

ITEM 12.2	PLANNING PROPOSAL FOR 6 MITCHELL ROAD, PALM BEACH - PEX2022/0003
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2023/045950
ATTACHMENTS	1 Planning Proposal - 6 Mitchell Road, Palm Beach (Included In Attachments Booklet) 2 Heads of Agreement between Pittwater Council and Trustees of the Bible Garden (Included In Attachments Booklet) 3 Submissions Response Table (Included In Attachments Booklet) 4 Local Planning Panel - Minutes, 14 December 2022 (Included In Attachments Booklet) 5 Probity Audit Report (Included In Attachments Booklet)

SUMMARY

PURPOSE

To seek endorsement to submit a Planning Proposal for land at 6 Mitchell Road, Palm Beach to the Department of Planning and Environment for a Gateway Determination.

EXECUTIVE SUMMARY

On 12 September 2022, Council received a proponent-initiated Planning Proposal for 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858). The application was submitted by Planning Hub.

6 Mitchell Road is a privately-owned property and is adjacent to 6A Mitchell Road which is known as the 'Bible Garden' and is owned by Council. The 'Bible Garden' is a garden containing plants mentioned in the bible which 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 create 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 (6A Mitchell Road) 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 2021, 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 application was placed on non-statutory exhibition for three weeks, from 28 September 2022 to 21 October 2022 inclusive. Six submissions were received.

Council staff have considered the request, prepared a Planning Proposal and conducted an assessment of the Planning Proposal against the Department of Planning & Environment's (the 'Department') *Planning Proposals: A Guide to Preparing Planning Proposals* which confirms that the proposal provides sufficient strategic merit and overall demonstrates site-specific merit.

On 14 December 2022, the Northern Beaches Local Planning Panel considered the Planning Proposal and supporting documentation. The Local Planning Panel has recommended that Council support the Planning Proposal.

The Planning Proposal prepared by staff is now provided to Council for consideration (Attachment 1). If supported, the Planning Proposal will be forwarded to the Department of Planning and Environment for Gateway Determination. The Planning Proposal will be placed on statutory public exhibition in accordance with any Gateway approval. The outcomes of the statutory public exhibition will be reported to Council for consideration.

RECOMMENDATION OF DIRECTOR PLANNING AND PLACE

That Council:

1. Submit the Planning Proposal for 6 Mitchell Road, Palm Beach to the Department of Planning and Environment for a Gateway Determination.
 2. Publicly exhibit the Planning Proposal in accordance with any Gateway approval granted by the Department of Planning and Environment.
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REPORT

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 bisected by a cliff. The lower level of the property contained a dwelling house, and the upper level contained a garden. 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 2) was signed by Pittwater Council and the Trustees of the Bible Garden on 9 February 2004 to investigate opportunities 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.

The Heads of Agreement included concept sketches to identify the future intent and vision of the land. The portion of land between the two allotments had been identified as the location of a potential future garage for the dwelling. A restrictive covenant would control the height of the garage and require the roof to be of load-bearing capacity suitable for use as a potential future viewing platform from the Bible Garden. A concept sketch from the Heads of Agreement is in Figure 1. The garage and potential viewing platform are identified in the red bubble.

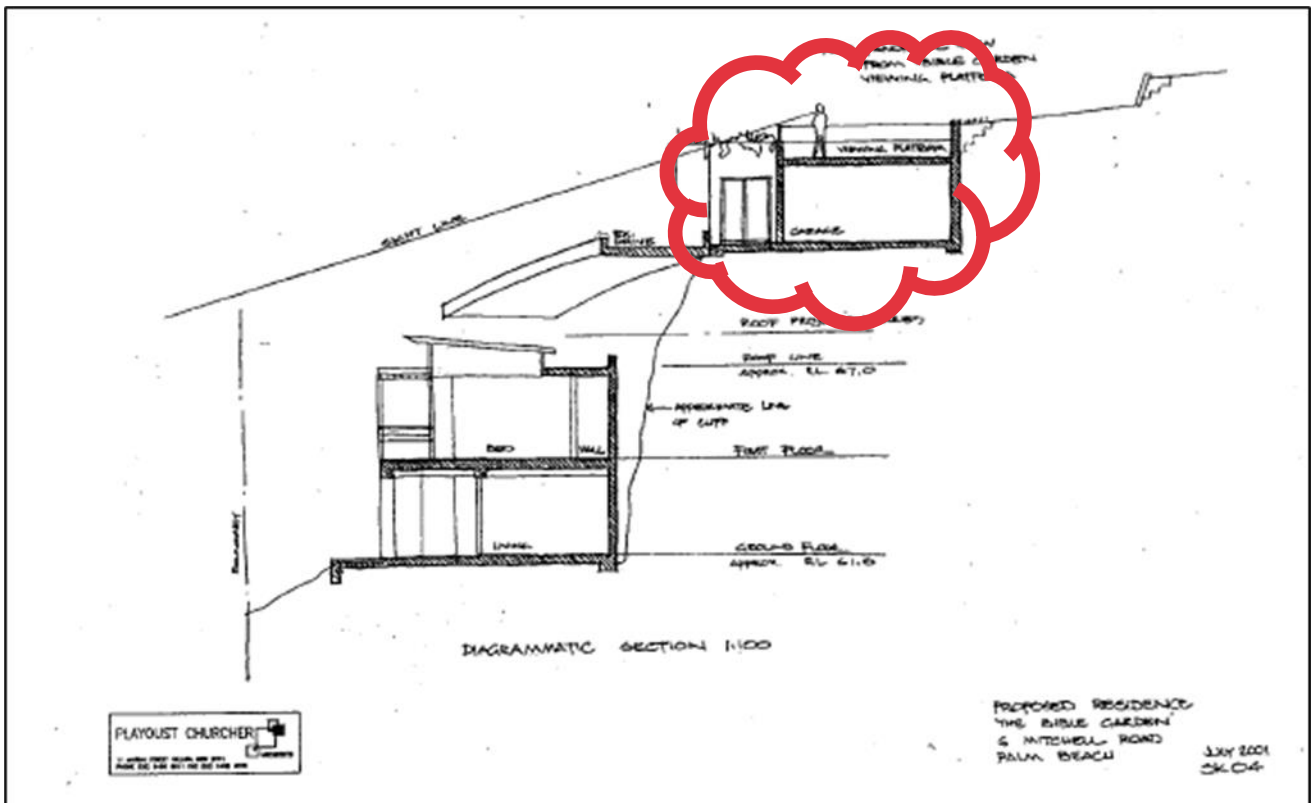


Figure 1: Concept Sketch from Heads of Agreement

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. This application was consistent with the signed Heads of Agreement. On 4 April 2005, Council consented to the subdivision into two allotments subject to conditions.

The steep topography of the site and the need to maintain the viewing platform created challenges in relation to a two-dimensional subdivision, resulting in the creation of the two properties via stratum subdivision. A stratum subdivision creates allotments which are limited in height or depth, allowing properties to be effectively created on top of each other. The subdivision created the following allotments:

- Lot 1 DP1086858, now known as 6 Mitchell Road – Containing the existing dwelling and parking space underneath the viewing platform at the rear of the lot.
- Lot 2 DP1086858, now known as 6A Mitchell Road – Containing the Bible Garden and the viewing platform above the parking space on Lot 1.

A location map of 6 Mitchell Road (the subject of the Planning Proposal) and 6A Mitchell Road (the Bible Garden) is in Figure 2. The portion of land between the two allotments, identified in the Heads of Agreement for the garage and viewing platform, is subdivided in stratum, and is split between both allotments. This land is identified with the white bubble. In relation to this part of the land, the Deposited Plan and registered easements stipulate:

- Lot 1 (6 Mitchell Road) is limited in title to a height of 74.5 AHD.
- Lot 2 (6A Mitchell Road) is limited in title to a depth of 74.5 AHD.



Figure 2: Location Map of 6 and 6A Mitchell Road, Palm Beach

6A Mitchell Road was transferred into Council ownership on 7 February 2006 and classified as community land under Council's Land Register in accordance with the *Local Government Act 1993*. 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 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 development or with consent) under this adopted plan. A copy of the signed Management Deed is also appended to the adopted Plan of Management.

Figure 3 is an excerpt from the Planning Proposal and is a picture taken from 6A Mitchell Road (the Bible Gardens) looking north over 6 Mitchell Road. The red string (shown in the white bubble) identifies the stratum boundary between the properties at a height of 74.5 AHD. The yellow string represents the existing ground level (76.3 AHD) of the viewing platform on the Bible Gardens.



Figure 3: Extract from Planning Proposal - Site picture with height poles

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 viewing platform land above 74.5 AHD.

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

An extract of the zoning map, obtained from the adopted Bible Garden Plan of Management, is in Figure 4.



Figure 4: Zoning under Pittwater LEP 1993

Pittwater Local Environmental Plan 2014

On 26 June 2014, the 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 the Planning Proposal) – The land was rezoned from Zone No. 2 (a) (Residential “A”) as follows:
 - majority of the site is zoned C4 Environmental Living; and
 - the portion of the site directly underneath the Bible Garden’s viewing platform (below 74.5 AHD) became zoned RE1 Public Recreation.
- 6A Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation “A”) to RE1 Public Recreation.

An extract of the Pittwater LEP 2014 zoning map is in Figure 5.

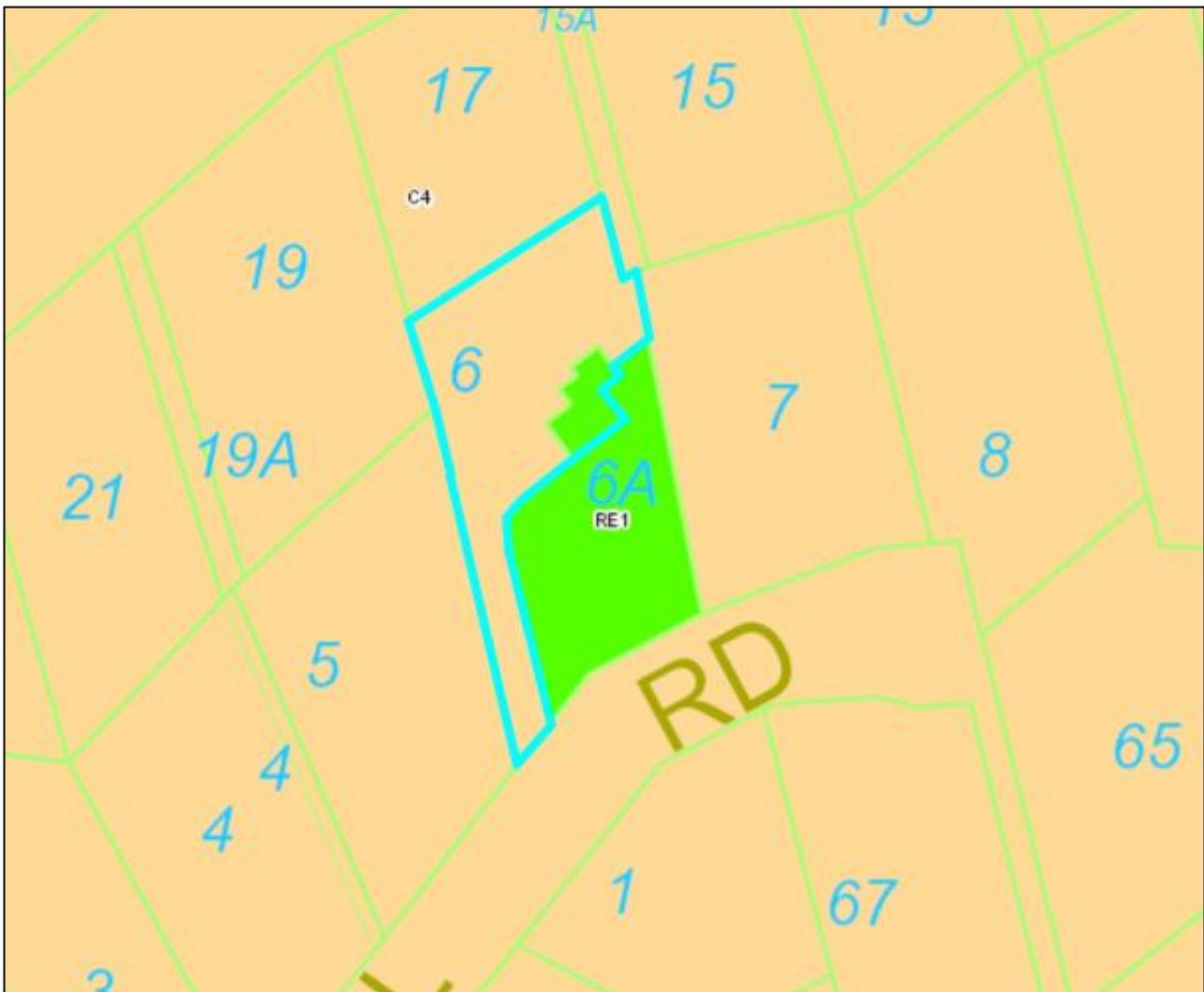


Figure 5: Zoning Map Pittwater LEP 2014

Recent Development Application

On 25 January 2021, Council received a Development Application (DA2020/1596) for 6 Mitchell Road to construct a dwelling house including a swimming pool, driveway, and garage.

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 2021, 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 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 6).

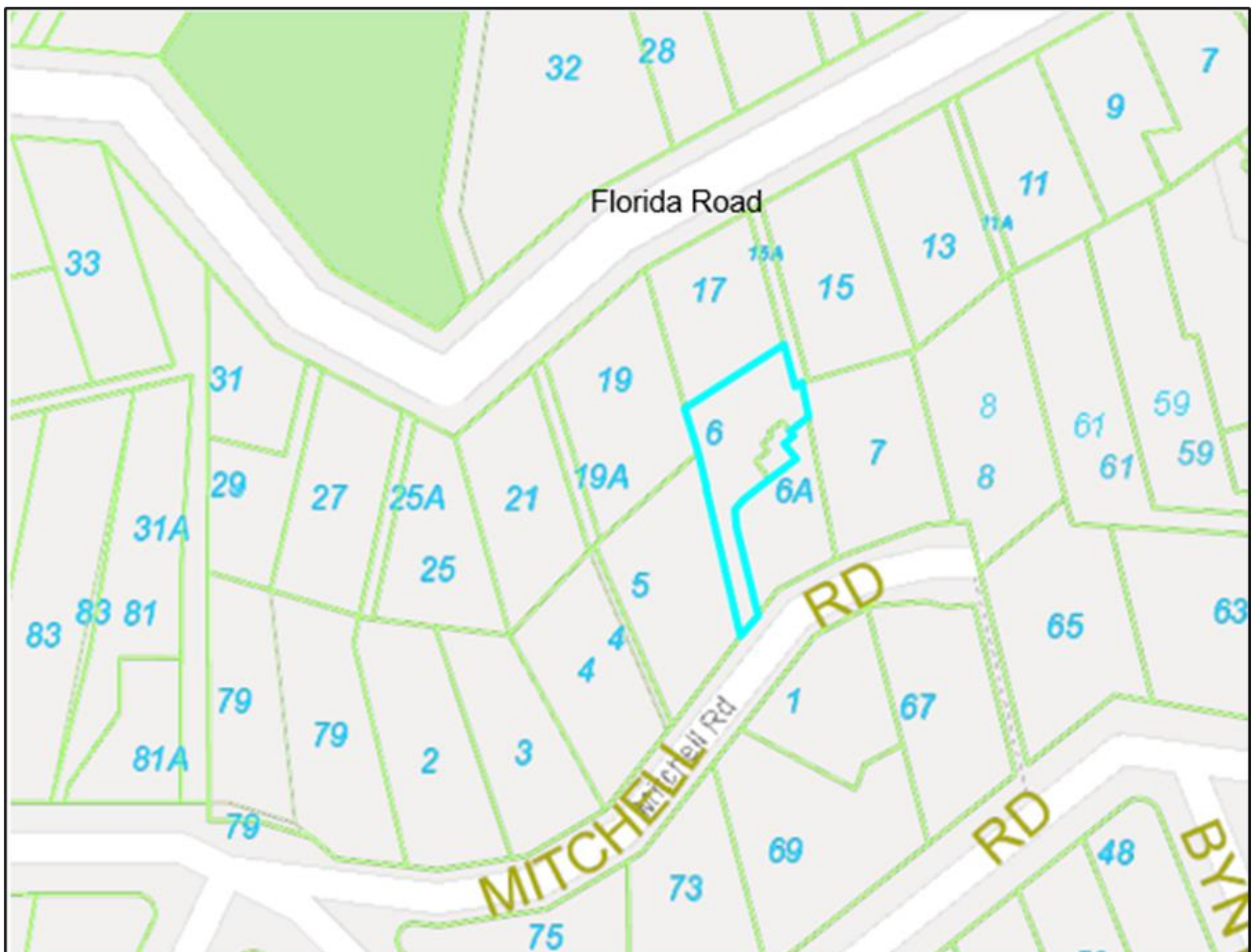


Figure 6: Locality Map

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.

6 Mitchell Road is Zoned C4 Environmental Living and RE1 Public Recreation under the Pittwater LEP 2014. The surrounding Properties are a mix of established low density residential areas zoned C4 Environmental Living.

The Bible Garden at 6A Mitchell Road not only abuts this land but overhangs directly above a portion of the subject site from a depth of 74.5 AHD. 6A Mitchell Road (inclusive of the overhang) is a locally listed heritage item. Due to the nature of the stratum subdivision, the portion of the subject site underneath the Bible Garden overhang is also listed as a heritage item. A picture showing the relationship between the Bible Garden overhang and the portion of 6 Mitchell Road underneath is in Figure 7 (shown in the white bubble).



Figure 7: Location of Bible Garden overhang between 6 and 6A Mitchell Road

The Proposal

On 12 September 2022, Council received a proponent-initiated Planning Proposal for 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858), submitted by Planning Hub.

The intent of the Planning Proposal is to amend the Pittwater LEP 2014 to include an additional permitted use of a 'dwelling house' on the RE1 zoned portion of the site (being the land below the Bible Garden viewing platform) to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement, signed 9 February 2004, between the Trustees of the Bible Garden and Pittwater Council.

A provision is also proposed restricting the building height of any future residential development on the site to 74.5 AHD, ensuring that the views of Palm Beach from the Bible Gardens are preserved.

Assessment Of Planning Proposal

An assessment of the Planning Proposal was undertaken in accordance with the Department of Planning and Environment's Local Environmental Plan Making Guideline 2022, as follows.

Part 1- Objectives or Intended Outcomes

The 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 house; and to seek that residential development on the site cannot exceed a height of 74.5 AHD.

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 on that portion of site zoned RE1, contrary to the signed Heads of Agreement.

The Planning Proposal seeks 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 received dedication of the Bible Garden land.

Imposing a building height of 74.5 AHD 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 Planning Proposal amends the following provisions of 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.
- Schedule 1 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.

The amendments support the creation of an additional permitted use for a dwelling house on that portion of the land currently zoned RE1. This is best served by amending the Additional Permitted Uses Map, to identify 6 Mitchell Road 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 proposal to require that any future residential development on the site cannot exceed a height of 74.5 AHD by way of Schedule 1 is appropriate. This will apply to all of 6 Mitchell Road and not just the portion of the site zoned RE1. This restriction will apply in addition to the existing height provisions of the Pittwater LEP 2014 which will remain unchanged.

The measurement of 74.5 AHD ensures that any future development is below the level of the Bible Gardens and thus retains significant and important views 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:
- Permit development for the purposes of a dwelling house on that portion of the land zoned RE1 Public Recreation.
 - In addition to any other provision in this Plan, any future residential development on 6 Mitchell Road, Palm Beach cannot exceed a height of 74.5 AHD.

Part 3 – Justification

Strategic Merit

Section A – Need for the Planning Proposal

Q1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The Planning Proposal is not the result of the Northern Beaches Local Strategic Planning Statement, strategic study, or report.

The proposal is consistent with the Heads of Agreement signed in 2004 by Pittwater Council and the then owners of the land. It is also consistent with several objectives and priorities within the Northern Beaches Local Strategic Planning Statement - Towards 2040 (detailed in Q4 below).

The proposal will enable appropriate residential development that recognises the heritage significance of the site and surrounding area, and will not adversely impact on the ecological, cultural, or scenic significance of the site and surrounding area.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

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 74.5 AHD.

Allowing a 'dwelling house' as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation 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

Q3. 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 Planning 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

Q4. Is the planning proposal consistent with a council's local Strategy or other local strategic plans?

The Planning Proposal is consistent with the Northern Beaches Local Strategic Planning Statement (LSPS). The additional height restriction will 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 of the 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

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The Planning Proposal is not inconsistent with the State Environmental Planning Policies (SEPP) 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		
	<ul style="list-style-type: none"> • Eastern Harbour City SEPP 	N/A	N/A

	<ul style="list-style-type: none"> Western Parkland City SEPP 	N/A	N/A
	<ul style="list-style-type: none"> Central River City SEPP 	N/A	N/A
	<ul style="list-style-type: none"> 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

Q6. Is the Planning Proposal Consistent with Applicable Ministerial Directions (Section 9.1 Directions)?

Apart from the Ministerial Direction 1.4 Site Specific Provisions, the Planning Proposal is consistent with the applicable Local Ministerial 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.

The Planning Proposal seeks to allow an additional permitted use of 'dwelling house' on that part of the land zoned RE1 Public Recreation and add an additional height restriction to the land.

The proposed amendments are consistent with the Heads of Agreement and the inconsistency with Direction 1.4 Site Specific Provisions is of minor significance and limited to this 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?

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.

A Flora and Fauna Assessment by EcoLogical Australia (May 2022) and an Arborist Report by Arbosaw (June 2022) accompanied the Planning Proposal application.

The Flora and Fauna Assessment 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.
- A review of the Planning Proposal and the proposed development it seeks to enable was evaluated for potential environmental impacts.

No threatened plant or animal species were found on and within immediate vicinity of this property.

Council's Senior Environment Officer - Biodiversity advised 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.

The Planning Proposed is not likely to adversely impact on critical habitat, threatened species, populations, or ecological communities.

The Arborist Report concluded that the Planning Proposal is suitable from a tree impact perspective provided the recommendations are implemented during the approval of any future Development Application.

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

Geotechnical

The subject site is identified as being a Geotechnical Hazard H1 on the Geotechnical Hazard Map. A Geotechnical Report prepared by Davies Geotechnical Consulting Engineers (July 2022) accompanied the Planning Proposal application.

This report concludes that the geotechnical conditions of the site will not affect consideration of the Planning Proposal.

Heritage

A Heritage report by Weir Phillips (21 July 2022) accompanied the Planning Proposal application. The report concluded that the proposed additional permitted use within the small portion of land zoned RE1-Public Recreation will have no impact on the significance of the adjoining heritage item (Bible Garden) for 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 be 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.*

Council's Heritage Officer concurs with the report's conclusions and supports the Planning Proposal from a heritage perspective as it will:

- Enable a dwelling to be constructed as envisaged by the Heads of Agreement 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 and beyond.

View Loss

The proposal provided a detailed account of a study conducted in 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 concluded that no portion of future residential development on this land will impede on existing views from the Bible Garden based on topography of the site and the existing covenants over the land.

The Planning Proposal seeks to add a height restriction for any future residential development on 6 Mitchell Road. This is in addition to the existing height provisions in the Pittwater LEP 2014 and will ensure that views from the Bible Garden are preserved and consistent with the signed Heads of Agreement.

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

The Planning Proposal will facilitate residential development on the whole of 6 Mitchell Road, consistent with the signed Heads of Agreement.

The proposal will not result in additional dwellings being permitted on the land. It will facilitate a dwelling house, and development ancillary to a dwelling (e.g., a garage), to be permissible on that part of the land zoned RE1.

Limiting the height of future residential development on the land ensures no obstruction of views from the Bible Garden. This allows the land to be used and enjoyed by the owners and the community.

Section D - State and Commonwealth Interests

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

6 Mitchell Road is an existing serviced property within an established neighborhood. The Planning Proposal will not result in additional dwellings being permitted on the land and will not require additional public infrastructure.

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

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

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

CONSULTATION

The Planning Proposal submitted by the proponent was initially placed on non-statutory public exhibition for 14 days, from 28 September to 13 October 2022, in accordance with the Northern Beaches Community Participation Plan. Following a request from a submitter, the public exhibition period was extended to 21 October 2022. The public exhibition comprised:

- Notification letters to adjoining landowners and occupiers
- Email to community members who had registered their interest in the project
- An updated Council 'Your Say' page with relevant information; and
- Inclusion in Council's Community News email.

Six (6) submissions were received. The issues raised in submissions included:

- Request for the garage to be lowered
- Vegetation that will feature on garage roof should be at maximum development height
- New structure will obscure view
- Unlawful public exhibition and Planning Proposal
- The proposed amendments are unclear
- Extension of public exhibition
- Planning Proposal is unlawful.

Issues relating to landscaping and the potential design of the garage are not relevant to the Planning Proposal and will be considered in any future Development Application. The Planning Proposal has been lawfully prepared and considered in accordance with all statutory requirements.

A summary of the submissions and responses to the issues raised is in Attachment 3. These issues do not warrant the rejection of the Planning Proposal.

Local Planning Panel

On 14 December 2022, an assessment of the Planning Proposal was presented to the Northern Beaches Local Planning Panel. The proceedings in Brief from the meeting included the following comments:

At the public meeting Counsel for an objector submitted that: (a) there were two planning proposals before the Panel, one by The Planning Hub on behalf of the applicant and the other by Council as set out in Attachment 2 to the Council assessment report; (b) that the former was beyond power under the Environmental Planning and Assessment Act 1979 but that the latter was within power and the Panel could advise in respect of the latter; (c) that the Panel should reject the former and advise Council only in respect to the latter. The Panel considers that there is only one planning proposal before it, namely the Council's planning proposal set out in Attachment 2 to the Council assessment report. The Panel will advise Council only in respect of that planning proposal.

Subsequently, the Planning Panel recommended:

That the Northern Beaches Local Planning Panel recommends that Council support the planning proposal set out in Attachment 2 to the Council assessment report to permit a dwelling house limited to a building height of RL 74.5 AHD as an additional permitted use on 6 Mitchell Road Palm Beach, for the reasons presented in the assessment report, subject to the following:

The Panel suggests that the additional clauses in Schedule 1 of the Pittwater Local Environment Plan should read to the following effect:

Use of certain land at 6 Mitchell Road, Palm Beach

- (1) This clause applies to land at 6 Mitchell Road, Palm Beach, being Lot 1. DP1086858 and identified as on the Additional Permitted Uses Map.*
- (2) Development on the part of 6 Mitchell Road, Palm Beach zoned RE1 for the purposes of a dwelling house, not exceeding RL 74.5AHD in height, is permitted with development consent.*
- (3) The height limit restriction of RL 74.5AHD also applies to the remainder of 6 Mitchell Road, Palm Beach, currently zoned C4.*
- (4) Subject to the restriction imposed by clause 3, the remainder of 6 Mitchell Road, Palm Beach continues to be subject to the development height controls in clause 4.3 of the Pittwater Local Environmental Plan.*

Vote: 4/0

The Planning Proposal has been amended in line with the suggestion provided by the Local Planning Panel.

The minutes of the Local Planning Panel meeting are in Attachment 4.

External Probity Adviser

On 24 October 2022, Council engaged the services of external probity adviser Charles Kendall Australia to oversee Council's assessment of the Planning Proposal. Probity advice was sought to manage any potential or perceived conflict of interest arising from the assessment of a Planning Proposal on land adjacent to the Council-owned Bible Gardens.

Charles Kendall Australia has undertaken an audit of the assessment process. The audit report is provided in Attachment 5. The audit report concluded that there were no probity concerns with the assessment of the Planning Proposal.

TIMING

It is anticipated that the timeframe for completion of the Planning Proposal is approximately 12-18 months from the date of Council's approval.

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

LINK TO STRATEGY

The Planning Proposal relates to the following goals of the Northern Beaches Community Strategic Plan 2040 outcome of:

- Community and belonging - Goal 7 Our diverse community is supported to participate in their chosen cultural life
- Community and belonging - Goal 8 Our community feels safe and supported
- Community and belonging - Goal 9 Our community is inclusive and connected
- Housing, places and spaces - Goal 11 Our local centres are vibrant and healthy, catering for diverse economic and social needs
- Partnership and participation - 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-initiated application. The proponent has paid the assessment fees stipulated in Council's Fees and Charges 2022/23.

The recommendations of this report pose no financial impact on Council.

SOCIAL CONSIDERATIONS

The proposal seeks to rectify an anomaly unique to this site and is consistent with the signed Heads of Agreement.

The Planning Proposal will maintain the existing views from the Bible Garden and is not anticipated to have any adverse social impacts.

ENVIRONMENTAL CONSIDERATIONS

An assessment of the Planning Proposal has determined that it is unlikely to have any adverse environmental impacts on the subject site or surrounding land.

GOVERNANCE AND RISK CONSIDERATIONS

The Planning Proposal has been assessed in accordance with all statutory requirements.

Independent probity advice was sought to manage any potential or perceived conflict of interest arising from the assessment of the Planning Proposal. The audit report concluded that there were no probity concerns with the assessment of the Planning Proposal.