

ITEM 0	PEX2022/0003 PLANNING PROPOSAL AT 6 MITCHELL ROAD, PALM BEACH
AUTHORISING MANAGER	MANAGER, STRATEGIC & PLACE PLANNING
TRIM FILE REF	2022/716051
ATTACHMENTS	1 Heads of Agreement between Pittwater Council and Trustees Bible Garden signed 2004 2 Planning Proposal as updated by Council for 6 Mitchell Road Palm Beach 3 Summary of Submissions and Responses

PURPOSE

To report the assessment of a Planning Proposal for land at 6 Mitchell Road, Palm Beach to the Northern Beaches Local Planning Panel (Panel) and to recommend that the Panel advise Council to progress the Planning Proposal to a Gateway Determination.

SUMMARY

The property at 6 Mitchell Road, Palm Beach is known locally as the 'Bible Garden'. The 'Bible Garden' is a garden containing plants mentioned in the bible that has been open to the public since it was established in the 1960s. The land had previously been settled in a charitable trust. In 2004, the trustees of the Bible Garden sought to subdivide the land to create separate lots for the existing Bible Garden at the front (southern portion) of the site and the residential use at the rear (northern portion) of the site such that:

- The Bible Garden area was to be vested in Council as community land and zoned as a public reserve.
- The balance of the land would continue to be used for residential purposes.

This land is naturally subdivided by a cliff. The rear of the land is traversed diagonally by a right of way and driveway. Over the cliff section, the right of way is provided by an elevated concrete driveway. The driveway provides residences to the east of the site with access to Mitchell Road. A cottage exists under the elevated section of driveway. A viewing platform exists above the existing house/parking space for the house.

The steep topography and the overhanging viewing platform created challenges in relation to a two dimensional subdivision. When the land was subdivided, the viewing platform for the Bible Garden (that overhangs the existing house/parking space for the house) was included in the front lot and the house and parking space underneath the viewing platform was included in the rear lot (now 6 Mitchell Road and the subject of the Planning Proposal) via stratum subdivision.

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A"). This included the land above 74.5AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential "A"). This includes the portion of 6 Mitchell Road below 74.5 AHD.

On 26 June 2014, Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

The provisions in the Standard Instrument LEP didn't allow for as much flexibility in the zoning of this unique site. This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of this Planning Proposal application) – The land was rezoned from Zone No. 2 (a) (Residential “A”) as follows:
 - majority of the site zoned C4 Environmental Living; and
 - the portion of the site below 74.5AHD, directly underneath the Bible Garden’s viewing platform, became zoned RE1 Public Recreation.

Under the RE1 Zone, ‘dwelling house’ is prohibited.

- 6a Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation “A”) to RE1 Public Recreation.

On 25 January 2021, a Development Application (DA2020/1596) was lodged to construct a dwelling house, including a swimming pool, driveway, and garage on 6 Mitchell Road. Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2022, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

On 12 September 2022, Planning Hub submitted Planning Proposal application (PEX2022/0003) for 6 Mitchell Road Palm Beach. The application seeks to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) to include as an additional permitted use, “dwelling house” on that portion of the site zoned RE1 Public Recreation and to restrict any future residential development on 6 Mitchell Road to a height of 74.5AHD.

Allowing a “dwelling house”, as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation due to it being underneath the Bible Garden’s overhang will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering or weakening the natural environment for recreational purposes; or
- diminishing public use of, or access to, public open space resources.

The Planning Proposal was placed on non-statutory exhibition for three weeks, from 28 September 2022 to 21 October 2022 inclusive. Six valid submissions were received.

An assessment of the Planning Proposal against the Department of Planning & Environment’s (the ‘Department’) *‘Planning Proposals: A Guide to Preparing Planning Proposals’* confirms that the proposal provides sufficient strategic merit and overall demonstrates site-specific merit.

RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

- A. That the Northern Beaches Local Planning Panel recommend that Council support the Planning Proposal to permit a dwelling house limited to a building height of 74.5AHD as an additional permitted use on 6 Mitchell Road Palm Beach, as presented in the attached Planning Proposal.

BACKGROUND

6 Mitchell Road (the subject of the Planning Proposal) and 6A Mitchell Road were previously one residential allotment (known as 6 Mitchell Road, Lot 2 DP 213975) with a total site area of 1,196m².

The land is naturally subdivided by a cliff with a garden on the upper level and a dwelling house on the lower half of the property. This garden, known as the Bible Garden, was established in 1962 and was so named as the garden contains plants mentioned in the bible. It has been open to the public for weddings, baptisms, and informal visits since it was established in the 1960s. The land had previously been settled in a charitable trust.

From 1972 to 1994, Deaconess Beatrice Violet Robinson, as curator of the garden and Trustee of the Bible Garden Memorial Trust, maintained the Bible Garden for the public's enjoyment.

Heads of Agreement

Following the death of Beatrice Robinson in 1994, the Trustees of the Bible Garden approached the then Pittwater Council seeking advice regarding the retention of the 'Bible Garden' curtilage whilst excising the remaining portion of land containing the dwelling house.

As a result, a Heads of Agreement (Attachment 1) was signed by Council and the Trustees of the Bible Garden on 9 February 2004 to investigate opportunity to subdivide the property as follows:

- Excise the portion of land containing the existing dwelling from the lot containing the Bible Garden curtilage.
- The new lot containing the existing dwelling being sold as a residential allotment.
- Retain the lot containing the Bible Garden curtilage.

Development consent for subdivision of land

On 11 November 2004, a Development Application (N0824/04) to subdivide the land into two allotments was lodged with Council, consistent with the signed Heads of Agreement. On 4 April 2005, Council consented to the subdivision into two lots subject to conditions.

The steep topography and the overhanging viewing platform created challenges in relation to a two-dimensional subdivision, resulting in the creation of the two properties as follows:

- Lot 1 DP1086858, now known as 6 Mitchell Road, contains the existing dwelling house and parking space underneath the viewing platform included in the rear lot via stratum subdivision.
- Lot 2 DP1086858, now known as 6A Mitchell Road, containing the 'Bible Garden'. The viewing platform for the Bible Garden (that overhangs the existing house/parking space for the house) was included in this lot.

This lot was transferred into Council ownership on 7 February 2006, classified as community land under Council's Land Register in accordance with the Local Government Act. Although Council owns this land, it is managed by the 'Friends of the Bible Garden Memorial' via a Management Deed signed by Council, The Trustees of the Bible Garden and then owner of 6 Mitchell Road (the subject site) on 23 March 2006.

On 18 December 2006, Council adopted the Bible Garden - Palm Beach Plan of Management, which lists what land uses are permissible (as exempt or with consent) under this adopted plan. A copy of the signed Management Deed is also appended to the adopted Plan of Management.

An aerial map showing the location of 6 Mitchell Road (the subject site) and 6A Mitchell Road (the Bible Garden) is shown on Figure 1.



Figure 1: Location of 6 and 6A Mitchell Road Palm Beach

Pittwater Local Environmental Plan 1993

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential “A”) to Zone No 6 (a) (Existing Recreation “A”). This included the land above 74.5AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential “A”). This includes the portion of 6 Mitchell Road below 74.5 AHD.

An extract of the zoning map, obtained from the adopted Bible Garden Plan of Management, is below.



Figure 2 – Zoning under Pittwater LEP1993 of 6 and 6A Mitchell Road

Pittwater Local Environmental Plan 2014

On 26 June 2014, Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of this Planning Proposal application) – The land was rezoned from Zone No. 2 (a) (Residential “A”) as follows:
 - majority of the site zoned C4 Environmental Living; and
 - the portion of the site below 74.5AHD, directly underneath the Bible Garden’s viewing platform, became zoned RE1 Public Recreation.

Under the RE1 Zone, ‘dwelling house’ is prohibited.

- 6a Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation “A”) to RE1 Public Recreation.

Extract of the zoning map is in Figure 3.

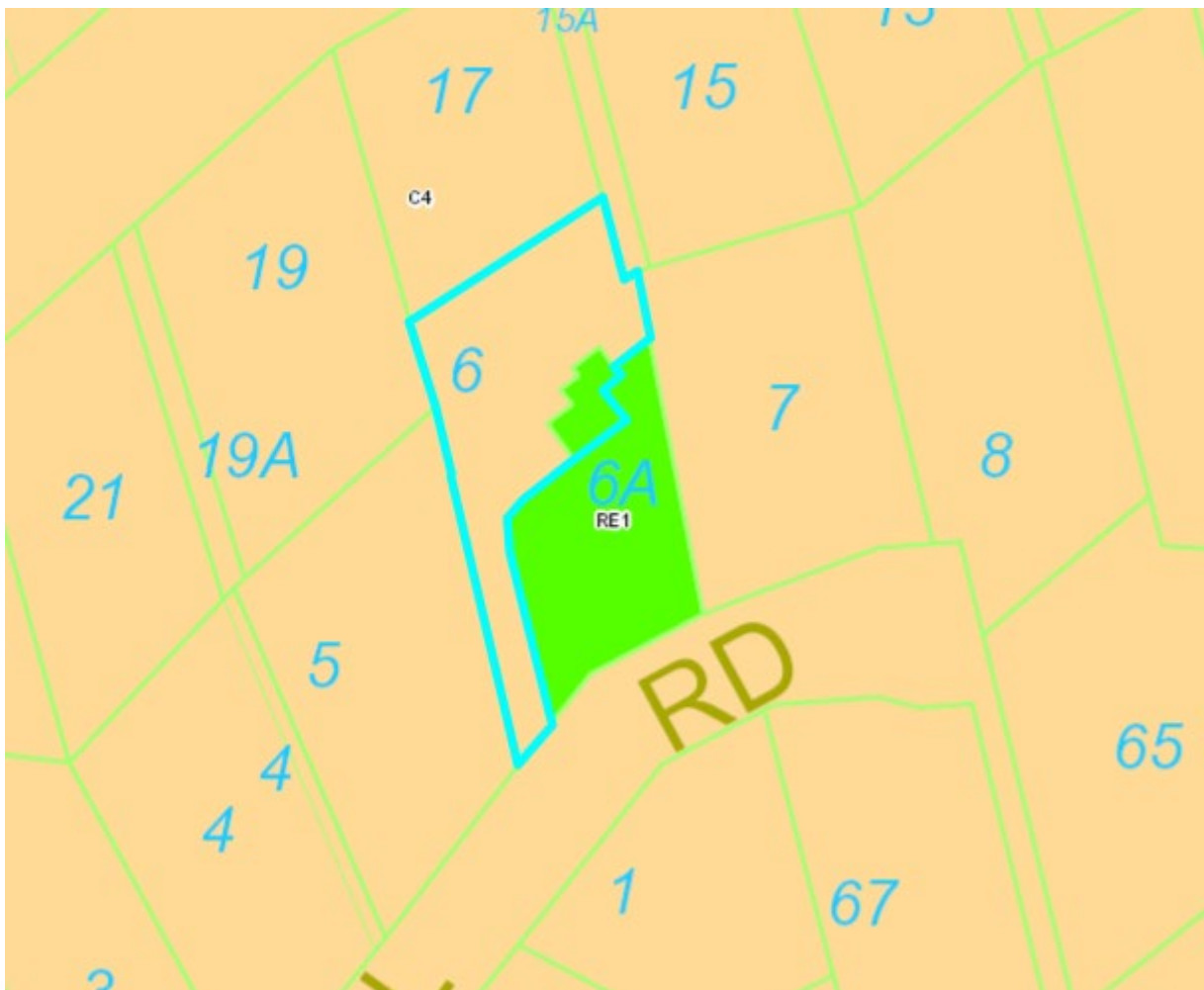


Figure 3: Extract of Zoning under Pittwater LEP 2014 for 6 and 6A Mitchell Road

Recent Development Application

On 25 January 2021, a Development Application (DA2020/1596) was lodged to construct a dwelling house, including a swimming pool, driveway and garage on 6 Mitchell Road. Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2022, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

Pre-Lodgment Meeting

Following refusal of the DA2020/1596, pre-lodgement meetings were held between the landowner's legal representatives and Council on 19 August and 14 December 2021 to discuss the RE1 zoning on the portion of the land.

SITE DESCRIPTION

The subject site, known as 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858), is a battle axe shaped lot located on the northern side of Mitchell Road. Access to this property is provided via an elevated driveway from Mitchell Road along the western (side) boundary. This elevated driveway also provides access to 15 Florida Road, located north-east of the subject site (see Figure 4).

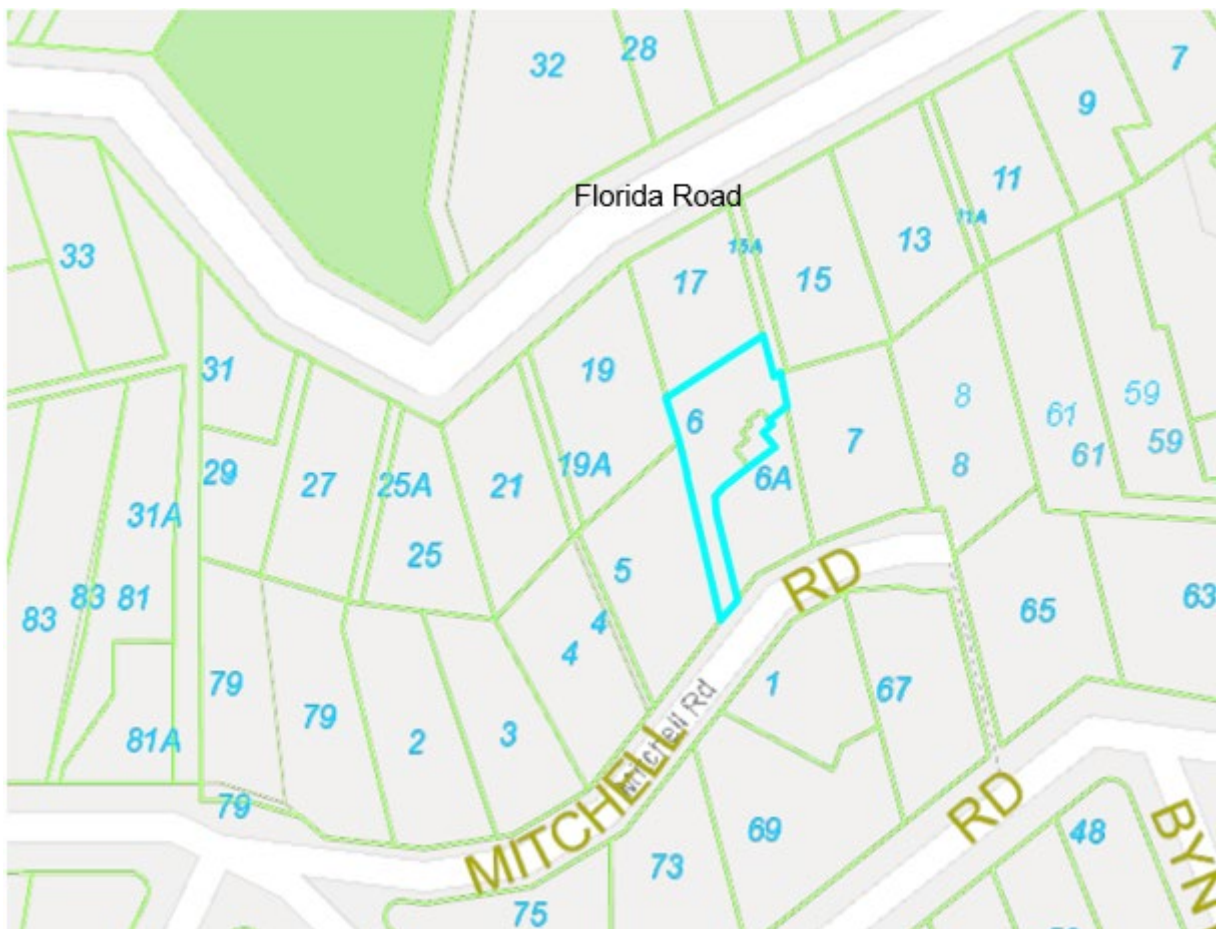


Figure 4: Locality Map - 6 and 6A Mitchell Road, and 15 Florida Road.

An existing dwelling is located on the lower portion of the subject site. Pedestrian access into the dwelling from Mitchell Road is via stairs sited beside the elevated driveway (See Figure 5).



Figure 5: Photo – Pedestrian access from Mitchell Road to the existing dwelling on 6 Mitchell Road is via these stairs.

As mentioned above, “The Bible Garden” at 6A Mitchell Road not only abuts this land but overhangs directly above a portion of the subject site. The whole of 6A Mitchell Road (inclusive of the overhang) is a locally listed heritage item. Because of the stratum subdivision, the portion of the site underneath the Bible Garden overhang is also listed as a heritage item. A picture showing the relationship of the Bible Garden and the portion of the site underneath the Bible Garden overhang is Figure 6.



Figure 6: Photo of 6 Mitchell Road, the land directly above parking platform is 6A Mitchell Road.

The surrounding properties are a mix of established low density residential and environmental living area characterized by low density residential dwellings.

THE PROPOSAL

The intent of the proposal is to amend the PLEP 2014 to include the additional permitted uses of a dwelling on the portion of the subject site zoned RE1, to facilitate future residential development consistent with the Heads of Agreement signed 9 February 2004 between the Trustees of the Bible Garden and then Pittwater Council.

A provision is proposed restricting the building height of any future residential development on the site to 64.5AHD, ensuring that the views of Palm Beach from The Bible Gardens are preserved. This was further demonstrated by the height poles installed on site as shown on the photo below.

- Yellow string shows the existing level of the Bible Garden at 76.3AHD,
- Red string defines the 74.5AHD height on 6 Mitchell Road, being the maximum building height specified in the signed Heads of Agreement and registered covenant.



Figure 7: Photo shows the Height Poles installed on 6 Mitchell Road Palm Beach

ASSESSMENT OF THE PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Department of Planning, Industry and Environment's '*Planning Proposals: A Guide to Preparing Planning Proposals*'.

Part 1 – Objectives or Intended Outcomes

The applicant's stated objectives and intended outcomes of the Planning Proposal are to seek an amendment to PLEP 2014 to allow a section of the subject site zoned RE1 Public Recreation to permit development for the purposes of a dwelling; and to seek residential development on the site

cannot exceed a height of 74.5AHD, in line with the intended use of the site as outlined in the Heads of Agreement Contract.

Response

Applying the rules of the Standard LEP Template required that land, including land beneath 74.5 AHD under the Bible Garden overhang was zoned RE1 Public Recreation under Pittwater LEP 2014.

This change in zoning under Pittwater LEP 2014 resulted in the prohibition of a “dwelling house” to occur on that portion of site zoned RE1, contrary to the signed Heads of Agreement.

The proposal is to rectify this zoning prohibition, to permit a dwelling house on a small portion of the land. This is considered reasonable and in keeping with the signed Heads of Agreement upon which Council then received the Bible Garden land.

Imposing a building height of 74.5AHD for any future residential development on the subject site is also appropriate and is consistent with the signed Heads of Agreement.

The Planning Proposal is site-specific and can only be applied to 6 Mitchell Road, Palm Beach.

Part 2 – Explanation of Provisions

The applicant seeks to:

- *Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site (Sheet APU_015) to identify the portion of the site zoned RE1 Public Recreation for additional permitted uses referenced in Schedule 1 of LEP.*
- *Amend Schedule 1 of the Pittwater LEP 2014 to include a provision relating to the subject site that would permit development for the purposes of a dwelling house. Schedule 1 is to also detail that any future residential development on the site cannot exceed a height of 74.5 AHD.*

Response

The proposed amendments to Pittwater LEP 2014 support the creation of an APV to permit dwelling house on that portion of land currently zoned RE1. This is best served by amending the Additional Permitted Uses Map, as proposed by the applicant, and identify 6 Mitchell Road for additional permitted uses as referenced in Schedule 1 of Pittwater LEP 2014.

Currently, the Height of Building Map and Clause 4.3 Height of Buildings under Pittwater LEP 2014 applies to the land. The applicant’s proposal to detail that any future residential development on the site cannot exceed a height of 74.5AHD by way of Schedule 1 is appropriate. It should be clear in this future provision, that it applies to all of 6 Mitchell Road and not just the portion of the site zoned RE1 to provide greater certainty that the maximum building height for this land is 74.5AHD. The measurement of 74.5AHD ensures that any future development is below the level of the Bible Garden and thus retains significant and important views out from the garden to the ocean, Pittwater and beyond.

Accordingly, it is proposed to amend the Explanation of Provisions to read as follows:

- a) Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site 6 Mitchell Road, Palm Beach (Sheet APU_015) to identify the site for additional permitted uses referenced in Schedule 1 of Pittwater LEP 2014.
- b) Amend Schedule 1 of the Pittwater LEP 2014 to include a provision for 6 Mitchell Road Palm Beach:

- Despite any other provision in this Plan, any future residential development on 6 Mitchell Road Palm Beach cannot exceed a height of 74.5 AHD.
- Permit development for the purposes of a dwelling house on that portion of the land zoned RE1 Public Recreation.

As a result of these changes, an amended Planning Proposal is in Attachment 2.

Part 3 – JUSTIFICATION

Strategic Merit

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The applicant's report states the site has strategic merit for the following reasons:

- It will facilitate the future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden;
- It will enable appropriate residential development that recognises the heritage significance of the site and surrounding area; and
- It will not adversely impact on the ecological, cultural or scenic significance of the site and surrounding area.

Response

The above mentioned reasons are supported. This Planning Proposal is not the direct result of the endorsed Northern Beaches Local Strategic Planning Statement, strategic study or report. However, the proposal is consistent with the Heads of Agreement signed in 2004 by Council and the then owners of the land, as well as a number of the objectives and priorities within Northern Beaches Local Strategic Planning Statement - Towards 2040 (detailed against question 3 below).

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant states that there were three options regarding potential development on site:

- Option 1: Do nothing
Does not promote social and economic potential or resolve issues with split zoning on site.
- Option 2: Lodge Development Application
Not viable as the current zoning does not allow for the development envisaged.
- Option 3: Planning Proposal
Objectives and intended outcomes can only be achieved through the amendment of the Pittwater Local Environmental Plan 2014.

Response

Yes, a Planning Proposal is the only way of achieving the objectives and intended outcomes for this site that is also consistent with the signed Heads of Agreement.

The signed Heads of Agreement included a condition that any future residential development cannot exceed 74.5AHD.

Allowing a “dwelling house”, as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation due to it being underneath the Bible Garden’s overhang will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering and weaken the natural environment for recreational purposes; and
- diminishing public use of, or access to, public open space resources.

Section B - Relationship to Strategic Planning Framework

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The applicant’s report states that the Planning Proposal is consistent with both the Greater Sydney Region Plan and the North District Plan.

The proposal will not require additional utility services or social infrastructure. The property is in an existing residential area and is adequately serviced and already connected to an existing transport network.

The applicant’s heritage consultant Weir Phillips (21/07/22) provided recommendations in ensuring the locally listed Bible Garden is not impacted by future development on the site.

Response

It is agreed that the proposal is consistent with both the Greater Sydney Region Plan and the North District Plan.

The Planning Proposal will also achieve the following objectives under the Greater Sydney Region Plan:

- Objective 7: Communities are healthy, resilient and socially connected.
- Objective 13: Environmental Heritage is identified, conserved and enhanced.
- Objective 28: Scenic and cultural landscapes are protected.
- Objective 31: Public Open Space is accessible, protected and enhanced.

4. Is the planning proposal consistent with a council’s local Strategy or other local strategic plans?

The applicant’s report states that the Planning Proposal is consistent with the endorsed Northern Beaches Local Strategic Planning Statement (LSPS).

The applicant has stated that the proposal will promote sustainable residential development on the site with a clear connection and relationship with the surrounding natural environment.

Response

It is agreed that the proposal is consistent with the LSPS. As discussed above, it is proposed to include a building height provision to ensure that views to Palm Beach from the Bible Garden are preserved and there is minimal impact on the heritage significance of the Bible Garden.

The Planning Proposal is most consistent with the following priorities under Council's LSPS:

- Priority 6 - High Quality open space for recreation
- Priority 11 - Community Facilities and services that meet the changing community needs
- Priority 18 - Protected, conserve and celebrated heritage.
- Priority 29 - A thriving, sustainable tourism economy

5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The applicant has outlined that the Planning Proposal is most consistent with the following SEPPs:

- SEPP (Biodiversity and Conservation) 2021-
 - Chapter 2 - Vegetation in Non-Rural Area
 - Chapter 6 - Bushland in Urban Areas

The proposal had been designed to minimize impacts on the surrounding landscape as outlined in the Flora and Fauna assessment report and Arborist Report.

- SEPP (Resilience and Hazards) 2021
 - Chapter 3 Hazardous and Offensive Development

The submitted Geotechnical report found that there were no matters that affect consideration of the Planning Proposal.

The applicant also states that other SEPPs are to be addressed during a Development Application.

Response

The Planning Proposal is not inconsistent with the State Environmental Planning Policies (SEPPs) as listed in the Table below:

SEPPs (as at March 2022)			
Focus Areas	State Environmental Planning Proposal	Applicable	Is the Planning Proposal consistent with SEPP?
Housing	Housing SEPP	N/A	N/A
Transport and Infrastructure	Transport and Infrastructure SEPP	N/A	N/A
Primary Production	Primary Production SEPP	N/A	N/A
Biodiversity and Conservation	Biodiversity and Conservation SEPP	YES	YES
Resilience and Hazards	Resilience and Hazards SEPP	YES	YES
Industry and Employment	Industry and Employment SEPP	N/A	N/A
Resources and Energy	Resources and Energy SEPP	N/A	N/A

Planning Systems	Design Quality of Residential Apartment Development	N/A	N/A
	Precinct SEPPs		
	• Eastern Harbour City SEPP	N/A	N/A
	• Western Parkland City SEPP	N/A	N/A
	• Central River City SEPP	N/A	N/A
	• Regional SEPP	N/A	N/A
	Codes SEPP	N/A	N/A
No.65	Design Quality of Residential Apartment Development	N/A	N/A
	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	YES	YES
	(State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	YES	YES

Table 1: Compliance with State Environmental Planning Policies

6. Is the Planning Proposal Consistent with Applicable Ministerial Directions (Section 9.1 Directions)?

The applicant's report lists the following Ministerial Directions:

- Implementation of Regional Plans: Consistent
- 1.4 Site Specific Provisions: Inconsistent
- 3.1 Conservation Zones: Consistent
- 3.2 Heritage Conservation: Consistent
- 4.4 Remediation of Contaminated Land: Consistent
- 4.5 Acid Sulfate Soils: Consistent
- 4.6 Mine Subsidence and Unstable Land: Consistent
- 5.1 Integrating Land use and Transport: Consistent
- 5.2 Reserving Land for public: Consistent
- 6.1 Residential Zones: Consistent

Response

With the exception of the Ministerial Direction 1.4 Site Specific Provisions, this Planning Proposal is consistent with the remaining Minister Directions. Direction 1.4 Site Specific Provisions reads as follows:

- “(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either:
- (a) allow that land use to be carried out in the zone the land is situated on, or
 - (b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
 - (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.”

In this case, the inconsistency with this Ministerial Direction is minor and limited to this specific property.

Site-Specific Merit

Section C- Environmental, Social and Economic Impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A Flora and Fauna Assessment report by EcoLogical Consultants Australia Pty Ltd, May 2022 (the ‘EcoLogical Report’) and an Arborist report by Arbosaw, June 2022 (the ‘Arbosaw Report’) accompanied the Planning Proposal application.

The EcoLogical Report undertook a threatened species ‘test of significance’ assessment incorporating the following:

- On ground surveys on 18 August and 3 September 2019, and 14 May 2022;
- Bionet searches for flora, fauna and endangered populations to identify if there were previous records of threatened species occurring within the local area using a 10km radius around the site; and
- A review of the planning proposal and the proposed development it seeks to enable was evaluated for potential environmental impacts

The results found:

- No threatened flora and fauna species recorded on site during the survey.
- Trees on site are a mix of exotic and native Eucalyptus and Corymbia spp.
- No significant habitat features, values or landscape corridors will be impacted by any proposed development.
- The adjoining Bible Garden (public recreation area) will remain open to the public and unaffected by the proposal.
- The proposal will not significantly affect Large Forest Owls, Grey-headed Flying-foxes or microbats and will not result in the local populations being at risk of extinction.
- The proposal does not trigger the Biodiversity Offset Scheme (BOS) Threshold.

The report provides mitigation measures that would be more appropriately imposed on a future development consent on the land should this Planning Proposal be supported.

The Arbosaw Report undertook an assessment to identify impacts of the proposed development works on trees located within and adjacent to the subject site. It concluded that the Planning Proposal is suitable from a tree impact perspective provided the recommendations are implemented during the approval of a future Development Application.

Response

6 Mitchell Road Palm Beach is identified on the Pittwater LEP 2014 Biodiversity Map - Sheet BIO_015, and as a result calls up Clause 7.6 Biodiversity under the LEP.

Council's Senior Environment Officer - Biodiversity reviewed the application, advising as follows:

The Biodiversity Planning team do not raise any other issues or concerns in relation to the current Planning Proposal.

I note the updated Flora & Fauna Assessment which has assessed the biodiversity values of the portion of the site zoned RE1 Public Recreation, and generally agree with the report findings, namely that a significant impact to the environment is unlikely and the NSW biodiversity Offset Scheme is not triggered. A range of suitable management and mitigation measures are also detailed within the Report that could be applied to any future development of the site.

No threatened plant or animal species were found during the assessment as being on and within immediate vicinity of this property. The proposed additional permitted use on that portion of land zoned RE1 is not likely to adversely impact on critical habitat, threatened species, populations or ecological communities.

A range of suitable management and mitigation measures are also detailed within both the Flora and Fauna report and the Arborist report that are to be addressed during are to be further addressed if a Development Application is to result from the Planning Proposal.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Geotechnical

As the subject site is identified as being a Geotechnical Hazard H1 on the Geotechnical Hazard Map and the applicant included a Geotechnical Report by Davies Geotechnical Consulting Engineers (July 2022). Davies Geological Consulting Engineers have updated the report to reflect the intention of the Planning Proposal. The Geotechnical Report has concluded that considering the geotechnical conditions of the site and associated development, there are no matters that affect consideration of the Planning Proposal.

Response

No concern was raised regarding the geotechnical conditions that may affect the Planning Proposal.

Heritage

The applicant provided a Heritage report by Weir Phillips (issued 21/07/22) where it was concluded that the proposed additional permitted use within the small portion of land from RE1- Public Recreation at 6 Mitchell Road will have no impact on the significance of the adjoining heritage item (Bible Garden) because of the following reasons:

- *The proposed additional permitted use is in character with the original concept scheme envisaged when the site was subdivided and sold as part of the Heads of Agreement between Pittwater Council and the Trustees of the Bible Garden.*

- *The steep topography of the northern portion of the subject site is unusable by patrons of the Bible Garden. An additional permitted use in this portion of the site allows for a construction of a dwelling with a flat top structure (potential garage).*
- *Additional permitted use within the RE1 zoning will not result in a built form that when viewed from the most significant points at Mitchell Road and from within the Bible Gardens the dwelling will be concealed by the existing topography. There will no visual impact from this perspective.*
- *The character of the Bible Garden, as a site enjoyed for quiet contemplation and appreciation of the magnificent outlook towards Palm Beach will be unaffected by the proposed additional permitted use within the RE1 zoning.*
- *The proposed additional permitted use within the RE1 zoning is unlikely to reduce the user's ability to interpret the cultural landscape of the Bible Garden within its context.*
- *From Palm Beach and surrounds, a new dwelling built as a result of the additional permitted use in RE1 would be visible as one of a number of residential developments within the escarpment behind Palm Beach as a result of the proposed additional permitted use. Any new dwelling constructed would be visible in the landscape from these viewpoints but will have a lessened visual impact due to the scale and constrained nature of the site in comparison to other nearby residential developments. The visual impact from this perspective is considered to be minor.*
- *No other heritage items in the vicinity will be affected by future built form constructed as part of the planning proposal owing to the separation of these items from the subject site.*

Response

Advice from Council's Heritage Officer reads as follows:

The Planning Proposal is able to be supported from a heritage perspective as it will:

- enable a dwelling to be constructed as envisaged by the Heads of Agreement Contract between Council and The Bible Garden Trust; and
- not impact upon the heritage significance of The Bible Garden; and
- not impact upon important significant views from the garden out to Pittwater, Palm Beach, the ocean and beyond.

View Loss

The applicant's proposal has also provided a detailed account of a study conducted under consultation with the Committee of the Friends of the Palm Beach Bible Garden. Height poles were installed to determine the potential impact of any future development on the RE1 zoned land. The study had concluded that no portion of future residential development will impede on the existing views from the Bible Garden based on topography of the site, existing covenant and the indicative location of the garage as outlined in the Heads of Agreement Contract.

Response

As the site-specific provision involves the inclusion of a 74.5 AHD building height limit for any future residential development on 6 Mitchell Road (this would be despite clause 4.3 still applying to the land), there is greater certainty that the views to Palm Beach, particularly when viewed from the Bible Garden terrace are preserved and consistent with the signed Heads of Agreement.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

The applicant states that the proposal will facilitate the development of the whole site for residential purposes as intended under the Heads of Agreement, and that the social and economic benefits include increasing residential accommodation in the area.

Response

If progressed, the Planning Proposal will facilitate the whole of 6 Mitchell Road to be used for a dwelling house, consistent with the signed Heads of Agreement. The proposal will not result in additional dwellings being permitted on the land but simply will facilitate a dwelling house to be permissible on that part of the land zoned RE1.

Limiting the future residential development to 74.5AHD ensures no obstruction of views to Palm Beach particularly from the Bible Garden terrace and impact on the heritage significance of the Bible Garden can be minimized. This allows the land to be used and enjoyed by the owners; whilst at the same time the use of the Bible Garden can continue to be enjoyed by the community.

Section D - State and Commonwealth Interests

Q10. Is there adequate public infrastructure for the Planning Proposal?

The proposal states that the site contains services and utilities required to enable residential development as it is located in an established neighborhood. An additional permitted uses for the purposes of a dwelling on the portion of the subject site zoned RE1 Public Recreation will not negatively impact on the surrounding utilities and services in the immediate area and existing services can be utilise in any future development of the site.

Response

6 Mitchell Road is an existing serviced property within an established neighborhood.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with Gateway determination?

If the Planning Proposal is progressed and receives a Gateway Determination, the following public authorities will be consulted:

- Sydney Water;
- Ausgrid; and
- NSW Office of Environment and Heritage.

Part 4 Consultation

Community Engagement

The Planning Proposal was originally placed on non-statutory public exhibition for 14 days in accordance with the Northern Beaches Community Participation Plan from 28 September to 13 October 2022. Notification included:

- Notification letters to adjoining landowners and occupiers;
- Email to community members who have registered their interest;
- An updated Council Public Exhibition website 'Your Say' with relevant information; and
- Council's Community News.

On 12 October 2022, the notification period was extended to 21 October 2022.

The issues raised in the six (6) valid submissions included:

- Wanting garage on the concept plan to be lowered;

- Vegetation that will feature on garage roof as shown on garage height should be at maximum development height;
- New structure will obscure view;
- Unlawful public exhibition;
- Unclear amendment proposal;
- Garage roof vegetation upkeep issues;
- Extension of exhibition time; and
- Planning Proposal is unlawful.

A summary of the 6 valid submissions and responses to the issues raised is in Attachment 3 to this report.

Agency Referrals

If the amended Planning Proposal (Attachment 2) is supported, this will be the Planning Proposal presented to Council for its consideration.

If the Council agrees to progress the Planning Proposal, then it will be forwarded to the Department seeking a Gateway Determination.

Timing

It is anticipated that the timeframe for the completion of the Planning Proposal is approximately 10 to 12 months from the date of Council's approval to proceed to requesting Gateway Determination.

Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The matter will be reported back to Council for final consideration following exhibition.

LINK TO COUNCIL STRATEGY

The Planning Proposal relates to the following goals of the Shape 2028 Northern Beaches Community Strategic Plan:

- Goal 7 - *'Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community'*;
- Goal 8 - *'Our neighbourhoods inspire social interaction, inclusion and support health and wellbeing'*; and
- Goal 11 - *'Our community feels safe and supported'*
- Goal 12- *'Our community is friendly and supportive'*
- Goal 22- *'Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community'*

FINANCIAL CONSIDERATIONS

The Planning Proposal is a proponent-led application and has paid assessment fees set out in Council's Fees and Charges 2021/22.

If this Planning Proposal is progressed, it should not have an adverse impact on Council's budget.

SOCIAL CONSIDERATIONS

The proposal seeks to rectify an anomaly unique to this site.

If progressed, the Planning Proposal will facilitate the whole of 6 Mitchell Road to be used for a dwelling house, consistent with the signed Heads of Agreement.

ENVIRONMENTAL CONSIDERATIONS

The planning proposal has been assessed as unlikely to have any adverse environmental impacts as a result of the additional permitted land use on the portion of land zoned RE1 Public Recreation.