
From: Denis Smith
Sent: 11/07/2024 3:53:30 PM
To: Nic England
Cc: Council Northernbeaches Mailbox; Peter Robinson
Subject: Letter of Objection - 6 Mitchell Road, Palm Beach - Lot 1 in DP 1086858 - DA2024/0774
Attachments: Letter of Objection - 6 Mitchell Road Palm Beach - 10 July 2024.pdf;

Good afternoon, Nick

Please find attached a letter of objection in respect of the above Development Application. We have also copied in Peter Robinson as we firmly believe that the Development Application includes works on the Bible Garden site (6A Mitchell Road, Palm Beach) which is owned by Northern Beaches Council and no Consent has been obtained by the applicant for these works.

Should you have any queries, please do not hesitate to call me.

Thank you and regards
Denis Smith

Denis Smith
Director, Planning and Property



Suite 1/41-49 Darley Street East m: [REDACTED]
Mona Vale, NSW 2103 e: [REDACTED]

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TOMASY PLANNING

Suite 1, 41- 49 Darley Road East
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10 July 2024

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Att: Nicholas England
Nicholas.England@northernbeaches.nsw.gov.au

Dear Nicholas

**Re: Letter of Objection to Development Application DA 2024/0774
Property: 6 Mitchell Road, Palm Beach (Lot 1 in DP 1086858)**

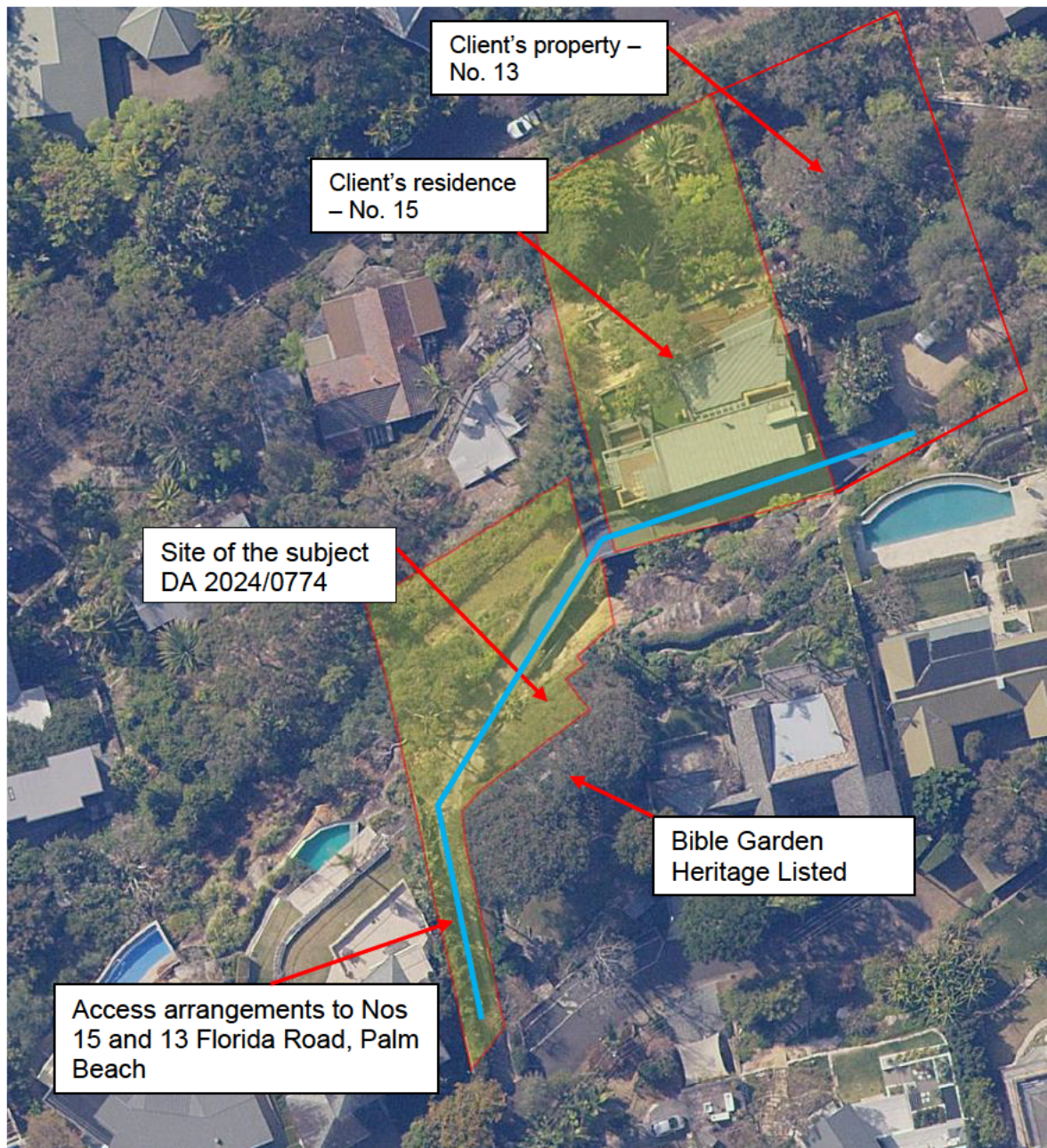
Reference is made to recent discussions with Council's assessment officer, Mr Nick England, regarding the above development application DA 2024/0774. Mr England had indicated that any matters that we intend to address are to be part of a formal submission to Council as part of the public notification period. Tomasy Planning has been engaged by Jason and Jodie Smith, the owners of No's 15 and 13 Florida Road, Palm Beach, to lodge a formal objection in respect to the above Development Application.

In preparing this submission, we have reviewed the Statement of Environmental Effects prepared by the Planning Hub, the architectural drawings prepared by Nanna Lesiuk from Housed together with other relevant documentation that is referred to in the Statement of Environmental Effects as Appendix A – N (inclusive).

Our clients share a common boundary with No 6 Mitchell Road and have a lawful right of carriageway over No 6 Mitchell Road to access their properties at Nos 15 and 13 Florida Road, Palm Beach. To enable Council to appreciate the location and relationship between our client's land, Council's land (Bible Garden – Heritage item), and the land the subject of the Development Application for the construction of a new dwelling, and associated works, including a new swimming pool, a plan has been prepared which clearly delineates our client's property and the land, the subject of the Development Application.

During the past three years, our clients have submitted comprehensive objections to the original development application (as amended) DA2020/15906 for the erection of a dwelling house at No 6 Mitchell Road, which included, at that time, part of the dwelling being located on RE1 Public Recreation Zoned land, and a dwelling house at that time was a prohibited land use. Our objections were supported by the client's lawyer, Paul Vergotis, Partner, Piper Alderman, an Accredited Lawyer in Planning and Environmental Matters, together with advice from Dr Steven Berveling, Barrister, who is highly respected in Planning and Environmental Law. Our clients' lawyers have also submitted comprehensive advice relating to the Planning Proposal submitted by The Planning Hub seeking to have that part of the land that adjoins Council's Bible Garden amended to permit a dwelling house to be erected on the land currently zoned RE1 Public Recreation.

It is important for Council to acknowledge that No 6 Mitchell Road is a privately owned property which is adjacent to No 6A Mitchell Road, which is known as 'The Bible Garden' and is owned by Council. The Bible Garden is a listed Heritage site under Pittwater Local Environment Plan 2014. The Council's land is zoned as RE1 Public Recreation, and the land, the subject of the current DA, continues to be zoned as part RE1 Public Recreation; however, it is noted that the Minister for Planning's delegate has recently amended the Pittwater Local Environment Plan 2014 which permits the construction of a new dwelling as a 'permissible land use' per Clause 25 of Schedule 1 – Additional Permitted Land Uses – in this case, on land zoned RE1. This will be further elaborated on in this submission regarding the objectives of a RE1 zone.



Client's subject property in relation to 6 Mitchell Road, Palm Beach

Source: <https://maps.six.nsw.gov.au/>

One of the principal grounds of objection by our clients is the perceived conflict of interest that Northern Beaches Council and its officers have in dealing with this application.

This component of the objection is based upon the following:

Owners Consent

- In respect of the current DA, the applicant intends to carry out work on Council owned land (the Bible Garden). These works are described in the Statement of Environmental Effects under Section 3.12 overview and include the following statement, *“The construction of a new balustrade for the Bible Garden to match the existing one and minor repair works to the existing Bible Garden paved areas that may be impacted during construction”*. It is evident that the applicants intend to carry out works on the Council owned property (Bible Garden). The DA therefore embraces two parcels of land, one being Council’s property and the other being the subject of the works described under Section 3.12 Overview being on land known as No. 6 Mitchell Road, Palm Beach.

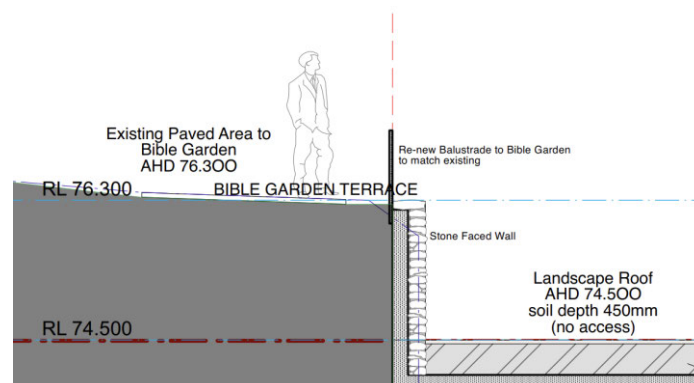
In recent discussions with Council’s assessment officer, it was pointed out that the subject Development Application does involve development that relates to Lot 1 (Applicant’s Land) and Lot 2 DP 102658 (Council’s Land, the Bible Garden) and, accordingly, requires the consent of all owners (one being Northern Beaches Council). There is no evidence that we are aware of that Consent from the owner of Lot 2, DP 102658 has been obtained.

- It would appear that the same matter that is raised above in respect to Council’s consent for the lodgement of the application was raised with the original DA (DA2020/1596) by our client’s lawyers who outlined that the DA that was submitted at that time incorporated works on Council owned land and accordingly Council’s consent for the lodgement of the application was required. How does Council accept a Development Application which involves work on their property without the formal consent of the Council for the lodgement of the application? Surely council cannot be above the law as it is a mandatory requirement for all land owners to provide their consent to Council to lodge a development application. If there is a consent by Council to the subject proposal, can they please produce it so that this matter can be addressed.

Council’s attention is drawn to the Environment Planning and Assessment Regulations 2021, Part 3 – Development Application Division, clauses 23, ‘Persons who may make a development application’ and Clause 30b, ‘Council – Related Development Applications’.

It is abundantly clear that the consent of the Northern beaches Council is required for the subject Development Application as there is work to be carried out on land that is owned by Council within the bounds of the area known as The Bible Garden. We refer to the architectural drawing DA15 Section 01 – Living Pavilion which has a notation adjacent to the words ‘Bible Garden Terrace’ and it says ‘Re – New Balustrade to Bible Garden to match existing’. As previously stated in this submission, the Statement of Environmental Effects clearly describes under the heading ‘project description’ the following works to be undertaken:

- The construction of a new balustrade for the bible garden to match the existing one and minor repair works to the existing bible garden paved areas that may be impacted during construction.



Source: Architectural Drawing DA15 Section 01 - Living Pavilion

Project Description

3.1 Overview

This application proposes the demolition of existing structures and construction of a dwelling house and associated works at 6 Mitchell Road, Palm Beach. Specifically, the development will consist of:

Demolition

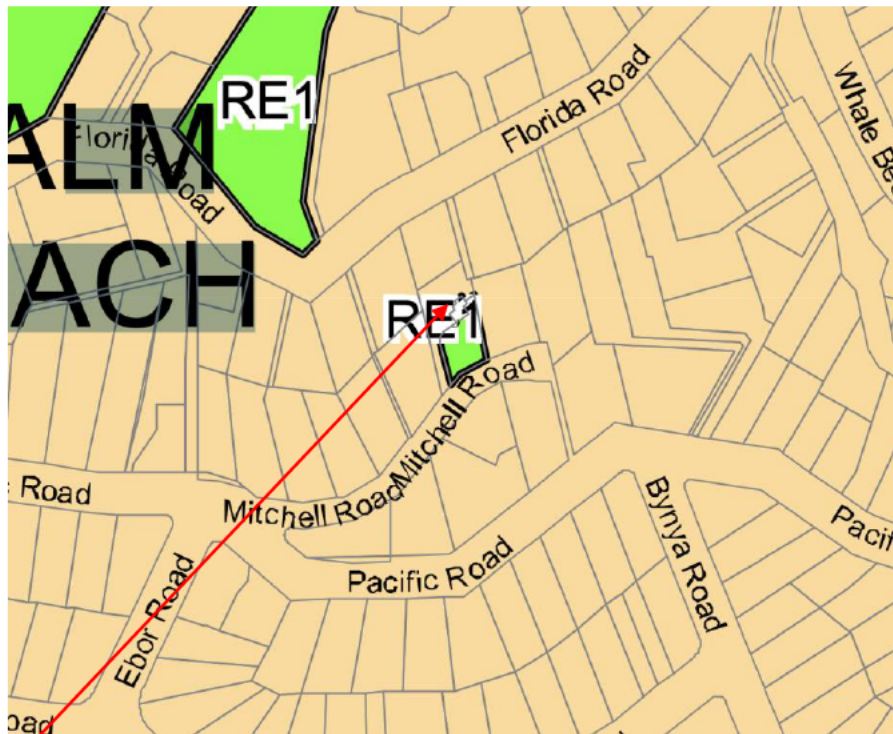
- The demolition of the existing dwelling and associated structures;
- The removal of two (2) existing trees;

Construction

- The construction of a new dwelling to comprise of:
 - Ground Floor –
 - Foyer
 - Bunk room with ensuite
 - Laundry
 - Powder
 - Laundry
 - Bunk room
 - Formal living and dining area
 - Kitchen and family area
 - Access staircase and lift
 - Plunge pool and deck
 - First Floor –
 - Three bedrooms (two with ensuite)
 - Bathroom
 - Gallery
 - Robe
 - Linen store
 - Sitting Area
 - Access staircase and lift
 - Deck
- A two car garage, accessed from the existing shared driveway.
- The construction of a new balustrade for the bible garden to match the existing one and minor repair works to the existing bible garden paved areas that may be impacted during construction.
- The provision of landscaping to include native species to ensure no environmental or amenity impacts on surrounding land uses. The proposed landscaping includes the provision of a landscape roof over the proposed garage to ensure no visual impacts on the adjoining Bible Garden.

Source: Statement of Environmental Effects – Planning Hub

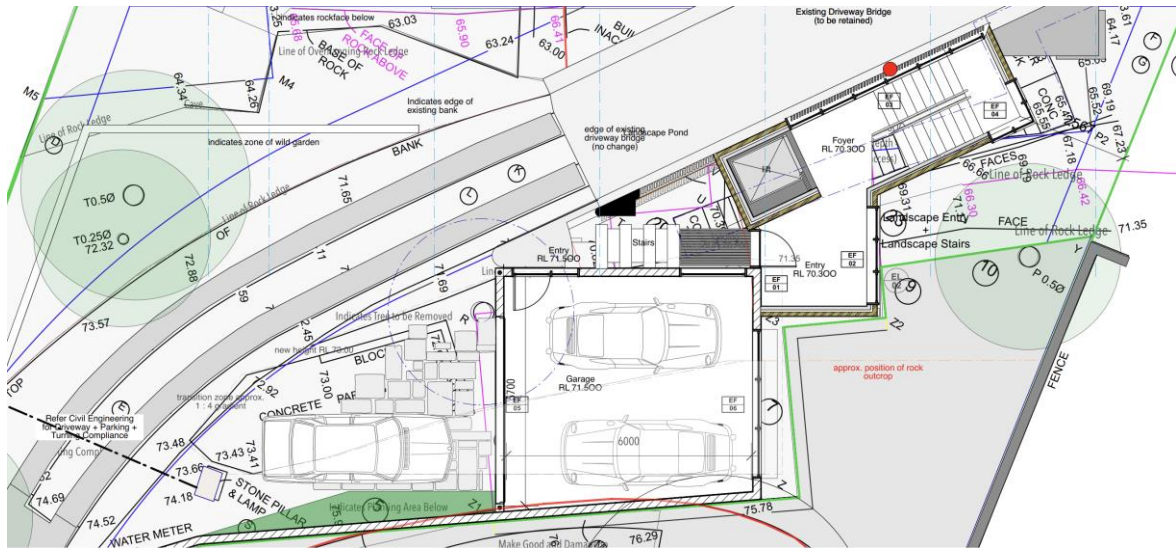
Land Zoning Details



Subject property – 6 Mitchell Road, Palm Beach

Part of the land that is zoned for RE1 Public Recreation is proposed to accommodate the following components of the proposed dwelling as per the architectural drawing DA02 – Entry Level. This component of the proposed dwelling includes the following:

- Double garage
- Concrete Driveway adjacent to the garage
- Passenger lift
- Entry foyer
- Staircase
- Landscaping



Source: Architectural Drawing DA02 – Entry Level

All of these components are totally located within that part of the land zoned RE1 Public Recreation. The Objectives of the RE1 zone are set out below:

1 Objectives of zone

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

Comment: Non-Compliant. No part of the subject land that is zoned RE1 Public recreation will be used for the purpose for public open space or recreation purposes. The proposal intends to use this component of the land for the erection of a double garage, entry foyer, lift and other access facilities – all integral components of a residential dwelling.

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

Comment: Non-Compliant. The proposal does not include a range of recreational settings and activities or compatible land uses. A dwelling house is not a compatible land use for land that is zoned for public recreational purposes.

- To protect and enhance the natural environment for recreational purposes.

Comment: Non-Compliant. The proposal also fails this objective in that there is no protection or enhancement of the natural environment. The proposal represents a direct contradiction of protecting and enhancing the natural environment as it involves excavation of a significant amount of cliff face rock and other vegetation that currently provides an effective scenic quality value and contributes to the landscaped values of this important heritage listed Bible Garden area. It is important

to recognise that the land zoned for public recreation purposes is part of the heritage classification for the Bible Garden.

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

Comment: Non-Compliant.

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

Comment: Non-Compliant. The subject development is not in the public interest as it does not provide for any passive and/or active public open space and is not deemed to be ancillary development to meet the needs of a community such as a community hall, amenities building, canteen, picnic facilities etc.

Notwithstanding that the Minister for Planning's delegate has saw fit with the support of Northern Beaches Council to allow a dwelling house to be erected on land zoned RE1 Public Recreation, it is clearly evident that the subject proposal fails miserably to comply with any of the objectives of the zone. It is difficult to comprehend how Council could support the erection of a dwelling house of land zoned for public purposes.

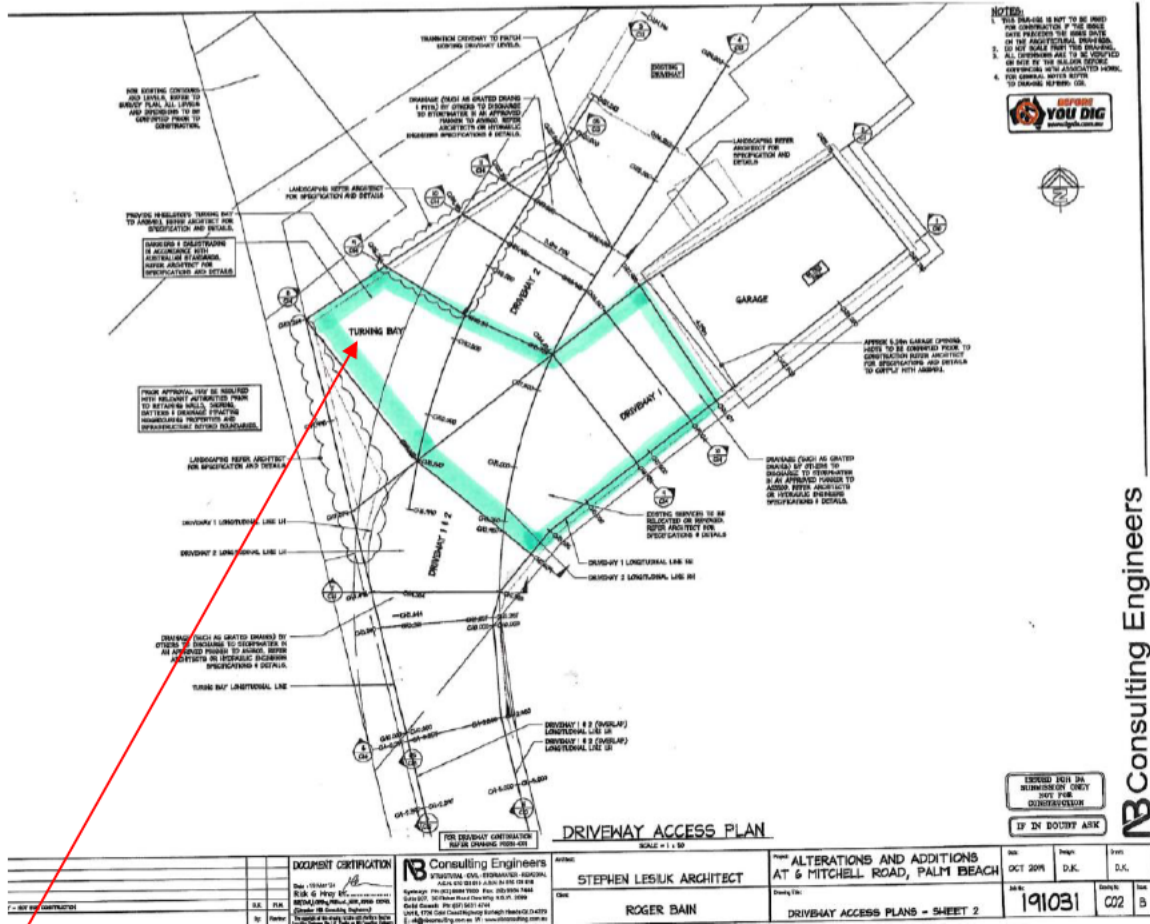
RECONSTRUCTION OF THE RIGHT OF CARRIAGE WAY

Our clients, who own Lot 7 and 8 in DP 10167 (No 15 and No 13 Florida Road, Palm Beach), have a legal right of carriageway that traverses from Mitchell Road through No 6 Mitchell Road and continues through our clients' property and No. 7 Florida Road. This right of carriageway that is enjoyed by our clients allows for unrestricted access 7 days a week 24 hours a day for both pedestrian and vehicular access movements. It is evident from the plans that have been submitted with the development application that the proposal involves reconstruction of the driveway along the right of way between Mitchell Road and the elevated part of the driveway and suggests that access will not be possible to lots 7 and 8 DP10167 (No 15 and 13 Florida Road, Palm Beach).

The reconstruction of the right of carriageway would amount with a serious interference with the right of way and thus would be contrary to the terms of the right of way.

It is imperative that access to Lots 7 and 8 DP 10167 (15 and 13 Florida Road) is maintained at all times during construction (if approved) and is a matter to be taken into consideration pursuant to Section 4.15(1) (b) – the likely impacts of the development as well as Section 4.15(1) (e) the public interest. Continued unimpeded access to No 15 and No 13 Florida Road is of itself such importance that it may well cause the DA to be refused for this reason alone.

One of the occupants of No. 15 Florida Avenue **has a medical condition that requires 24 hour 7 days a week access for an ambulance to be able to attend our client's family member during any medical episode.** This matter cannot be taken lightly by Council in determining this application as it is not in the public interest to approve a development that could result in vehicular access being denied as a result of the reconstruction of the driveway within the right of carriage way. Set out below is a copy of the plan prepared by the applicant's engineering consultants which demonstrates by way of green edging that the proposal is to reconstruct part of driveway 1, which includes the right of carriageway and the creation of a turning bay. It is important for Council to acknowledge that on the architectural drawings there is no reference to the turning bay that is shown on the engineering drawings prepared by Northern Beaches Consulting Engineers.



In respect to the turning bay, which is shown on the engineering drawing above, there is a notation comprising the following text:

PRIOR APPROVAL MAY BE REQUIRED WITH RELEVANT AUTHORITIES PRIOR TO RETAINING WALLS, SHORING, BATTERS & DRAINAGE IMPACTING NEIGHBOURING PROPERTIES AND INFRASTRUCTURE BEYOND BOUNDARIES.

There are no details at all relating to how the turning bay will be built and this is confirmed by the text on the engineers drawing.

Comment: It is hard to understand why Council would not require detailed plans as part of the DA documentation so that members of the public have a clear understanding of the possible impacts the construction of the turning bay could have on their property, as the notation states, no approval has been sought for such an important component of the building works. The architectural drawings for the ground floor layout, which includes the garage, driveway and other infrastructure make no reference to the turning bay.

It is noted that no stormwater management plan was submitted with the current DA and the civil plans have the following notation on page C02: "drainage (such as grated drains and pits) by others to discharge to stormwater in an approved manner to AS3500. Refer to architects or hydraulic specifications and details". Relevant reports are, obviously, missing.

In addition to the matters raised above, we wish to submit comments provided by Taylor Consulting Engineers as they related to DA2020/1596 (as amended). A number of the matters raised in this report are still relevant to the current application and they are provided below to support our clients' position regarding the existing right of carriageway and associated access driveway, which is currently non-compliant in a number of areas. The matters that remain non-compliant are set out below, together with relevant comments relating to the safety of pedestrians and vehicles using the right of carriageway:

Relevant sections of the Taylor Consulting Engineers report are as follows:

"The existing partially suspended concrete right of access driveway services the subject site and also 15 and 13 Florida Road, Palm Beach. Analysis of the existing driveway with reference to AS2890.1 2014 Off-Street Parking, found compliance and safety issues that will be exacerbated due to increased traffic loading which would result from the proposed development. We note that the existing concrete crash barrier and galvanised steel handrails either side of the driveway are in a poor state of repair and non-compliant. "

Comment: a photo of the existing barrier and chain as part of the elevated driveway (as shown on the following pages) demonstrates the level of non-compliance with the relevant Australian Standards, as referred to above.

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

Comment: the comments above are still relevant to the subject application. No updated details have been provided on how the turning bay will be constructed and the impacts it could have on neighbouring properties.

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

Comment: This issue remains unresolved.

"The proposed amendments to the right of access do not satisfactorily address these safety issues."

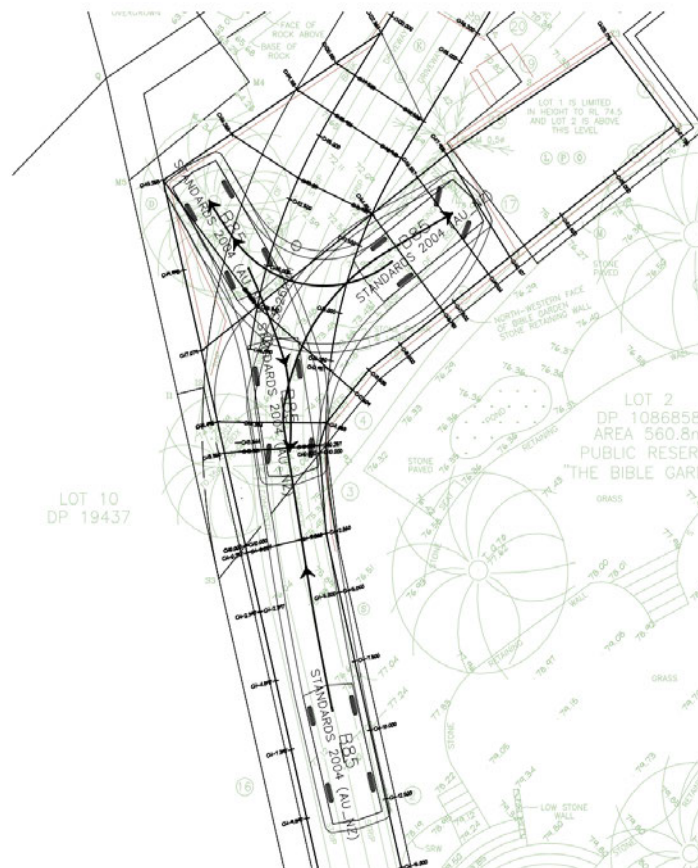
"Longitudinal sections of the proposed driveway show the reconstructed section of the right of access being completely demolished and rebuilt. Note that this is the primary vehicular and pedestrian access for the owners of 15 and 13 Florida Road, and the owners of these properties will not have safe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

Source: Taylor Consulting Engineers, 21 February 2021

It is also noted that swept paths provided by NB Consulting on Drawing Number C30B show a vehicle reversing into the right of access from the proposed garage without any line of sight to traffic entering or exiting the drive from above or below the proposed development. Therefore, this component of the development poses a significant risk to both pedestrians and other vehicles sharing the right of access.

Further, it is interesting to note on this same drawing (i.e., NB Consulting Engineers' Drawing No C30B), the vehicle entering the garage in a forward direction occupies 70% of the driveway area whereas Architectural Drawing No DA02 Entry Level shows a garage accommodating two motor vehicles within, and one parked outside, on the driveway leading into the garage. Based upon Architectural Drawing DA02, it would be physically impossible for a vehicle driving down the right of carriageway driveway to enter the garage in a forward direction if there were to be a vehicle parked on the driveway to the garage, or with one vehicle parked in the garage.

Architectural Drawing No DA02 does not show any turning bay and, once again, we find this incomprehensible as there is a direct conflict between the civil engineering plans and the architectural drawings. Why is the turning bay missing from the Architectural Drawing titled Entry Level, as shown on this drawing on the following page?



THREE (3) POINT TURN

SWEPT PATHS FOR B85 FROM DRIVEWAY 1 GARAGE AREA INTO TURNING BAY

REFER AS/NZS 2890.1:2004

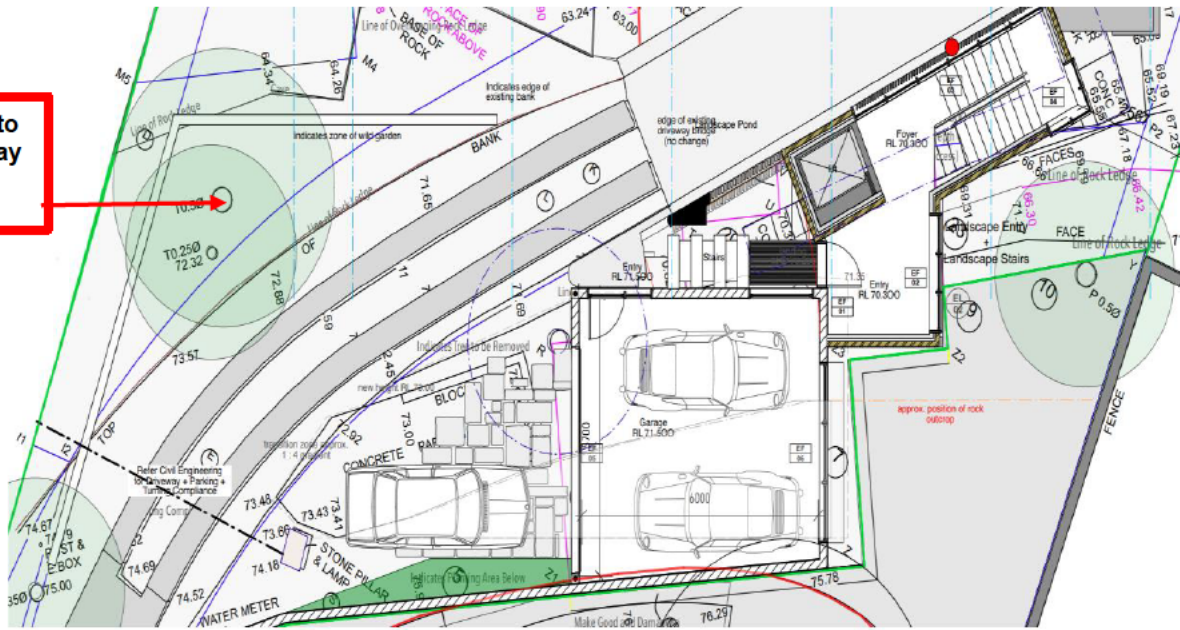
SCALE = NTS

NOTE: NO SWEPT PATH ANALYSIS HAS BEEN UNDERTAKEN FOR VEHICLES ENTERING OR EXITING THE ALLOTMENT FROM MITCHELL ROAD

Source: NB Consulting Engineers Drawing C30B Swept Path Analysis, 19 March 24

It is respectfully submitted that if Council were to approve the current DA, a Condition of Approval **must** unequivocally form part of the Notice of Determination requiring all components of the driveway within the right of carriageway including the elevated driveway to be compliant with the current relevant Australia Standards.

No reference to any turning bay on plan



Source: Housed Architectural Plans – Drawing DA02 Entry Level, 13 June 24

Existing concrete crash barrier and galvanised steel handrails are non-compliant with the relevant Australian Standards.



Source: Tomasy Planning

CLOSURE OF SHARED DRIVEWAY – FLORIDA ROAD AND MITCHELL ROAD, PALM BEACH (Council reference 2022/482602)

It is also relevant for Council to understand that due to actions taken by Council on **8 August 2022**, Council has inspected the shared driveway vehicular access at **No 7 Florida Road** and recommended that it was unsafe for use by pedestrians and light vehicles due to the deteriorating condition of the driveway. Council advised that immediate action had been taken to close off access to this section of the shared driveway until permanent repairs were completed. Council’s letter to our client stated that the works were scheduled to commence on **8 August 2022**.

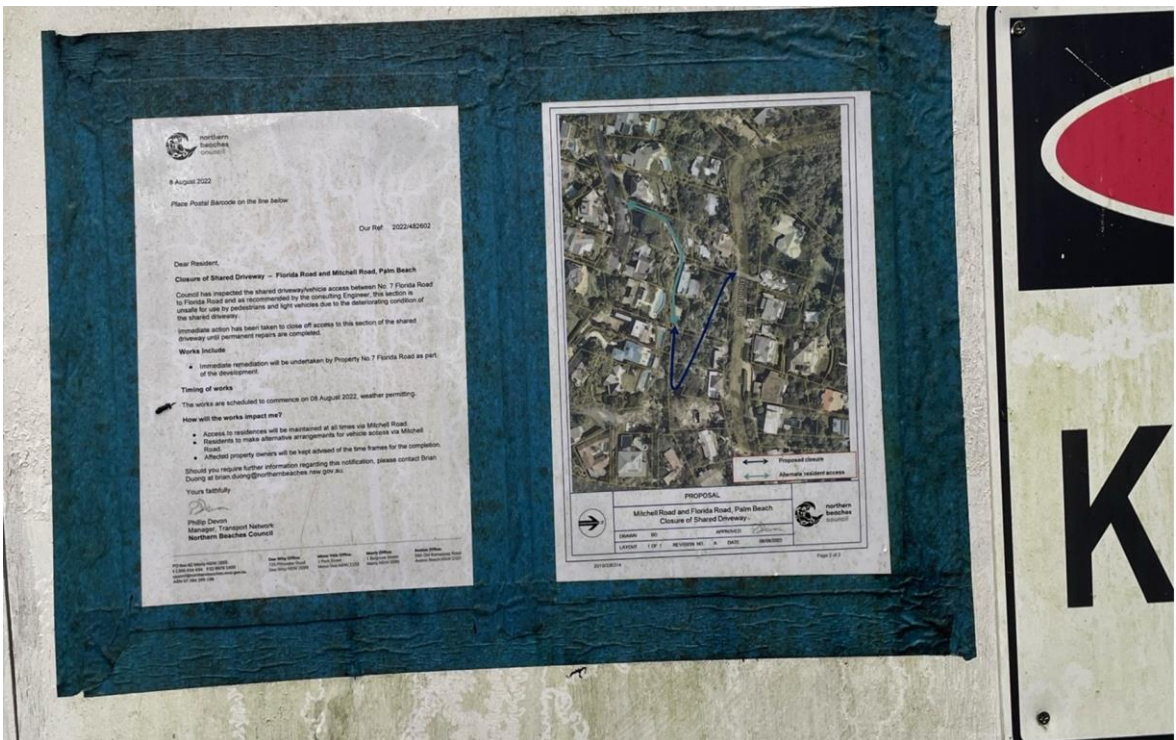
It is noted that as at the time of preparing this submission and in other submissions that have been made to Council, access to Florida Road by way of the legal right of carriage way remains closed. It is blocked off by a series of tall timber gates which have been installed by the builder constructing a dwelling on No. 7 Florida Road, Palm Beach. Therefore, our clients cannot rely on any alternate vehicular or pedestrian access other than Mitchell Road as Council’s actions have resulted in the Florida Road access facilities being denied. For the last 2 years Council has taken no action to ensure that the remediation works by property No 7 Florida Road are completed. Council’s correspondence states that “access to residences will be maintained at all times by Mitchell Road”. Council’s note also states that affected property owners will be kept advised on the timeframe for the completion of the works. During the past two years there has been no update provided by Council on the immediate remediation works that were to be undertaken by property No 7 Florida Road.



Source: photographed by Tomasy, 9 July 24



Source: photographed by Tomasy, 9 July 24



Source: photographed by Tomasy, 9 July 24

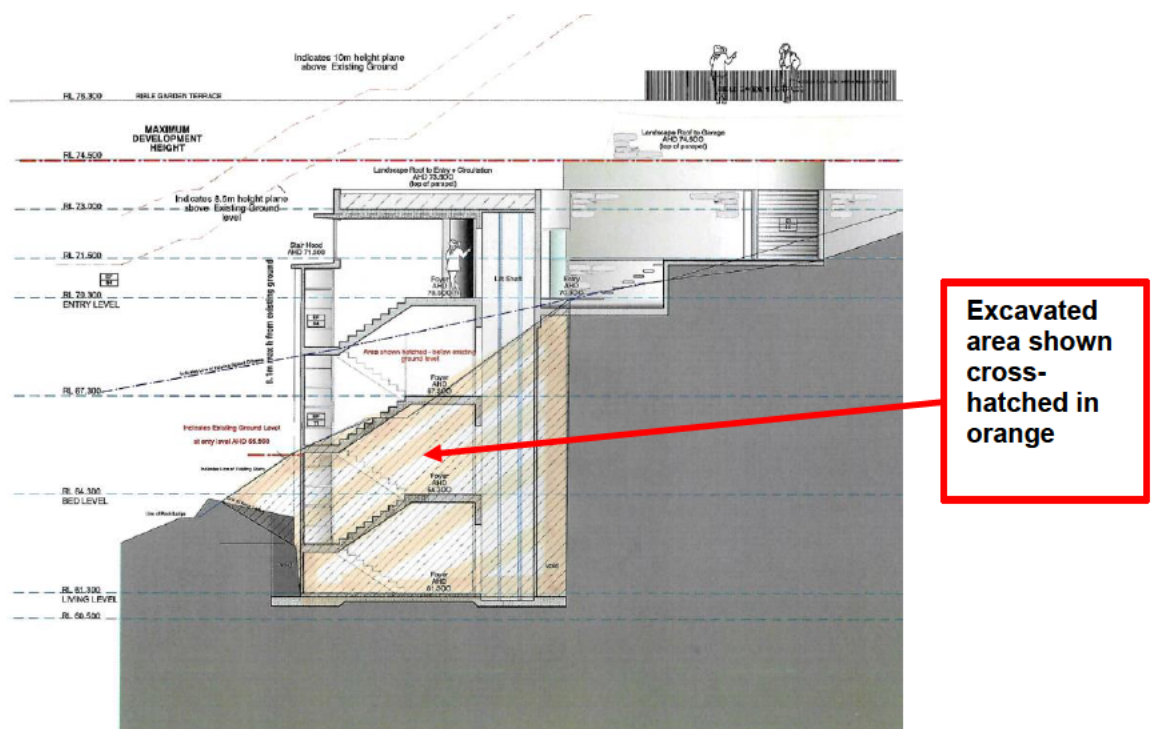
Comment: the barricade at Florida Road entrance to the right of carriageway has affixed to it a copy of Council’s letter dated 8 August 2022. Very interesting that Council’s Notice of 8 August 2022 required that, “immediate remediation will be undertaken by property No 7 Florida Road as part of the development”. It is evident that Council’s “immediate” has no relevance whatsoever. However, given the current DA before Council for No 6 Mitchell Road, this situation needs to be resolved without further delay.

CONSTRUCTION, DEMOLITION AND EXCAVATION

The proposal is inconsistent with Clause 6.2 of Pittwater LEP 2014 and Clause B8.1 (Construction, Demolition and 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.

The proposal is also 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.

It is noted that there is no construction management plan or traffic management plan has been submitted with the subject application. It is evident from the plan below that the proposed works involve massive earthworks including excavation to accommodate the proposed four storey lift tower.



COMMENT: The documentation that was submitted with the development application fails to adequately address how the material is to be excavated, where it will be stored on site and there is no documentation submitted to show a construction zone and in particular how the existing house is to be demolished and where the material that is to be removed will be stored and transported from the site. The waste management plan is considered to be totally inadequate and fails to address critical factors that have been raised in this submission above. As referenced in the section dealing with the objectives of a land zoned as RE1 Public Recreation, it is difficult to comprehend how this proposal meets those objectives when you have a look at the scale of the excavation to take place on that component of the building which is zoned for public recreation purposes. It is indeed hypocritical on Council's behalf to have supported the re-zoning of this land to allow an additional land use to be introduced as a permissible use for a dwelling house when the land is zoned for public recreational purposes which abuts the bible garden which has special conservation and heritage values. At no stage has the owners of the subject land ever consulted our clients regarding the application that is before Council and in the past the application that sought a planning proposal to have the land rezoned to permit a dwelling house to be a permissible land use on land zoned public recreation.

A detailed assessment has been undertaken of the submitted plans, Statement of Environmental Effects and other relevant documentation supporting the application and, in this regard, the application is not considered to be acceptable and should be refused by Council for the reasons outlined below:

1. *The proposed erection of a dwelling house on land zoned for RE1 Public Recreation contravenes all of the relevant objectives of this zoning under Pittwater Local Environmental Plan 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.*
 - (iii) *Owners consent has not been obtained for the work on Deposited Plan 1086858, Lot 2 above AHD 74.5. Therefore, the DA is invalid.*
 - (b) *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 exceeds the 10m maximum height development standard, and a Clause 4.6 variation has not been submitted. Refer to drawing DA09 – Eastern Elevation.*
5. *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.*
6. *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.*
7. *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.”*

It is essential that access to Lots 7 and 8 DP 10167 (15 and 13 Florida Road) is maintained at all times during construction (if approved) and is a matter to be taken into consideration pursuant to Section 4.15(1) (b) – the likely impacts of the development as well as Section 4.15(1) (e) the public interest. Continued unimpeded access to No 15 and No 13 Florida Road is of itself of such importance that it may well cause the DA to be refused for this reason alone.

We would welcome the opportunity of discussing this application with you.

Yours sincerely



Denis Smith, Principal