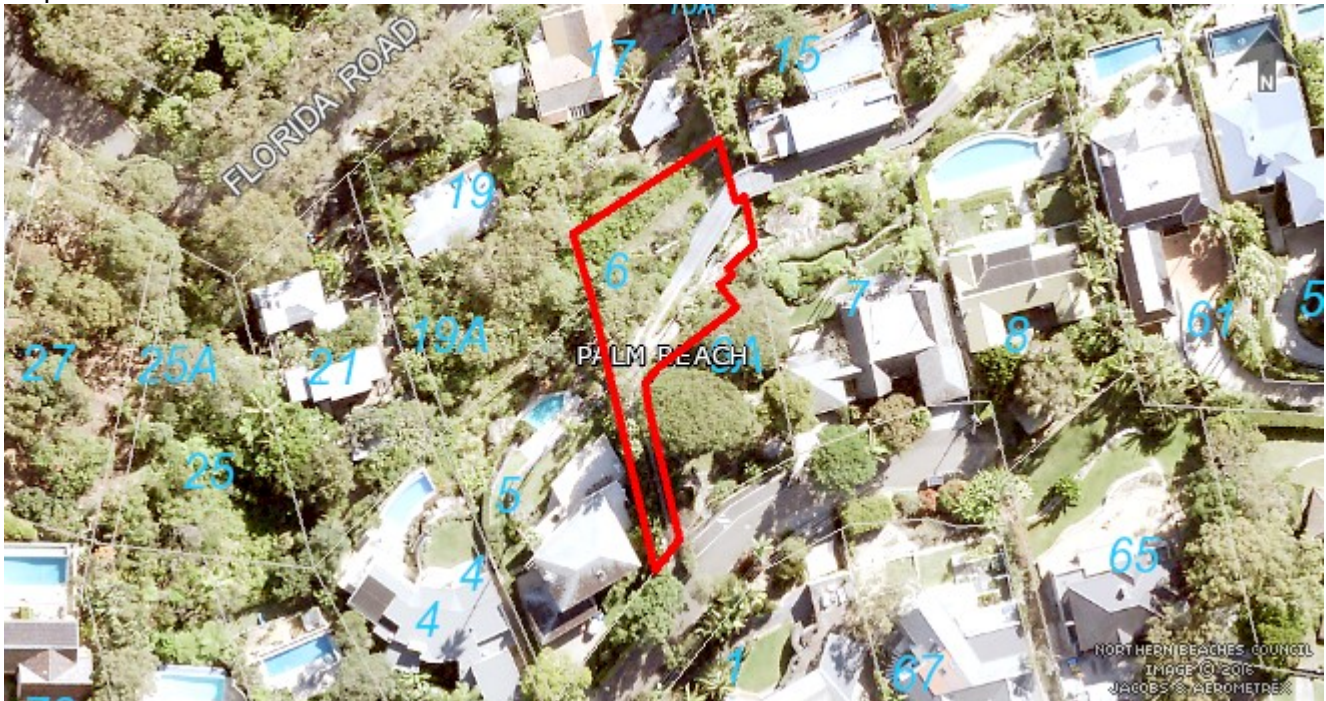
SITE DESCRIPTION

Property Description:	Lot 1 DP 1086858 , 6 Mitchell Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site is commonly known as 6 Mitchell Road, Palm Beach and legally described as Lot 1, DP 1086858. The site is a battle-axe allotment accessed via a shared private driveway from Mitchell Road to the south of the site.</p> <p>The site is irregular in shape with a 25.7m frontage to the north and a depth of 23m (exclusive of the access handle). The site has a surveyed area of 695.1sqm.</p> <p>The site has a split zoning with the majority of the site being located within the E4 Environmental Living zone and the area to the south of the shared driveway being zoned RE1 (Public Recreation).</p> <p>The site significantly slopes to the north with a slope of approximately 34 degrees and has views to Palm Beach to the north east of the site. The site currently contains an existing two storey dwelling located beneath an elevated section of the shared driveway which is recorded to have been constructed in 1972 (previously approved as a workshop). Associated steel stairs, stone retaining walls and gardens are provided in association to the dwelling. Mature trees are provided along the east and west boundaries of the site.</p> <p>The shared driveway, in part, follows a cliff line and provides access to the property to the north known as 15 Florida Road, a three (3) storey detached dwelling with an upper level integrated garage and No.11 and No. 13 Florida Road.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p><i>The Bible Garden (south)</i></p> <p>The site commonly known as the “Bible Garden” is located to the immediate south in the area between the subject lot / the shared driveway and Mitchell Road. The Bible Garden is legally described as lot 2 DP 213975 6A Mitchell Road. The area has been a publicly accessible garden since 1966 and the bible garden has been in a charitable trust since 1972. The garden is maintained by the family of the original owner of the land who established the garden and The Friends of the Bible Garden Memorial, which is an</p>

incorporated association. Since its inception the garden has been accessible and used by the broader community for a range of uses focused upon the biblical plantings and the desire to expand the awareness of the teachings of the bible.

Adjoining the Bible Garden are a number of detached two storey dwelling with access to Mitchell Road. Detached three and four storey dwellings are located along Florida Road to the north.

Map:



SITE HISTORY

N0824/04

On 7 April 2005, **N0824/04** granted consent for the subdivision of one lot into two. The consent referenced plans numbered 04_202A sheet A1 dated 9 October 2000, prepared by Kiprovič & Associates Pty Ltd, as amended or as modified by any conditions of this consent including the following conditions:

D123 The north west corner of proposed lot 1 is to be reserved for the planting of locally native plants to be undertaken in conjunction with any future residential development on proposed lot 1.

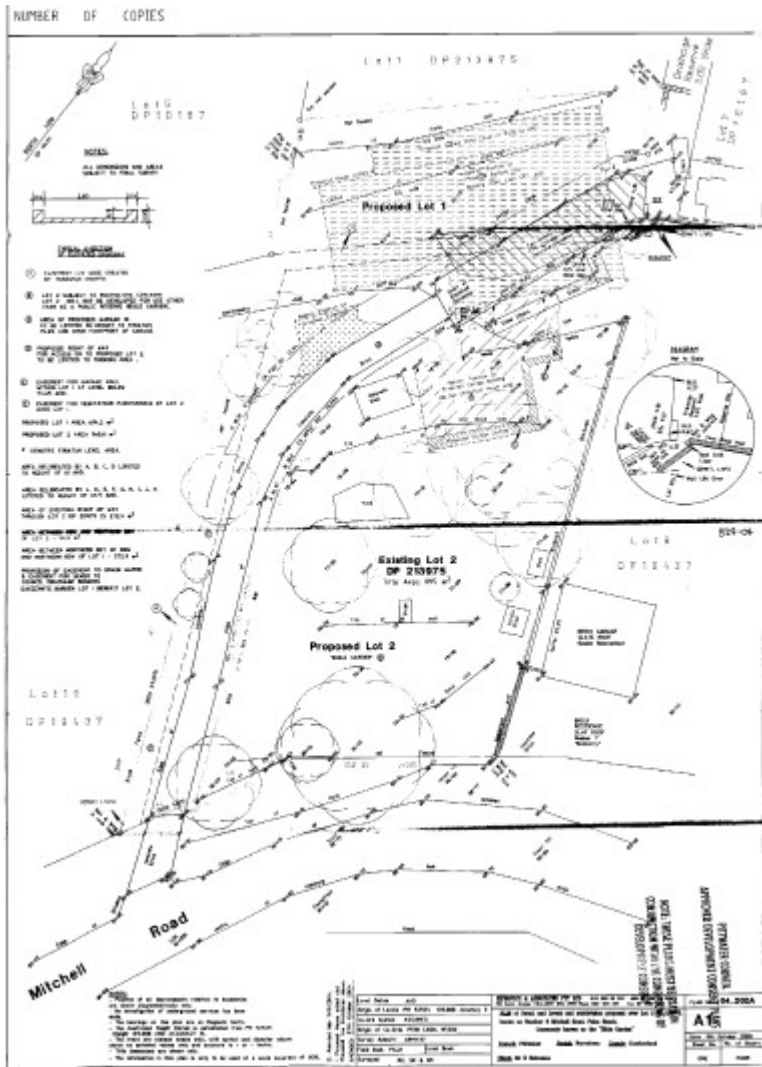
D124 The building platform for proposed lot 1 is to be amended to identify that any dwelling located on the lot must maintain a minimum setback of 4.5m from the rear north western boundary of the site. Details must be provided with the required subdivision certificate.

D131. Any future dwelling erected upon proposed Lot 1 providing private open space between the new dwelling and the rear north western boundary shall limit the finished height of the private open space to a finished height at or below RL 60.5m AHD.

F99 A positive covenant is to be created on the title of proposed lot 1 requiring the construction of a

vehicle turning area in association with any development application for a dwelling on the new lot 1. The turning area must be designed to allow for the 85th percentile vehicle to exit the site in a forward direction.

F100. Prior to the issue of a Subdivision Certificate, a positive covenant / restriction on the use of land is to be created that refers to the obligation in conditions B29, D123, D199, E87, E88, F99 and B64.



Approved sub-division plan N0824/04. It is noted that the approved plans included reference to a garage below 74.65 AHD

Pre-lodgement meeting PLM2018/0291

On 8 January 2019, a Pre-lodgement meeting (PLM) took place to discuss the future development of the site for a new dwelling. The issues raised at the PLM included the following:

The proposed development includes structures associated with the dwelling house (garage, lift, foyer etc.) within the portion of the site zoned RE1. The proposal is therefore not lawfully able to be approved in its current format and this element of the proposal is prohibited within the RE1 zone.

It was noted that the applicant is of the opinion that there may be a planning argument that this portion of the site benefits from existing use rights. If a development application seeks to rely upon existing use rights, adequate legal advice and evidence to support an existing use rights argument must be submitted with a development application.

Further, clarification is required regarding the ownership of the portion of the site zoned RE1.

Alternatively, you may explore the potential for rezoning of the land, or the creation of additional permitted uses on the land, via a planning proposal.

If these options are not available to you the proposed development requires redesign to be placed wholly on the portion of land zoned E4.

In addition to the issue of part of the development being prohibited the following issues were raised. Potential view loss issues as a result of the breach of the building height. Privacy impacts from the large rear deck and recreation area and insufficient setbacks from the rear boundary. Inconsistencies with the terms of easement and restrictions.

On 8 April 2021, a letter was issued to the applicant raising the following issues with the application:

- The garage and associated work in the RE1 zone are prohibited;
- Breach of the setback controls;
- Breach of the building envelope control;
- Visual Privacy issues;
- Heritage issues with respect of the solar array of the elevated driveway; and
- Clarification on the following details: the maximum building height, landscape open space and turning bay.

On 22 April 2021, a letter of response was received from Shaw Reynolds Lawyers on behalf of the applicant. In addition, amended plans were received which included the following changes:

- Modifications to the Bible Garden Plan now illustrating stair access from the Bible Garden to the Garage Roof Landscape Terrace
- Modified North Elevation illustrating Stair Access from the Bible Garden to the Garage Roof Landscape Terrace, and
- Modifications to the Garage and Entry incorporating Civil Engineering and modifications to accommodate Stairs from Bible Garden to the Garage Roof Landscape Terrace.

On 10 May 2021, all persons that made a submission to the original application were re-notified of the amended plans.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The

Section 4.15 Matters for Consideration'	Comments
instrument	subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Panel decide to approve the application these matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to building height, landscape open space, setbacks, envelope, visual privacy, heritage issues and the turning bay.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Panel decide to approve the application these matters can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is not relevant to the application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should the Panel decide to approve the application these matters can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development</p>

Section 4.15 Matters for Consideration'	Comments
environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>Control Plan section in this report. Insufficient information has been submitted to satisfy clause 6.2 and 7.7 of the LEP that there will be no geotechnical issues with the development.</p> <p>(ii) Social Impact The proposed development has detrimental social impact in the locality considering the character of the proposal. Insufficient information has been submitted to address matters in relation to access along the shared carriageway as a result of the development. In addition, insufficient information has been submitted to address geotechnical issues.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The double garage, lift and access to the private dwelling are sited in part of the site zoned as RE1 (Public Recreation) and the development is prohibited in the zone. As such the site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s). The proposed garage, lift and access are located within a portion of the site that is zoned RE1 (Public Recreation). These elements are integral to the private dwelling and are prohibited in the RE1 zone. In addition, insufficient information has been submitted to satisfy Council that the earthworks will not have unreasonable geotechnical impact on stability of the site and adjoining sites and is therefore inconsistent with Clause 6.2 and 7.7 of the PLEP. In addition, insufficient information has also been submitted to ensure that there is no unreasonable loss of access to private properties as a result of the development, especially during the construction phase.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

It is noted that there is an existing parking hardstand for two cars in the area which is zoned as RE1 (Public Recreation) . The Applicant is not relying on existing use rights relating to the car parking areas to support the development. Therefore, a detailed assessment of the proposal against Section 4.65 of the Act is not required.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/02/2021 to 17/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mr Ivan Wheen	7 Florida Road PALM BEACH NSW 2108
Mr David Andrew Thomas Thomas Mrs Elizabeth Helen Thomas	3/614 New South Head Road ROSE BAY NSW 2029
Mrs Susannah Victoria Plowman	7 Mitchell Road PALM BEACH NSW 2108
Frank Guy Stokes Mellish	69 Pacific Road PALM BEACH NSW 2108
William G Adams	9 Wentworth Place POINT PIPER NSW 2027
Ms Petrina Anne Minter Ms Nancye Elizabeth Walton	48 C Riverview Road AVALON BEACH NSW 2107
Tomasy Planning Pty Ltd Denis Smith	1073 Pittwater Road COLLAROY NSW 2097
Mr Jason Bradley Smith	15 A Florida Road PALM BEACH NSW 2108
Jodie A Smith	15 A Florida Road PALM BEACH NSW 2108
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093

In accordance with the Community Participation Plan (CPP) a total of nine (9) *unique* submissions have been received in respect of the development application. Note: all submissions received by or on behalf of the same dwelling are counted as one a single unique submission.

The following issues were raised in the submissions and each have been addressed below:

- **Prohibited development in the RE1 (Public Recreation) zone**
- **The location of the crane in the RE1 is inconsistent with zone RE1 and the objectives of the zone**
- **Construction impacts**
- **Road and pedestrian safety**
- **Impacts on access to private properties**
- **Overdevelopment breach of built form controls**
- **Excessive bulk and scale**
- **Visual impact on scenic amenity and character**
- **Solar Panels**
- **Overshadowing**
- **Visual and acoustic privacy**
- **View loss**
- **Excessive excavation, further geotechnical investigation required**
- **Insufficient information regarding construction management**
- **Heritage impacts to Bible Garden**
- **Impacts on ecology**
- **Impacts on drainage**
- **Contrary to sub-division approval**
- **Deficiencies, inconsistencies and conflicts with details**
- **Public safety issues**

The matters raised within the submissions are addressed as follows:

- **Prohibited development in RE1 Public Recreation zone as a major integral portion of the dwelling (the double garage and entry) is positioned in this zone. Council does not have the power to approve a dwelling in this zone.**

The applicant's argument in relation to the garage being ancillary to the dominate permissible use is not valid. The garage is not ancillary to the dominate recreational use and is not ancillary to the proposed viewing platform. The garage serves its own residential purpose that is not in any way associated with the recreational use of the site, and as such, is prohibited within the RE1 zone. 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.

It is also noted that the landscaped garage roof is to be non-traffic and does not therefore provide a "*viewing platform*"

The proposal is contrary to the objectives of the zone including: to enhance the natural environment for recreational purposes, allow development that will not diminish public use or access to the space or meet the needs of the community.

Comment

A major portion of the dwelling, namely the double garage, lift and entry, is positioned within the RE1 Public Recreation zone. Council does not support the applicant's justification that the garage is ancillary development in the RE1 zone or for the purpose of the land as a private road. The garage, lift and access services the private residential use and it is Council's assessment that the proposal is prohibited development in the RE1 zone. As such, Council does not have the power to grant approval the development application.

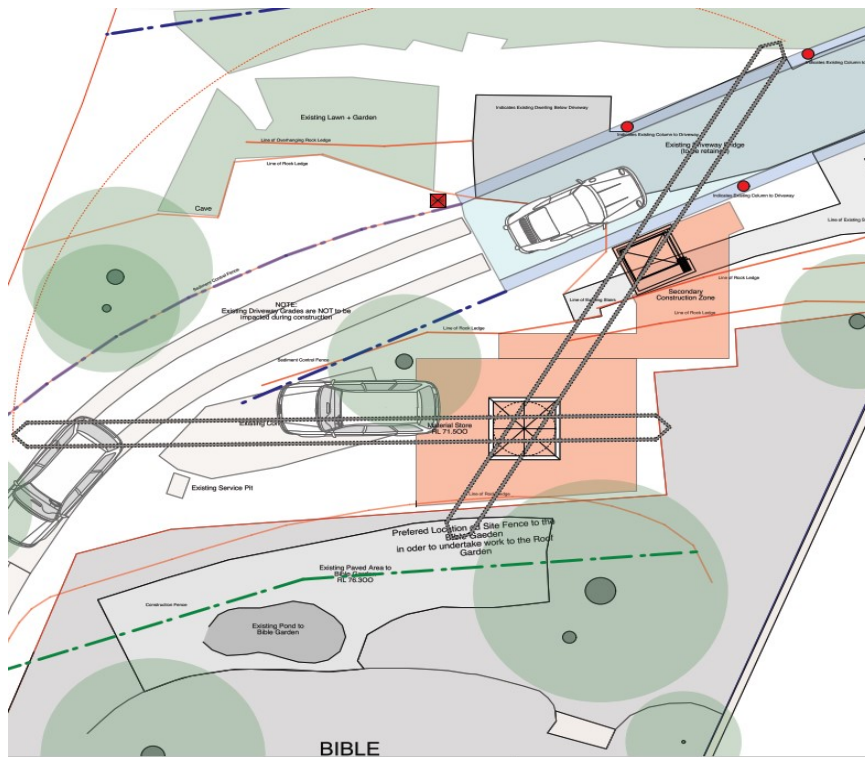
The roof of the garage has been amended from a non-traffic landscaped roof to a terrace / viewing platform with a stair that connects to the Bible Garden providing public access. Despite the changes to the roof of the garage its primary purposes is to provide two car parking spaces for the private dwelling.

- **The construction strategy shows that a crane and associated storage area for building purposes will be accommodated on land zoned as public open space. This is a direct contradiction of the utilisation of land zoned for public open space purposes. The location of the crane and associated building storage facilities is an integral component of the dwelling house. Construction, road safety and pedestrian impacts especially given the battle axe block and very tight road network. The proposed construction tower crane creates safety issues overhanging the Bible garden and land subject of a right of way. Construction traffic, parking and road and pedestrian safety issues.**

Comment:

The crane and associated storage are referenced in the Construction Management Plan as being located on the portion of the site, adjacent to the existing concrete parking area, which is within the ownership of the applicant. Although this area is part of the Bible Garden it is sited below the primary accessible area of the Bible Garden at a lower level and is currently not used as public recreation or public access. A portion of the Bible garden will be fenced off during construction (see green dotted line in the plan below) which will result in some loss of access to the Bible garden. This aspect of the development has been considered by Council's Heritage Officer who offer's no objection subject to it being temporary and the restoration of the garden.

Insufficient information has been submitted in terms of the construction of the dwelling to satisfy Council that there will be no unreasonable impacts on pedestrian and vehicular access, refer below.



Construction Management Plan (source S Lesiuk)

- **The reconstruction of the driveway along the right-of-way between Mitchell Road and the elevated part of the driveway suggests that access will not be possible to Lots 7 and 8**

DP 10167 (No. 15 and 11 Mitchell Road). The proposal will impact on the right of carriageway (4.57m wide) and use of the easement which includes the driveway over the current dwelling at No. 6 Mitchell Road.

Comment

The right of carriageway provides access to a number of properties including the subject site and No. 15, No. 13 and No. 11 Mitchell Road. The subject site is burdened with easements and covenants on title. Whilst access to neighbouring properties over a right of way traversing land the subject of a development application may be a relevant consideration in weighing up the merits of the development application, generally, interests on title, such as rights of way and easements, are private matters between landholders who are burdened or benefited by the instruments.

Clause 1.9A of the Pittwater LEP 2014 provides that an instrument on the title of a property or an agreement between landholders cannot operate to prevent lawful development from being carried out, such that the provisions of the Pittwater LEP 2014 override the operation of an agreement or covenant or right of way, but only to the extent necessary to enable the development to be carried out. It does not mean that the existence of a right of way is an irrelevant consideration, rather it may be a relevant consideration under section 4.15 of the Environmental Planning and Assessment Act 1979, but only in so far as the impact of the proposed development on the right of way constitutes a social impact or relates to the suitability of the site for the development, or constitutes a public interest consideration. Refer to detailed discussion under Clause 1.9A of the PLEP.

To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process and access to the other properties serviced by the right of carriageway is not obstructed additional details are required in the form of a Traffic Management Plan. The application has not provided sufficient detail to confirm that the right of carriageway will not be blocked during construction. Without this information the development does not meet the relevant consideration of section 4.15 of the Act and has unreasonable social impacts, is not suitable for the site and is not in the public interest. Refer to detailed discussion under Section 4.15 of the Act.

- **Overdevelopment as expressed with the breach in the built form controls.**

Comment:

The proposal is generally consistent with the built form controls. There are minor breaches of the setback and envelope controls which in merit assessment are assessed as acceptable. Refer to discussion under the PLEP and PDCP sections of this report.

- **The building height is 10.62m (RL73.60) which represents a 25% breach of height limit. A clause 4.6 variation has not been submitted for the breach of the development standard.**

Comment:

Building height is measured from the existing ground. The proposal will result in a minor portion of the building breaching the 8.5m height limit with a maximum height of 9.4m. Clause 4.3 (2D) allows for a maximum height of 10m on sites where the building footprint is situated on a slope that is in excess of 16.7 degrees. The site has a slope of 34 degrees and the proposal is consistent with Clause 4.3(2D) without the need for a Clause 4.6 variation. Refer to detailed discussion under Clause 4.3(2D) of the PLEP.

- **Breach of landscape area 20% proposed contrary to 60% requirement. The landscape area calculations are incorrect. Insufficient deep soil planting to help soften the building bulk.**

Comment:

The landscape area is calculated in the area zoned E4, it excludes the area zoned RE1 and

allows for 6% of the total site area may be provided as impervious landscape treatment providing these areas are for outdoor recreational purposes. Based on this calculation the proposal retains a landscaped area of 64% which exceeds the control. Council's Landscape Officer has no objections to the proposal subject to conditions.

- **Breach of front setback zero setback.**

Comment:

The battle-axe allotment has a frontage to Mitchell Road and the proposed development is setback 25.8m from the frontage.

- **Breach of rear setback**

Comment:

The northern wall of the dwelling is setback 5m from the rear boundary. Given the irregular nature of the site and built form in the surrounding area the minor breach of the rear setback is considered acceptable on merit.

- **Breach of envelope control.**

Comment:

There is a minor breach of the envelope to the east elevation which relates to a high-level window. There are no unreasonable impacts on the bulk and massing of the development as a result of this minor breach or neighbouring amenity.

- **Breach of side setback control.**

Comment:

There is a minor breach of the development to the western boundary which relates to a step. The dwelling and associated structures are compliant with the side setback control and the minor breach of the step will not result in unreasonable impacts on the bulk and scale of the development or neighbouring amenity.

- **Bulk and design will impact on the scenic amenity of the area when viewed from surrounding viewpoints and is inconsistent with the desired character of the locality or low density character of the area.**

Comment:

The bulk and scale of the dwelling is considered acceptable and will not impact on the scenic quality of the area or desired character of the locality.

- **Impacts on neighbouring amenity including privacy. There are a number of windows and decks that have a direct sight line to windows and decks to No 5 Mitchell Road. No privacy treatment is proposed to these windows / decks.**

Comment:

Should the Panel decide to approve the application conditions can be imposed requiring privacy treatment to windows and decks.

- **Solar access - while the solar diagrams are incomplete they show that the development will overshadow the adjoining dwellings. The loss of solar access at 9am is unreasonable, considering the multiple non-compliances to envelope controls.**

Comment:

It is agreed that there will be some additional overshadowing of No. 5 Mitchell Road at 9am, however, the shadow diagrams demonstrate that the proposal complies with Clause C1.4 (Solar access).

- **Visual impact of the 15 solar panels along the private driveway, for some 18m, is a blight**

on both the natural and built environments of this area and represents a proliferation of visual clutter which results in a negative impact on both the scenic and visual aesthetics that prevail in this special precinct (the heritage listed Bible Garden).

Comment:

The solar panels have been deleted from the proposal.

- **Insufficient information including a Construction Management Plan, Traffic Management Plan, Demolition Plan, details of the turning bay on the architectural drawings. Inconsistencies between the architectural drawings and the engineering drawings. No dimensions on drawings and survey plan appears to misleading and inaccurate. It is not a registered boundary survey which is required. No structural report.**

Comment:

It is agreed that there is insufficient information in terms of the detailed Construction Management Plan which will assure Council that there will be no unreasonable impacts on access to private properties along the shared driveway during construction.

The applicant has amended the plans to correct the inconsistencies between the architectural drawings and the engineering drawings. A scale has been included on all drawings which allows the measurement to be calculated required to allow an assessment of the development against the built form controls. The survey submitted with the application is acceptable.

- **Noise impacts from AC plant, heating/cooling plant and pool plant.**

Comment:

Should the Panel decide to approve the application acoustic issues can be conditioned.

- **View loss, the proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing. Concern is raised in respect of view loss from the main living deck at No. 5 Mitchell Road, looking down towards the beach/water interface, to the views to the north-east, and the public views from the Bible Gardens. Height poles are requested to assess view loss impacts. Proposed planting will block view corridor.**

Comment

It is noted that dwelling at No. 5 Mitchell Road is set back to the south of the subject site with primary views to the north towards Palm Beach and the headland which are unlikely to be affected. The views that may be affected by the development are those looking across the side boundary of the site to the north-east. The view may be affected by the lift, garage and entrance structures which are located on the higher portion of the site which is zoned RE1. For the reasons discussed throughout this report these elements are prohibited and Council does not have the power to approve the development. Due to the development being prohibited and the application being recommended for refusal height poles have not been requested.

- **Excessive excavation on a steeply sloping site which presents significant site disturbance to the existing landform. Insufficient evidence has been produced that confirm that the excavation associated with this proposal would not "cause harm on the development or adjoining development"; An amended geotechnical report is required to address concerns about the structural design and conditions for the ongoing management. Dilapidation reports are required should the DA be approved. The geotechnical report does not address the existing stone wall on the northern boundary which is unstable and presents a safety issue.**

Comment:

It is agreed that Council cannot be certain that the earthworks will not impact on adjoining properties / satisfy Clause 6.2 and 7.7 of the PLEP. It is agreed that a dilapidation report are required and conditions relating to ongoing management.

Council's Compliance Unit have investigated the issues with the existing retaining wall and confirm that as it is located on private property and does not pose a risk to public land, Council cannot take action.

- **Road safety issues with sight lines being blocked by a four storey structure. The current elevated driveway does not meet Australian standards. The amendments to the driveway and the turning bay raise significant road safety issues. The details of the turning bay are not included in the architectural plans.**

Comment

Insufficient information has been submitted to address the concerns from Council's Transport Officer.

- **Heritage impact, the double garaging facility and the provision for entry to the new dwelling, new foyer, lift and access facilities are part of the heritage listing for the Bible Garden. Impact during construction with the crane overhanging the air space and a fence erected close to the northern boundary.**

Comment

Council's Heritage Officer has no objections to the proposal subject to conditions.

- **Impact on ecology.**

Comment:

Council's Bushland and Biodiversity Officer has no objections to the development subject to conditions.

- **The DA is contrary to the conditions of the sub-division approval.**

Comment:

While it is agreed that the proposal is contrary to some of the sub-division approval conditions the application cannot be supported as it is prohibited development.

The amended plans were re-notified to all those that made a submission to the original proposal. An additional four (4) submissions were received which re-iterated the issues raised above in addition to the following:

- **The additional Bible Garden space would encourage larger gatherings, increased patronage with no additional parking and increased safety concerns with more people accessing the private road.**

Comment:

It is not anticipated that the use of the terrace on the roof of the garage will result in an excessive number of additional people using the Bible Garden. However, it is agreed that road safety issues have not been resolved.

- **The additional tier would bring the Bible Garden closer to private dwellings which will encroach in visual and acoustic privacy.**

Comment:

It is not expected that the use of the terrace above the garage would result in unreasonable visual and acoustic issues to neighbouring dwellings subject to the use of the Bible Garden complying the Bible Garden Plan of Management.

- **The amended design includes work in lot 2 which is dedicated as a Public Reserve therefore it would be reasonable to assume that the public reserve is in the ownership of Northern Beaches Council. Owners Consent from Council has not been granted.**

Comment:

The work on the Bible Garden is above AHD 74.5 which means that owners consent is required from Council.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the partial demolition and excavation of existing site structures, and the construction of a new residential dwelling, inclusive of garage, stairs, lift and new landscape works.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none">• B4.22 Preservation of Trees and Bushland Vegetation• C1.1 Landscaping• D12.10 Landscaped Area - Environmentally Sensitive Land <p>A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, shrubs, grasses and shrubs, as well as on-slab planting of grasses and groundcovers.</p> <p>The Arboricultural Impact Assessment has identified a total of eleven trees that are within close proximity to the site and proposed works. Of these eleven trees, two trees, Trees No. 8 and 11, have been proposed for removal. These trees are located towards the northern boundary and fall within the proposed works footprint. These two trees have been identified as exempt species, and therefore do not require Council's approval for removal. It is also noted that additional trees are located within the adjoining Bible Garden to the south, however these are clear from development and will therefore not be impacted.</p> <p>It is noted in the Arboricultural Impact Assessment that of the trees to be retained, no encroachments into the Tree Protection Zones and Structural Root Zones expected. The Arboricultural Impact Assessment also recommends that a Project Arborist be appointed to advise, monitor, inspect and ensure compliance where trees are to be retained within the site and adjoining properties. For this reason, the Arborists recommendations are accepted. The protection of these trees on site is necessary to comply with controls B4.22 and D12.10, as key objectives of these controls seek to "protect and enhance the scenic value and character that trees and bushland vegetation provide", and to ensure "the bulk and scale of built form is minimised".</p> <p>The implementation of landscape works as proposed on the Landscape Plans is vital to satisfy control C1.1, as the proposed landscaping seeks to reduce and soften the built form by ensuring it is secondary to landscaping and vegetation.</p>

Internal Referral Body	Comments
	<p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees, and the completion of landscape works as proposed on the Landscape Plans.</p>
<p>NECC (Bushland and Biodiversity)</p>	<p>Councils Biodiversity Referrals team have assessed this Development Application for compliance against the following applicable policy and controls:</p> <ul style="list-style-type: none"> • Coastal Management SEPP Clause 11 Development on land in proximity to littoral rainforest • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater 21 DCP Clause B4.6 Wildlife Corridors <p>The proposed development will require the removal of two (2) trees (Tree 8: <i>Washingtonia robusta</i> and Tree 11: <i>Brachychyton acerifolius</i>) that are listed on Councils Exempt tree species list. As such these trees do not require consent for their removal.</p> <p>As the proposed development will not require the removal of any native vegetation or Prescribed trees, it is considered that the proposal complies with the above listed policy and controls, subject to these consent conditions.</p>
<p>NECC (Development Engineering)</p>	<p>The proposal for the development includes an access driveway and turning area that is along a right of carriageway that services a number of properties. To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process and access to the other properties serviced by the right of carriageway is not obstructed the Applicant shall submit a Traffic Management Plan to Council. The Traffic Management Plan shall be prepared to Transport for NSW standard by an appropriately certified person.</p>
<p>Parks, reserves, beaches, foreshore</p>	<p>The proposal can be supported with conditions.</p>
<p>Property Management and Commercial</p>	<p>The proposal is for the construction of a new dwelling on the subject site, which sits to the north of the Bible Gardens, a public park owned by Northern Beaches Council.</p> <p>It is noted that a section of the site, shown on Council's mapping system as PT1 & PT2, which it is understood to contain a portion of the existing site and a portion of the Bible Gardens, is owned by Northern Beaches Council and the landowner. The Deposited Plan (DP) for the land shows that the owner of 6 Mitchell Rd has title of this section up to a height of 74.5 AHD and Council has title of this land down to a height of 74.5 AHD.</p> <p>Provided the proposed garage and other works on this land do not breach the 74.5 AHD height limit Property has no objection to the proposal.</p> <p><u>Additional Comments 17 June 2021:</u> It has been brought to my</p>

Internal Referral Body	Comments					
	<p>attention that there is currently no garage on site at 6 Mitchell Rd Palm Beach, and as such I have amended the comments regarding the location of a garage. Nevertheless, provided the proposed development does not extend above 74.5 AHD, Property has no objection to the proposal, noting that should works occur above the 74.5 AHD line, owners consent will be required from Council's Parks & Recreation team, who manage the Bible Gardens.</p> <p><i>NOTE:</i> <i>It is noted that the DP for 6 Mitchell Rd is complex, with multiple easements, positive covenants and restrictions as to user over the land. Should questions arise as to whether the proposed development can harmonise with these restrictions on title, it is recommended that the applicant be requested to provide legal advice as to how the development is able to coexist with the various restrictions on title.</i></p>					
Strategic and Place Planning (Heritage Officer)	<table border="1"> <thead> <tr> <th data-bbox="517 853 1436 891">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="517 891 1436 929">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="517 929 1436 1176"> <p>The proposal has been referred to Heritage as part of the subject site is heritage listed while the remainder adjoins the heritage item. While the listing only refers to 6A Mitchell Road, the mapping includes the split owned land parcel.</p> <p>Bible Garden - 6A Mitchell Road</p> </td> </tr> <tr> <td data-bbox="517 1176 1436 1214">Details of heritage items affected</td> </tr> <tr> <td data-bbox="517 1214 1436 2125"> <p>Details of the item as contained within the Pittwater inventory is as follows:</p> <p><u>Statement of significance:</u> The Bible Garden at Mitchell Road, Palm Beach is an item of local significance for Pittwater and possibly of State heritage significance for New South Wales. It is the result of the creativity of Gerald Hercules Robinson, a devout Christian who was inspired to construct a garden of biblical plants in a magnificent natural setting. As a rare example of its type of designed landscape it has provided and continues to provide inspiration to visitors of all religions as a place for quiet contemplation of the wonders of creation. The garden has special association with the Christian community for spiritual reasons and has considerable educational potential arising from its special plant collection and the natural environment in which it is located. The social values of the Bible Garden have been enhanced by ongoing efforts by Gerald Robinson's descendants and by interested 'Friends' of the Garden in collaboration with the local government authority to ensure that this special place is protected in perpetuity and that its original philosophy and character are retained</p> <p><u>Physical description:</u> The subject land is located on the upper level of the sandstone escarpment to the south of Cabbage Tree Boat Harbour, at the southern end of Palm Beach. The land has a frontage of</p> </td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as part of the subject site is heritage listed while the remainder adjoins the heritage item. While the listing only refers to 6A Mitchell Road, the mapping includes the split owned land parcel.</p> <p>Bible Garden - 6A Mitchell Road</p>	Details of heritage items affected	<p>Details of the item as contained within the Pittwater inventory is as follows:</p> <p><u>Statement of significance:</u> The Bible Garden at Mitchell Road, Palm Beach is an item of local significance for Pittwater and possibly of State heritage significance for New South Wales. It is the result of the creativity of Gerald Hercules Robinson, a devout Christian who was inspired to construct a garden of biblical plants in a magnificent natural setting. As a rare example of its type of designed landscape it has provided and continues to provide inspiration to visitors of all religions as a place for quiet contemplation of the wonders of creation. The garden has special association with the Christian community for spiritual reasons and has considerable educational potential arising from its special plant collection and the natural environment in which it is located. The social values of the Bible Garden have been enhanced by ongoing efforts by Gerald Robinson's descendants and by interested 'Friends' of the Garden in collaboration with the local government authority to ensure that this special place is protected in perpetuity and that its original philosophy and character are retained</p> <p><u>Physical description:</u> The subject land is located on the upper level of the sandstone escarpment to the south of Cabbage Tree Boat Harbour, at the southern end of Palm Beach. The land has a frontage of</p>
HERITAGE COMMENTS						
Discussion of reason for referral						
<p>The proposal has been referred to Heritage as part of the subject site is heritage listed while the remainder adjoins the heritage item. While the listing only refers to 6A Mitchell Road, the mapping includes the split owned land parcel.</p> <p>Bible Garden - 6A Mitchell Road</p>						
Details of heritage items affected						
<p>Details of the item as contained within the Pittwater inventory is as follows:</p> <p><u>Statement of significance:</u> The Bible Garden at Mitchell Road, Palm Beach is an item of local significance for Pittwater and possibly of State heritage significance for New South Wales. It is the result of the creativity of Gerald Hercules Robinson, a devout Christian who was inspired to construct a garden of biblical plants in a magnificent natural setting. As a rare example of its type of designed landscape it has provided and continues to provide inspiration to visitors of all religions as a place for quiet contemplation of the wonders of creation. The garden has special association with the Christian community for spiritual reasons and has considerable educational potential arising from its special plant collection and the natural environment in which it is located. The social values of the Bible Garden have been enhanced by ongoing efforts by Gerald Robinson's descendants and by interested 'Friends' of the Garden in collaboration with the local government authority to ensure that this special place is protected in perpetuity and that its original philosophy and character are retained</p> <p><u>Physical description:</u> The subject land is located on the upper level of the sandstone escarpment to the south of Cabbage Tree Boat Harbour, at the southern end of Palm Beach. The land has a frontage of</p>						

Internal Referral Body	Comments		
	<p>approximately 28 metres to Mitchell Road, a cul-de-sac off Pacific Road. The site has a north-westerly aspect and slopes steeply down from the road, with a fall of approximately 22 metres from the highest point at the Mitchell Road frontage to the lowest level. Residential properties border the site to the east, north and west. To the right of the entrance is an interpretive sign and to the left is a commemorative bronze plaque and a donation box for 'thank offerings'. A driveway of two concrete tyre tracks with turf between extends down the western side of the lot, then sweeps towards the north across a reinforced concrete elevated causeway, providing a right of way to the adjoining properties to the east. A single carport with metal deck roof is located to the south of the drive just west of the causeway. The major lookout from the garden is a terraced area at the top of the cliff. Located in this area is a plaque including biblical excerpts, seating and a copy of the Bible. The Bible Garden is located to the east and south of the driveway, with a series of lawn terraces between slopes and garden beds. Sandstone retaining walls replace the earlier concrete block walls constructed along the northern edges of the terraces. Major trees include a wild stone fruit tree, cypress and evergreen oak on the Mitchell Road boundary, two large pines, a mulberry and a carob on the flat northern area of the garden and a number of trees along the eastern boundary. An ornamental pond is located on the flat area towards the centre of the flat northern area of the garden and there are two metal garden sheds along the eastern boundary. From the elevated driveway there is a sheer drop of about 8 metres to the lawn in front of the residence below.</p>		
	<p>Other relevant heritage listings</p>		
	<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>	<p>No</p>	
	<p>Australian Heritage Register</p>	<p>No</p>	
	<p>NSW State Heritage Register</p>	<p>No</p>	<p>The Bible Garden is not on the state register.</p>
	<p>National Trust of Aust (NSW) Register</p>		
	<p>RAIA Register of 20th Century Buildings of Significance</p>	<p>No</p>	
	<p>Other</p>		
	<p>Consideration of Application</p>		
	<p>The proposal seeks consent for a new dwelling on the subject site at 6 Mitchell Road, below the elevated concrete driveway. This will replace the existing c1970's dwelling known as 'Treetops'. At the rear of the new dwelling a staircase and lift is proposed which will provide access between the garage and the house. The garage and accessway is located within a portion of the site which is split</p>		

Internal Referral Body	Comments
	<p>owned between 6 (the dwelling lot) and 6A (the Bible Garden - owned by Northern Beaches Council). This split owned section is also included within the heritage mapping of the Bible Garden.</p> <p>Both properties and the split owned section were previously one property, but were subdivided to separate the dwelling lot from the garden. The split ownership appears to stem from plans to construct a viewing platform for the garden over the garage, as indicated in the dwelling concept proposal drawings by Playoust Churcher Architects and landscape concept by Judith Fritsche in 2001 . As per the subdivision plan, 6 Mitchell Road's ownership of the split owned section is limited to a height of 74.5m AHD, while 6A's ownership is limited to a depth of 74.5m AHD.</p> <p>A Heritage Impact Statement by Weir Phillips has been provided in support of the proposal. This statement and its conclusions are mostly acceptable to Heritage.</p> <p><i>Assessment</i></p> <p>The proposed dwelling is considered to be largely acceptable to Heritage and mostly in accordance with what was envisioned for the heritage components at the time the site was subdivided. As per that concept, the bulk of the dwelling is located at some height below the Bible Garden and elevated concrete driveway with only the garage and accessway being located near to the garden. The major difference between the subdivision concept and this proposal is that it does not include the viewing platform above the garage. However it is noted that there is a change in elevation between the lower terrace level of the Bible Garden and the proposed roof of the garage which is challenging, but not impossible, to resolve. In the absence of the viewing platform, Heritage considers a landscape roof to be the next best approach. This will have a better relationship to the Bible Garden and its heritage significance than the visual impact of a standard roof. A standard roof would be considered to have a negative impact upon views to and from the garden and thus its significance.</p> <p>In terms of construction impacts to the Bible Garden, it is noted that construction will involve rebuilding the retaining wall of the lower terrace and its fence, as well as excavation in close proximity. The application has proposed to undertake a dilapidation survey of the site and garden prior to works commencing, and to reinstate the garden to its previous condition and repair any damage. In this regard, Heritage supports the recommended conditions of Park, Reserves and Foreshores for the dilapidation survey, protection of trees and reinstatement of Council property (Bible Garden). The application has also proposed to place construction fencing part way through this lower terrace during works. This impact is considered tolerable to Heritage on the basis it is temporary, will be removed when works are finished, and the garden and its features</p>

Internal Referral Body	Comments
	<p>will be reinstated.</p> <p>While not considered significant in its own right, the existing dwelling at 6 Mitchell Road known as 'Treetops' has an important relationship to the site, having been constructed and lived in by a descendant of the garden's founder who took over care of the garden. Heritage will condition that a photographic archival recording of the dwelling, its context and the site be undertaken to Heritage NSW standards. This will be to ensure a record of the dwelling and its site for research and archival purposes.</p> <p>However, where Heritage raises concerns is the proposed solar array and vehicle turning bay. The location of the solar array on the elevated concrete driveway is not supported by Heritage due to its visual impact. The array should be relocated onto the roof of the dwelling (not the garage). There is also some inconsistency in the plans in regards to the vehicle turning bay and its treatment. This inconsistency should be resolved and presented to Heritage for comment. Any resolution of this issue should include minimising the visual impact of the turning bay.</p> <p>In summary, Heritage can broadly support the proposed dwelling. However, it cannot support the solar array and there is some inconsistency in the vehicle turning bay that needs to be resolved. Heritage does not consider these matters terminal to the application, just matters that need to be addressed before it can support the proposal.</p> <p>Therefore Heritage recommends amended plans for the solar array and vehicle turning bay.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Amended Comments - 13 July 2021</p> <p>Amended plans have been received which now include a terrace for the Bible Garden over the garage. This brings the proposal closer in line with the plans envisioned at the time the lots were subdivided. Heritage raises no objections to this amended terrace proposal, other than the detail of the fencing. Currently the proposal includes a rendered concrete wall where as Heritage would prefer a fence that would be less visually imposing and more easily screened via landscaping. A condition requiring the updating of the fence to Heritage's satisfaction prior to the construction certificate will be imposed.</p>

Internal Referral Body	Comments
	<p>A sandstone wall has also been proposed for the vehicle turning bay which was not indicated on previous plans. However details of the sandstone wall such as its colour and course layering have not been provided. Heritage will condition that details around this sandstone wall be provided to Heritage's satisfaction prior to the issue of the construction certificate. Heritage raises no objections to the proposed grass on 'Atlantis' drain cell treatment.</p> <p>Lastly, to make it clear that the solar array on the driveway is not approved, Heritage will impose a condition that they be removed from all plans and documents prior to the issue of the construction certificate.</p> <p>Therefore Heritage raises no objections to the proposal and requires three conditions.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1126399S dated 17 September 2020).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

Should the Panel decide to approve the application a condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Coastal Management) 2018

The northern portion of the site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposal will not result in unreasonable impacts the adjacent coastal wetland or littoral rainforest or the quality of the surface and ground water flows to these areas.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal is unlikely to result in unreasonable impacts on the biophysical, hydrological (surface and groundwater) ecological environment. The site is located approximately 120m to the south of Palm Beach, given its location the proposal will not impact on existing public access to the foreshore, beach or headland.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development will not unreasonably impact on the matters listed in subclause (1).

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development will not result in adverse impacts on access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability. The development will not result in overshadowing or wind funnelling or the visual amenity and scenic qualities of the coast, including coastal headlands. The proposal will not result in unreasonable impacts on the heritage significance of the Bible Garden, should the Panel decide to approve the DA conditions can be including in the consent to ensure any aboriginal heritage is protected.

The applicant has submitted view loss diagrams which together with a site inspection confirm that the

proposal is unlikely to result in the loss of views from public places (the Bible Garden) to foreshores.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Given the location of the site approximately 120m to the south of Palm Beach the development is unlikely to cause an increased risk of coastal hazards.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RE1: No Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Zone RE1: No Zone E4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.2m	N/A	*No
Special height provisions	10m	9.2m	N/A	Yes

*Clause 4.3 (2D) allows for a maximum height of 10.0m subject to compliance with certain criteria which is discussed in detailed below.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	No
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

Concern has been raised from neighbours in relation to the development being contrary to rights of ways and other easements and covenants on the title of the property. Whilst access to neighbouring properties over a right of way traversing land the subject of a development application may be a relevant consideration in weighing up the merits of the development application, generally, interests on title, such as rights of way and easements, are private matters between landholders who are burdened or benefited by the instruments. For the purposes of determining the development application, clause 1.9A of the Pittwater LEP 2014 relevantly provides:

(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

(2) This clause does not apply:

(a) to a covenant imposed by the Council or that the Council requires to be imposed.

The statutory power for this provision comes from section 3.15 of the Environmental Planning and Assessment Act 1979.

The effect of clause 1.9A of the Pittwater LEP 2014 is that an instrument on the title of a property or an agreement between landholders cannot operate to prevent lawful development from being carried out, such that the provisions of the Pittwater LEP 2014 override the operation of an agreement or covenant or right of way, but only to the extent necessary to enable the development to be carried out. It does not mean that the existence of a right of way is an irrelevant consideration, rather it may be a relevant consideration under section 4.15 of the Environmental Planning and Assessment Act 1979, but only in so far as the impact of the proposed development on the right of way constitutes a social impact or relates to the suitability of the site for the development, or constitutes a public interest consideration. The merit consideration of the impact on the right of way is therefore considered under Section 4.15 of the Act.

Zone RE1 Public Recreation

RE1 (Public Recreation Zone)

The following are permitted without consent:

Building identification signs; Environmental protection works; Horticulture; Markets; Roads

The following are permitted with consent:

Centre-based child care facilities; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Signage; Take away food and drink premises; Water recreation structures.

Any development not specified above is prohibited.

Comment

The proposal includes the construction of a substantial integral part of the dwelling, namely a double garage, entry, foyer stairs and lift within the RE1 Public Recreational zone. The development is prohibited.

The application has also been assessed against the Objectives of the RE1 Public Recreation Zone

To enable land to be used for public open space or recreational purposes.

Comment:

The applicant argues that the garage, lift and entrance to the proposed dwelling, which are proposed to be constructed on the part of the property which is zoned RE1, is permissible as part of the use of the land as a private road, or is development which is ancillary to the proposed dwelling house. It is Council's opinion that the development proposed by the development application is properly characterised as a dwelling house, including that part of the development proposed on the RE1 portion of the land. As such, the applicants argument is not supported and development is prohibited and Council does not have the power to grant development consent.

To provide a range of recreational settings and activities and compatible land uses.

Comment:

The applicant justifies the application on the basis that these structure are ancillary to the residential dwelling. The construction of a double garage, lift and entrance for the purpose of a private dwelling are fundamental to the private dwelling. However, these elements are not considered to be ancillary or compatible with the recreational land use to which the land is zoned.

The applicant also argues that a viewing platform is provided which will meet the objective of the RE1 zone. The proposal has been amended to change the design of the roof of the garage from a non-trafficable landscaped roof to an accessible viewing platform with a paved terraced and stairs connecting the Bible Garden. While this will provide some level of public access and recreational use to the area zoned RE1, the primary function of the double garage, to which the terrace is built upon, and associated lift and access is for the private dwelling and not the recreational use.

To protect and enhance the natural environment for recreational purposes.

Comment:

There are no significant landscape features within the portion of the site that is zoned RE1 that will be affected and Council's Landscape Officer and Bushland and Biodiversity Officer have no objections to the proposal subject to conditions.

The proposal provides some enhanced recreational use / access to the portion of the site zoned RE1 with the modification of the DA to change the roof of the garage to an accessible terrace. However, the elements proposed in the RE1 zone are directly associated with the private dwelling which is prohibited in the zone.

To allow development that does not substantially diminish public use of, or access to, public open space resources.

Comment:

The construction management plan provided details of fencing which will be partially located in the northern portion of the Bible Garden. Public access and use of the public open space resource will therefore be temporarily diminished to part of the RE1 zone during the construction of the development.

To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.

Comment:

The proposed work in the portion of the site zoned RE1, namely the double garage, lift and entry, primarily relates to the private dwelling. The development allows for some limited recreational use and public access to the area zoned RE1 in the form of the terrace above the garage.

4.3 Height of buildings

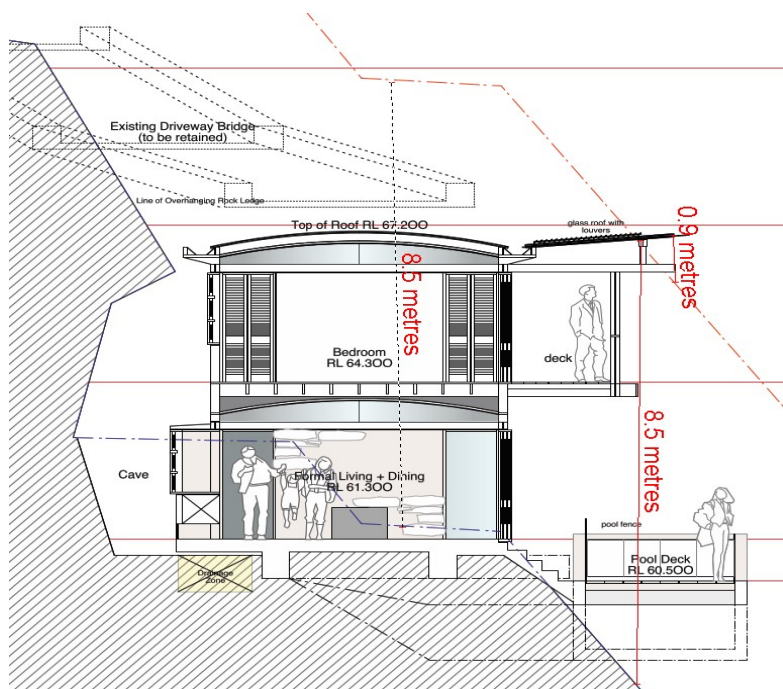
Clause 4.3 sets a height limit of 8.5m for the site.

Clause 4.3(2D) allows for the height to exceed 10m if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment

A small portion of the glass roof over the first floor deck area and a minor portion of the overall building exceeds the 8.5m building height control resulting in a maximum 9.4m building height, refer to image below. The building footprint is located in a slope that is in excess of 16.7 degrees and the minor breach to the height control is acceptable in principle subject to the development being consistent with the objectives of the height control which is discussed in detail below:



Section showing the height (source Stephen Lesiuk)

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

Comment:

The development by virtue of height and scale is generally consistent with the desired character of the Palm Beach locality.

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Comment:

The height and scale and scale of the development is generally compatible with other dwellings in the

surrounding area.

(c) to minimise any overshadowing of neighbouring properties.

Comment:

Shadow diagrams have been submitted which confirm that the development will not result in unreasonable overshadowing to neighbouring properties.

(d) to allow for the reasonable sharing of views.

Comment:

A view loss assessment and site inspection demonstrate that the proposal will not result in unreasonable view loss from public area including the Bible Garden and Mitchell Road. Concern has been raised from neighbours in respect of view loss from private property as a result of the lift and garage. As these elements are not supported due to being prohibited development in the RE1 zone height poles have not been requested as this is considered an unreasonable request given the application is recommended for refusal on the basis of permissibility.

(e) to encourage buildings that are designed to respond sensitively to the natural topography.

Comment:

The dwelling and associated structures are proposed to be built into the cliff with excavation to a depth of 3m of the sandstone cliff line (rock) being required to facilitate the construction of the access to the dwelling (the lift and stair) and 3m excavation for the construction of the garage. The application is supported by a geotechnical report that identified several geotechnical hazards to have "unacceptable" risk levels. The geotechnical report recommends further assessment and testing and concludes:

Provided the recommendations of this report including further inspection and installation of support systems as determined necessary occurs then the site will achieve the 'Acceptable' risk management criteria of Councils policy for the design life of the new development, taken as 100 years. Therefore, the project is considered suitable for the site provided the recommendations of this report are implemented"

It is Council's opinion that until the additional inspections and testing is carried out that the proposal can not conclusively be regarded to have responded to the natural topography as such it is not consistent with objective (e).

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment

The amended design removes the solar array and the proposal and is unlikely to have a visual impact on the natural environment of the adjoining heritage listed Bible Garden, refer to comments from Council's Heritage Officer.

7.2 Earthworks

Clause 7.2 (Earthwork) require:

(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in th*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on any waterway, drinking water catchm*

- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development
- (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site,

Comment:

As discussed above, the Geotechnical report prepared by Crozier dated November 2018 recommends further investigation and testing to confirm that the earthworks will achieve an acceptable risk management criteria. Until this additional investigation and testing has been carried out Council can not conclusively confirm that the development satisfies the matters listed in Clause 6.2(3) as listed above.

7.7 Geotechnical hazards

Clause 7.7 Geotechnical hazards requires:

- (4) Development consent must not be granted to development on land to which this clause applies unless:
 - (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and
 - (b) the consent authority is satisfied that:
 - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
 - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
 - (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment

The site is located within the H1 (highest category) landslip hazard zone as identified within the Geotechnical Hazard Mapping (Geotechnical Risk Management Policy for Pittwater – 2009).

As discussed above, the geotechnical report that identified several geotechnical hazards to have “unacceptable” risk levels and recommends further assessment and testing. Until the additional testing is carried out the consent authority cannot be satisfied that the development can be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Schedule 5 Environmental heritage

Part of the site is listed as a Local Heritage item, namely the Bible garden 6A Mitchell Road, Lot 2, DP 1086858. Councils' Heritage Officer has no objections to the amended proposal subject to conditions, refer to referral comments in this report.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	25.8m	N/A	Yes
Rear building line	6.5m	<u>Ground Level</u> 1.3m (to the pool / deck)	80%	No

		3.8m to the sitting steps 5m to the northern wall of the dwelling	41.6% 23%	No No
		<u>First Floor</u> 3.4m to the deck 5m to the northern wall of the dwelling	47.7%	
Side building line	2.5m	<u>West -Ground Level</u> West 2.8m to the dwelling 2.1m to the sitting steps	N/A 16%	Yes No
		<u>West - First Floor</u> 3m to the dwelling	N/A	Yes
	1m	<u>East Ground Level</u> 1.1m to the dwelling 3m to the stairs	N/A N/A	Yes Yes
		<u>East First Floor</u> 1.1m to the dwelling	Yes	Yes
Building envelope	3.5m	<u>East Elevation dwelling</u> Minor breach 0.3m - 0m in height x 2m in length which relates to the highlevel windows.	See details	No
	3.5m	Within envelope	N/A	Yes
Landscaped area	60%	63%	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.12 Palm Beach Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	No	No
B3.1 Landslip Hazard	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	No	No
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	No	No
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Clause 1.7A requires:

Before granting development consent, Council must be satisfied that the development is consistent with:

*Pittwater Local Environmental Plan 2014; and
the desired character of the Locality; and
the development controls applicable to the development.*

*Council will also have regard to the matters for consideration under section 4.15 Evaluation of the
Environmental Planning and Assessment Act 1979.*

*Before granting consent for development within a Locality, Council may consider the provisions of a
neighbouring Locality to the extent to which it affects the subject site.*

Comment:

The proposed dwelling is prohibited in the RE1 (Public Recreation) zone and insufficient geotechnical information has been submitted to address Clause 6.2 (Earthworks) and 7.7 (Geotechnical Hazards) of the PLEP.

The proposal is also inconsistent with a number of Pittwater DCP controls relating to landslip and traffic / construction management and is inconsistent the heads of consideration under Section 4. 5 of the Act.

A4.12 Palm Beach Locality

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Comment

The design of the dwelling is generally consistent with the desired future character of the Palm Beach locality, however, issues remain outstanding regarding its impact on the landform and the garage, lift and entry are all prohibited structures in the RE1 zone.

B3.1 Landslip Hazard

Clause B3.1 requires:

*All development on land to which this control applies must comply with the requirements of the
Geotechnical Risk Management Policy for Pittwater.*

*Development must be designed and constructed to ensure that every reasonable and practical means
available is used to remove risk to an acceptable level as defined by the Geotechnical Risk
Management Policy for Pittwater (see Appendix 5) for the life of the development.*

*The development must not adversely affect or be adversely affected by geotechnical processes nor
must it increase the level of risk for any people, assets and infrastructure in the vicinity due to
geotechnical hazards.*

Comment:

As discussed under Clause 7.7 of the PLEP the geotechnical report recommends additional investigation and testing to confirm that geotechnical hazards can be managed. Until the additional investigation is complete it is not possible to conclude that the development will not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards in accordance with the outcome of the clause B3.1 which require:

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

B6.7 Transport and Traffic Management

Clause B6.7 requires

Adequate vehicular entrances to and exits from the site are to be provided so that vehicles using those entrances and exits will not endanger persons using adjoining roads.

Comment

For the reasons discussed elsewhere in this report the proposal does not meet the outcomes of the control which are required to ensure:

Safe and orderly traffic, pedestrian and cyclist access to and from all development via the surrounding road network and transport infrastructure.

B8.1 Construction and Demolition - Excavation and Landfill

Clause B8.1 requires:

Excavation and landfill on any site that includes the following:

- Excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation;
- Any excavation greater than 1.5 metres deep below the existing surface;
- Any excavation that has the potential to destabilize a tree capable of collapsing in a way that any part of the tree could fall onto adjoining structures (proposed or existing) or adjoining property;
- Any landfill greater than 1.0 metres in height; and/or
- Any works that may be affected by geotechnical processes or which may impact on geotechnical processes including but not limited to constructions on sites with low bearing capacity soils,

must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Appendix 5) as adopted by Council and details submitted and certified by a Geotechnical Engineer and/or Structural Engineer with the detail design for the Construction Certificate.

Comment:

The application has been supported with a geotechnical report that concludes that

"Provided the recommendations of this report including further inspection and installation of support systems as determined necessary occurs then the site will achieve the 'Acceptable' risk management criteria of Councils policy for the design life of the new development, taken as 100 years. Therefore, the project is considered suitable for the site provided the recommendations of this report are implemented"

The report identifies a number of geotechnical hazards and concludes that further inspections are required in addition to compliance with the recommendations of the report. In this regard, until the additional geotechnical testing occurs Council can not be satisfied that the proposal satisfies the outcomes of the control, namely:

Site disturbance is minimised.

Excavation, landfill and construction not to have an adverse impact.

Excavation and landfill operations not to cause damage on the development or adjoining property.

B8.6 Construction and Demolition - Traffic Management Plan

Clause B8.6 requires:

For all development where either excavated materials to be transported from the site or the importation of fill material to the site is 100m³ or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.

All transport works must not cause adverse disruption or nuisance to adjoining residences, businesses or the street system.

The proposal has been assessed against the outcomes of the control

Minimal disturbance to the residential community.

Comment

The right of carriageway provides access to a number of properties including the subject site at No. 6 and No. 11, 13 and 15 Mitchell Road. The proposal for the development includes an access driveway and turning area that is along a right of carriageway.

Significant concern has been expressed from neighbours regarding potential impacts on access to private residences along the shared right of carriageway, including impacts during the construction phase. Council's Traffic Engineer has also raised issues with regards to impacts from the development on access to private properties that share the carriageway. Therefore, without the additional information including a Construction Traffic Management Plan the development is inconsistent with outcome 1 of the control.

Protection of Roads.

Comment

A road is defined in the PLEP as a *public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.*

The road to which the development connects to is a private right of carriage. Council's Transport Engineer has not raised any concerns with regard to the impacts of the proposal on the adjoining road.

D12.6 Side and rear building line

Clause D12.6 requires a 1m and 2.5m side setback and 6.5m to the rear.

Comment:

The boundaries of the site are irregular and the setback of the dwelling to the western boundary generally complies with the 2.5m requirement with the exception of the small section of the steps which represent a 0.3m breach of the side set back control. The minor 0.3m breach of a step is not in itself regarded as being inconsistent with the objectives of the control.

The proposal breaches the rear setback in the following areas:

- Ground level - the pool and associated deck are sited 1.3m from the rear boundary, the sitting steps 3.8m and the northern wall of the dwelling 5m;

- First Floor - the upper floor deck 3.4m from the rear boundary and the northern wall of the dwelling 5m.

The proposal has been assessed against the outcomes of the control as follow:

- *To achieve the desired future character of the Locality.*

Comment:

The battleaxe allotment and the pattern of development within the surrounding area is irregular. The breach of the pool and associated deck against the rear setback control will not in itself result in the dwelling being inconsistent with the desired future character of the Palm Beach Locality. Likewise, the minor 1.5m breach in the setback of dwelling is not inconsistent with the pattern dwellings to the east.

- *The bulk and scale of the built form is minimised.*

Comment:

The minor breach in the setback of the dwelling will not in itself result in the dwelling being excessive in terms of its bulk and scale.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The application is supported with view loss diagrams which together with a site inspection confirm that the dwelling will not have unreasonable impacts on view loss to and from public places. As Council cannot granted consent for the development application being prohibited development in the RE1 Public Recreation zone a detailed view loss assessment has not been carried out from private properties as this would require the installation of height poles. It would be unreasonable to require height poles as the application is being recommended for refusal.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

Refer to discussion under Outcome No 3 above.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

Shadow diagrams confirm that there will be no unreasonable impacts on solar access to neighbouring residential properties. Should the Panel decide to grant consent conditions can be imposed to address issues with respect to privacy.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

Councils Landscape Officer has no objections to the development. Due to the site being a battle-axe lot the only glimpses of the structures will be visible from the public domain.

- *Flexibility in the siting of buildings and access.*

Comment:

The siting of the dwelling is generally acceptable. However, the siting of the garage and access to the private dwelling within the RE1 zone is not permissible.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposal will involve the removal of two (2) trees. Council's Landscape Officer has no

objections to the removal of the trees subject to conditions.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

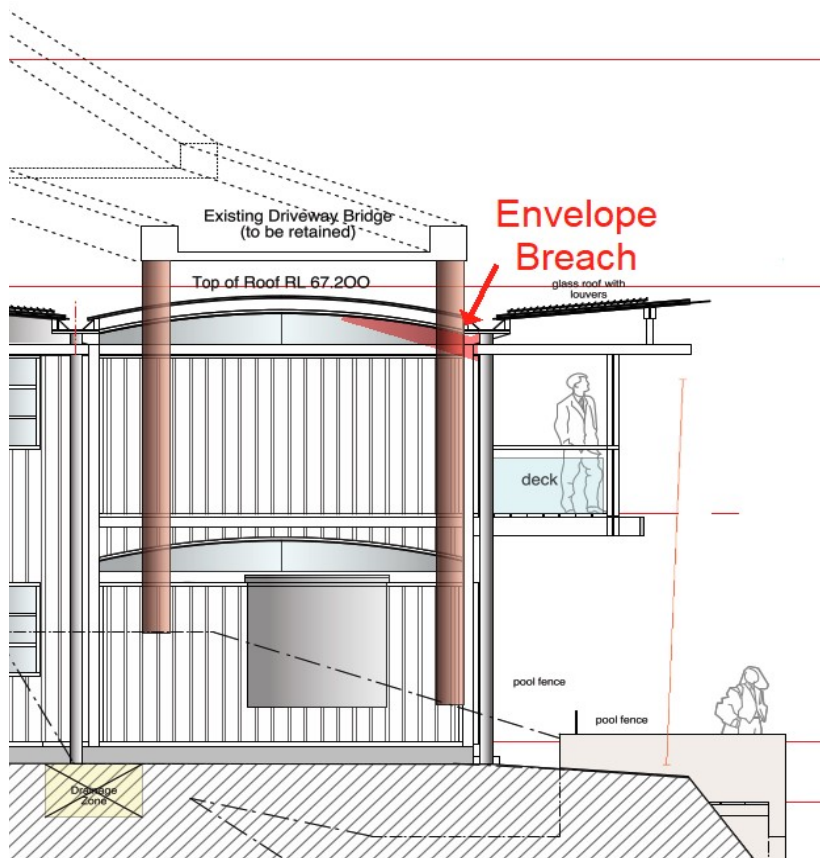
Not relevant the site is surrounding by land zone either residential or public recreation.

D12.8 Building envelope

Clause D12.8 requires buildings to be sited within a building envelope measured at 45 degrees from a height of 3.5m above ground level (existing) at the side boundaries to the maximum building height.

Comment:

A minor portion of the eastern elevation of the dwelling, namely a triangular area 0m - 0.3m in height x 2m in length which relates to the high light window, breaches the side building envelope, refer to the diagram below. With the exception of this small area the proposal complies with the control.



West elevation (source Stephen Lesiuk)

The minor 0.3m high breach of the envelope which relates to a window is not inconsistent with the objectives of the control which require:

- *To achieve the desired future character of the Locality.*
- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- *The bulk and scale of the built form is minimised.*

- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*
- *Vegetation is retained and enhanced to visually reduce the built form.*

D12.10 Landscaped Area - Environmentally Sensitive Land

Clause D12.10 requires 60% of the site to be retained as landscaped area. The control allows:

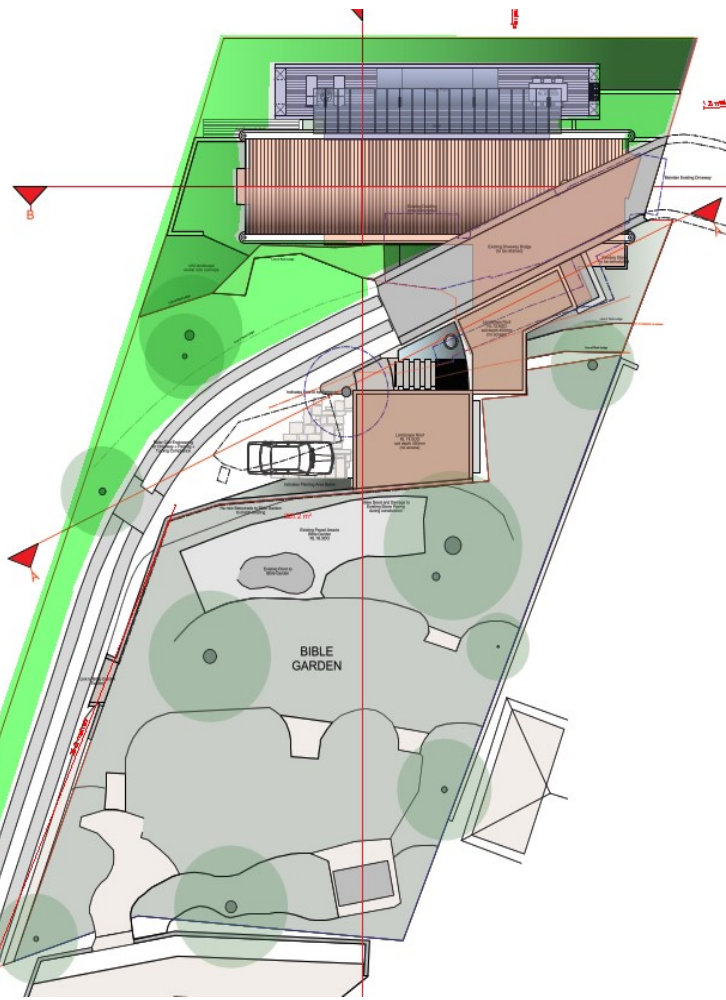
On lots where there is a split zoning and part of the lot is zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure, the calculation for total landscaped area will be based only on that area not zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure. It will not be based on the site area of the whole lot.

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

- i) impervious areas less than 1 metre in width (e.g. pathways and the like);*
- ii) for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

Comment

Excluding the portion of the site zoned as RE1 the remaining areas in the E4 Living zone equates to an area of approximately 387.3sqm, refer to image below.



Site plan (source Stephen Lusiuk)

The proposal retains an area of 220.2sqm of landscape open space in the form of rocky ledges, and outcrops, lawn and the grass verge along the western edge of the right of way, refer to image below. In addition, 24sqm of pool side deck is proposed which equates to 6% of the site area and can be included in the landscape open space calculation which will therefore amount to a total of 244.2sqm which represents a compliant 63% of the site area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$25,600 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$2,560,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
 - Inconsistent with the zone objectives of the LEP
 - Inconsistent with the aims of the LEP
 - Inconsistent with the objectives of the relevant EPIs
 - Inconsistent with the objects of the Environmental Planning and Assessment Act 1979
-
- Issues in respect of permissibility. The applicant argument that the garage, lift and entrance to the proposed dwelling are permissible as part of the use of the land as a private road, or is development which is ancillary to the proposed dwelling house is not supported. The development proposed by the development application is properly characterised as a dwelling house, including that part of the development proposed on the RE1 portion of the land. As such, the development is prohibited and Council does not have the power to grant development consent.
 - The amended plans include work on the Bible Garden above AHD 74.5, namely a stair and wall, as such owners consent is required for this work which has not been obtained.
 - Traffic and road safety issues including potential impacts on access to residential properties that share the right of carriageway;
 - Issues in respect of the geotechnical impacts of the proposed earthworks;
 - Impacts on neighbouring amenity in terms of view loss, solar access and visual and acoustic privacy;
 - Heritage impacts, and
 - Issues relating to bulk and scale and compliance with the built form controls.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1596 for the Construction of a dwelling house, including a swimming pool, driveway and garage on land at Lot 1 DP 1086858,6 Mitchell Road, PALM BEACH, for the reasons outlined as follows:

1. The double garage, lift and entry are located on land zone RE1 (Public Recreation), these elements are integral to the dwelling and this form of development is prohibited in the RE1 zone in Pittwater LEP 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. The proposal is inconsistent with Section 4.15 (1) (b) of the EP&A Act as:
 - (a) Insufficient information has been submitted to ensure:
 - (i) that the earthworks will not result in unreasonable geotechnical impacts on the natural and built environment.
 - (ii) to confirm that the development will not have unreasonable impacts on access to private dwellings.
 - (b) Owners consent has not been obtained for the work on Deposited Plan 1086858, Lot 2 above AHD 74.5.
 - (c) The proposal is inconsistent with Section 4.15 (1) (c) of the EP&A Act as part of the site is zoned as RE1 (Public Recreation) and a private residential dwelling is not suitable for the site.
 - (d) The proposal is inconsistent with Section 4.15 (1) (e) of the EP&A Act as it is not in the public interest.
4. The proposal is inconsistent with Clause 6.2 of the Pittwater LEP, and Clause B8.1 (Construction and Demolition - Excavation) of the Pittwater DCP as insufficient information has been submitted to ensure that the earthworks will not have a detrimental impact on the amenity of adjoining properties.
5. The proposal is inconsistent with Clause 7.7 of the Pittwater LEP and Clause B3.1 (Landslip Hazards) of the Pittwater DCP as insufficient information has been submitted to ensure that the development has been designed, sited and managed to avoid any geotechnical risk or impact on surrounding development.
6. The proposal is inconsistent with Clause B6.7 (Transport and Traffic Management) and B8.6 (Construction and Demolition - Traffic Management Plan) of the Pittwater DCP as insufficient information has been submitted to ensure the development will have minimal disturbance to the residential community in terms of available safe access from the shared right of carriageway to dwellings, especially during construction.

