



IRF NUMBER

Gateway determination report – PP-2022-3209

Introduce 'dwelling house' as an Additional Permitted Use and prescribe a maximum height of building for land at 6 Mitchell Road, Palm Beach

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal**Relevant reports and plans****Background of Site – 6 Mitchell Road, Palm Beach****Attachment A1 – Planning proposal Report (November 2022)**

- **A2** – Planning Proposal Cover Letter (September 2022)
- **A3** – Heads of Agreement Contract (February 2004)
- **A4** – Heritage Impact Statement (July 2022)
- **A5** – Arborist Report (June 2022)
- **A6** – Concept Architectural Plans (August 2022)
- **A7** – Geotechnical Report (July 2022)
- **A8** – Flora and Fauna Assessment (May 2022)
- **A9** – Survey Plan (September 2018)
- **A10** – Bible Garden Letter (August 2020)
- **A11** – Bible Garden Plan of Management (December 2006)'
- **A12** – Council's Heritage Referral Comments (October 2022)

Attachment D– Council correspondence

- **D1** – Council Report (February 2023)
- **D2** – Council meeting minutes (March 2023)

Attachment E – Local Planning Panel

- **E1** – Local Planning Panel Report (December 2022)
- **E2** – Local Planning Panel meeting minutes (December 2022)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Northern Beaches
PPA	Northern Beaches Council
NAME	Include 'dwelling house' as an Additional Permitted Use and prescribe a maximum height of 74.5 AHD at 6 Mitchell Road, Palm Beach
NUMBER	PP-2022-3209
LEP TO BE AMENDED	Pittwater Local Environment Plan 2014 (PLEP 2014)
ADDRESS	6 Mitchell Road, Palm Beach
DESCRIPTION	Lot 1; DP 1086858
RECEIVED	24/04/2023
FILE NO.	IRF23/1124
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The planning proposal seeks a site-specific amendment to the Pittwater Local Environmental Plan (PLEP) 2014 to:

- Include the additional permitted use of 'dwelling house' on a portion of the site at 6 Mitchell Road, Palm Beach currently zoned RE1 Public Recreation.
- Apply a maximum building height of 74.5 AHD for any future residential development on the site.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the PLEP 2014 as follows:

- amend the Additional Permitted Uses Map to identify the site at 6 Mitchell Road, Palm Beach (Sheet APU_015) for additional permitted uses referenced in Schedule 1 of the PLEP 2014.
- amend Schedule 1 Additional Permitted Uses to include a provision for 6 Mitchell Road, Palm Beach to limit any future residential development on the site so it does not exceed a height of 74.5 AHD, and permit development for the purpose of a 'dwelling house'.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

It is noted that the subject RE1 zoned portion of 6 Mitchell Road, Palm Beach is not owned by Council. As such, this proposal does not include or require the reclassification of this land.

1.4 Site description and surrounding area

The site is a battle-axe lot located at 6 Mitchell Road, Palm Beach (the site) (**Figure 1**). It is legally identified as Lot 1 of DP 1086858.

The site contains a driveway and bridge which provides vehicle access to the neighbouring site at 15 Florida Road, Palm Beach. A two-storey dwelling is located under this bridge.



Figure 1 Subject site (source: SIXMaps)

The majority of the site is zoned C4 Environmental Living with a portion to the south-east zoned RE1 Public Recreation (**Figure 2**). This portion forms part of the RE1 zoning of the adjacent Palm Beach Bible Garden (Bible Garden), located at 6A Mitchell Road (Figure 3).

The RE1 zoned portion of the site is also identified as a general heritage item as part of the Bible Garden under Schedule 5 of the PLEP 2014 (**Figure 3**).

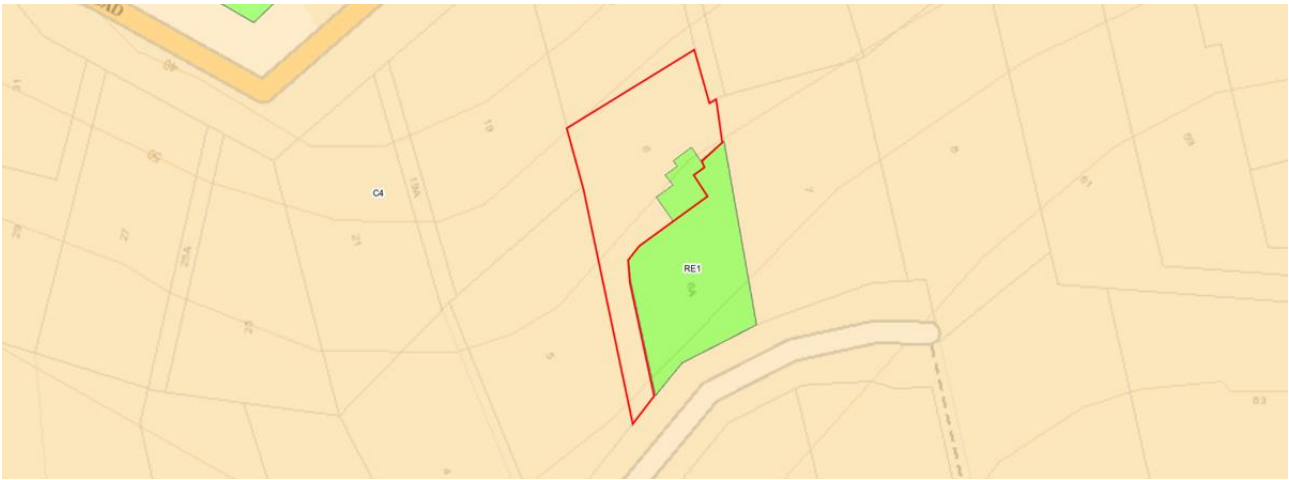


Figure 2 Land zoning map (Note: The RE1 portion of land within 6 Mitchell Road is classified as operational land) (source: EPlanning)



Figure 3 Heritage map (source: EPlanning)

1.5 Mapping

The planning proposal includes mapping figures showing the existing (**Figure 4**) and proposed changes (**Figure 5**) to the Additional Permitted Uses Map.

The map will be required to be consistent with Department standards should the planning proposal proceed to finalisation.

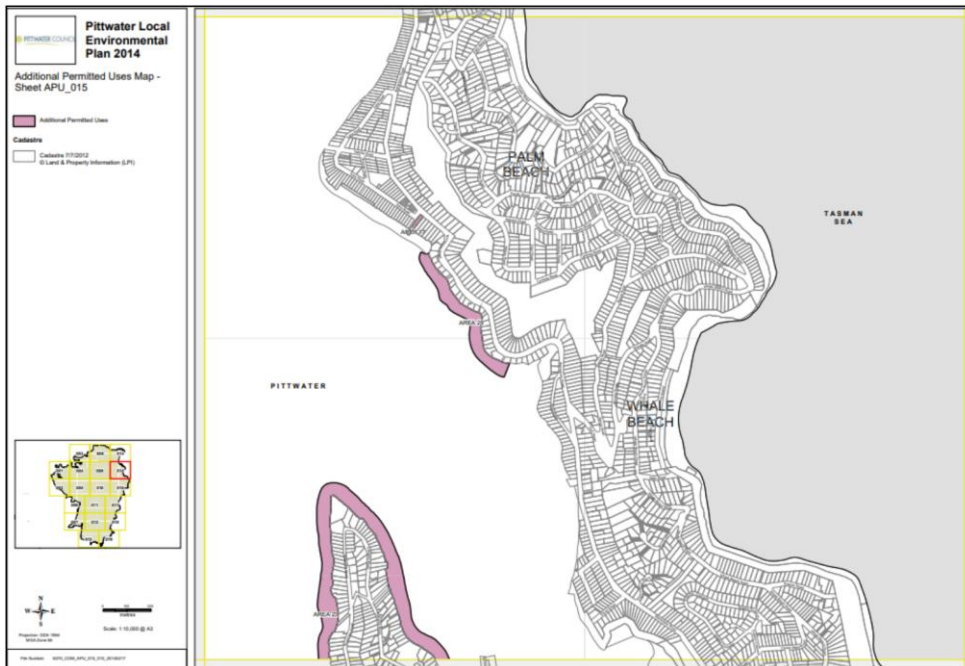


Figure 4 Current Additional Permitted Use Map (APU_015)

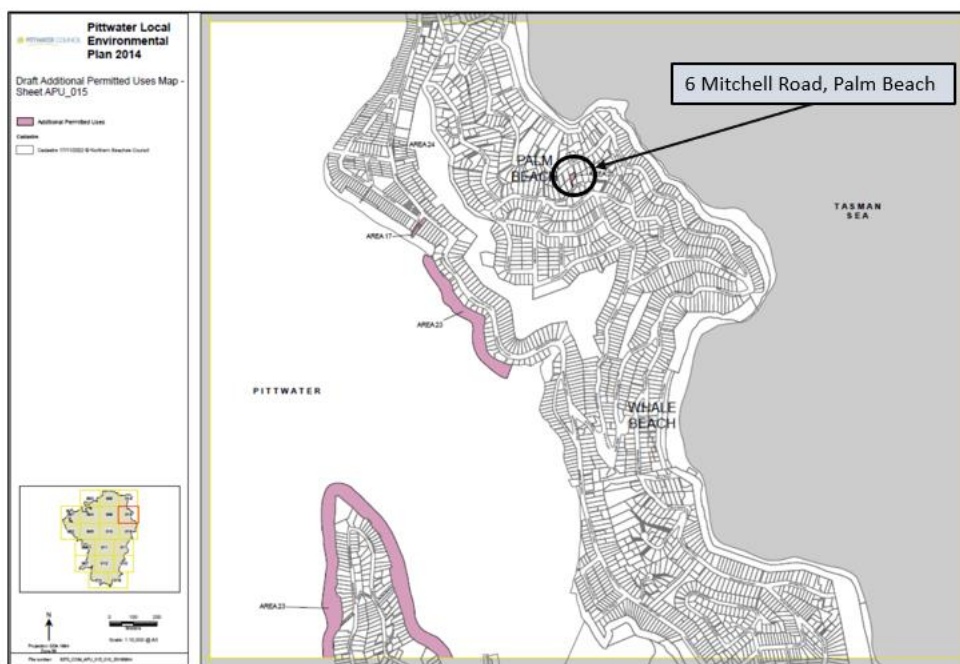


Figure 5 Proposed Additional Permitted Use Map (APU_015)

2 Need for the planning proposal and Background

The planning proposal intends to enable residential development on the RE1 Public Recreation zoned portion of the site to align with future residential development of the whole site. Preliminary plans submitted with the planning proposal show the construction of a garage and lift on the RE1 zoned portion of the site which will provide access to the proposed residential dwelling on the remainder of the site.

Since 2004, the site has been subject to a Heads of Agreement Contract (the Contract) (**Attachment A3**) which resulted in the original Bible Garden be subdivided to retain the garden

area while the remainder of the site will be used for residential purposes. Controls on the residential development would protect views from the Bible Garden including height restrictions.

Since the PLEP 2014 came into effect, majority of the site has been zoned C4 Environmental Living with a portion of the site below 74.5 AHD adjacent to the Bible Garden's viewing platform being zoned RE1 Public Recreation.

Further details on the background of the planning proposal are provided in the **Attachment - Background of Site**.

Retaining the Site's RE1 Public Recreation zoned portion will ensure any future residential development aligns with the terms of the Heads of Agreement contract and Plan of Management. This will ensure that views from the Bible Garden are protected upon development of the site.

3 Strategic assessment

3.1 District Plan

The site is covered by the North District Plan North District Plan on 18 March 2018.

The planning proposal is mostly consistent with the priorities for liveability and sustainability in the plan as outlined below.

Due to the minor nature of the proposal, it is recommended that the planning proposal be updated to remove discussion on several priorities and outcomes in North District Plan as they are considered irrelevant in the context of the planning proposal. These include priorities N1, N2, N3, N4, N7, N7, N9, N10, N11, N12, N13, N14, N15, N16, N18, N21 and N22.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions in the North District Plan.

District Plan Priorities	Justification
Planning Priority N5 - Providing housing supply, choice and affordability with access to jobs, services and public transport.	<p>The Proposal will permit development on the RE1 Public Recreation portion of the site to align with the residential development of the whole site.</p> <p>The proposal is consistent with this planning priority.</p>
Planning Priority N6 - Creating and renewing great places and local centres, and respecting the District's heritage	<p>The proposal does not pose a risk of adverse impact on the adjoining heritage item (Bible Garden) including the identified local heritage area on the site. A small portion of heritage significance is identified on the site for the airspace above AHD 74.5m. This protects views from the Bible Garden. The planning proposal is accompanied by a Heritage Impact Assessment (Attachment A4) which supports the proposal.</p> <p>An executed Heads of Agreement is in place that articulates that the whole of at 6 Mitchell Road was to allow a residential development. This was also reflected in the provisions under PLEP 1993. In the making of PLEP 2014 the original planning intent for 6 Mitchell Road was altered.</p> <p>The proposal is consistent with this planning priority.</p>

District Plan Priorities	Justification
Planning Priority N19 - Increasing urban tree canopy cover and delivering Green Grid connections	<p>The planning proposal facilitates the construction of a single detached dwelling house. Concept plans propose the removal of one palm tree on the boundary of the zoned RE1 Public Recreation portion of the site which has been supported by an Arborist Report accompanying the planning proposal (Attachment A5)</p> <p>The planning proposal is justifiably inconsistent with this planning priority.</p>
Planning Priority N20 - Delivering high quality open space	<p>While the planning proposal includes an additional permitted use within an RE1 Public Recreation zone, this portion of the site is inaccessible from the adjacent Bible Garden. The amount of publicly accessible open space will remain unchanged.</p> <p>The planning proposal is justifiably inconsistent with this planning priority.</p>

3.2 Local

The proposal states that it is consistent with Council's Local Strategic Planning Statement (LSPS) and Community Strategic Plan (CSP). Due to the minor nature of the proposal, it is recommended that the planning proposal be updated to remove discussion on several priorities and outcomes in the LSPS and CSP as they are considered irrelevant in the context of the planning proposal. These include LSPS priorities 1, 5, 7, 8, 9, 10, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 and the Community Outcomes for Places for People, Community and Belonging, Vibrant Local Economy, Transport, Infrastructure and Connectivity, Good Governance and Partnership and Participation in the CSP.

The proposal is consistent with local priorities and community outcomes as outlined in the table below:

Table 5 Local Strategic Planning Statement

Local Priorities	Justification
<p>Priority 2 - Protected and enhanced bushland and biodiversity</p> <p>Priority 4 - Protected Metropolitan Rural Area</p>	<p>The planning proposal will facilitate the construction of a single dwelling but does not impact bushland itself.</p> <p>The Arborist Report accompanying the planning proposal (Attachment A5) identifies tree 8 as an exempt species under local tree preservation guidelines. Moreover, the concept proposal includes a landscape roof over the future residential development on the RE1 Public Recreation zone of the site.</p> <p>Any future impacts of development on the existing vegetation can be addressed at the Development Application Stage. The minor inconsistency with this planning priority is justified.</p>
Priority 3: Protected scenic and cultural landscapes	<p>The overall protection of the scenic landscape through the height restriction of 74.5 AHD aims to protect existing views from the adjacent Bible Garden and retain the curtilage of the residential escarpment.</p> <p>The proposal is consistent with this priority.</p>

Priority 6: High quality open space for recreation	The planning proposal includes an additional permitted use within an RE1 Public Recreation zone of the site that is not publicly accessible. There is no net loss of public open space as a result of the proposal. Concept architectural plans (Attachment A6) include the provision of rooftop landscaping over the future residential development on the RE1 portion of the site which will contribute to the character of the Bible Garden. The proposal is consistent with this priority.
Priority 11: Community facilities and services that meet changing community needs	The planning proposal is a result of a public-private partnership under the Heads of Agreement Contract (Attachment A3) in which controls ensure residential development on the RE1 Public Recreation zoned portion of the site does not adversely impact the adjacent public Bible Gardens. The proposal is consistent with this priority.
Priority 15: Housing supply, choice and affordability in the right locations	The Proposal will permit development on the zoned RE1 Public Recreation portion of the site that will align with the residential development of the whole site. The proposal is not inconsistent with this priority.
Priority 18: Protected, conserved and celebrated heritage	The proposal does not pose a risk of adverse impact on the adjoining heritage item (Bible Garden). This includes a small portion of heritage significance on the site for the airspace above 74.5 AHD. This protects views from the Bible Garden. The planning proposal is accompanied by a Heritage Impact Assessment (Attachment A4) which supports the proposal. Further assessment of heritage is at Section 4 below. Council's Internal Heritage Comments noted no objections to the planning proposal that could not be dealt with at the Development Application stage (Attachment A12). The proposal is consistent with this priority.

Table 6 Community Strategic Plan (CSP)

Community Outcome	Justification
Protection of the environment	The planning proposal will not result in adverse impact on the adjoining public open space, heritage item or surrounding landscape.
Environmental sustainability	The planning proposal is accompanied by a Geotechnical Report (Attachment A7) which concludes that the proposal is supported from a geotechnical risk standpoint, subject to management and mitigation measures which will be investigated at the Development Application stage. The planning proposal facilitates the construction of one dwelling house and garage. Concept plans propose the removal of one palm tree on the boundary of the RE1 Public Recreation zone of the site. Its removal is supported by an Arborist Report accompanying the planning proposal (Attachment A5) which identifies this tree as an exempt species under local tree preservation guidelines. The proposal is consistent with this outcome.

Housing, places and spaces	<p>The planning proposal will deliver an additional permitted use on the RE1 Public Recreation zoned portion of the site which will align with the future residential development of the whole site.</p> <p>The proposal is consistent with this outcome.</p>
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3.3 Local Planning Panel

On 14 December 2022, the Northern Beaches Local Planning Panel (the Panel) met and provided support for the planning proposal to be forwarded to the Department for Gateway assessment. **(Attachment E1-E2).**

The Panel suggested specific wording for the APU clause which will be considered post exhibition.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent - N/A	Reasons for Consistency or Inconsistency
1.4 Site Specific Provisions	Justifiably inconsistent	<p>This Direction seeks to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The proposal seeks to amend the PLEP 2014 to provide an additional permitted use on the RE1 zoned portion of the site.</p> <p>As detailed in <i>Section 2</i>, the adoption of the PLEP 2014 resulted in a split zoning of the site. As dwelling houses are prohibited in zone RE1 Public Recreation, the site-specific provision is required to align this portion with future residential development on the remainder of the site which is zoned C4 Environmental Living.</p> <p>The height limit proposed as part of the additional permitted use will ensure future development of the RE1 zoned portion of the site will not adversely impact the heritage significance of the adjacent Bible Garden.</p> <p>All other existing controls applying to the RE1 zoned portion of the site in the PLEP 2014 remain applicable.</p> <p>The Department is satisfied that the proposal is minor in nature, and that it is not unreasonable for a residential use on the RE1 portion of the site given the history of the site and its subdivision from the Bible Garden. The proposal adequately responds to the heritage significance of adjoining land by prescribing a height restriction that will allow the continued use of the viewing platform.</p> <p>The inconsistency is considered minor.</p>

3.2 Heritage Conservation	Yes	<p>The objective of this direction is to conserve items, areas, objects, and places of environmental heritage significance.</p> <p>The site is adjacent to and forms a part of a local heritage item for the Bible Garden, listed under Schedule 5 of the PLEP 2014. While the zoned RE1 portion of the site forms part of the heritage listing, it is predominately located on the adjacent site.</p> <p>The proposal is accompanied by a Heritage Impact Statement (Attachment A4) which concludes that the heritage significance of the adjacent heritage item will be unaffected and is therefore consistent with this Direction.</p> <p>Further assessment of heritage impact is at Section 4 below.</p>
4.6 Mine Subsidence and Unstable Land	Yes	<p>The site is identified as Geotechnical Hazard H1 on the Geotechnical Hazard Map in the PLEP 2014. This includes the RE1 zoned portion of the site.</p> <p>A Geotechnical Report accompanies the planning proposal (Attachment A7) which concludes that the future development can be supported from a geotechnical standpoint.</p> <p>The planning proposal is consistent with this direction however is subject to further assessment as part of a development application.</p>
5.2 Reserving Land for Public Purposes	Justifiably inconsistent	<p>The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes and remove reservations of land for public purposes where the land is no longer required for acquisition.</p> <p>The Proposal seeks to include an additional permitted use of a dwelling house on a portion of the site that is zoned RE1 Public Recreation.</p> <p>The Proposal states the RE1 portion of the site is not currently used for public recreation and the additional permitted use will align with the majority of the site's development for residential purposes. Further information regarding the loss of recreation values is in Section 4 below.</p> <p>The planning proposal is justifiably inconsistent with this Direction as it allows council to maintain the original vision for the site to maintain the Bible Garden and preserve views over the lot subdivided from the site for a dwelling house. It has been intended that a garage would be constructed on the part of the site zoned RE1, but it is not permissible under the current zone.</p>
6.1 Residential Zones	Yes	<p>The proposal will enable residential development (a garage) on the RE1 Public Recreation zoned portion of the site. The proposal states that any future development will be required to demonstrate that the site can be adequately serviced to facilitate the proposed development.</p> <p>The planning proposal is consistent with this Direction.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as outlined below. The remaining SEPPs, whilst they apply are not a relevant consideration of this planning proposal.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021 – Chapter 4	This chapter of the SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	Yes	Council have identified the site is suitable for the intended use and that no further investigation is deemed to be necessary.
SEPP (Biodiversity and Conservation) 2021 – Chapters 2 and 6	Chapter 2 of the SEPP aims to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through preservation of trees and other vegetation. Chapter 6 aims to protect and preserve bushland within urban areas.	Yes	The planning proposal facilitates a future development that proposes the removal of one existing tree on the boundary of the RE1 zoned portion of the site. The removal of this tree is supported by an Arborist Report accompanying the planning proposal (Attachment A5) which identifies it as an exempt species under local tree preservation guidelines. Any future impacts of development on the existing vegetation can be addressed at the Development Application Stage.

4 Site-specific assessment

4.1 Environmental

Heritage

The proposal is accompanied by a Heritage Impact Statement which concludes that it will have no impact on the significance of the adjoining heritage item (Bible Garden). The proponent has undertaken a four-step assessment (see page 44 of **Attachment A1**) which concludes future residential development poses minimal risk of impact on existing views from the Bible Garden. It is also identified that the APU is consistent with the schemes envisaged when the site was subdivided.

Council considers it appropriate to retain the heritage listing for the small portion of land on the site identified as the airspace above 74.5m AHD, and notes that the care of that land (below the air space) is the responsibility of the landowner.

Biodiversity

The site is mapped under the PLEP 2014 biodiversity map (**Figure 6**).

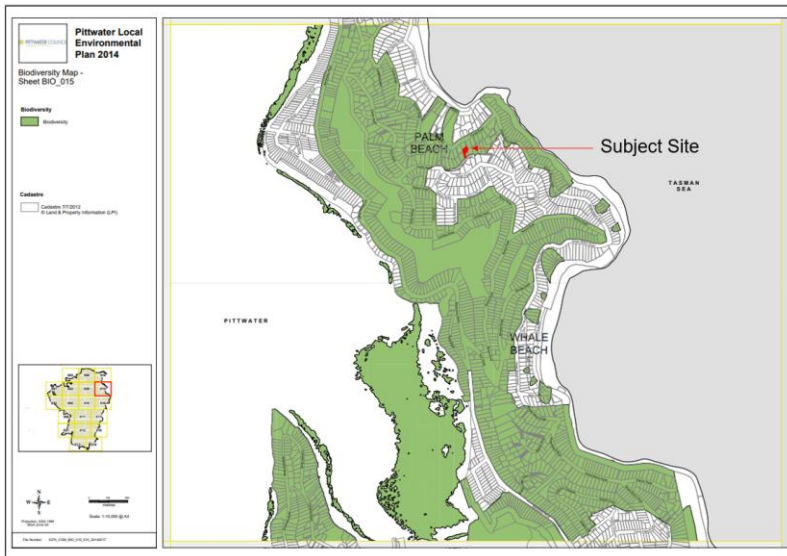


Figure 6 Biodiversity Map (BIO_015)

The proposal is accompanied by a Flora and Fauna Assessment (**Attachment A8**) which supports the proposal and includes several mitigation measures to be implemented during development of the site including removal of weeds to prevent spread of seed, preserve and protect sandstone outcrops during construction and manage the sites interface with the Bible Garden through a Vegetation Management Plan.

The planning proposal is accompanied by an Arborist Report (**Attachment A5**) which concludes that the proposal does not have an impact on significant vegetation on the site. It is also noted that the future residential development is suitable from a tree impact perspective, subject to recommendations and further assessment as part of a future development application.

Geotech

The site is mapped under the PLEP 2014 Geotechnical Hazard Map as H1 (**Figure 7**).

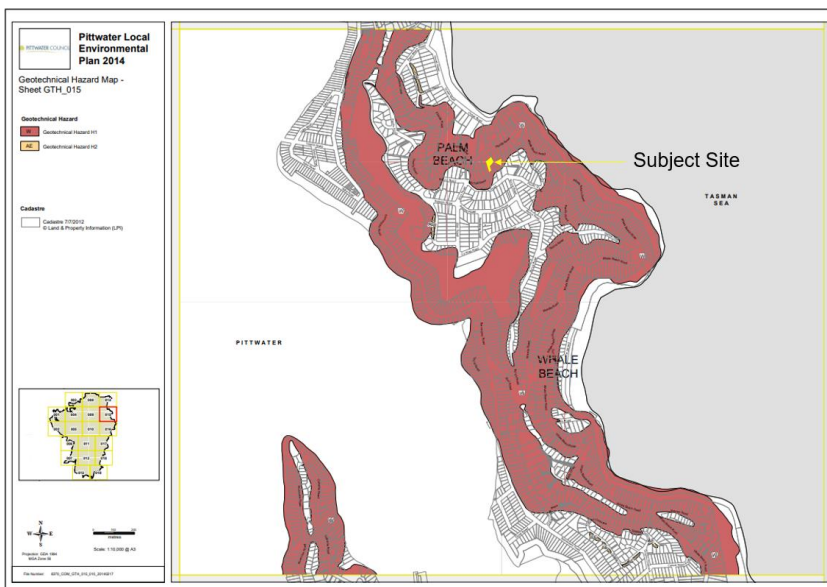


Figure 7 Geotechnical Hazard Map (GTH_015)

The Geotech Report accompanying the proposal (**Attachment A7**) identifies management and mitigation measures to be incorporated during future development of the site. Incorporation of

these measures will ensure future development will not adversely impact the site or surrounding area. Further assessment of these issues is appropriate at the development assessment stage.

4.2 Social and economic

The proposal will not result in a net loss of public recreational space as the public value is vested in the airspace above the small RE1 zoned portion of the site, that is the view from the Bible Garden viewing platform over steep terrain towards Palm Beach.

The Heritage Impact Statement provides a sketch of a potential dwelling and garage on the RE1 land as part of the proposed subdivision in 2004 (**Figure 8** and Page 8 of **Attachment A4**).

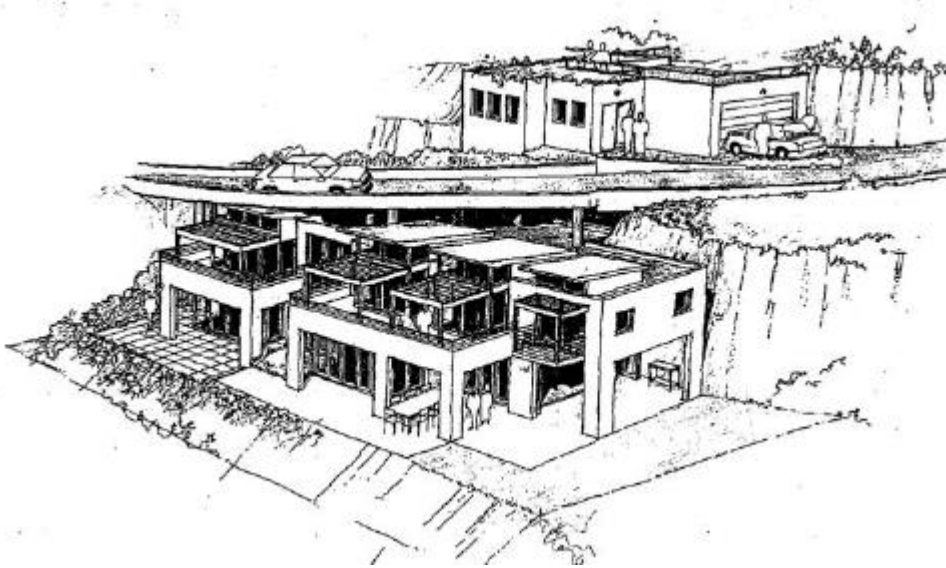


Figure 8: Sketch of conceptual dwelling and garage on the RE1 zoned land (Source: Heritage Impact Statement – Weir Phillips).

While the proposal facilitates the future development of RE1 land for the purposes of a dwelling house (garage), the garage will be subject to a maximum height of building that is below the Bible Garden viewing platform, and also appears to be consistent with the concept plans provided in the Heads of Agreement Contract.

4.3 Infrastructure

The proposal is not considered to impact existing infrastructure.

The proposal states that any future development will be required to demonstrate the provision of adequate infrastructure.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

An exhibition period of 20 working days is considered appropriate. This has been included as part of the conditions of the Gateway determination.

It is noted Council placed the proposal on a non-statutory exhibition period of 30 days during which six submissions objecting to the proposal were received.

5.2 Agencies

No specific agencies are recommended to be consulted.

6 Timeframe

Council proposes a six month time frame to complete the LEP.

The Department agrees a time frame of 6 months is reasonable to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site/planning proposal is minor in nature the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions to be addressed by the proponent prior to exhibition. The proposal will enable development on the RE1 Public Recreation zoned portion of the site to be consistent with future residential development of the whole site.

9 Recommendation

It is recommended that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be amended to address the following matters prior to exhibition:
 - (a) Delete discussion on North District Plan planning priorities N1, N2, N3, N4, N7, N7, N9, N10, N11, N12, N13, N14, N15, N16, N18, N21 and N22 that are not relevant to the proposal;
 - (b) Delete discussion on Northern Beaches Local Strategic Planning Statement priorities 1, 5, 7, 8, 9, 10, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 that are not relevant to the proposal;
 - (c) Delete the following community outcomes of the Northern Beaches Community Strategic Plan that are not relevant from the planning proposal:
 - i. Places for People
 - ii. Community and Belonging
 - iii. Vibrant Local Economy
 - iv. Transport, Infrastructure and Connectivity
 - v. Good Governance

vi. Partnership and Participation

2. The Bible Garden – Palm Beach Plan of Management (dated December 2006) is to be exhibited with the Planning Proposal;
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. The planning proposal must be exhibited **3 months** from the date of the Gateway determination.
5. The timeframe for completing the LEP is to be **6 months** from the date of the Gateway determination.
6. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



31/05/23

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30 May 2023

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