



northern  
beaches  
council

# PLANNING PROPOSAL

Amendments to Pittwater Local Environmental Plan  
2014 (PLEP 2014)

**6 Mitchell Road, Palm Beach**

November 2022

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## Executive Summary

### Overview

This Planning Proposal seeks a site-specific amendment to the Pittwater Local Environmental Plan (LEP) 2014 for 6 Mitchell Road Palm Beach, 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, and
- a maximum building height of 74.5AHD for any future residential development on 6 Mitchell Road.

The additional clause in Schedule 1 of the LEP 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 “Area 25” 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.

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site. The site has a split zoning of C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP 2014.

On 9 February 2004, a contract was entered into between Pittwater Council and the Trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract). The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity.

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

*Rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential “A”) to Zone No 6 (a) (Existing Recreation “A”) under Pittwater Local Environmental Plan 1993, and to allow land uses permissible under the relevant plan of management for the remaining land to which this plan applies.*

The rezoning ensured the Bible Garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014, Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract.

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

This Planning Proposal outlines the intended effects of the proposed LEP amendments to Pittwater LEP 2014 and provides justification for the proposed changes.

This Planning Proposal has been prepared in accordance with:

- Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act); and
- The Department of Planning – ‘Local Environmental Plan Making Guideline.’

It is the first stage of the Planning Proposal which seeks the initial Department of Planning and Environment gateway determination to:

- Support the justification for the proposal;
- Confirm the technical investigations and consultation required; and
- Outline the process for continuing the assessment of the proposal.

As outlined in a ‘Local Environmental Plan Making Guideline’, the Planning Proposal will evolve throughout the course of preparing the amending LEP as relevant sections will be updated and amended in response to the outcomes of technical investigations and consultation.

The proposal is considered to have a high level of strategic merit based on the following key areas:

- 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.

This Planning Proposal is accompanied by a suite of documents prepared by the applicant and considered by Council in its assessment of the planning proposal.

## Land to Which this Planning Proposal Applies

The subject site is located on the northern side of Mitchell Road to the south of Florida Road. The site is commonly known as 6 Mitchell Road, Palm Beach and legally described as Lot 1, DP 1086858. The site comprises a battle-axe lot with an area of approximately 695.1m<sup>2</sup>. The site is accessed via a shared driveway from Mitchell Road to the south of the site.

The site significantly slopes to the north with a slope of approximately 34 degrees and has views to Palm Beach to the north east of the site. The site currently contains an existing dwelling located beneath the shared driveway.

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014.

The site sits within an established low density residential and environmental living area characterized by low density residential dwellings designed to respond to the topography and existing vegetation in the area.

The site’s locational context is shown at **Figures 1 & 2** below.

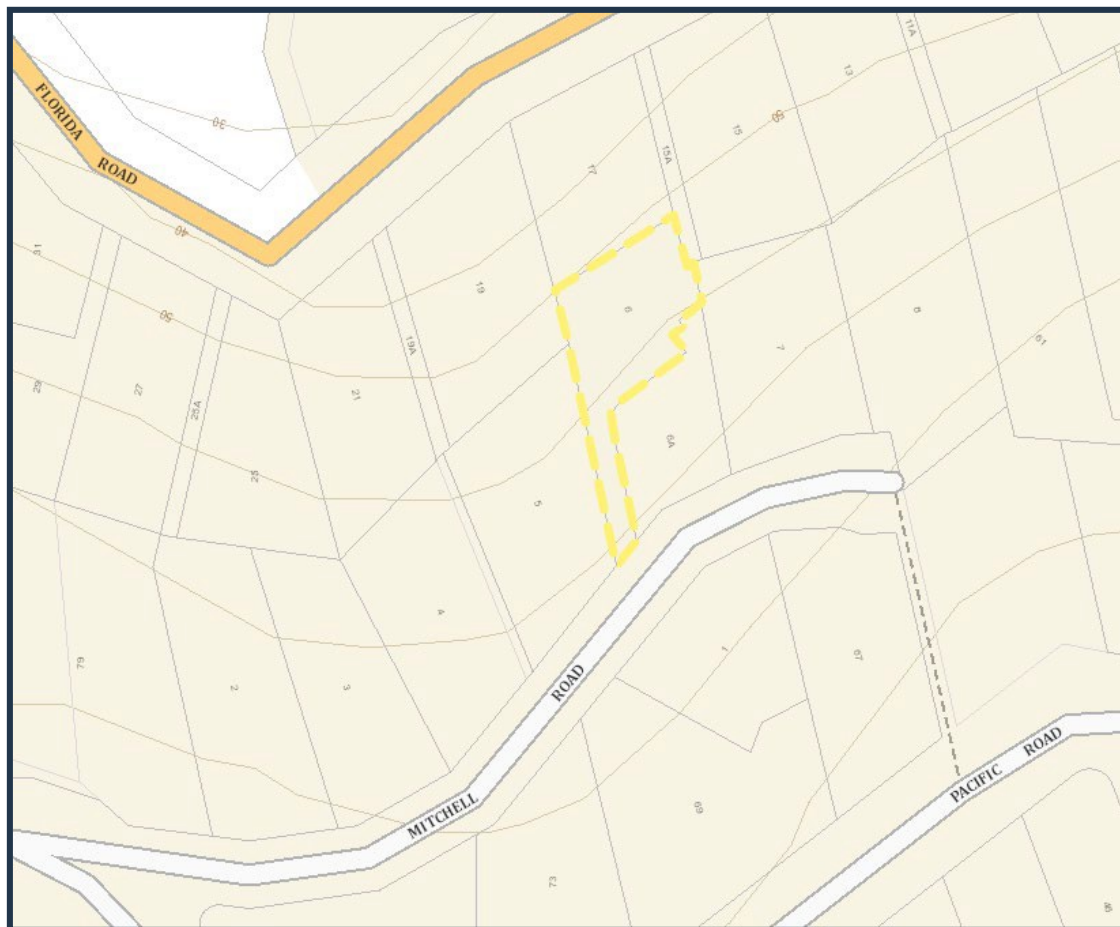


Figure 1: Locality Plan demonstrating the site outlined in yellow (Source – NSW Planning Portal)



Figure 2: Site Aerial with the subject site outlined in yellow (Source: NSW Planning Portal)

### Existing Zoning

The site is situated within the Northern Beaches Local Government Area (LGA) and part of the former Pittwater Council. The proposal is subject to the provisions of the Pittwater Local Environmental Plan (LEP) 2014. The site is zoned C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP, as shown in **Figure 3**.

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site as detailed in **Figure 4**.



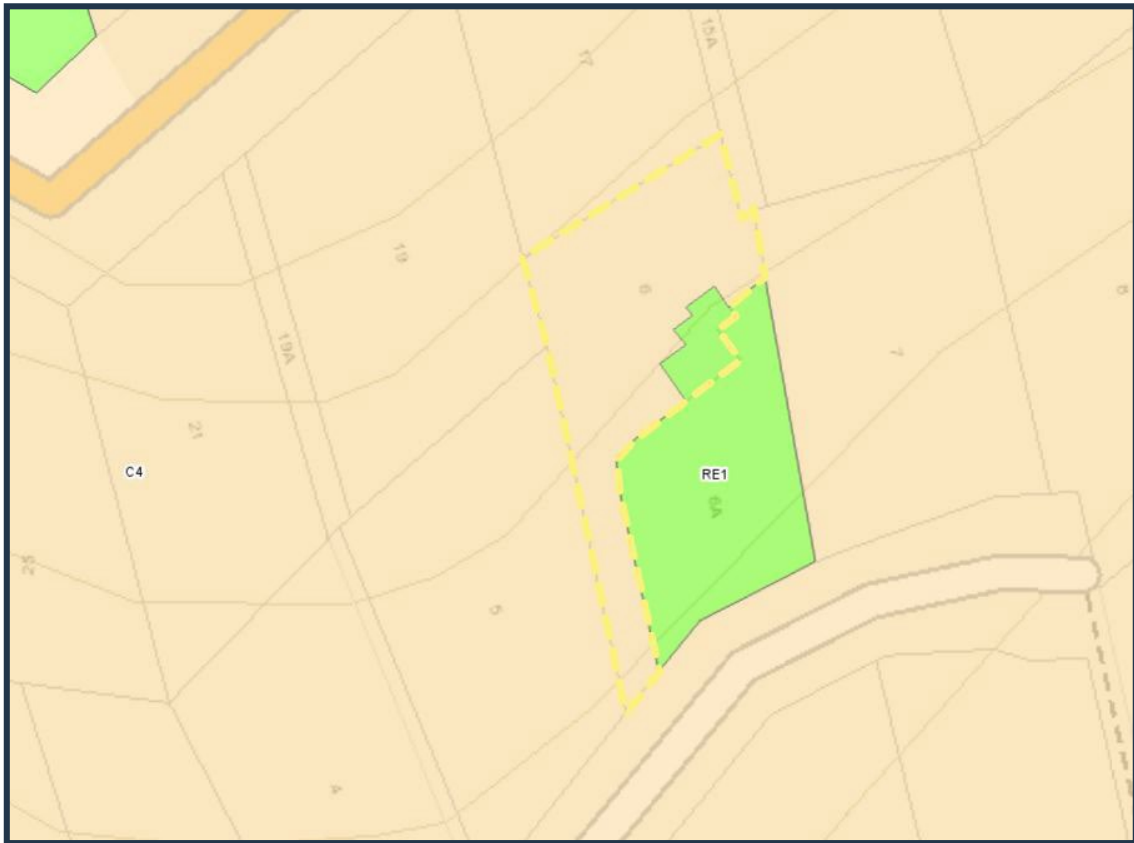


Figure 3: Map showing the land zoning of the subject site (Source: NSW Planning Portal)

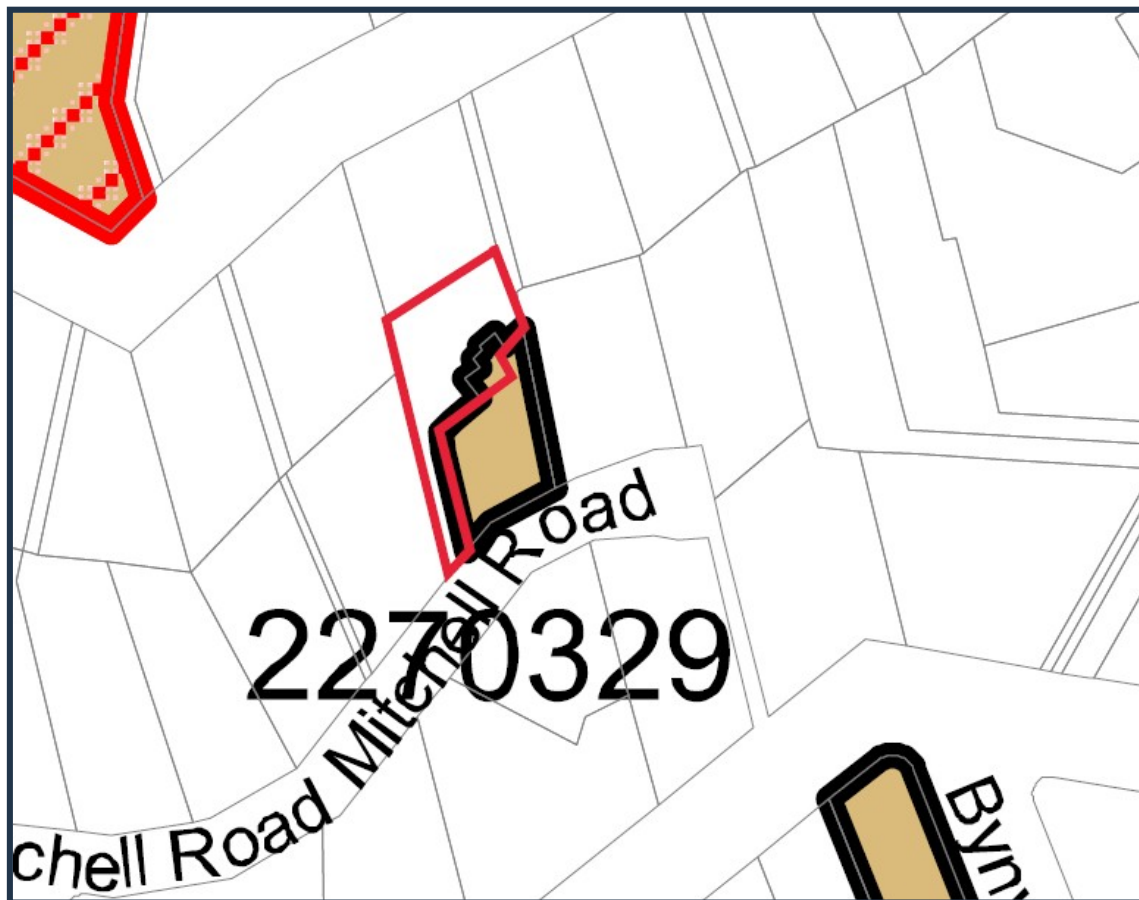


Figure 4: Heritage Map with the subject site outlined in red (Source: NSW Legislation)



## Proposed Amendments

The intent of the subject Planning Proposal is to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

In summary the project objectives and intended outcomes will be achieved by:

- 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.
- Amend Schedule 1 of the Pittwater LEP 2014 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 purposes of a dwelling house on that portion of the site zoned RE1 Public Recreation.

The additional clause in Schedule 1 of the LEP 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 "Area 25" 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.

The proposal is considered to have a high level of strategic merit based on the following key areas:

- 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.

The applicant and landowner, Roger Bain, had submitted Concept Plans with the application to demonstrate how the full site could be developed for residential purposes within the height limit of 74.5AHD once the planning proposal is approved. Council reviewed the concept plans and found that a future residential development can be reasonably accommodated below the 74.5AHD height level. These concept plans however, are not being referenced in the proposed amendments to Pittwater LEP 2014.

## **PART 1 – Objectives and Intended Outcomes**

The intent of the subject Planning Proposal is to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

The site has a split zoning of C4 Environmental Living and RE1 Public Recreation pursuant to the Pittwater LEP 2014. Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development.

### **Site History, Project Context and Intended Outcomes**

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014.

The Bible Garden at Palm Beach was founded by Gerald H. Robinson in 1962. From the 1970s, Mr Robinson established the garden by using plants in the Bible’s Old and New Testaments. Mr Robinson terraced the steep site and created garden beds himself. By trust deed dated 5 April 1972 GH Robinson settled the Bible Garden in a charitable trust for the construction, use and maintenance of the Bible Garden for all Christians.

A dwelling was constructed on the northern portion of the site beneath the shared driveway in 1972. In 1972 the founder's daughter and a trustee of the Bible Garden Memorial Trust, Deaconess Beatrice Violet Robinson, became the curator of the Bible Garden, living in the dwelling under the driveway and maintaining the Bible Garden for public enjoyment. This house was occupied by Deaconess Beatrice Violet Robinson until her death in 1994.

Following the death of Deaconess Beatrice Violet Robinson, the Trustees of the Bible Garden sought to subdivide the site to form two allotments, with the sale of the residential portion of the land to fund other trust projects and the ongoing conservation of the Bible Garden.

The proposed subdivision submitted to the then Pittwater Council (now Northern Beaches Council) included the provision for a new garage for the residence at 6 Mitchell Road and the provision for a viewing deck, accessible from the Bible Garden on the roof of the new garage.

On 9 February 2004, a contract was entered into between Pittwater Council and the Trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract). The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity. The Heads of Agreement Contract acknowledged that the boundary between the Property and the Bible Garden was chosen to provide space for the “eventual two car garage” on the Property, and that any approved

subdivision would have to enable the construction of the two-car garage as shown on the concept plans (Annexure H of The Heads of Agreement Contract).

The subdivision of the site utilised the existing cliff face and steep topography of the site to form the two lots which ensured the subdivision did not impact the existing bible garden use of the site. As outlined in the Heads of Agreement Contract The trustees of the Bible Garden propose to subdivide 6 Mitchell Road so as to create separate lots for the existing Bible Garden and residential uses of the land:

- The Bible Garden area (lot 2) would be vested in Pittwater Council as community land, being zoned 'Public Reserve (Bible Garden)', included as a heritage item in Pittwater Local Environmental Plan and managed by the incorporated association 'Friends of the Bible Garden Memorial'. Council would recognise the committee of the Friends as a committee of Council.
- The remainder of 6 Mitchell Road (lot 1) would continue to be used for residential purposes, and subject to development parameters consistent with protection of the view from the Bible Garden.

The Planning Process identified in Annexure K of the Heads of Agreement Contract identified the planning proposal to achieve the above subdivision as follows:

1. *Public Exhibition of Draft Heads of Agreement;*
2. *Signing of Heads of Agreement;*
3. *Lodgement of Applications - Concurrent lodgment of Development Application (DA) for subdivision, SEPP 1 submission, and application for amendment of Development Control Plan / Locality Plan (DCP), including:*
  - *public reservation of Bible Garden area (based on cultural, heritage and environmental attributes)*
  - *development parameters for the residential lot (for incorporation in DCP) as per concept sketches (Annexure H) and discussion of compliance with council requirements (Annexure I)*
4. *Public Exhibition - Public exhibition of DA, draft DCP, draft plan of management of the Bible Garden as community land.*
5. *Approvals –*
  - *granting of development consent for subdivision*
  - *public reservation of Bible Garden area*
  - *draft DCP adopted*
  - *resolution that the Bible Garden area will be classified as "community land" upon dedication to Council*
  - *obtain Sydney Water certificate*
  - *lodgment with Land and Property Information of subdivision plans endorsed with Council's subdivision certificate.*

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

*rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A") under Pittwater Local Environmental Plan 1993, and to allow land uses permissible under*

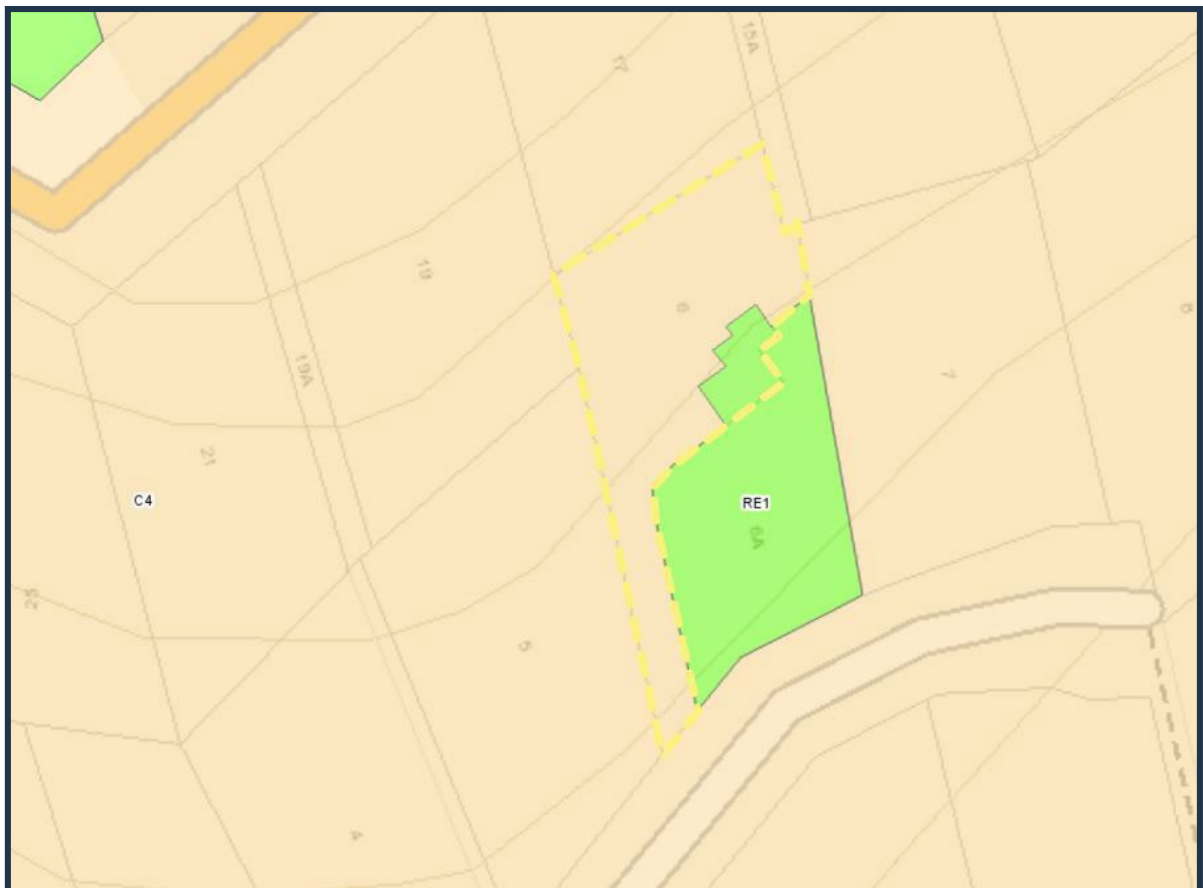
*the relevant plan of management for the remaining land to which this plan applies.*

The rezoning ensured the bible garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014 Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site as identified in **Figure 5** below.

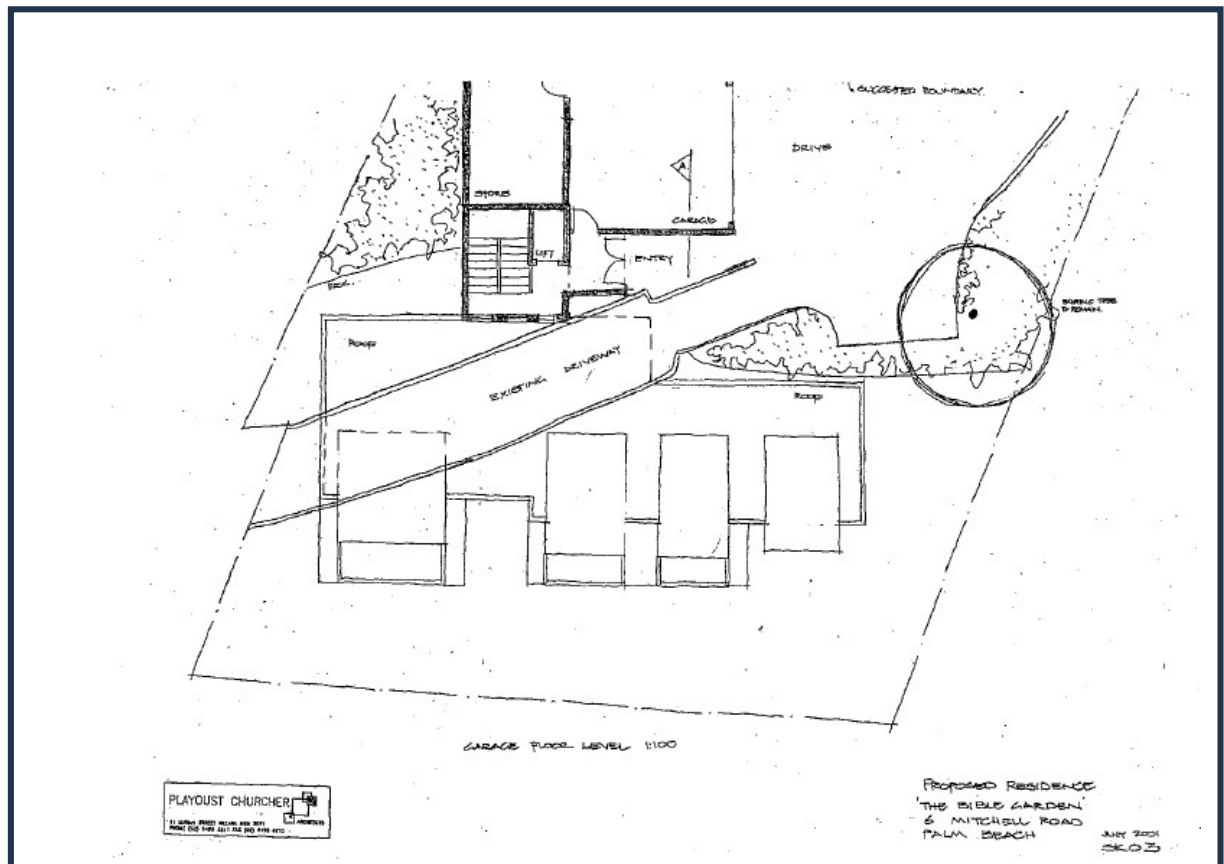


**Figure 5: Map showing the land zoning of the subject site (Source: NSW Planning Portal)**

The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing

platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract and detailed in **Figure 6-8** below.



**Figure 6: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road**  
(Source: Heads of Agreement Contract 2004)

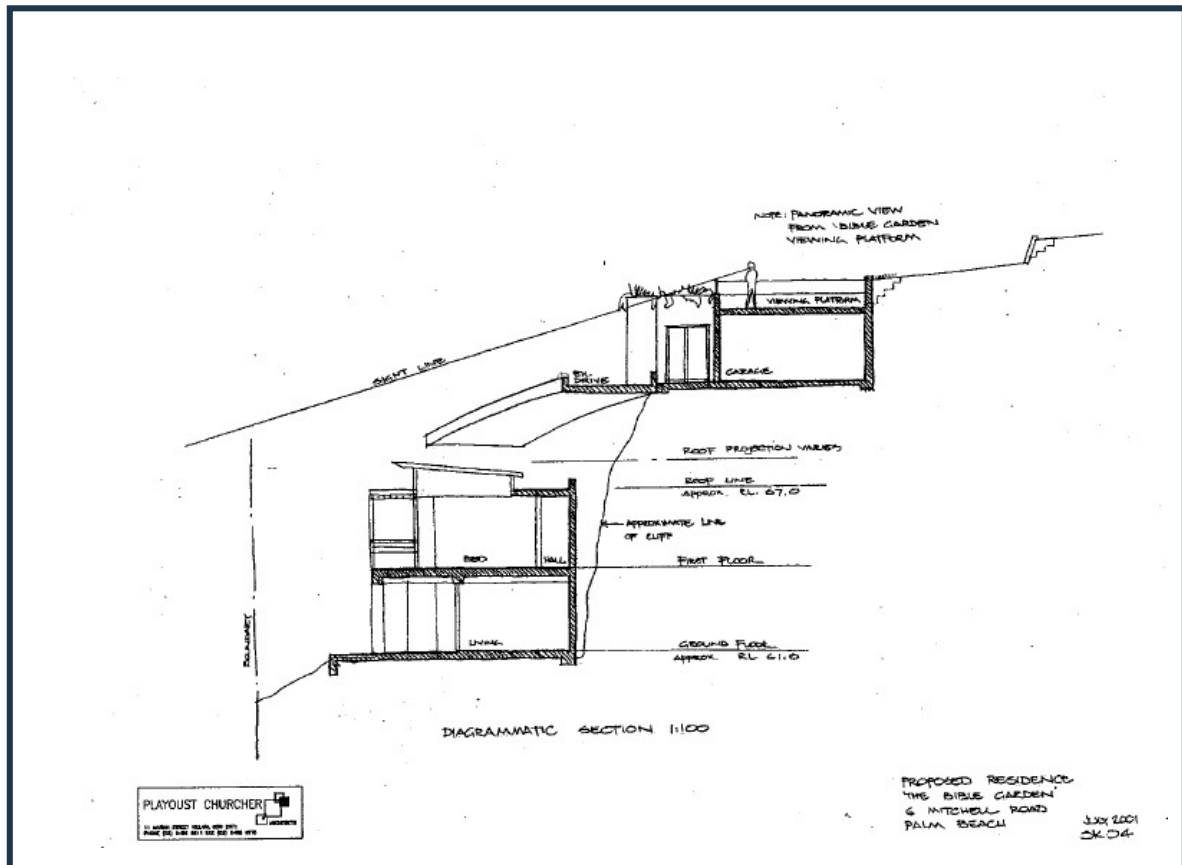


Figure 7: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

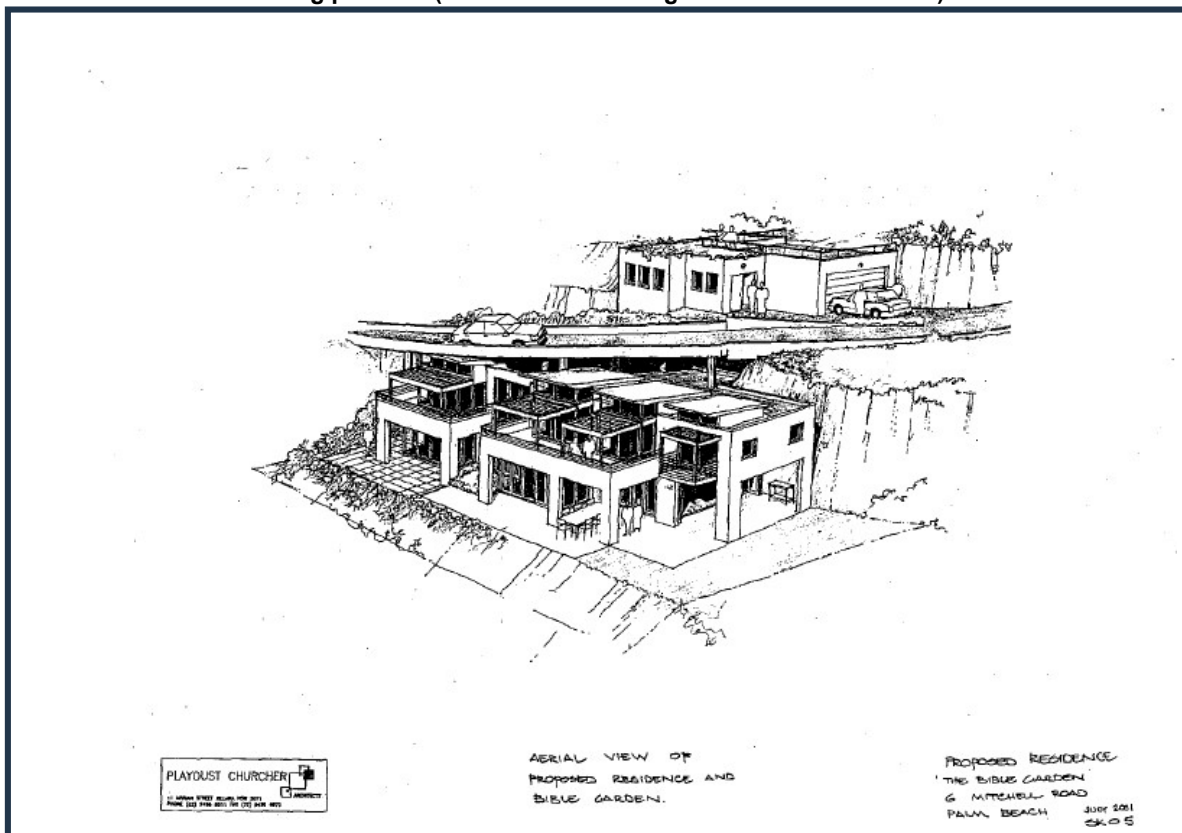


Figure 8: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

### **Strategic Merit**

A key consideration for any Planning Proposal is its strategic merit. The proposal is considered to have a high level of strategic merit based on the following key areas:

- 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.

#### Future intended residential development of the site as envisaged by Council and the Trustees of the Bible Garden

The proposal is deemed to have strategic merit in that it will ensure the site can be developed in line with the intended use and development outlined in the Heads of Agreement Contract. The subdivision and future development outlined in the Heads of Agreement Contract allowed the development of the subject site for residential purposes without impacting on the adjoining heritage item and ensuring they could coexist through appropriate design that responded to the natural characteristics of the site.

The planning proposal will allow the subject site to facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site. As discussed earlier, Council reviewed the concept plans submitted to demonstrate how a future residential development can be accommodated below the 74.5AHD height level and deemed this reasonable. These concept plans however, are not being referenced in the proposed amendments to Pittwater LEP 2014.

#### Enable appropriate residential development that recognises the heritage significance of the site and surrounding area

A key consideration in the preparation of the proposal was heritage impacts and the proposal has been designed to ensure it will not result in any adverse impacts on the adjoining heritage item as outlined in the Heritage Impact Statement (submitted with the application) and the redevelopment of the site envisaged in the Heads of Agreement Contract. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site in the Heads of Agreement Contract.



No adverse impact on the ecological, cultural or scenic significance of the site and surrounding area

The proposal has been designed to ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space or the ecological, cultural or scenic significance of the surrounding landscape. The following specialist studies have been prepared in support of the proposal and submitted with the application to ensure all potential impacts are minimised and appropriately managed:

- Flora and Fauna Assessment
- Arborist Report
- Geotech Report.

The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.

## **PART 2 – Explanation of Provisions**

In summary the project objectives and intended outcomes will be achieved by:

- 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.

The additional clause in Schedule 1 of the LEP 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 “Area 25” 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.

## **PART 3 – Justification of Strategic and Site-Specific Merit**

This section establishes the reasons for the proposed outcomes of the planning proposal and proposed amendments of the LEP. It addresses the key questions to be considered when demonstrating the justification as outlined in the Local Environmental Plan Making Guideline.

The key questions outlined relate to the need for the planning proposal, its strategic planning context, the environmental, social and economic impacts and the implications for State and Commonwealth government agencies.

## **A. NEED FOR PLANNING PROPOSAL**

The intent of the subject Planning Proposal is to facilitate residential development across the whole site at 6 Mitchell Road, Palm. On 9 February 2004, a contract was entered into between Pittwater Council and the trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach (the Heads of Agreement Contract).

The Heads of Agreement Contract enabled investigation of subdivision of the Original Lot to enable residential development on the Property and to allow the Bible Garden to continue in perpetuity. The Heads of Agreement Contract acknowledged that the boundary between the Property and the Bible Garden was chosen to provide space for the “eventual two car garage” on the Property, and that any approved subdivision would have to enable the construction of the two-car garage as shown on the concept plans (Annexure H of The Heads of Agreement Contract).

The subdivision of the site utilised the existing cliff face and steep topography of the site to form the two lots which ensured the subdivision did not impact the existing bible garden use of the site. As outlined in the Heads of Agreement Contract, The Trustees of the Bible Garden propose to subdivide 6 Mitchell Road so as to create separate lots for the existing Bible Garden and residential uses of the land:

- The Bible Garden area (lot 2) would be vested in Pittwater Council as community land, being zoned 'Public Reserve (Bible Garden)', included as a heritage item in Pittwater Local Environmental Plan and managed by the incorporated association 'Friends of the Bible Garden Memorial'.

On 7 February 2006, this lot was transferred into Council ownership and is 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 (lot 1 and is the subject site) on 23 March 2006.

- The remainder of 6 Mitchell Road (lot 1, the subject site) would continue to be used for residential purposes, and subject to development parameters consistent with protection of the view from the Bible Garden.

On 30 March 2007 the Pittwater Local Environmental Plan (LEP) 1993 was amended to:

*rezone 6a Mitchell Road, Palm Beach (Lot 2 DP 1086858) (The Bible Garden) from Zone No 2 (a) (Residential “A”) to Zone No 6 (a) (Existing Recreation “A”) under Pittwater Local Environmental Plan 1993, and to allow land uses permissible under the relevant plan of management for the remaining land to which this plan applies.*

The rezoning ensured the bible garden located at 6a Mitchell Road, Palm Beach was zoned for recreation purposes and the remainder of the site (6 Mitchell Road, Palm Beach) could be used for residential purposes in line with the subdivision and Heads of Agreement Contract.

On 26 June 2014, Pittwater LEP 1993 was repealed and the Pittwater LEP 2014 came into force. The subject site was rezoned under the Pittwater LEP 2014 as follows:

- 6a Mitchell Road, Palm Beach – RE1 Public Recreation; and
- 6 Mitchell Road, Palm Beach – part C4 Environmental Living and part RE1 Public Recreation.

The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.

The Heads of Agreement Contract clearly detailed that the future lot (Lot 1 DP1086858) would be for residential purposes and detailed it as an indicative location for a garage with a viewing platform above for use by the Bible Garden as identified in the Concept Plans provided in Annexure H of the Heads of Agreement Contract.

Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract.

The proposal is deemed to have strategic merit in that it will ensure the site can be developed in line with the intended use and development outlined in the Heads of Agreement Contract. The subdivision and future development outlined in the Heads of Agreement Contract allowed the development of the subject site for residential purposes without impacting on the adjoining heritage item and ensuring they could coexist through appropriate design that responded to the natural characteristics of the site.

The planning proposal will allow the subject site to facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

**QUESTION 1 – Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

The Planning Proposal is not a result of any specific strategic study or report however is a result of the development envisaged on the site under the Heads of Agreement Contract entered into between Pittwater Council and the trustees of the Bible Garden Memorial Trust in their capacity as owners of 6 Mitchell Road, Palm Beach in 2004.

The Heads of Agreement Contract involved investigations and consultation that identified the key framework to facilitate the future development of the subject site for residential purposes. The planning proposal will allow the subject site to facilitate the residential development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

In addition, a comprehensive assessment of the proposal has been undertaken against the strategic planning strategies and policies relevant to the site which is provided in the following sections of this report. The assessment has found that the Planning Proposal is generally consistent with the relevant objectives and actions of the key planning strategies and policies relevant to the site which are as follows:

- Greater Sydney Region Plan;
- Northern District Plan;
- Northern Beaches Local Strategic Planning Statement; and
- Northern Beaches Community Strategic Plan.

**QUESTION 2 – Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

There are three options that could apply to the site regarding its potential development. These are as follows:

**Option 1: Do Nothing**

This option does not promote the social and economic potential of the site or facilitate the development envisaged in the Heads of Agreement Contract and resolve the key issues associated with the split zoning of the site.

**Option 2 – Lodge a Development Application**

A Development Application is not viable as the current zoning does not allow for the development envisaged and no other alternate pathway under current legislation would facilitate the intended outcomes. Therefore, the planning proposal is the most efficient and time effective approach to delivering the outcomes envisaged for the site.

**Option 3 – Planning Proposal**

The project objectives and intended outcomes can only be achieved through the amendment of the Pittwater Local Environmental Plan 2014. Council is supportive of this Planning

Proposal as this is the only way of achieving the objectives and intended outcomes for this site consistent with the Heads of Agreement signed by Council and the Trustees of the Bible Garden in 2004.

## **B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

### **Question 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 Planning Proposal is consistent with the Greater Sydney Region Plan and the North District Plan.

#### **North District Plan**

The North District Plan is a guide for the implementation of *A Metropolis of Three Cities* – the Greater Sydney Region Plan at a district level.

*A Metropolis of Three Cities* – the Greater Sydney Region Plan was implemented by the Greater Sydney Commission and is built on a vision of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. To meet the needs of a growing and changing population the vision seeks to transform Greater Sydney into a metropolis of three cities:

- the Western Parkland City
- the Central River City
- the Eastern Harbour City.

Greater Sydney's three cities reach across five districts: Western City District, Central City District, Eastern City District, North District and South District.

The North District consists of the City of Ryde, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches and Willoughby Local Government Areas and contains the subject site.

The North District Plan is structured to implement the aim of the Greater Sydney Region Plan to provide cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. This is to be achieved through a number of planning priorities detailed in the plan. The proposed development is considered to be consistent with the plan and a number of planning priorities.

The table below details the relevant planning priorities of the North District Plan and the proposal's consistency with those priorities.

Table 1: Consistency with the North District Plan	
Objective	Comment
<b>Planning Priority N5</b> – Providing housing supply, choice and affordability with access to jobs, services and public transport.	The planning proposal seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling house on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal will positively contribute to the housing supply and choice in the area.
<b>Planning Priority N6</b> – Creating and renewing great places and local centres, and respecting the District's heritage	The proposal is consistent with this planning priority as it will ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space or heritage item. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site. A key consideration in the preparation of the proposal was heritage impacts and the proposal has been designed to ensure it will not result in any adverse impacts on
<b>Planning Priority N8</b> - Eastern Economic Corridor is better connected and more competitive	<p>The adjoining heritage item as outlined in the Heritage Impact Statement (submitted with the application) and the redevelopment of the site envisaged in the Heads of Agreement Contract.</p> <p>The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts.</p>
<b>Planning Priority N17</b> - Protecting and enhancing scenic and cultural landscapes	<p>The proposal is consistent with this planning priority as the proposed amendment include a height limitation for any future residential development on the site to not exceed 74.5 AHD. This will be well below the level of the existing Bible Garden Terrace therefore not affect existing views of Palm Beach from neighboring property 6a Mitchell Road, Palm Beach also known as the Bible Gardens.</p> <p>A Heritage Impacts Statement was submitted with the application.</p>

Table 1: Consistency with the North District Plan	
Objective	Comment
<b>Planning Priority N20</b> - Delivering high quality open space	<p>The proposal is consistent with this planning priority as it will ensure that any future development on the site will be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed:</p> <ul style="list-style-type: none"> <li>• Heritage Impacts Statement</li> <li>• Flora and Fauna Assessment</li> <li>• Arborist Report</li> <li>• Geotech Report.</li> </ul>

**QUESTION 4 – Is the planning proposal consistent with a Council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?**

#### **Northern Beaches Local Strategic Planning Statement (LSPS)**

The Planning Proposal is consistent with the Northern Beaches Local Strategic Planning Statement (LSPS). The LSPS implements the strategic direction of The Greater Sydney Region Plan and North District Plan at the local level by setting clear local priorities for the jobs, homes, services and parks that the Northern Beaches community will require over the next 20 years. The LSPS sets short, medium and long-term actions linked to the local priorities, to deliver on the community's future vision.

The LSPS is structured around the following four key themes:

- Sustainability;
- Infrastructure and Collaboration;
- Liveability; and
- Productivity.



An assessment of the proposal against the key planning priorities of the LSPS is provided in the table below.

<b>Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement</b>	
<b>Planning Priority</b>	<b>Comment</b>
<p><b>Priority 2</b> Protected and enhanced bushland and biodiversity</p> <p><b>Priority 3</b> Protected scenic and cultural landscapes</p> <p><b>Priority 4</b> Protected Metropolitan Rural Area</p> <p><b>Priority 6</b> High quality open space for recreation</p>	<p>The proposal is consistent with the planning priorities as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed:</p> <ul style="list-style-type: none"> <li>• Heritage Impacts Statement</li> <li>• Flora and Fauna Assessment</li> <li>• Arborist Report</li> <li>• Geotech Report.</li> </ul> <p>The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.</p> <p>The proposal it only relates to a small portion of the site zoned RE1 to facilitate the residential development of the site in line with the remaining C4 zoned land. All future residential development will need to ensure it appropriately responds to the natural characteristics of the site and manages energy, water and waste efficiently.</p>

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	Comment
<p><b>Priority 11</b> Community facilities and services that meet changing community needs</p> <p><b>Priority 15</b> Housing supply, choice and affordability in the right locations</p> <p><b>Priority 18</b> Protected, conserved and celebrated heritage</p>	<p>The planning proposal seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal will positively contribute to the housing supply and choice in the area.</p> <p>The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that will provide employment during its construction and will increase housing supply in an established residential area that positively contributes to the nearby local centres, health and education precincts.</p> <p>The proposal is consistent with this planning priority as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space or heritage item. This will be achieved based on the topography of the site and the low scale garage development envisaged for the southern portion of the site as outlined in the Heritage Impact Statement and the Heads of Agreement Contract.</p> <p>The proposal will promote sustainable residential development on the site with a clear connection and relationship with the surrounding natural environment, public open space and cultural heritage.</p>

### Northern Beaches Community Strategic Plan

The Northern Beaches Community Strategic Plan outlines the community's vision to protect and enhance the natural and built environments, to create more connected and caring communities, to embrace our diverse sports and recreation culture, and to live more sustainably and in balance with the environment.

The key vision principles of the Strategy are:

- Community
- Safety
- Inclusion

- Extraordinary
- Connected
- Coastal and Bushland Environment
- Balance.

The strategy identifies the following key community outcomes to achieve the vision:

- Protection of the Environment
- Environmental Sustainability
- Places for People
- Community and Belonging
- Vibrant Local Economy
- Transport, Infrastructure and Connectivity
- Good Governance
- Partnership and Participation

An assessment of the proposal against the key community outcomes of the Northern Beaches Community Strategic Plan is provided in the table below.

<b>Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan</b>	
<b>Community Outcome</b>	<b>Comment</b>
<b>Protection of the Environment</b>  <b>Environmental Sustainability</b>	<p>The proposal is consistent with this community outcome as it will ensure that any future development on the site will need to be designed to ensure there are no adverse impacts on the adjoining public open space, heritage item or surrounding landscape. The following specialist studies have been prepared in support of the proposal to ensure all potential impacts are minimised and appropriately managed:</p> <ul style="list-style-type: none"> <li>• Heritage Impacts Statement</li> <li>• Flora and Fauna Assessment</li> <li>• Arborist Report</li> <li>• Geotech Report.</li> </ul> <p>The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.</p>

**QUESTION 5 – Is the planning proposal consistent with any other applicable State and regional studies or strategies?**

**Greater Sydney Region Plan**

Greater Sydney Region Plan was finalised in March 2018 and replaces the former *A Plan for Growing Sydney (2014)*. This Plan sets the vision and the overarching planning framework to guide future transport, infrastructure, and development in Greater Sydney in concurrence with Future Transport 2056 and State Infrastructure Strategy.

The Plan provides planning priorities that will direct Sydney's growth over the next 20 years. The Region Plan identifies the overarching directions and objectives to guide growth in the Sydney region. These directions have then been used to provide more specific detail to guide growth and land use decisions in each of the districts through the relevant District Plans. As outlined further in this report, the Planning Proposal is consistent with the relevant Directions and Actions in the District Plan and therefore is consistent with the Region Plan.

### **Future Transport 2026**

The NSW Governments "*Future Transport 2056*" was released in 2018 and is an overarching strategy, supported by a suite of plans to achieve a 40-year vision for the NSW transport system. The strategy considers:

- the future road network throughout Sydney
- future light and heavy rail networks
- a future rapid bus and ferry network
- bicycle network, and
- freight network

The Planning Proposal is not inconsistent with the plan as it will facilitate future residential development that is connected to the existing transport network within the region.

## QUESTION 6 – Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with the relevant State Environmental Planning Policies (SEPPs) that apply to the site. A detailed list of the SEPPs and commentary is provided in the table below:

<b>Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)</b>		
<b>SEPP</b>	<b>Aim</b>	<b>Comment</b>
<b>SEPP (Resilience and Hazards) 2021</b>	<p>Chapter 4 of this Policy provides a state-wide planning approach to remediation and aims to promote the remediation of any contaminated land for the purpose of reducing the risk of harm to human health and/or the environment.</p> <p>A planning authority is to consider whether the land is contaminated and if so whether it is, or can be made, suitable for the proposed land uses.</p>	<p>The subject site is not located within an investigation area and has contained only residential land uses for an extended period of time. The site is therefore considered suitable for the intended future use. No further investigation is deemed to be necessary.</p> <p>The proposal is therefore consistent with Chapter 4 of SEPP (Resilience and Hazards) 2021.</p>
<b>SEPP (Biodiversity and Conservation) 2021</b>	<p><b>Chapter 2 – Vegetation in Non-rural Areas</b> Chapter 2 of SEPP (Biodiversity and Conservation) 2021 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 the preservation of trees and other vegetation.</p> <p><b>Chapter 6 – Bushland in Urban Areas</b> Chapter 6 of SEPP (Biodiversity and Conservation) 2021 aims to protect and preserve bushland within the urban areas.</p>	<p>The proposal has been designed to minimise impacts on the surrounding landscape as outlined in the following specialist studies:</p> <ul style="list-style-type: none"> <li>• Flora and Fauna Assessment</li> <li>• Arborist Report</li> <li>• Geotech Report.</li> </ul> <p>All future development will need to demonstrate consistency with the SEPP and therefore the proposal is not considered to be inconsistent with the SEPP.</p>
<b>SEPP (Building Sustainability Index: BASIX) 2004</b>	The aim of this policy is to mandate minimum sustainability targets for thermal comfort, energy and water use for residential development.	DAs for all future residential development will need to comply with the targets established under BASIX.

<b>Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)</b>		
<b>SEPP</b>	<b>Aim</b>	<b>Comment</b>
<b>SEPP (Exempt and Complying Codes) 2008</b>	The aims of this policy are to provide exempt and complying development codes that have State-wide application.	The Planning Proposal is not inconsistent with this SEPP which would apply to future development.
<b>SEPP (Housing) 2021</b>	The aim of this policy is to enable the development of diverse housing types, including purpose-built rental housing and encouraging the development of housing that will meet the needs of more vulnerable members of the community	The Planning Proposal is not inconsistent with this SEPP which may apply to future development.

**QUESTION 7 – Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The Planning Proposal is generally consistent with the applicable Section 9.1 directions issued by the Minister for Planning. A statement of the consistency of this Planning Proposal with the relevant directions to this planning proposal is provided in the table below:

<b>Table 5: Consistency with Relevant Section 9.1 Ministerial Directions</b>		
<b>Direction</b>	<b>Requirement</b>	<b>Comment</b>
<b>Focus Area 1 – Planning Systems</b>		
<b>1.1 Implementation of Regional Plans</b>	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	The proposal is generally consistent with this direction as it is consistent with the Greater Sydney Region Plan as detailed above.
<b>1.4 Site Specific Provisions</b>	<p>(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either:</p> <p>(a) allow that land use to be carried out in the zone the land is situated on, or</p> <p>(b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any</p>	The planning proposal seeks to amend the Pittwater Local Environmental Plan (LEP) 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site. The planning proposal will provide a site-specific provision for the site allowing the additional permitted use of dwelling houses whilst maintaining the RE1 zoning of the site and is therefore inconsistent with this direction.

**Table 5: Consistency with Relevant Section 9.1 Ministerial Directions**

Direction	Requirement	Comment
	<p>development standards or requirements in addition to those already contained in that zone, or</p> <p>(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.</p> <p>(2) A planning proposal must not contain or refer to drawings that show details of the proposed development.</p> <p>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.</p>	<p>The adoption of Pittwater LEP 2014 resulted in a split zoning for the subject site. The split zoning is inconsistent with the intent of the subdivision and rezoning of the site as agreed to under the Heads of Agreement Contract as it prohibited residential development on the portion of the site zoned RE1.</p> <p>Dwelling houses are prohibited in the RE1 zone and therefore the southern portion of site cannot accommodate any residential development or associated structures. The subject planning proposal therefore seeks to amend the Pittwater LEP 2014 to include the additional permitted use of dwelling houses on the RE1 zoned portion of the site to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement Contract. The proposal is therefore considered to be of minor significance.</p>

**Focus Area 3 – Biodiversity and Conservation**

<b>3.1 Conservation Zones</b>	<p>(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>(2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection</p>	<p>The proposal intends to permit residential development on a small portion of land zoned RE1 Public Recreation in line with the C4 Environmental Living zoning of the remainder of the site.</p> <p>Currently, Council has placed on public exhibition a review of Conservation Zones for the Northern</p>
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	<p>purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land).</p>	<p>Beaches and affects the subject land. In this regard, for this land:</p> <ul style="list-style-type: none"> <li>• No change in zoning is proposed. The large portion of the parcel will remain within the C4 zone with the other portion proposed to be zoned RE1.</li> <li>• No proposed changes in the RE1 zone permitted uses as part of this process.</li> <li>• There are some minor proposed changes in uses for the C4 zone but they are unlikely to impact the use of that land.</li> </ul> <p>The planning proposal is considered to be of minor significance and will not amend or reduce the environmental protection standards that apply to the land.</p> <p>The proposal is therefore consistent with the direction.</p>
<b>3.2 Heritage Conservation</b>	<p>(1) A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p>	<p>The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site.</p> <p>A Heritage Impact Statement has been prepared in support of the proposal by Weir Phillips Heritage and</p>

	<p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>Planning. The Heritage Impact Statement concludes that the proposal will have no impact on the significance of the adjoining Bible Gardens and that the proposal complies with the provisions contained in Section 9.1 Ministerial Direction for Planning Proposals – 3.1 Heritage Conservation.</p> <p>The proposal is therefore consistent with the direction.</p>
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#### Focus Area 4 – Resilience and Hazards

<p><b>4.4 Remediation of Contaminated Land</b></p>	<p>(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:</p> <p>(a) the planning proposal authority has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</p> <p>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.</p>	<p>The subject site is not located within an investigation area and has contained only residential land uses for an extended period of time. The site is therefore considered suitable for the intended future use. No further investigation is deemed to be necessary.</p> <p>The proposal is therefore consistent with the direction.</p>
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	<p>In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.</p> <p>(2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.</p>	
<b>4.5 Acid Sulfate Soils</b>	<p>(1) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.</p> <p>(2) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:</p> <p>(a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary, or</p> <p>(b) other such provisions provided by the Planning Secretary that are consistent with the Acid Sulfate Soils Planning Guidelines.</p>	<p>The proposal only relates to a small portion of an existing site currently used for residential purposes. The site is mapped as containing Class 5 Acid Sulfate Soils as identified in the Pittwater LEP 2014. The proposal intends to permit residential development on a small portion of land zoned RE1 Public Recreation and is considered to be of minor significance. Any future development will have to take into consideration the Acid Sulfate Soil mapping of the site.</p>

	<p>(3) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.</p> <p>(4) Where provisions referred to under 2(a) and 2(b) above of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with 2(a) and 2(b).</p>	
<b>4.6 Mine Subsidence and Unstable Land</b>	<p>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:</p>	<p>The proposal only relates to a small portion of an existing site currently used for residential purposes. The site is identified as Geotechnical Hazard H1 as detailed on the Geotechnical Hazard Map in the Pittwater LEP 2014. The proposal intends to permit residential</p>

	<p>(a) justified by a strategy approved by the Planning Secretary which:</p> <p>i. gives consideration to the objective of this direction, and</p> <p>ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), or</p> <p>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy, Regional Plan or District Plan prepared by the Department of Planning and Environment which gives consideration to the objective of this direction, or</p> <p>(d) of minor significance.</p>	<p>development on a small portion of land zoned RE1 Public Recreation and is considered to be of minor significance.</p> <p>A Geotechnical Report has been prepared by Davies Geotechnical Consulting Engineers in support of the proposal.</p> <p>The Geotech Report identifies management and mitigation measures to be incorporated under future development that ensures it can appropriately respond to the Geotech hazard of the site demonstrating that the proposal will not adversely impact on the site or surrounding area. The Geotech Report concludes that the proposal can be supported from a geotechnical risk standpoint. Therefore, the proposal is considered to be of minor significance.</p>
<b>Focus Area 5 – Transport and Infrastructure</b>		
<b>5.1 Integrating Land Use and Transport</b>	<p>(1) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	<p>The Planning Proposal is not inconsistent with the direction as it will facilitate future residential development that is connected to the existing transport network within the region. The proposal will facilitate residential development that is of a consistent and compatible scale with existing land uses in the surrounding area.</p>

<p><b>5.2 Reserving Land for Public Purposes</b></p>	<p>(1) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary).</p> <p>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:</p> <p>(a) with respect to a request referred to in paragraph (4), further information is required before appropriate planning controls for the land can be determined, or</p> <p>(b) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.</p>	<p>The planning proposal seeks to resolve split zoning issues on the site and facilitate the residential development of the site in line with the intended use and development outlined in the Heads of Agreement Contract.</p> <p>The proposal seeks to include the additional permitted use of a dwelling house on the small portion of the site that is zoned RE1 Public Recreation. The portion of the site is not currently used for public recreation and the proposal will ensure the entire site can be developed for residential purposes. The proposal is therefore of minor significance.</p>
<p><b>Focus Area 6 – Housing</b></p>		
<p><b>6.1 Residential Zones</b></p>	<p>(1) A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p>	<p>The proposal is consistent with this ministerial direction as it will facilitate the intended residential use of the site.</p> <p>Any future development will be required to demonstrate the site can be adequately serviced to facilitate the proposed development.</p> <p>The proposal does not contain provisions which will</p>

	<p>(d) be of good design.</p> <p>(2) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	<p>reduce the permissible residential density of land.</p>
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### **C. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT**

**QUESTION 8 – 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?**

#### **Ecological Impacts**

The subject site is identified as having biodiversity value as detailed in the Biodiversity Map provided in the Pittwater Local Environmental Plan (LEP) 2014.

A Flora and Fauna Assessment was prepared by Ecological Consultants Australia Pty Ltd in support of the proposal. The Flora and Fauna Assessment included:

- On ground surveys on 18 August, 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 Flora and Fauna Assessment concluded that:

- No threatened flora or fauna species were recorded on- site during survey or previously recorded via Bionet.
- No significant habitat features, values or landscape corridors will be impacted by the proposed development.
- The proposal does not trigger entry into the Biodiversity Offset Scheme.

- Tree protection will be consistent with the Arborist report (Beecher 2020) or any updates from Alex Austin (ArborSaw June 2022). Main trees to be managed are trees within close proximity to building works.
- The neighboring bible garden/public recreation area will remain open to the public and unaffected by the proposal; and
- All 5 part tests have concluded that the proposal is not likely to significantly affect Large Forest Owls, Grey-headed Flying-foxes or microbats and will not be likely to put the local populations at risk of extinction.

The assessment also includes a number of recommended mitigation measures to be incorporated during the construction of the development which will be implemented to ensure potential ecological impacts are minimised and appropriately mitigated.

All future development on the site will be sited and designed to best respond to the ecological value of the surrounding area and will include the provision of native landscaping to assist in the integration of the future development into the surrounding environment. It is therefore considered that the Planning Proposal will not adversely impact on critical habitat, threatened species, populations or ecological communities and their habitats.

### **Tree Impacts**

An Arborist Report was prepared by Arborsaw in support of the proposal.

The Arborist Report undertook an assessment of the existing vegetation on the site and within the surrounding area to ascertain the suitability of the proposal.

The Arborist Report concludes that the planning proposal is considered to be suitable from a tree impact perspective provided the recommendations of the report are implemented with any future development onsite.

### **QUESTION 9 – Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

#### **Heritage**

The site directly adjoins and partially forms a part of the locally listed heritage item “The Bible Garden” at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014. A small portion of the subject site forms part of the heritage listing however it is predominantly located on 6a Mitchell Road to the south of the site.

A Heritage Impact Statement has been prepared in support of the proposal by Weir Phillips Heritage and Planning. The Heritage Impact Statement concludes that the proposal will have no impact on the significance of the adjoining heritage item based on the following:

- The proposal is compatible with the concept schemes envisaged when the site was subdivided and sold as part of the Heads of Agreement Contract with The Trustees of the Bible Garden.



- The steeply topography of the existing lot, particularly the northern portion which adjoins the subject site, is not usable by patrons of the Bible Garden. The proposal will allow for the construction of a dwelling with a flat top structure (potential garage). This structure when constructed will provide additional area as part of the garden which will enhance the user experience of the Garden and offer an opportunity to expand the significant plantings on site.
- The previous residential scheme was by Stephen Lesiuk Architect has been presented and endorsed by the Trustees of the “Bible Garden” Memorial Trust in a letter dated 17th August 2020. This demonstrates that the proposed residential zoning is considered to be acceptable by the Trustees of the Bible Garden.
- The proposal 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 rezoning.
- The proposal 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, the proposal would be visible as one of a number of residential developments within the escarpment behind Palm Beach as a result of the rezoning. Any new dwelling constructed as a result of the proposal 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.
- The proposal will likely facilitate the demolition of the dwelling on site. The existing dwelling on site is not considered to be of heritage significance, either through the assessment of Northern Beaches Council or by the authors of this statement.
- No other heritage items in the vicinity will be affected by future built form constructed as part of the proposal owing to the separation of these items from the subject site.

## **View Loss**

The notion of view loss is invoked when a property enjoys existing views, and a proposed development would impact on that view. View loss impacts is addressed in the planning principle established by the NSW Land & Environment Court to deal with the assessment of view loss impacts, referred to as the *Tenacity Principle* (*Tenacity Consulting v Warringah* [2004] NSWLEC 140).

To determine the impact of view loss, the following four-step assessment should be used.

- Step 1** *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
- Step 2** *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
- Step 3** *The third step is to assess the extent of the impact. This needs to be done for the whole of the property, and not just to that part where the views are affected. The views from living areas (including kitchen areas) are more significant than from bedrooms or service areas. Whilst the impact could be assessed quantitatively, it is more useful to look at the issue in a qualitative sense and ask whether the view loss is negligible, minor, moderate, severe or devastating.*
- Step 4** *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.*

The following provides an assessment of the properties deemed to be impacted by the development using the steps established in *Tenacity Principle (Tenacity Consulting v Warringah [2004] NSW LEC 140)*.

### **Step 1**

The existing significant views in proximity to the subject site comprise of ocean and beach views of Palm Beach located to the north east of the site.

The subject site slopes down towards the north and any future development will be designed to respond to the natural topography and step down the site. This will ensure any future development will not impact on any existing views from residential properties and the Bible Garden to the south of the site.

## Step 2

Views from the Bible Garden extend from Mitchell Road in an arch from the northwest to northeast towards Palm Beach. The land is also visible also from nearby privately owned residential properties to the north east. The views are achieved from the elevated position of the site and due to the topography, the subject site and existing dwelling are not visible from the Bible Garden as detailed in **Figure 9** and **10** below.

The existing views are achieved from a standing or seated position across the site with the only obstructions consisting of existing vegetation.



**Figure 9: Existing view from the Bible Garden (Source: Weir Phillips Heritage and Planning)**



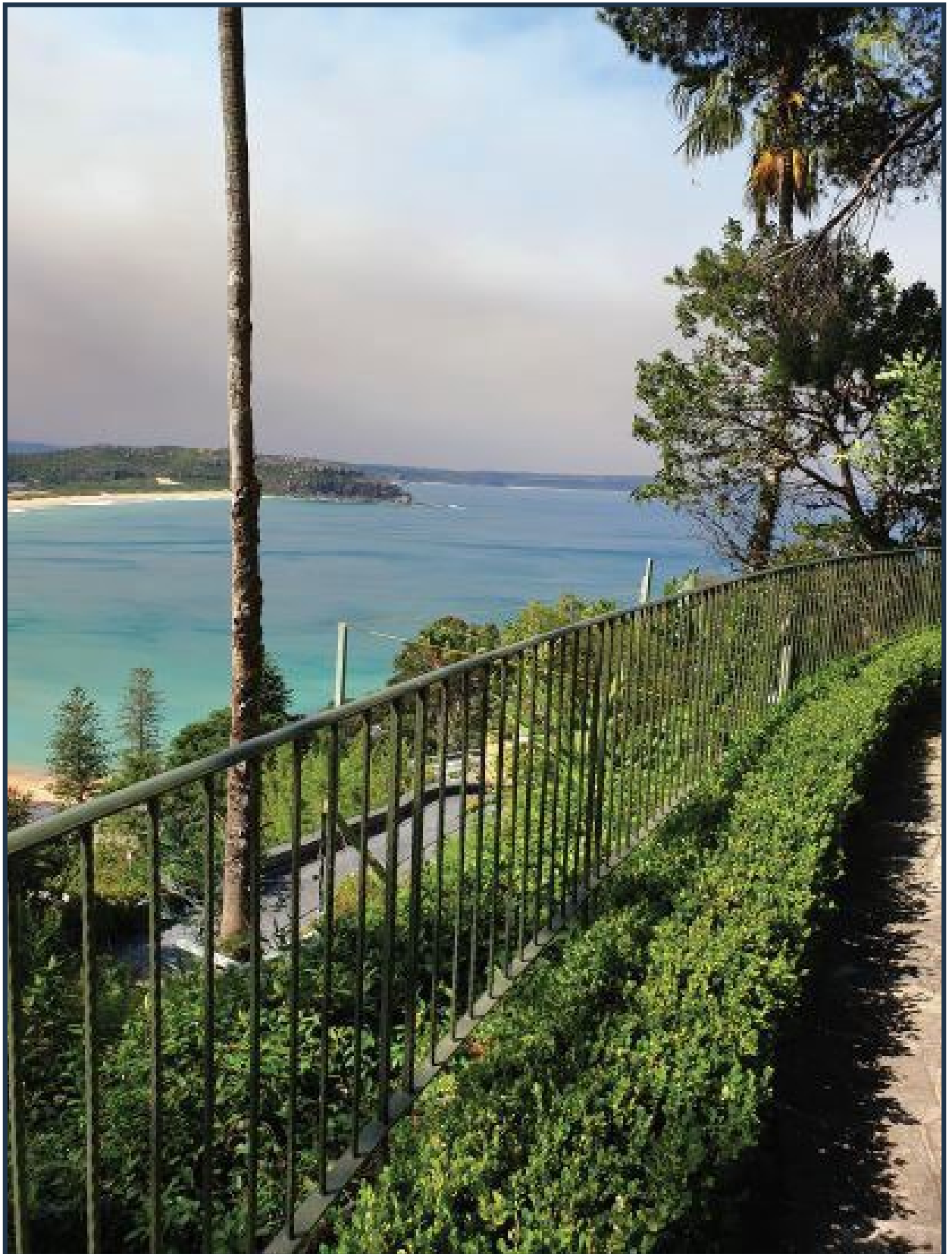
**Figure 10:** Existing view from the Bible Garden indicating the location of the subject site (Source: Weir Phillips Heritage and Planning)

During the preparation of the proposal consultation was undertaken with the Committee of the Friends of the Palm Beach Bible Garden and height poles were installed to determine the potential impact of any future development on the RE1 zoned land. **Figure 11** and **12** below details the height poles with the yellow string identifying the existing level of the bible garden and the red string identifying the maximum height allowable on the subject site as per an existing covenant.





**Figure 11:** Site photo detailing the installation of the height poles in relation to the existing view  
(Source: Stephen Lesiuk Architect)



**Figure 12:** Site photo detailing the installation of the height poles in relation to the existing view  
(Source: Stephen Lesiuk Architect)

### Step 3

As detailed in **Figures 11 & 12** no portion of future residential development will impede on the existing views from the Bible Garden based on the topography of the site, existing covenants and the indicative location of the garage as outlined in the Heads of Agreement Contract.

### Step 4

The proposal is therefore considered to be reasonable from a view loss perspective in that any future development would be sited and designed to ensure there are no impacts on existing views obtained from the Bible Garden and surrounding area.

### Built Form

Concept Architectural Plans have been prepared in support of the proposal by Housed Architects which demonstrate how the full site could be developed for residential purposes in line with the intended outcomes of the Heads of Agreement Contract.

As demonstrated in the Concept Architectural Plans and detailed in **Figures 13-17** below, the planning proposal will facilitate the development of the whole site for the purposes of a dwelling house and associated works. The portion of the site will be utilised to provide vehicular access, parking and entry to the future dwelling house without adversely impacting on the adjoining Bible Garden or access provided to adjoining sites.

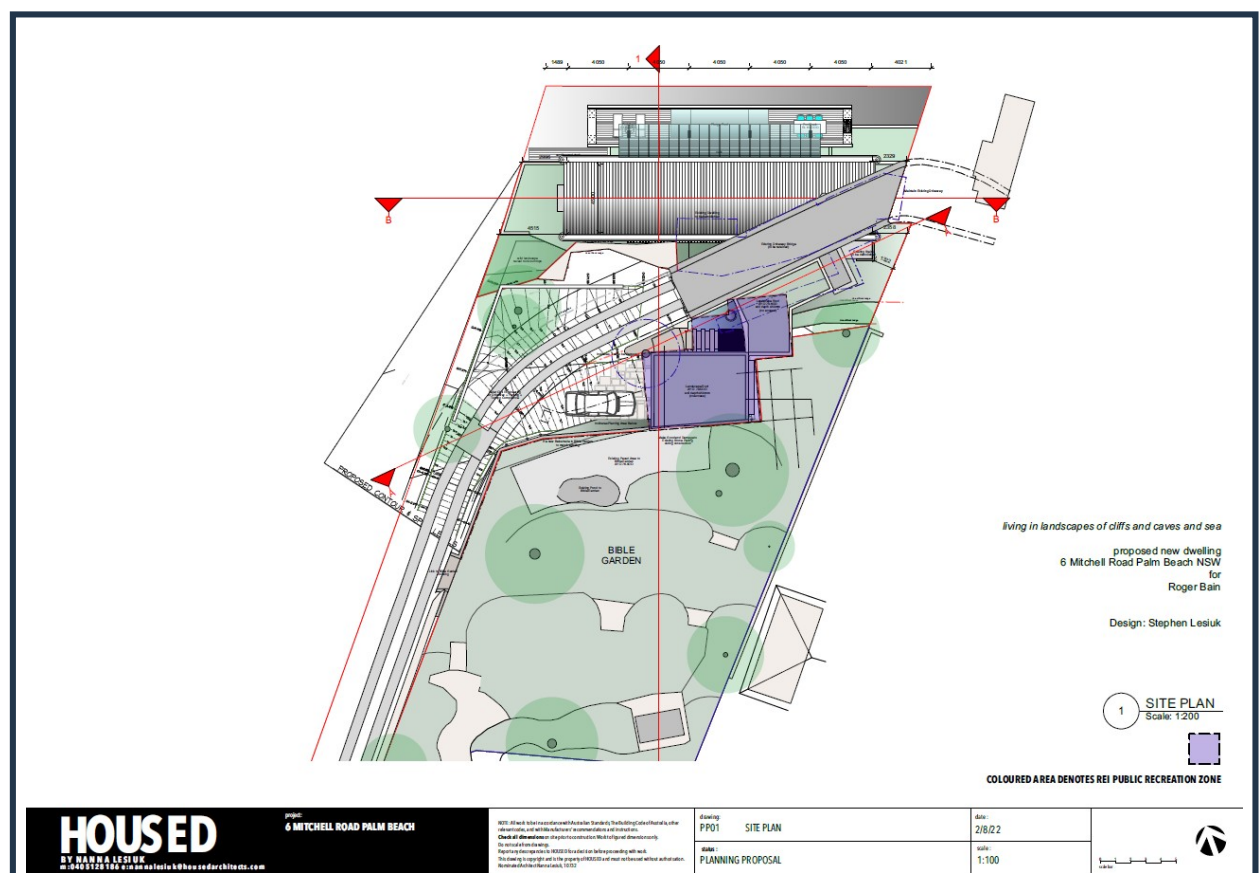
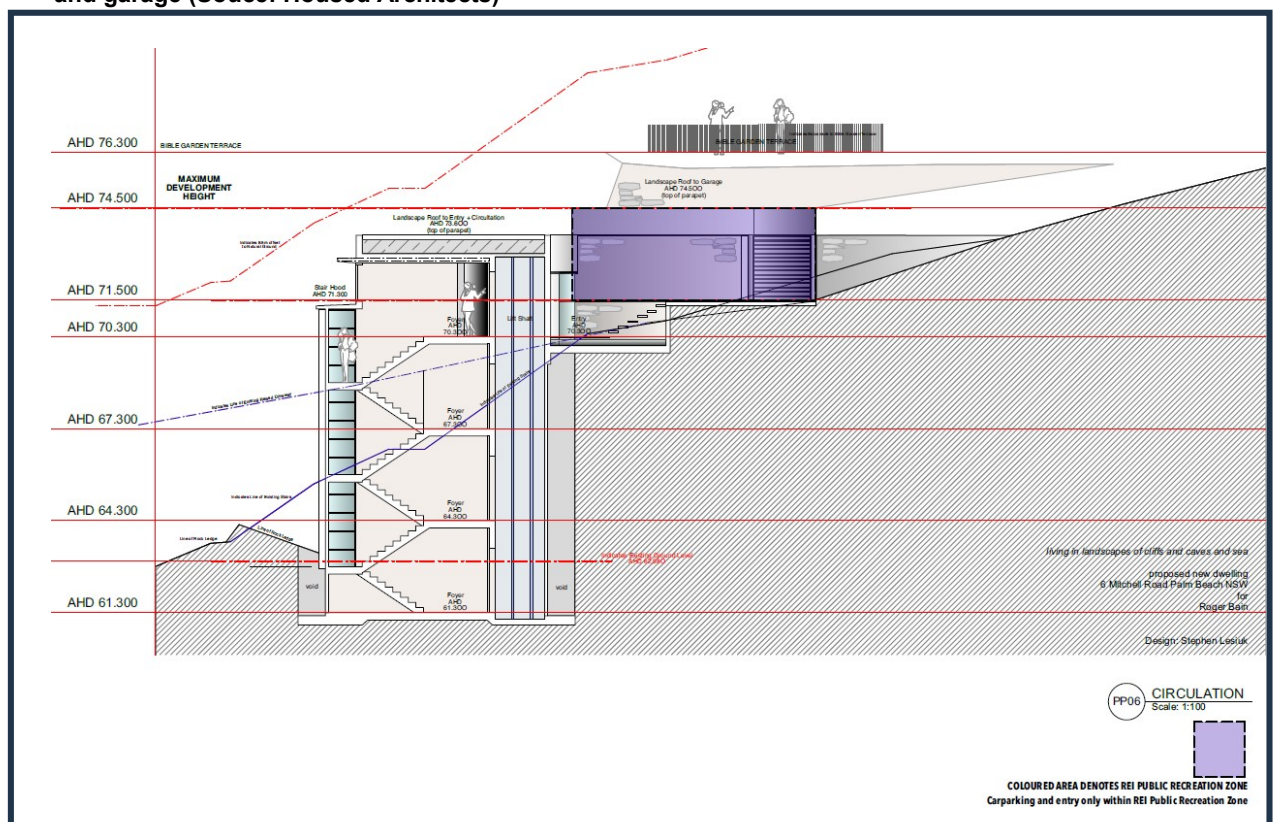
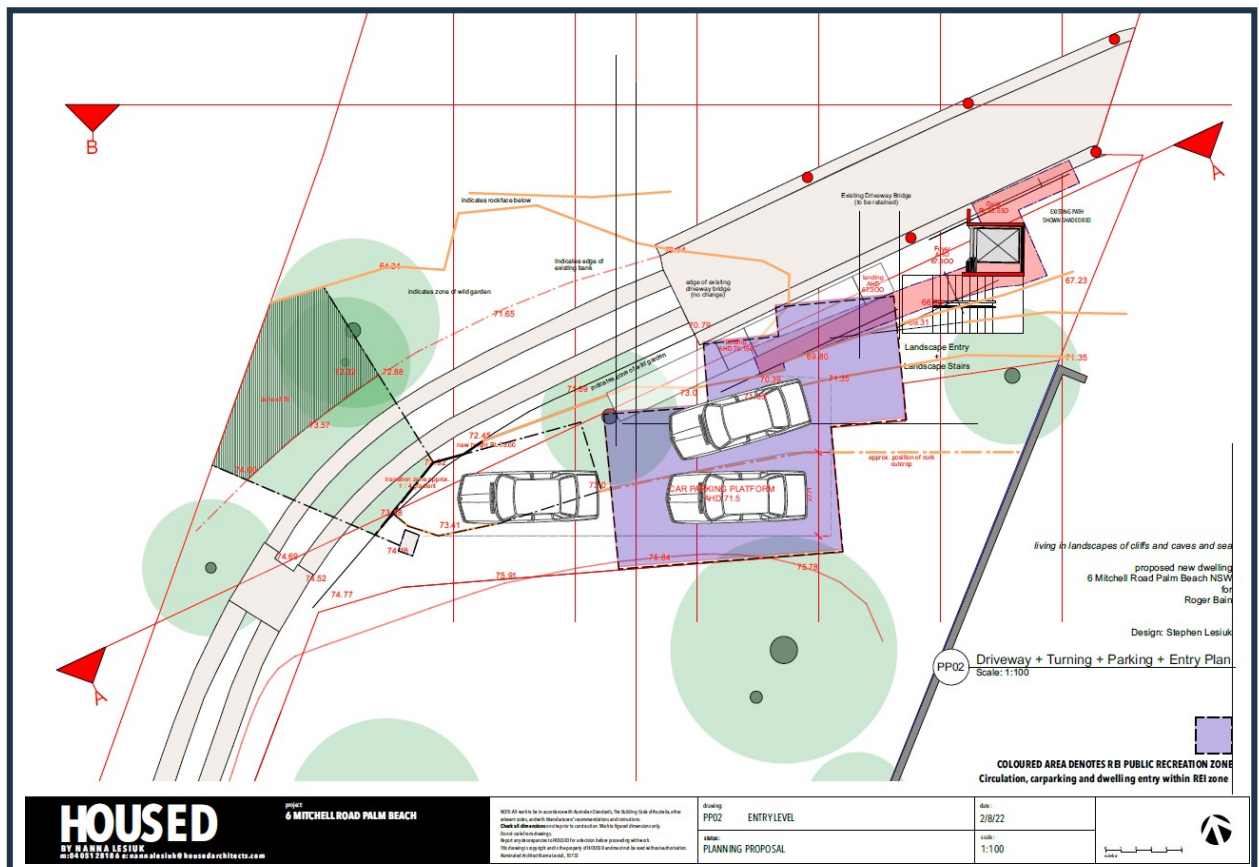


Figure 13: Concept Site Plan with the RE1 zoned portion of the site highlighted in purple (Source: Housed Architects)







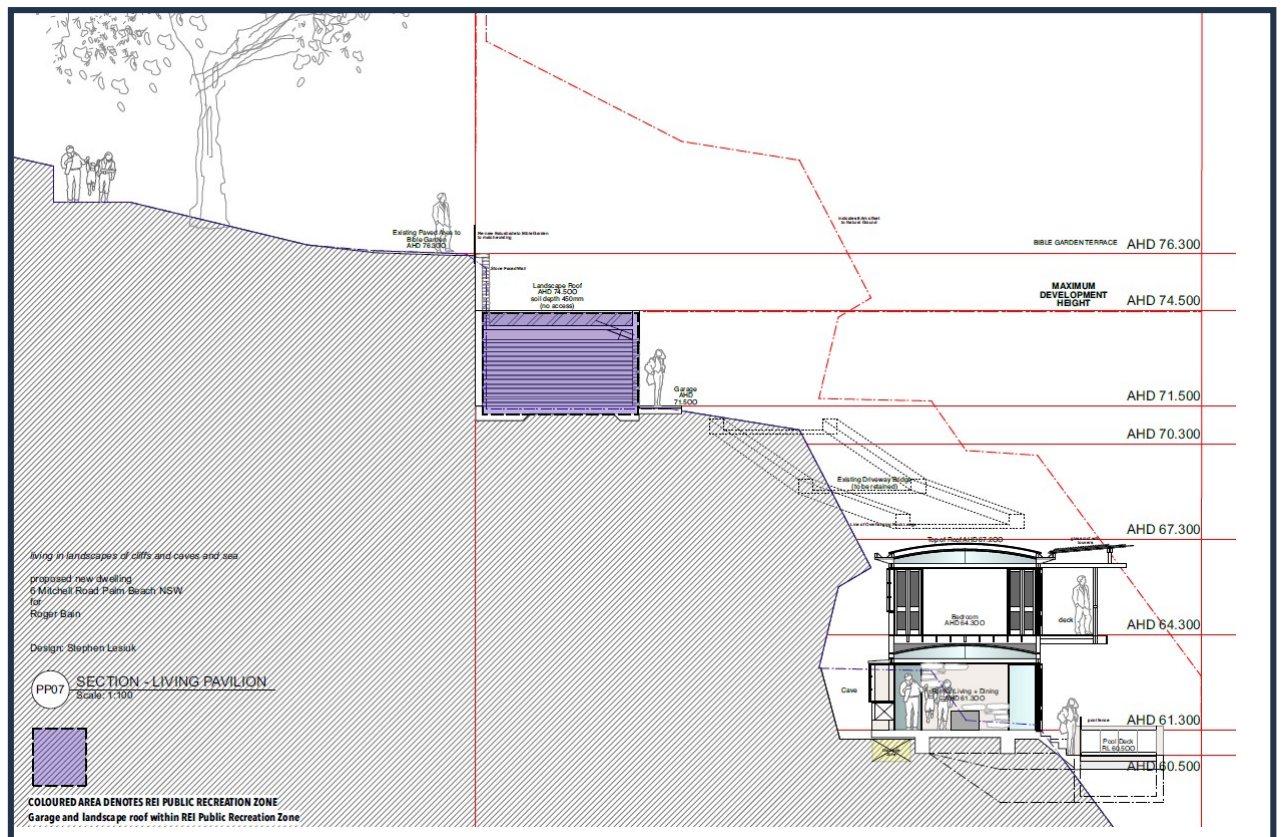


Figure 16: Concept Section detailing the garage as below the Bible Garden and height limit (Source: Housed Architects)

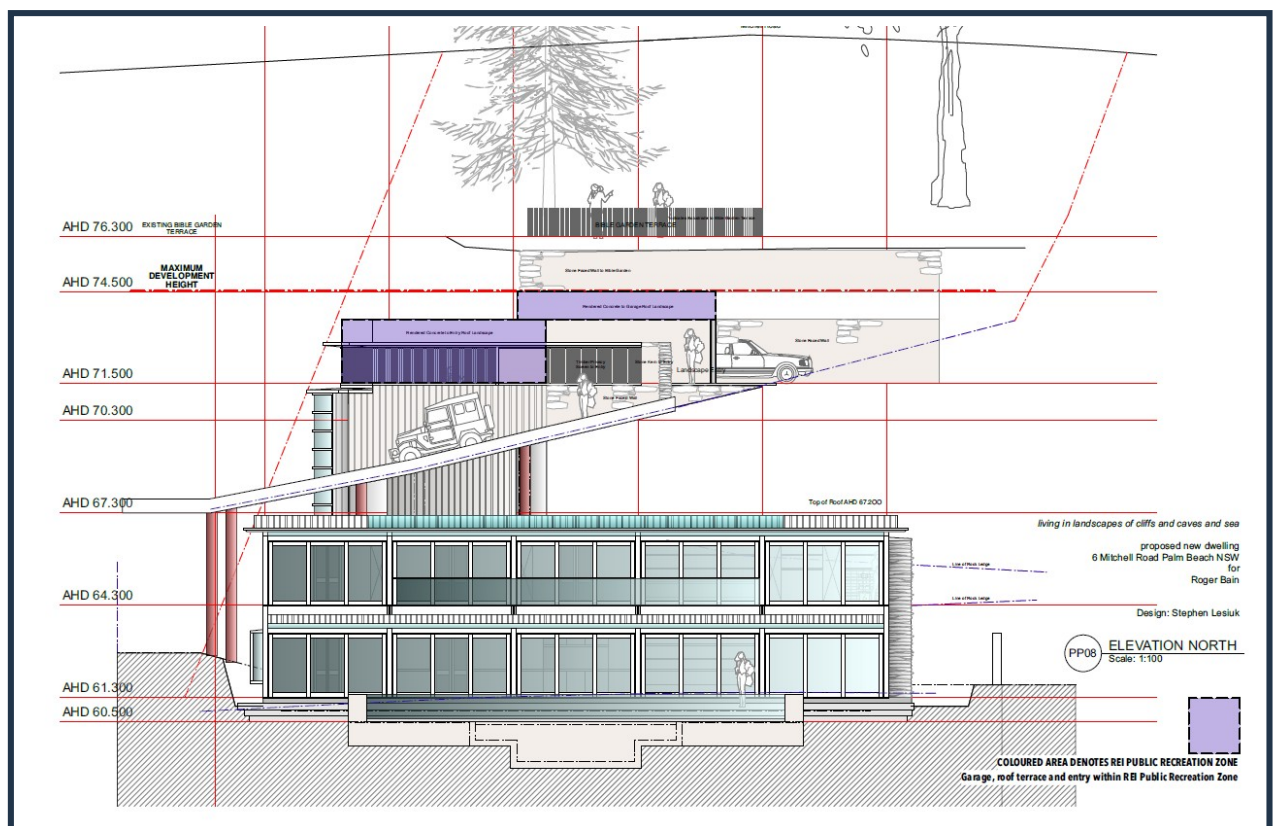


Figure 17: Concept Circulation Plan detailing the garage as below the Bible Garden and height limit (Source: Housed Architects)

As demonstrated in **Figures 13-17** above, the portion of the site zoned RE1 can be developed for the purposes of a dwelling house without adversely impacting on the setting or functionality of the adjoining Bible Garden and recreation zoned land.

The provision of the height limit for the site as part of the amendment to Schedule 1 of the Pittwater Local Environmental Plan (LEP) 2014 ensures future development will not adversely impact on the adjoining bible garden or surrounding area and an appropriate built form can be achieved onsite. Therefore, the planning proposal will not result in any adverse built form impacts.

### **Traffic and Access**

The proposal will not result in any adverse traffic or access impacts. The portion of land identified to include the additional permitted uses is located adjacent to an existing shared driveway that was envisaged to provide access to the subject site as outlined in the Heads of Agreement Contract. The driveway is of a sufficient size to accommodate any future residential development on the site.

### **Geotechnical Impacts**

The site is identified as Geotechnical Hazard H1 as detailed on the Geotechnical Hazard Map in the Pittwater LEP 2014. A Geotechnical Report has been prepared by Davies Geotechnical Consulting Engineers in support of the proposal.

The Geotech Report identifies management and mitigation measures to be incorporated under future development that ensures it can appropriately respond to the Geotech hazard of the site demonstrating that the proposal will not adversely impact on the site or surrounding area. The Geotech Report concludes that the proposal can be supported from a geotechnical risk standpoint.

### **QUESTION 10 – Has the Planning Proposal adequately addressed any social and economic effects?**

The planning proposal will facilitate the development of the whole site for residential purposes as intended under the Heads of Agreement. The social and economic benefits include increased residential accommodation in the area and resolution of the issues arising from the split zoning of the site.

## **D. INFRASTRUCTURE (LOCAL, STATE AND COMMONWEALTH)**

### **QUESTION 11 - Is there adequate public infrastructure for the Planning Proposal?**

The site contains an existing dwelling that has connection to all services and utilities required to facilitate residential development. The provision of additional permitted uses on the portion of land zoned RE1 Public Recreation will not adversely impact on the provisions of services and utilities in the area and existing services can be utilised in any future development of the site.

**QUESTION 12 - What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Consultation with relevant State and Commonwealth public authorities will be undertaken as part of the exhibition of the Planning Proposal, as directed by the Gateway Determination. In this regard, consultation with the following public authorities is anticipated:

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

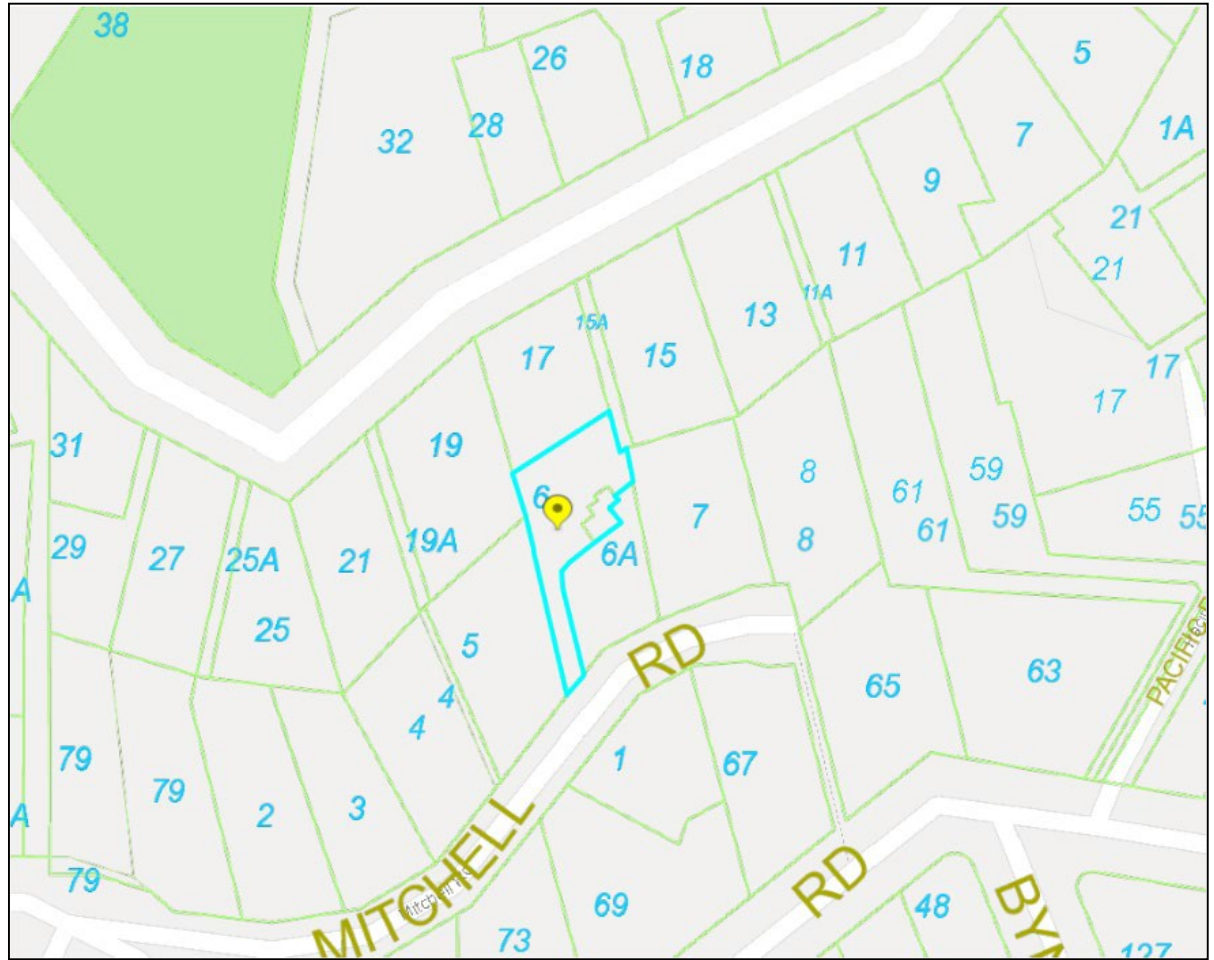
**PART 4 – Mapping**

As discussed, the Planning Proposal seeks to amend the Pittwater LEP 2014 as follows:

- 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 the LEP.

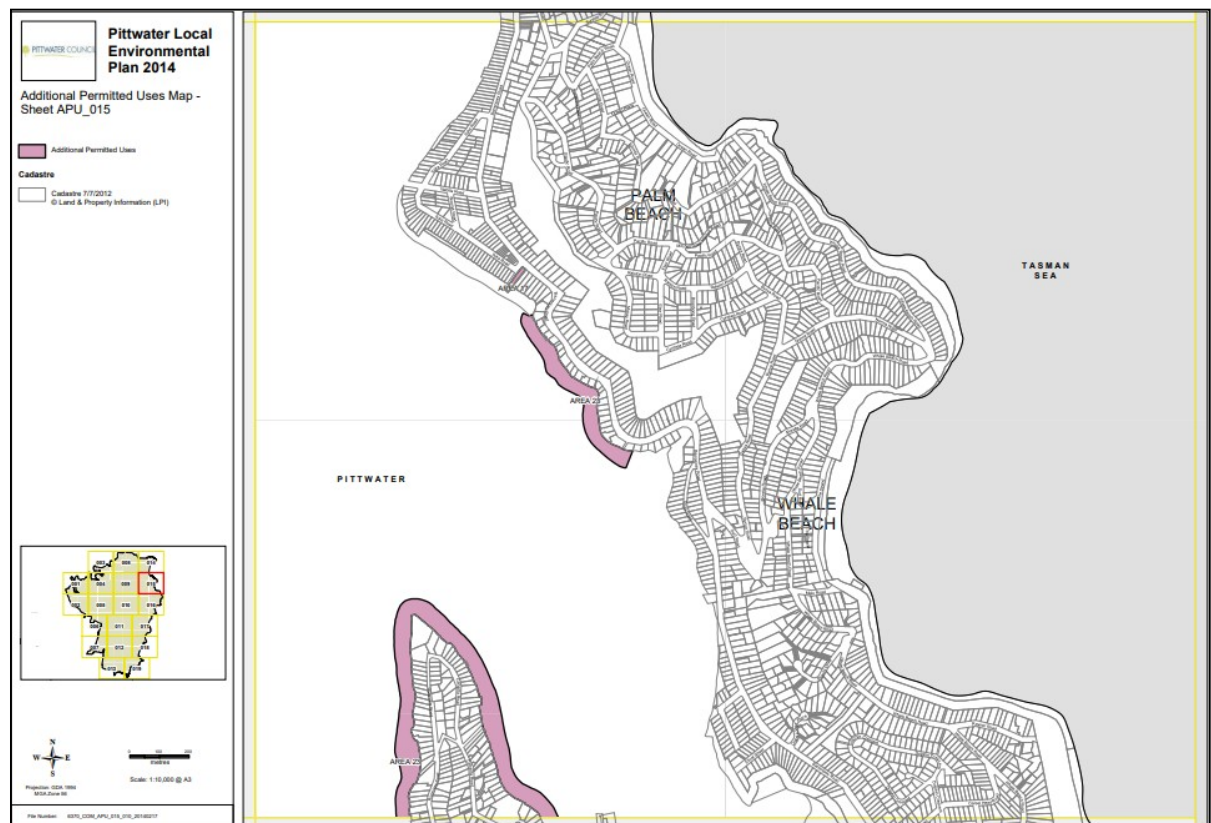
The required mapping will be undertaken by Council once Gateway Determination has been issued for the proposal.

Map 1 – Site Identification Map

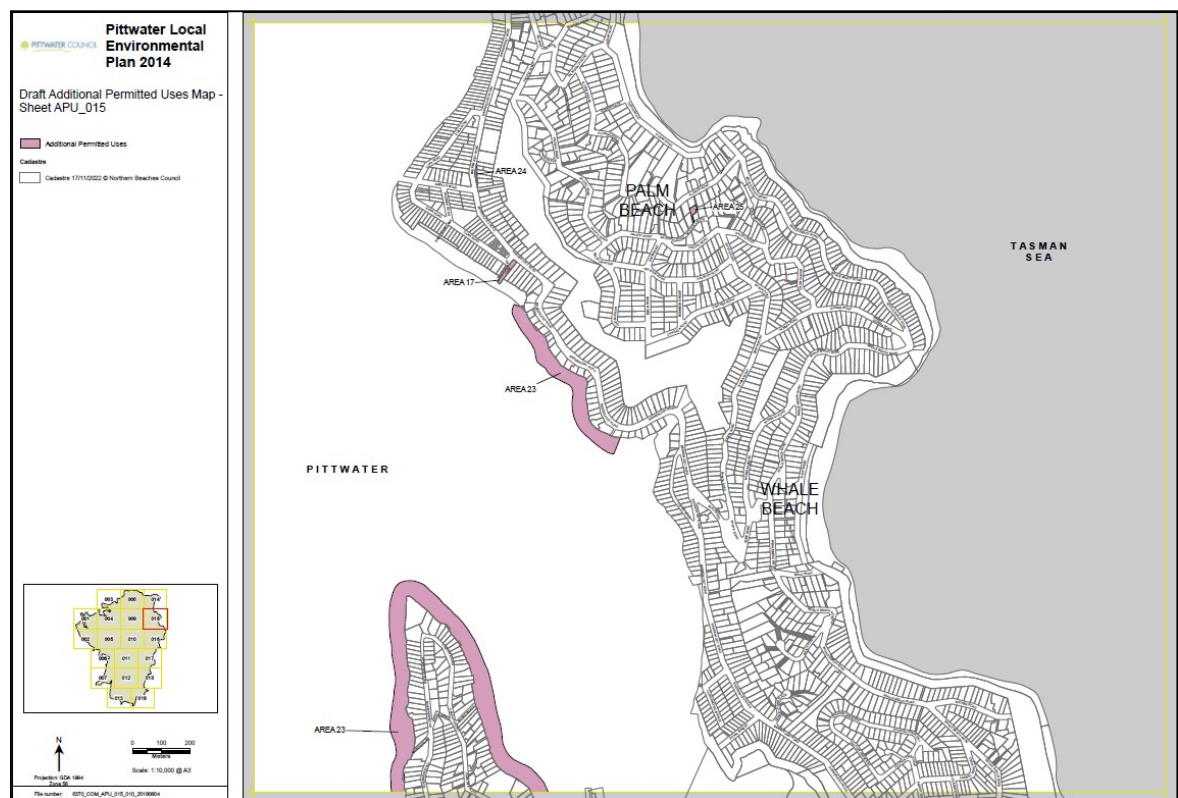




## Map 2 – Current Additional Permitted Uses



## Map 3- Proposed Additional Permitted Use



## **PART 5 – Community and Key Stakeholder Consultation**

### **Community Engagement (Non-Statutory)**

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.

#### Submissions

Six (6) valid submissions were received during the non-statutory exhibition period. The issues raised in the six (6) 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 max 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.

One (1) submission was received after 21 October 2022 (closing date of notification period) and has still been considered.

A summary of the 6 valid submissions (including the late submission) and Council's responses to the issues raised is appended to the report presented to the Northern Beaches Local Planning Panel and Council.

### **Exhibition – Gateway Determination**

On issue of the Gateway Determination, Council will formally exhibit the Planning Proposal in accordance with the conditions of the Gateway Determination, Section 3.34 and Schedule 1, Clause 4 of the *Environmental Planning and Assessment Act 1979*.

It is expected that direction as to the nature and extent of the public exhibition will be provided by Department of Planning, Industry and Environment as part of the Gateway Determination. It is anticipated that the Planning Proposal will be publicly exhibited for a period of 28 days.

## PART 6 – Project Timeline

Council, as the Relevant Planning Authority (RPA), has discretion to determine the relevant project timeframe for the determination of this Planning Proposal. The information detailed within this Planning Proposal has been provided to outline any potential impacts and provide justification to support and assist the RPA's determination.

Table 6: Anticipated Project Timeline	
Stage	Timeframe
Report to Council – obtain Council resolution to progress Planning Proposal	February 2023
Forwarding the Planning Proposal to Department – Request for Gateway Determination	March 2023
Gateway Determination issued (assumes 3 month turnaround)	June 2023
Anticipated timeframe for the completion of required technical information (If required)	June 2023
Public Exhibition	June 2023
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	July 2023
Dates for public hearing (if required)	August 2023
Timeframe for consideration of submissions	August 2023
Report to Council on outcomes of public exhibition	September 2023
If Council agrees, submit to Department to finalise the LEP	October 2023
Anticipated date the local plan-making authority will make the plan (if authorised)	November 2023
Anticipated date the local plan-making authority will forward to the PCO for publication	December 2023

## Conclusion

This Planning Proposal seeks to amend the Pittwater Local Environmental Plan (LEP) 2014 to include an additional permitted use of dwelling house on that portion of 6 Mitchell Road, Palm Beach currently zoned R1 Public Recreation; and to ensure that any future residential development on the land does not exceed building height 74.5AHD.

The Planning Proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (the EP&A Act) and The Department of Planning's 'Local Environmental Plan Making Guideline.'

The Planning Proposal provides a comprehensive justification of the proposed amendment to the Pittwater LEP 2014, and significant planning merit in the following respects:

- 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.

Given the above significant planning merits and the absence of any adverse social, economic or environmental impacts, it is requested that the Planning Proposal be favorably considered by Council and that Council resolve to forward it to the Department of Planning, Industry & Environment to allow the Department to consider the Planning Proposal for Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act, 1979.