

DRAFT ATTACHMENT BOOKLET

ORDINARY COUNCIL MEETING

TUESDAY 28 MARCH 2023

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MINUTES

AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING

held in the Flannel Flower, Civic Centre, Dee Why on

TUESDAY 6 DECEMBER 2022

**Minutes of the Audit, Risk and Improvement Committee Meeting
held on Tuesday 6 December 2022
in the Flannel Flower, Civic Centre, Dee Why
Commencing at 2.03 pm**

ATTENDANCE:

Voting Members of the Committee

Chair Stephen Horne (Chair)
Member Mark McCoy (remote)
Member Sarah Richardson (remote)
Member Julie Walton
Member Bianca Crvelin (remote)
Member Sarah Grattan
Member Sue Heins (remote)

Council Officers (non-voting)

Ray Brownlee PSM	Chief Executive Officer
Jeff Smith	Director Corporate & Legal
Karen Twitchett	Director, Workforce & Technology
David Walsh	Chief Financial Officer
Sally Hall	Executive Manager Internal Audit & Complaints Resolution
Sarah Dunstan	Executive Manager Governance and Risk
Mark Jones	Executive Manager Strategy & Performance
Naren Gangavarapu	Chief Information Officer
Michael McDermid	Manager, Corporate Strategy
Aline Fernandes	Internal Auditor
Claudia Brodtke	Senior Advisor, Governance
Justin Hurst	Team Leader, Management Accounting
Elsbeth Cronin	Executive Manager Customer Service

Council Auditors (non-voting)

Ms Aisling Kilgannon	Internal Audit, Senior Manager, KPMG
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Note: The Committee met in camera prior to the ordinary meeting commencing

1.0 APOLOGIES

Apologies were received from Karen Taylor.

2.0 DISCLOSURES OF INTEREST

There were no disclosures of interest.

3.0 CONFIRMATION OF MINUTES

3.1 MINUTES OF AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING HELD 13 SEPTEMBER 2022

COMMITTEE RESOLUTION

That the minutes of the Audit, Risk and Improvement Committee meeting held 13 September 2022, copies of which were previously circulated to all members, are hereby confirmed as a true and correct record of the proceedings of that meeting, with minor changes accepted.

3.2 MINUTES OF EXTRAORDINARY AUDIT, RISK AND IMPROVEMENT COMMITTEE HELD 13 SEPTEMBER 2022

COMMITTEE RESOLUTION

That the minutes of the Extraordinary Audit, Risk and Improvement Committee held 13 September 2022, copies of which were previously circulated to all members, are hereby confirmed as a true and correct record of the proceedings of that meeting, with minor changes accepted.

4.0 ITEMS RESOLVED BY EXCEPTION

Nil.

5.0 ACTION ITEMS FROM MINUTES

5.1 ACTION ITEMS UPDATE

PURPOSE

To provide the Audit, Risk and Improvement Committee with a progress update on the actions arising from the minutes of previous meetings of the Committee.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the progress on actions arising from the minutes of previous meetings.

6.0 STANDING ITEMS

6.1 VERBAL UPDATE BY THE CHIEF EXECUTIVE OFFICER

PURPOSE

To provide the Committee with a brief update on current issues, particularly those relating to areas of potential risk for Council.

DISCUSSION

The Chief Executive Officer (CEO) introduced the new Executive Manager of Internal Audit & Complaints Resolution, Sally Hall.

The CEO raised the following matters for discussion:

- The upcoming Enterprise Resource Planning project
 - The reappointment of Council's directors for a five-year term
 - The recent discussion of the disclosures of interest at the October Council meeting
 - Council's Property Strategy
 - The impacts of COVID-19 on resourcing and the operations of Council, including on capital works programs.
-

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the verbal update by the Chief Executive Officer.

6.2 FINANCE UPDATE

Note : David Walsh and Justin Hurst joined the meeting for this item

PURPOSE

To provide an update on the financial performance of the Council as at 30 September 2022.

DISCUSSION

David Walsh, Chief Financial Officer and Justin Hurst, Team Leader Management Accounting presented the highlights of the report to the Committee.

The following points were discussed:

- The storm related expenses which continue to impact the financial performance of Council
- The impact of forecast Reserve Bank rate rises – that the full impact of inflation was not yet flowing through to expenses
- The anticipated costs required for the Enterprise Resource Planning Project.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the finance update as at 30 September 2022.

8.1 GOVERNANCE AND RISK MANAGEMENT UPDATE

Note: This item was moved ahead of the listed agenda order

PURPOSE

To provide the Audit Risk and Improvement Committee with an update on governance and risk management activities.

DISCUSSION

Sarah Dunstan, Executive Manager Governance & Risk raised the following:

- The status of Council's policies
- That a review of Council's statutory delegations is currently underway
- A request for feedback on the draft risk framework documents.

The Committee discussed the following items:

- Feedback regarding the draft policy and risk appetite statement including KPIs
 - The operational risks above tolerance including discussion on the residual risk rating for disclosures of interest
 - The process of refreshing the risk framework
 - The Council's setting of risk tolerances and acceptance of risks above tolerance
 - The regularity of IT penetration testing.
-

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the governance and risk management update and shared feedback on the updated risk framework documents.

6.3 PERFORMANCE REPORTING UPDATE - SEPTEMBER 2022

Note 1: Ray Brownlee left the meeting at 2.59pm and returned at 3.23pm

Note 2: Mark Jones, Elspeth Cronin and Michael McDermid joined the meeting

PURPOSE

To report on performance as at September 2022 against measures in Council's Operational Plan 2022/23.

DISCUSSION

Mark Jones, Executive Manager Strategy & Performance presented on an overview of the item.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the report.

7.0 IMPROVEMENT

7.1 BESPOKE BENCHMARKING PILOT - CUSTOMER SERVICE

Note: Mark Jones, Elspeth Cronin and Michael McDermid joined the meeting.

PURPOSE

To provide an update on Council's Bespoke Benchmarking Program.

DISCUSSION

Mark Jones, Executive Manager Strategy & Performance presented on an overview of the item.

The committee discussed a number of points including:

- Call response times
 - Call centres vs customer services counters
 - The future of the Benchmarking Program
 - First contact resolutions.
-

COMMITTEE RESOLUTION

That the Audit Risk and Improvement Committee note the findings of the bespoke benchmarking pilot on the service of Customer Service.

7.2 CONTINUOUS IMPROVEMENT UPDATE

Note: Mark Jones, Elspeth Cronin and Michael McDermid joined the meeting.

PURPOSE

To provide the Committee with an update on the Northern Beaches Council's continuous improvement program.

DISCUSSION

Mark Jones, Executive Manager Strategy & Performance presented on an overview of the current service review framework and system, and provided a summary of the total programs and the status of these programs.

The Committee discussed the following in relation to this item:

- How the Committee will be used as a forum to assess service levels
- How data analytics in relation to these programs will be completed.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the progress of Council's multifaceted continuous improvement programs.

8.0 FRAUD AND RISK MANAGEMENT

Note: Item 8.1 was moved ahead of the listed agenda order

8.2 NORTHERN BEACHES COUNCIL CYBERSECURITY UPDATE

Note: Naren Gangavarapu joined the meeting for this item

PURPOSE

To present to the Audit Risk and Improvement Committee an update on the actions and controls in place to achieve, monitor and maintain Council's cyber risk tolerance.

DISCUSSION

Naren Gangavarapu, Chief Information Officer presented some key callouts to the committee including:

- The increasing span and frequency of cyber-attacks
- The impact of incidents on the staffing of IT service desk
- Councillors attending a briefing from Cyber NSW
- The variety of methods used by attackers
- The financial impacts of IT security
- Preventative and post incident damage prevention
- Building a cyber risk culture and building capability – cyber risk is a business issue, not just limited to a tech issue.

The Committee discussed a number of points including:

- The number of websites owned and operated by Council
- Current IT Security projects which are underway
- Application control – including a review of licencing
- Seeking external legal advice around Australian privacy laws
- Internal resourcing/external resourcing
- Ransom payments.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted:

1. The progress made to date in line with the cybersecurity roadmap.
 2. The heightened cyberattacks on the Council environment leading to a high risk of compromise.
 3. That several risks will go above tolerance (to extreme) due increasing cyberattacks.
 4. Legislative changes from state and federal level constantly monitored as changes may impact on Council's ability to comply with policies around cybersecurity, privacy, and data breaches.
-

9.0 SPECIAL AGENDA ITEMS

9.1 ANNUAL INVESTMENT POLICY REVIEW

Note: David Walsh joined the meeting

PURPOSE

To provide the Investment Policy to the Audit, Risk and Improvement Committee for review in accordance with that Policy.

DISCUSSION

David Walsh, Chief Financial Officer spoke to this item.

The committee discussed the following points in relation to this item:

- How Northern Beaches Council Investment Policy compares to other Councils
- The lengthening of the portfolio maturity.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the review of the Investment Policy and that no changes to the Policy are proposed.

10.0 EXTERNAL AUDIT

Nil.

11.0 INTERNAL AUDIT

11.1 COMPLAINTS RESOLUTION TEAM UPDATE REPORT

PURPOSE

To present to the Audit Risk and Improvement Committee information relating to complaints received, including alleged breaches of the Code of Conduct, complaints made under the Public Interest Disclosures Act 1994 (PID), and referrals to or from the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman.

DISCUSSION

Sally Hall, Executive Manager Internal Audit & Complaints resolution spoke to this item with a key highlight being the trend of complaints decreasing over the past few months.

The Committee discussed the following items in relation to this matter:

- Awareness for complaints
- The upcoming change in Public Interest Disclosure legislation
- The causes of the downward trend in complaints.

COMMITTEE RESOLUTION

The Audit Risk and Improvement Committee noted the report.

11.2 INTERNAL AUDIT UPDATE REPORT**PURPOSE**

To provide an update to the Audit, Risk and Improvement Committee on all aspects of Internal Audit work since the last meeting.

DISCUSSION

Sally Hall, Executive Manager Internal Audit & Complaints provided an update on this item with Council currently at the five month mark of the Internal Audit Plan.

The Committee discussed the following in relation to this item:

- Software licencing and costs
- Work Health and Safety follow up
- Drivers and actions regarding the recruitment audit including measures being implemented in response
- The methodology of the recruitment audit and access granted to auditors and data governance within the People Central module
- The Committee noted a follow up audit will take place within the next 12 months, to review progress of recommendations, and a check of any closed recommendations.

COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the report.

12.0 GENERAL BUSINESS

12.1 AGENDA ITEMS FOR NEXT MEETING

PURPOSE

To discuss with the Committee the proposed agenda items for the next meeting.

COMMITTEE RESOLUTION

The Committee noted the forward agenda.

13.0 NEXT MEETING

Tuesday 14 March 2023

The meeting closed at 4.40pm.



MINUTES

COMMUNITY SAFETY ADVISORY COMMITTEE

held in Manly Town Hall on

THURSDAY 24 NOVEMBER 2022



MINUTES OF COMMUNITY SAFETY ADVISORY COMMITTEE

24 NOVEMBER 2022

**Minutes of the Community Safety Advisory Committee
held on Thursday 24 November 2022
in Manly Town Hall
Commencing at 9:30am**

ATTENDANCE:**Committee Members**

Cr Sue Heins	Curl Curl Ward - Deputy Mayor - Chair
Cr Candy Bingham	Manly Ward
Cr Ruth Robins	Narrabeen Ward
Cr Michael Gencher	Pittwater Ward
Supt Patrick Sharkey	Northern Beaches Police Area Command
Narelle Hand	Northern Beaches Domestic Violence Interagency
Antoin Cullen	Northern Beaches Mental Health Interagency
Melissa Palermo	Northern Sydney Local Health District
Melinda Daley	Northern Sydney Primary Health Network - representing Lynelle Hales
Wendy Finianos	Community Representative – Curl Curl Ward
Mary Brearton	Community Representative – Narrabeen Ward
Sue Johansson	Community Representative – Pittwater Ward

Council Officer Contacts

Kylie Walshe	Executive Manager Community, Arts and Culture
Will Wrathall	Manager, Youth and Community Development
Darren Greenow	Manager, Regulatory Support – representing Azmeena Kelly
Kath Young	Community Safety Coordinator
Helen Askew	Program Support Officer, Youth and Community Development

Guest

Russell Peake	Manager, Social Planning and Services
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1.0 ACKNOWLEDGEMENT OF COUNTRY

The Deputy Mayor acknowledged the traditional custodians of the land on which the meeting gathered, and paid respect to Elders past and present.

2.0 APOLOGIES

Apologies were received from:

Cr Michael Regan	Mayor - Frenchs Forest Ward
Aileen Ogilvie	Northern Beaches Community Drug Action Team
Kevin Kingsbeer	Northern Sydney Housing and Homelessness Interagency
Lynelle Hales	Northern Sydney Primary Health Network
Libby Paulsen	Community Representative – Frenchs Forest Ward
Sam King	Northern Beaches Youth Interagency
Ray Brownlee	CEO, Northern Beaches Council
David Kerr	Director Community and Belonging, Northern Beaches Council
Azmeena Kelly	Executive Manager Environmental Compliance, Northern Beaches Council

The following members were not in attendance:

Doug Brooker	Northern Beaches Liquor Accord
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3.0 DISCLOSURES OF INTEREST

There were no disclosures of pecuniary or non-pecuniary conflicts of interest.

4.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

4.1 MINUTES OF COMMUNITY SAFETY ADVISORY COMMITTEE MEETING HELD 1 SEPTEMBER 2022

RECOMMENDATION

That the minutes of the Community Safety Advisory Committee meeting held 1 September 2022, were accepted as a true and correct record of the proceedings of that meeting.

5.0 ACTIONS UPDATE

5.1 ACTIONS UPDATE

The following information was received and noted by the Committee.

MEETING OF 2 JUNE 2022

ITEM NO.	ACTION	RESPONSIBLE OFFICER	ACTION UPDATE
4.5.1	Investigate a sector or key community representative for seniors to join the Community Safety Advisory Committee	Kath Young	Complete. Refer to this meeting's Agenda Item 6.5.

MEETING OF 1 SEPTEMBER 2022

ITEM NO.	ACTION	RESPONSIBLE OFFICER	PROGRESS
6.1.1	Share with networks and the community that the reporting of crime, no matter how small, is essential to provide evidence and identification of patterns. Report crimes via the Police Portal or Crime Stoppers .	Committee members	Complete. Agenda Committee members encouraged to continue to share this when relevant.
6.1.2	Research and report on Council's process of investigating damage to Council facilities when video evidence comes to attention via social media.	Community Safety Coordinator	Complete. Refer to discussion.
6.3	Form a Working Group to progress the Community Safety Plan 2021-2026 action regarding sexual assault and report back to the Community Safety Advisory Committee on progress.	Committee members	Complete. Refer to this meeting's Agenda Item 6.5.

DISCUSSION

Action Item 6.1.2 Damage to Council facilities

Council has facility to scan TV, radio and news articles for reports with local relevance, however, has no formal facility to analyse social media for information on damage to Council facilities.

Community members are encouraged to report criminal incidents directly to the NSW Police Force Community Portal on 131 444 or [online](#), or to Crimestoppers on 1800 333 000 or [online](#).

Information about graffiti on Council property can also be reported to the Council's [Customer Service Team](#). Council's graffiti removal contractors will then be able to access this information and schedule removal.

6.0 AGENDA ITEMS

6.1 POLICE REPORT

Superintendent Patrick Sharkey provided an update on the Northern Beaches Local Area Command Police matters and requested the Committee hold in confidence Police matters discussed during the meeting.

The [NSW Bureau of Crime Statistics and Research \(BOCSAR\)](#) quarterly data was discussed, and crime trends were noted. A recent spike in property theft offences was largely associated with offenders entering unlocked homes and cars. Offenders are also accessing car keys left in unlocked homes to facilitate car theft. Regular licenced premises and firearms inspections are being undertaken.

Preparing for Summer

Emergency Management meetings have been conducted throughout 2022. Summer preparedness meetings have been held with stakeholders including Council, Rural Fire Service, SES, Marine Rescue and Water Police. Additional Police, including Licensing Police, are active every Friday and Saturday night to manage alcohol related crime throughout the Northern Beaches.

Suicide Prevention

Self-harm and suicide responses were discussed. Progress and actions of the Northern Beaches Suicide Response Steering Group were discussed.

Domestic Violence

Matters relating to domestic violence were highlighted. The Committee was assured that these matters are important to Police, and it was noted that audio recording of victim statements has recently been introduced to avoid furthering victim trauma. Police and Council support the Northern Beaches Domestic Violence Network and the [16 days of Activism against Gender Based Violence](#) was highlighted a current initiative.

Community Awareness

The Committee was encouraged to share with their networks the following key messages:

- Lock your cars and houses and secure your keys
- Report crime to Police at the time of the incident
- Support police by providing statements and cooperating with investigations.

DISCUSSION

Congratulations were extended to Superintendent Sharkey and the Northern Beaches Police Area Command on their efforts to identify and address local crime, their support of the community and on the results of their work.

Social media relating to Mona Vale Police Station was discussed. Superintendent Sharkey confirmed that this station is staffed 24 hours a day, 7 days a week. There are no plans to close this facility or reduce the Police presence north of Narrabeen Bridge. When officers at Mona Vale Police Station are engaged in other matters, an overflow phone diversion to Dee Why Police Station is activated.

ITEM NO.	ACTION	RESPONSIBLE OFFICER	DUE DATE
6.1	Council staff to report on the progress and actions of the Northern Beaches Suicide Response Steering Group as a standing Agenda item for the Committee.	Will Wrathall	16 February 2023

6.2 ENVIRONMENTAL COMPLIANCE REPORT

Representing the Executive Manager Compliance, the Manager Regulatory Support provided an overview and presentation on compliance and regulatory statistics in relation to:

- Companion animal management
 - Dog attack data was discussed.
 - Changes to the Companion Animals Register and online Pet Registry with particular reference to the annual permits for non-desexed cats and restricted and dangerous dogs.
 - Registration and microchipping is required for cats over 4 months.
- Rangers
 - Nightly patrols are being conducted at East Esplanade, Manly.
 - Impounding Act 1993 being repealed and replaced with the Public Space (Unattended Property) Act 2021:
 - Includes shopping trolleys and all registered vehicles (cars, trailers, caravans, boat trailers) being removed from public spaces after being unattended in the same place for 28 days
 - Onus is on the owner to ensure items/vehicles are not left unattended
 - Enforcement will commence from March 2023
 - Council is currently developing website information and notifications
 - Office of Local Government is developing broader education program during transition period.
 - The intention is that the community remove belongings from public spaces and store them on private property or commercial storage, not relocate to another public space.
 - Infographic explaining notifications will be circulated with the Draft Minutes.
- Proactive Compliance
 - Arborvirus surveillance program will run during the warmer months
 - In conjunction with NSW Health, a tank water 'in close proximity' pilot program is being undertaken
 - Environmental Health Officers are undertaking food outlet inspections, including education and inspections relating to market stalls.

The Compliance presentation will be circulated with the Draft Minutes.

DISCUSSION

Markets and monitoring of car parking in surrounding streets was discussed. The Committee was advised that parking officers proactively patrol in the vicinity of Pittwater RSL however, streets without kerb and gutter are difficult to manage.

6.3 E-CIGARETTES (VAPING)

Melissa Palermo, Manager Alcohol and Tobacco Program at Health Promotion Northern Sydney Local Health District (NSLHD) recognised the Gayamaygal traditional custodians for the meeting in Manly and the Dharawal traditional custodians for where she grew up in Wollongong.

E-cigarettes (vaping) is an increasing area of concern and a presentation on current evidence, issues and action relating to e-cigarettes in the Northern Sydney area was provided. A copy of the presentation will be circulated with the Draft Minutes. In particular it was noted that:

- It is illegal to sell e-cigarettes (with or without nicotine) or e-cigarette accessories to a person under 18 years of age
- In spite of the [Public Health \(Tobacco\) Act 2008](#) which restricts the sale and supply of e-cigarettes, children and young people are accessing e-cigarettes. Most of those e-cigarettes contain nicotine.
- For persons over 18, a medical prescription is required to legally access nicotine e-cigarettes and liquid nicotine in Australia
- Persons over 18 are able to legally purchase e-cigarettes that do not contain nicotine
- [Wollongong University 'What's in a vape'](#) study has revealed that to date, they are yet to analyse a disposable device that did not contain any nicotine.

The [Health Promotion Team](#) is working towards addressing vaping issues by:

- Developing the [NSW Health: The facts about vaping](#) campaign
- Developing fact sheets for young people, parents and schools
- Sharing the NSLHD Vaping and Young People Survey Results Report with local organisations.

If community members think a tobacco or e-cigarette retailing law has been broken, they are encouraged to report by calling the Northern Sydney Public Health Unit on (02) 9485 6911 or report to the an [online reporting portal](#).

Further information is available to support the community:

- NSLHD webinar for parents and teachers: [NSLHD Vaping in Children and Young People Recording \(office.com\)](#)
- NSW Health Quit line on 13 7848 (13 QUIT) and [iCanQuit](#)
- Alcohol and Drug Foundation (ADF) [Guide to talking about vaping with young people](#)
- ABC Life Matters Podcast, ['How to talk to teens about vaping'](#)

DISCUSSION

High level regulation was discussed. The [Therapeutic Goods Administration](#) and Border Force Patrols endeavour to regulate at the point of entry. Fair Trading also have a role in regulation.

Confidence in e-cigarettes advertised as non-nicotine products is low. Smoking and using e-cigarettes are banned in all enclosed public areas and certain outdoor public areas, under the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.

The Committee was asked to share the presentation information and resources with networks and Northern Beaches community members to improve understanding of this issue.

ITEM NO.	ACTION	RESPONSIBLE OFFICER	DUE DATE
6.3	Investigate and report back to the Committee, the opportunity to update Council signage and website to include vaping and e-cigarettes information.	Kath Young	16 February 2023

6.4 DRAFT YOUTH VOICE ACTION PLAN

The Manager Social Planning and Services provided an overview and presentation on the [draft Youth Voice Action Plan](#). The draft Plan reflects work undertaken over the last 12 months to understand what it is like to be a young person on the Northern Beaches and supports young people to be more active contributors in community life.

The draft Plan outlines five years of action for youth development that will support and engage young people.

Key safety issues raised by young people during consultations included:

- Safety on public transport and in public spaces
- The importance of events and community connections
- Housing
- Online safety and how that links to mental health
- Alcohol and other drugs – the importance of role modelling by adults and the desire for opportunities to socialise in places that are alcohol-free.

At its recent Council meeting, Councillors agreed to place the draft Youth Voice Action Plan on public exhibition. Community comment is invited from 1 December 2022 to 28 February 2023. Following the exhibition period and collation of responses, Council will reconsider the draft Action Plan in early 2023.

The presentation will be circulated with the Draft Minutes.

6.5 COMMUNITY SAFETY COORDINATOR UPDATE

The Community Safety Coordinator addressed items previously circulated in the Agenda.

Item 4.5.1 Seniors Sector representative

Further to this action from the 2 June 2022 meeting, the following update is provided.

A range of senior groups were considered to represent the seniors sector on the Community Safety Advisory Committee. Current membership of the Committee includes the Chairs of various interagencies representing key stakeholders under the Community Safety Plan. The [Northern Sydney Community Network](#) was identified as the relevant interagency for seniors.

The Community Safety Advisory Committee members in attendance unanimously agreed to invite a representative of the Northern Sydney Community Network to join the Committee.

Action Item 6.3 Sexual Assault Prevention and Response Working Group

Further to this action from the 1 September 2022 meeting, the following update is provided.

The Working Group is now established and met on 14 November 2022. Priority areas for action were discussed however advice from Northern Sydney Sexual Assault Service (SAS) is being sought prior to Group actions being determined. A representative from the SAS will attend the next Working Group meeting to assist discussion. In the interim a draft guide is being prepared with the intention of providing services with clear information on:

- 24/7 referral points for victims of sexual assault
- Reporting options for victims.

It is intended this guide will lead to a landing page on Council's internet with more information and links for services and victims.

Manly Ward representative

The selection process for a Manly resident has been completed and is being forwarded to Council's CEO for endorsement.

Police and Council Operational meeting

Items included in the 29 September 2022 meeting and listed within the Agenda were noted and briefly discussed.

ITEM NO.	ACTION	RESPONSIBLE OFFICER	DUE DATE
6.5	Invite a representative of the Northern Sydney Community Network to join the Community Safety Advisory Committee.	Kath Young	16 February 2023

7.0 GENERAL BUSINESS

MoWaNa Safe Space

Sue Johansson provided an update on the MoWaNa Safe Space which is being established in partnership with Roses in the Ocean. The community led safe space will be temporarily located at 8-10 Waratah Street, Mona Vale

MoWaNa is planned to begin operating from Friday 16 December 2022* at the following times:

- Friday and Saturday nights - 5.00pm - 9.00pm*
- 23, 24 and 25 December - 10.00am - 9.00pm*
- 30 and 31 December - 10.00am - 9.00pm.*

(*Note: It has since been decided that MoWaNa will not be open on the above dates. The Safe Space will open on a date yet to be confirmed.)

Trained volunteers will be in attendance to support visitors to the Safe Space. Volunteers have also obtained Police and Working with Children checks. To assist community education and Committee members to share the information, clear messaging about the MoWaNa Safe Space was requested.

Changes to Committee meeting times and structure

The Committee considered and agreed to change future meetings as follows:

- Future meetings to begin at 9am
- Invite local Federal and State Members of Parliament to attend as visitors to the 16 February 2023 meeting
- Review the Community Safety Advisory Committee Terms of Reference to reintroduce inclusion of local Federal and State Members of Parliament as members of the Committee and submit recommendation for Council's consideration.

Liquor Licensing Reform

The NSW Government is proposing liquor licensing reform and is inviting comments via <https://www.haveyoursay.nsw.gov.au/liquor-licensing-reform>. Consultation is open until on Tuesday 13 December 2022.

ITEM NO.	ACTION	RESPONSIBLE OFFICER	DUE DATE
7.1	Share with the Committee clear messaging about the MoWaNa Safe Space	Sue Johansson	ASAP
7.2	Change future Committee Meeting start time to 9am	Kath Young	ASAP
7.3	Invite local Federal and State Members of Parliament to attend as visitors to the 16 February 2023 Community Safety Advisory Committee Meeting	Kath Young	ASAP
7.4	Review the Community Safety Advisory Committee Terms of Reference to reintroduce inclusion of local Federal and State Members of Parliament as members of the Committee and submit recommendation for Council's consideration.	Kath Young	ASAP

SUMMARY OF ACTIONS

ITEM NO.	ACTION	RESPONSIBLE OFFICER	DUE DATE
6.1	Council staff to report on the progress and actions of the Northern Beaches Suicide Response Steering Group as a standing Agenda item for the Committee.	Will Wrathall	16 February 2023
6.3	Investigate and report back to the Committee, the opportunity to update Council signage and website to include vaping and e-cigarettes information.	Kath Young	16 February 2023
6.5	Invite a representative of the Northern Sydney Community Network (From the Beach to the Bush) to join the Community Safety Advisory Committee.	Kath Young	16 February 2023
7.1	Share with the Committee clear messaging about the MoWaNa Safe Space.	Sue Johansson	ASAP
7.2	Change future Committee Meeting start time to 9am.	Kath Young	ASAP
7.3	Invite local Federal and State Members of Parliament to attend as visitors to the 16 February 2023 Community Safety Advisory Committee Meeting.	Kath Young	ASAP
7.4	Review the Community Safety Advisory Committee Terms of Reference to reintroduce inclusion of local Federal and State Members of Parliament as members of the Committee and submit recommendation for Council's consideration.	Kath Young	ASAP

The meeting concluded at 11.39am



MINUTES OF COMMUNITY SAFETY ADVISORY COMMITTEE

24 NOVEMBER 2022

This is the final page of the minutes comprising 10 pages
numbered 1 to 10 of the Community Safety Advisory Committee meeting
held on Thursday 24 November 2022 and confirmed on Thursday 16 February 2023



Community Safety Advisory Committee Terms of Reference

1 NAME

Community Safety Advisory Committee

2 PURPOSE AND OBJECTIVES

The purpose of the Community Safety Advisory Committee (the Committee) is to provide guidance to Council on community safety issues impacting the Northern Beaches.

The Committee will have the following objectives:

- Monitor crime trends.
- Advise Council on emerging crime prevention and community safety issues impacting the Northern Beaches.
- Monitor implementation of the Community Safety Plan.
- Inform the future development of the Community Safety Plan.
- Provide guidance to Council, as required, on issues relating to the development of Council strategies and services aimed at enhancing and improving community safety.

The role of this Committee is purely advisory and may not commit Council resources. The Committee is to work within the framework of the Community Strategic Plan and does not deal with operational matters. It should be noted that employees of the Council are not subject to the direction of the Committee or any of its members.

3 COMMITTEE CHARTER

The Community Safety Advisory Committee operates according to these Terms of Reference and their relevant Charter. Terms of Reference and Charters are adopted by resolution of Council and may also be amended by Council from time to time. The scope of the Committee is detailed in the respective Charter (refer Attachment 1).

4 MEMBERSHIP

- a) Membership of the Committee is comprised of up to 26 representatives of a range of stakeholder groups relevant to community safety and the delivery of the Community Safety Plan.
- b) The Mayor and 4 Councillors (up to 1 per Ward) will be appointed.
- c) In addition to Councillors, membership of the Committee is comprised of up to 21 representatives of a range of stakeholder groups relevant to community safety. The membership composition is detailed in the Charter (refer Attachment 1).
- d) All members of this Committee have an obligation to:
 - Attend all meetings scheduled for the Committee.
 - Objectively consider and actively participate in group deliberations.
 - Review relevant documents and provide feedback to the Committee where necessary, including occasional out-of-session consideration of time-bound matters that may fall outside the meeting schedule.
 - Endeavour to convey the views of the broader community, network or peak agency they are representing.
 - Maintain and respect the confidential nature of the meeting and other members.

5 ELIGIBILITY

- a) All Councillors are eligible to nominate for membership on the Committee. Appointments will be determined and endorsed by Council.
- b) Council will invite representation from the stakeholder groups outlined in the Charter.
- c) Representatives of networks /peak agencies must possess such skills, expertise, experience or special affiliation to be able to contribute to the Committee purpose and objectives.
- d) The selection of members will be undertaken in accordance with Council's Policy for Community Committee Framework and Appointment of Community and Stakeholder Representatives.
- e) A person appointed to the Committee shall continue as a member of the Committee for the period outlined in Term of Office.
- f) Should a representative vacancy occur during the terms of appointment, a new representative will be sought from the stakeholder group.
- g) Membership will be reviewed annually and if necessary, adjusted in accordance with the recommendation from the Committee.

6 TERM OF OFFICE

To assist with maintaining effectiveness and the continuity of knowledge within the Committee the terms of Councillors and other Committee members have been staggered. The aim is for established members to provide assistance to incoming Councillors after the council election and 12 months later, reciprocally from Councillors to incoming community members.

- a) The term for Councillors on the Committee is two (2) years or 12 months following the election of new Council.
- b) The term for other members on the Committee is four (4) years commencing within 12 months after the election of Council.
- c) All Councillor memberships will cease during the election caretaker period. New Councillors should be appointed to the Committee at the earliest opportunity following the election.
- d) The terms above are subject to the conclusion of the Committee, when all memberships cease.

7 SUPPORT PROVIDED

- a) Council will provide necessary resources to the Committee. This will include the venue and administrative support such as facilitating and running the meeting, preparation and distribution of the notice of meeting, agenda and the recording of the minutes.
- b) The Community, Arts & Culture Business Unit is responsible for managing the Committee and will be the main point of contact for members on Committee related matters.
- c) Council staff in the areas of Community Development and Environmental Compliance will be available to provide guidance and assistance where appropriate. The role of these representatives is to provide guidance on:
 - Status of current issues
 - Broad policy objectives
 - Local Government regulations and relevant legislation.

8 TIMETABLE FOR MEETINGS

- a) The Committee is to meet quarterly (four (4) times) throughout the year.
- b) A meeting will be limited to a maximum of two (2) hours duration unless the group resolves to extend the meeting to a particular time or until the completion of business.
- c) The schedule of meeting dates and venues will be provided to the members in advance and an agenda will be provided at least 7 days prior to meeting.

9 ATTENDANCE AT MEETINGS

- a) All members are expected to attend the meetings, or otherwise tender their apologies to either the Chair or lead Council Officer.
- b) If unable to attend, members may delegate their position to another member of their organisation, in consultation with the Chair or Lead Council Officer.
- c) No member should be absent for more than two (2) consecutive meetings without first seeking, and being granted, leave by the Chair. Without being granted such leave in these circumstances, the person's membership will be re-evaluated.
- d) While other Councillors may attend Committee meetings as observers, the meetings will not be open to other members of the public.
- e) On the invitation of the Chair or lead Council Officer, individuals or organisational representatives may be invited to attend a meeting in a one off guest capacity for the purposes of giving presentations or providing specific advice or expertise.

10 MEETING PRACTICES AND PROCEDURES

- a) The Council will ensure that each meeting is properly recorded with the use of minutes, which will be reported to Council.
- b) The quorum for each meeting will be one half plus the Mayor or another Councillor. If a quorum is not present within 30 minutes within the commencement time of the meeting, it will become an informal meeting with no recommendations or decisions made.
- c) The Mayor is the Chair of the Committee or their nominated representative.
- d) The Chair directs the progress of the Committee meeting. Subject to any determination by the Chair, each item is to be dealt with in the order in which it appears on the agenda.
- e) The Chair role is to facilitate the conduct of the meetings and ensure the Committee focuses on its primary purpose and objectives.
- f) This Committee is advisory in purpose and should have the intention of reaching consensus when endorsing items and recommendations. It has no authority to make decisions on behalf of Council.
- g) It will be at the discretion of the Chair when a matter is to be put to the vote. In such circumstances voting is to be by way of a show of hands. For a vote to be carried the matter must be supported by a majority of members present, with the Chair having a casting vote in the event the vote is tied (or Deputy in the absence of the Chair).

11 CODE OF CONDUCT

- a) All members of the Committee are required to observe Council's Code of Conduct and any other policy or requirement applicable to the proper functioning of the Committee.
- b) Members shall act in a professional and responsible manner with the information they obtain.

- c) Members must respect each other (often despite differences) and work together to create an open and trusting atmosphere. The group requires openness and honesty in order to function well and members should feel free to express their opinions and views without fear of recrimination.
- d) A breach of the Terms of Reference may lead to the member being removed from the Committee by the Chair.
- e) Members of the Committee do not have the authority to act or speak on behalf of Council including representations to the media on Council or the Committee's behalf. In accordance with Council's Media Policy, the Mayor is the only person permitted to speak to the media on behalf of the Council and the Committee.
- f) Conflicts of Interest: Council recognises that community representatives join such groups and Committees because of special interests they may have, and Council welcomes their expertise. Nevertheless, it is important that Council understands the basis of advice it receives from the groups, so members will be requested to declare any organisation they may represent. Disclosures of Conflicts of Interest, particularly pecuniary interests need to be made by members of the group and recorded in the minutes in accordance with section 442 and 443 Local Government Act 1993.
- g) Confidentiality and Privacy: Members may have contact with confidential or personal information retained by Council or other agencies. If so, members are required to maintain the security of any confidential or personal information and not access, unless the member is authorised to do so.

12 COUNCIL VALUES

All members of the Committee and all meeting attendees are expected to observe Northern Beaches Council Values outlined below:

- Trust: because being open brings out our best
- Teamwork: because working together delivers
- Respect: because valuing everyone is how we make a difference
- Integrity: because we are proud of doing what we say
- Service: because we care as custodians for the community
- Leadership: because everyone has a leading role

13 NEXT REVIEW DATE

- a) This Terms of Reference will be reviewed prior to the establishment of a new Committee.
- b) Amendments to this Terms of Reference may only be determined by Council.

ATTACHMENT 1	
CHARTER: Community Safety Advisory Committee	
<p>Established: March 2022</p>	<p>Function: To provide guidance to Council on community safety issues impacting the Northern Beaches.</p>
<p>Stakeholder Representative Term</p> <ul style="list-style-type: none"> Councillors: Appointment for 2 years or until election caretaker period. Stakeholder Representatives: Appointment for 4 years including one year following council election. 	
<p>Quorum and Voting</p> <ul style="list-style-type: none"> The quorum for each meeting will be one half. If a quorum is not present within 30 minutes within the commencement time of the meeting, the meeting shall become an informal meeting with no recommendations or decisions made. The Committee should have the intention of reaching consensus when endorsing items and recommendations. 	<p>Composition/Membership</p> <p>The Committee comprises of up to 26 members representing a range of stakeholder groups relevant to the Community Safety Plan.</p> <p>The Chair is the Mayor or their nominated delegate on this group and Deputy Chair as elected by the Mayor.</p> <p>The following Council members will be appointed:</p> <ul style="list-style-type: none"> Mayor (Chair) and 4 appointed Councillors (up to 1 per Ward) <p>In addition to Councillors, the group is to consist of up to 21 members as follows:</p> <ul style="list-style-type: none"> Northern Beaches Police Local Area Commander or a delegate Domestic Violence Interagency Chair Mental Health Interagency Chair Youth Interagency Chair Northern Beaches Liquor Accord Chair Housing and Homelessness Interagency Chair Primary Health Network representative Local Health District Network representative Community Drug Action Team (CDAT) Chair Seniors sector representative 4 local State Members of Parliament or delegate 2 local Federal Members of Parliament or delegate. 5 Community members representing a broad range of strategic views on community safety across the Northern Beaches (up to 1 member per ward).
<p>Reporting Procedures</p> <p>Minutes of meetings to be reported to Council.</p>	
<p>Meetings:</p> <ul style="list-style-type: none"> The Committee are to meet quarterly (four (4) times) throughout the year. The schedule of meeting dates will be distributed at the formation of the Committee. Agenda items, time and venue will be provided to the members in an agenda at least 7 days prior to the meeting. 	
<p>Ex Officio Advisors:</p> <ul style="list-style-type: none"> Lead Council Officer: Community Safety Coordinator, Executive Manager Community, Arts and Culture, Manager Youth and Community Development Business Unit: Community, Arts and Culture Additional Council Officers: Executive Manager Environmental Compliance, Manager Rangers Business Unit: Environmental Compliance Council Executive: Chief Executive Officer, Director Community and Belonging 	

Revision History

Revision	Date	Status	TRIM Ref
1	8/5/2018	Terms of Reference (TOR) and Charter	2018/281599
2	23/3/2021	076/21 RESOLVED Notice of Motion 20/2021 – Community Safety Committee Membership	2021/196893
3	22/03/2022	065/22 RESOLVED Revision of Terms of Reference and Charter following election of Council	2022/089392
4	27/09/2022	288/22 RESOLVED Revision of Terms of Reference to include seniors sector representative	2022/526897
5	28/03/2023	Draft revised Terms of Reference to include local State and Federal Members of Parliament	2022/822717



MINUTES

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

held via Teleconference on

WEDNESDAY 21 DECEMBER 2022

MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL
MEETING

21 DECEMBER 2022

**Minutes of the Northern Beaches Local Planning Panel
held on Wednesday 21 December 2022**

The public meeting commenced at 2.00pm and concluded at 3:09pm.

The deliberations and determinations commenced at 3:23pm following the public meeting and concluded at 4.45pm.

ATTENDANCE:**Panel Members**

Annelise Tuor	Chair
Kara Krason	Town Planner
Robert Hussey	Town Planner
Peter Cotton	Community Representative

The meeting considered Item 4.1 deferred from Northern Beaches Local Planning Panel meeting that was held on 16 November 2022. The Panel has visited the site personally, or electronically, been briefed by Council officers and has had regard to the assessment report, all accompanying documentation, submissions from the public and the Proponent and any supplementary reports.

1.0 APOLOGIES AND DECLARATIONS OF INTEREST

No apologies.

In accordance with Section 4.9 of the NSW Government Code of Conduct for Local Government Planning Panels, all members prior to the meeting on 16 November 2022 have signed a declaration of interest in relation to the item on the agenda. No conflicts of interest were disclosed.

2.0 MINUTES OF PREVIOUS MEETING

Nil.

3.0 Category 3 Applications

Nil.

4.0 PUBLIC MEETING ITEMS

4.1 PEX2022/0001 - 10-12 BOONDAH ROAD, WARRIEWOOD - PLANNING PROPOSAL

PROCEEDINGS IN BRIEF

The proposal seeks to amend Pittwater Local Environmental Plan 2014 by rezoning the subject site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation, along with other amendments, to enable residential development comprising 40 dwellings in a 3-storey townhouse typology and 4 affordable housing dwellings for a period of 10 years in a manor home or 2-storey residential flat building typology.

The proposal was deferred from the meeting of 16 November 2022 'for the applicant to submit a response ... to the Supplementary Memo dated 14 November 2022, specifically items 2-6'.

At the public meeting which followed the deferral, the Panel was addressed by two (2) representatives of the applicant.

All additional information submitted to Council was considered, and the Panel's advice to Council is set out below:

RECOMMENDATION OF PLANNING PANEL

That the Northern Beaches Local Planning Panel recommend that Council **reject** the Proponent's Planning Proposal (Planning Proposal) for 10-12 Boondah Road, Warriewood and not forward it to the NSW Department of Planning and Environment for a Gateway determination, for the following reasons:

- A. The Planning Proposal has not demonstrated sufficient strategic merit or site-specific merit, and is inconsistent with the following elements of the strategic planning framework:

i. *Greater Sydney Region Plan:*

Objective 27: Biodiversity is protected, urban bushland remnant vegetation is enhanced
Objective 36: People and places adapt to climate change and future shocks and stresses
Objective 37: Exposure to natural and urban hazards is reduced.

ii. *North District Plan:*

Planning Priority N16: Protecting and enhancing bushland and biodiversity
Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

iii. *Towards 2040 Local Strategic Planning Statement* for the Northern Beaches:

Priority 1: Healthy and valued coast and waterways
Priority 2: Protected and enhanced bushland and biodiversity
Priority 8: Adapted to the impacts of natural and urban hazards and climate change
Priority 15: Housing supply, choice and affordability in the right locations

- iv. *Warriewood Valley Strategic Review Addendum Report* adopted 17 November 2014 and amended 19 December 2017 by Northern Beaches Council and incorporated in Clause 6.1 Warriewood Valley Release Area of the *Pittwater Local Environmental Plan 2014*.

- v. *Local Planning Directions* issued by the Minister for Planning:
- Local Planning Direction 4.1: Flood Prone Land
 - Local Planning Direction 4.2 Coastal Management
 - Local Planning Direction 4.4: Planning for Bushfire Protection
- B. The NSW State Emergency Service (SES) has raised significant concerns in relation to flood risk, and has indicated it does not support rezonings to enable development on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, shelter in place, and transfer of residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.
- C. The Planning Proposal seeks to rezone land within the flood planning area and insufficient information has been provided to demonstrate that the proposed development will not:
- i. result in a net loss of flood storage in the floodplain;
 - ii. result in significant adverse impacts to other properties;
 - iii. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures;
 - iv. adversely affect the safe occupation and efficient evacuation of people; and
 - v. place people and property at unacceptable risk at the event of a major flood.
- The Panel notes that further information has been provided by the applicant following the completion of the Supplementary Memo No 2, and this should be incorporated into the report to Council on the Planning Proposal.
- D. The Planning Proposal is inconsistent with the objectives of Clause 5.21 Flood Planning of *Pittwater Local Environmental Plan 2014*.
- E. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:
- i. failure to site and design development to avoid and minimise impacts to biodiversity;
 - ii. removal of the full extent of remnant Bangalay Sand Forest, an Endangered Ecological Community of significant biodiversity value, as well as impacts to threatened species habitats, reduction in local wildlife connectivity, and potential for altered flow regimes to impact groundwater dependent ecosystems;
 - iii. uncertainty with regards to Biodiversity Certification and, given that offset obligations are not available in the Northern Beaches, the likelihood of a net loss of local biodiversity;
 - iv. failure to exclude from development all of the mapped Coastal Wetland;
 - v. failure to provide an adequate 15 metre wide landscaped buffer, exclusive of the bushfire asset protection zone, to protect the adjacent wetlands; and
 - vi. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment and the wetland.
- F. The Planning Proposal does not comply with Council's Affordable Housing Policy as it only offers dwellings as affordable housing for a period of 10 years, and it fails to include a suitable mechanism to include the site in the *Affordable Housing Contributions Scheme*.



**MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL
MEETING**

21 DECEMBER 2022

- G. The proposed 15m maximum building height is not commensurate with the proposed 3 storey townhouses and could enable a scale of built form that is out of character with the area.

The Panel notes that this may be able to be clarified but is not formally part of the Planning Proposal.

- H. The proposed C2 zoning of land could trigger acquisition obligations for Council.

The Panel notes that this may be able to be clarified if the Planning Proposal was to progress.

Vote: 4/0



MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL
MEETING

21 DECEMBER 2022

5.0 NON PUBLIC MEETING ITEMS
Nil

This is the final page of the Minutes comprising 8 pages
numbered 1 to 8 of the Northern Beaches Local Planning Panel meeting
held on Wednesday 21 December 2022.



Our Ref: ID 1708
Your Ref: PEX2022/0001

6 February 2023

[REDACTED]
Northern Beaches Council
PO Box 82
Manly NSW1655

Dear Paula,

Planning Proposal for 10-12 Boondah Road Warriewood

Thank you for the opportunity to provide further advice on the Planning Proposal for 10-12 Boondah Road Warriewood. It is understood that the planning proposal seeks to:

- rezone the site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation
- increase the maximum building height from 8.5m to 15m over the R3 zoned land
- remove the minimum subdivision lot size
- amend the Urban Release Area Map and clause 6.1(3) to apply a dwelling yield range of 40-45 dwellings.

NSW State Emergency Service (NSW SES) is the agency responsible for dealing with floods, storms and tsunamis in NSW. This role includes, planning for, responding to and coordinating the initial recovery from floods. As such, the NSW SES has an interest in the public safety aspects of the development of flood prone land, particularly the potential for changes to land use to either exacerbate existing flood risk or create new flood risk for communities in NSW.

The consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including 4.3 – Flood Prone Land and is consistent with the NSW Flood Prone Land Policy as set out in the NSW Floodplain Development Manual, 2005 (the Manual). Complementary to our previous correspondence dated 31 , we would like to provide the following advice in relation to our role and the principles outlined in the Manual:

- **Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain.**



STATE HEADQUARTERS
93 - 99 Burelli Street, Wollongong 2500
PO Box 6126, Wollongong NSW 2500
P (02) 4251 6111
F (02) 4251 6190
www.ses.nsw.gov.au
ABN: 88 712 649 015



- Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood.
- Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes.

We understand that the applicant believes that they have correctly applied Flood Risk Management Guide EM01 (Figure 20, p.59). Firstly, this guideline is still draft, unfortunately the exhibition page of the website did not have the draft stamp. Nevertheless, NSW SES does not agree that the applicant has satisfied the conditions outlined in the Guide EM01, as detailed below:

The proposed development is a Low Flood Island

Noting that Boondah Road will be raised to the level of 1% AEP plus climate change, this area will still be a Low Flood Island. Low Flood Islands represent the highest risk to life.

The proposed development does not have sufficient time to evacuate

There is not sufficient time to evacuate, given there is no formal warning system in the catchment. The Flood Planning Assessment identifies 4.5 hour travel time as “significant”. Based on research, including [Opper et al 2010](#) and a number of [publications](#) on the NSW SES website and recent post flood surveys, 4.5 hours is generally an insufficient amount of time to enact evacuation successfully.

This site is also not an area that is warned to by the Bureau of Meteorology. It is noted that a sensor is proposed to warn the community (Water Management Report).

The NSW SES issues warnings that describe the expected consequences for communities and what impacted people should do. Forecasts and flood warnings from the Bureau of Meteorology, flood plans, historical impact data and community sourced input are all used to determine the types of warnings issued. The NSW SES adopted the Australian Warning System (AWS) in September 2022; a hazard-agnostic, three-tiered warning system to encourage a nationally consistent approach to warnings for natural hazards. The warning system comprises warning levels, calls to action, hazard icons, colours and shapes, and was endorsed by the Australia New Zealand Emergency Management Committee (ANZEMC) in March 2021. All warnings issued by the NSW SES are considered official warnings and will be viewed on the SES website and HazardWatch. If the early warning system is pursued, the Australian Warning System terminology will not be able to be adopted unless it is an established warning system within the NSW SES framework.



It is stressed that although warning technology applications could be developed, they cannot be relied upon to guarantee a faster response from the community. In the planning context the NSW SES argues for the warning time frame for a development to be determined on the assumption that every dwelling must also be warned by an NSW SES team knocking on the door. No matter how many warning technologies are used, door knocking is the only way of ensuring everyone has been warned. Any time advantage is gained by the application of warning technology should be considered as a safety factor, not a potential for increasing the scale of the development and simply wiping out the safety factor with more risk exposure.

Early warning systems will still need to rely on a trigger to evacuate prior to inundation occurring. There is considerable historical evidence that some people, occasionally in large numbers, will not heed the call to evacuate early and will instead wait until they see floodwater in their immediate vicinity. In doing so it is possible that people will not have sufficient time to get off the site before floodwater encroaches around their dwelling or workplace. In addition, if the forecast height does not result, then there is an effect on subsequent evacuation compliance rates due to the “cry wolf” effect.

The proposed modifications do not address the evacuation constraints

The proposed development would need to evacuate prior to the roads being closed. The broader area also needs to be considered, as all other routes out of the area will be closed prior to Boondah Road (after the proposed upgrade) is flooded, for example, Macpherson Street to the north and to the east, Brands Lane and Garden Street. Therefore, the future occupants will still not be able to self-evacuate.

- **In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES’s principles for evacuation. Future development must not conflict with the NSW SES’s flood response and evacuation strategy for the existing community.**
- **Evacuation must not require people to drive or walk through flood water.**
- **Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation.**

Section 7.4 of the Flood Planning Assessment identifies the option for shelter in place and a complex and high risk strategy detailed on page 54 of the Water Management Report.

'Shelter in place' strategy is not an endorsed flood management strategy by the NSW SES for future development. Such an approach is only considered suitable to allow existing dwellings that are currently at risk to reduce their risk, without increasing the number of people subject to such risk.



The flood evacuation constraints in an area should not be used as a reason to justify new development by requiring the new development to have a suitable refuge above the PMF. Allowing such development will increase the number of people exposed to the effects of flooding.

Other secondary emergencies such as fires (exacerbated by lack of electricity and difficult to extinguish due to isolation) and medical emergencies may occur in buildings isolated by floodwater. During flooding it is likely that there will be a reduced capacity for the relevant emergency service agency to respond in these times. Even relatively brief periods of isolation, in the order of a few hours, can lead to personal medical emergencies that have to be responded to. The occupants are also likely to be without water, sewerage, electricity, communications and other services. These factors can impose additional loads on emergency services during floods. For these reasons, shelter in place is a last resort alternative. In addition, this particular site is adjacent to the sewer treatment works, which is likely to result in contaminated floodwater surrounding the development.

- **Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.**
- **The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.**

Although we encourage businesses and homes to be prepared for flooding, NSW SES is the legislated authority responsible for ordering flood evacuation. This responsibility cannot be transferred to a reliance on a private evacuation plan.

It should also be noted that the Manual (see sections 3.6, A-5, L-5, L-6.9.6 and N-7) specifically precludes the practice of consent conditions requiring a site plan if that plan is trying to overcome an underlying flood risk that would otherwise be considered too high to permit approval. In other words, if the existence of a flood plan is ignored, is the underlying flood risk unacceptable in the context of the proposed development.

This work is labour intensive and like community flood education must be regularly reviewed and updated for the life of the development. This should include what will be established to ensure ongoing compliance. It is common for consent conditions to be met in the development/construction phase, but not as common for ongoing management to be continued.

- **NSW SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to NSW SES and/or increase capability requirements of the NSW SES.**



- **Consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources in the future.**

You may also find the following Guidelines, originally developed for the Hawkesbury Nepean Valley and available on the NSW SES website useful:

- [Reducing Vulnerability of Buildings to Flood Damage](#)
- [Designing Safer Subdivisions](#)
- [Managing Flood Risk Through Planning Opportunities](#)

Please feel free to contact Elspeth O'Shannessy via email at rra@ses.nsw.gov.au should you wish to discuss any of the matters raised in this correspondence. The NSW SES would also be interested in receiving future correspondence regarding the outcome of this referral via this email address.

Yours Sincerely

Peter Cinque
Senior Manager, Emergency Risk Management
NSW State Emergency Service

	Summary of Issues Raised in Submissions - Planning Proposal PEX 2022/0001
1.	Green space, population density, traffic, impact on wildlife and environment, disruption from construction
2.	Impact on wildlife and environment including wetland, traffic and road safety, need for accessible footpaths
3.	Green space, traffic, rural areas poor presentation
4.	Building height, out of character, lack of cohesion with surrounding development and landscape
5.	Potential increase in run-off and flooding of nearby properties, negative impact on property values, need for master-planning for development of other properties along Boondah Rd to fulfil housing and ageing in place strategies, noise impacts from playground. Note: submitter is supportive of proposal.
6.	Potential increase in run-off and flooding of nearby properties, negative impact on property values and amenity, need for master-planning for development of other properties along Boondah Rd. Note: submitter is supportive of proposal.
7.	Opposed to affordable housing
8.	Flooding impacts, roads cut off by floodwater, dangerous bend in road, green space as extension of sporting fields needed



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 695.1m². 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.

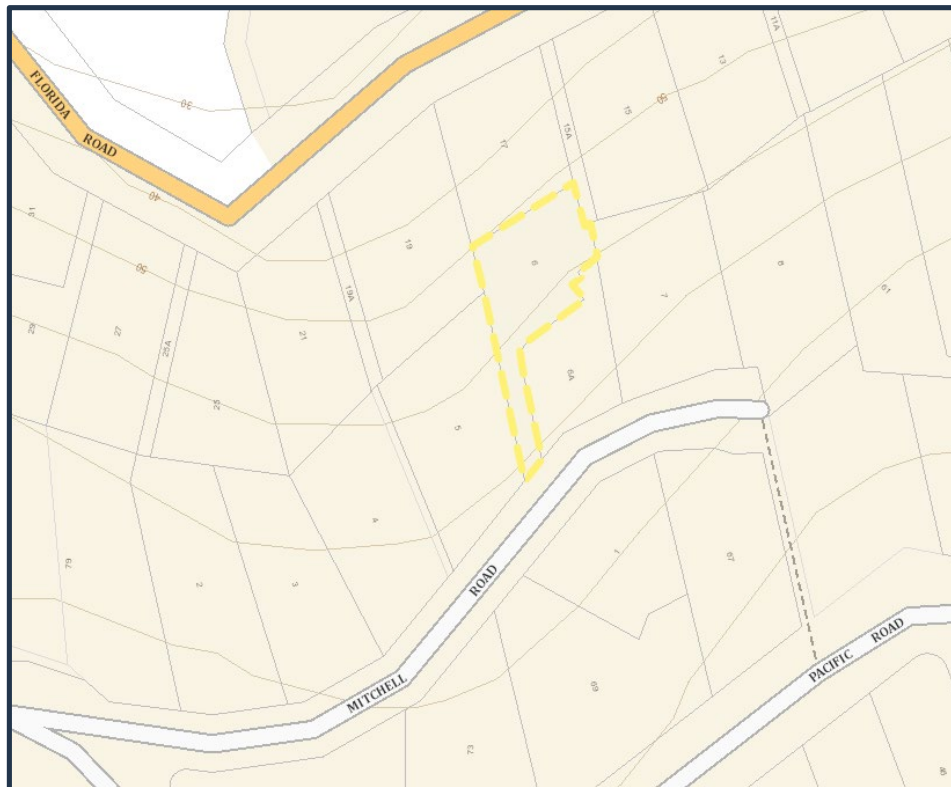


Figure 1: Locality Plan demonstrating the site outlined in yellow (Source – NSW Planning Portal)



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**.

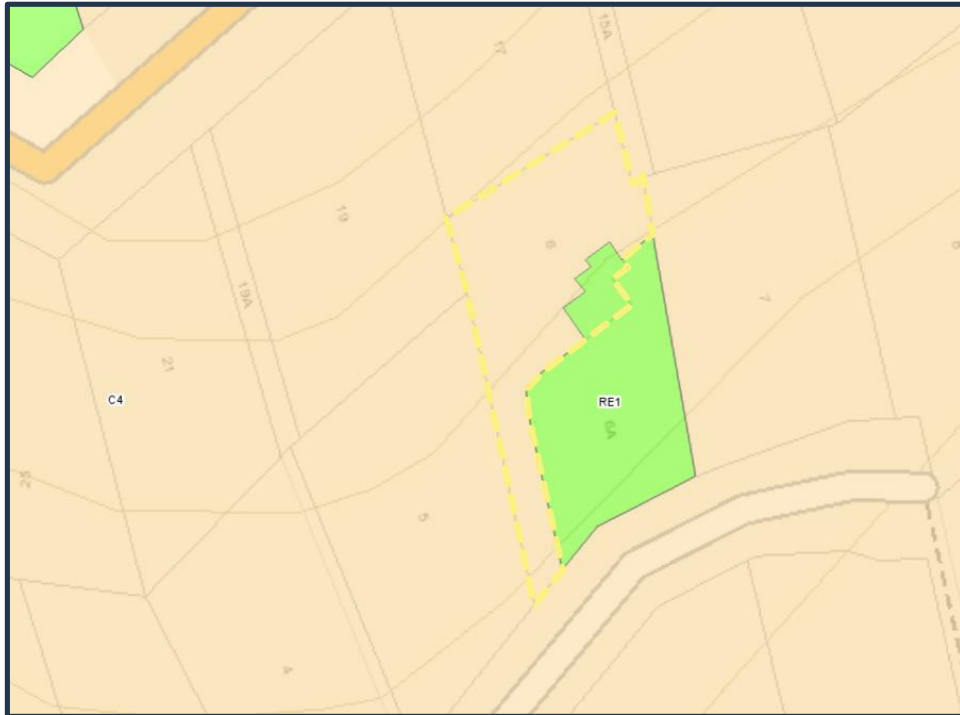


Figure 3: Map showing the land zoning of the subject site (Source: NSW Planning Portal)

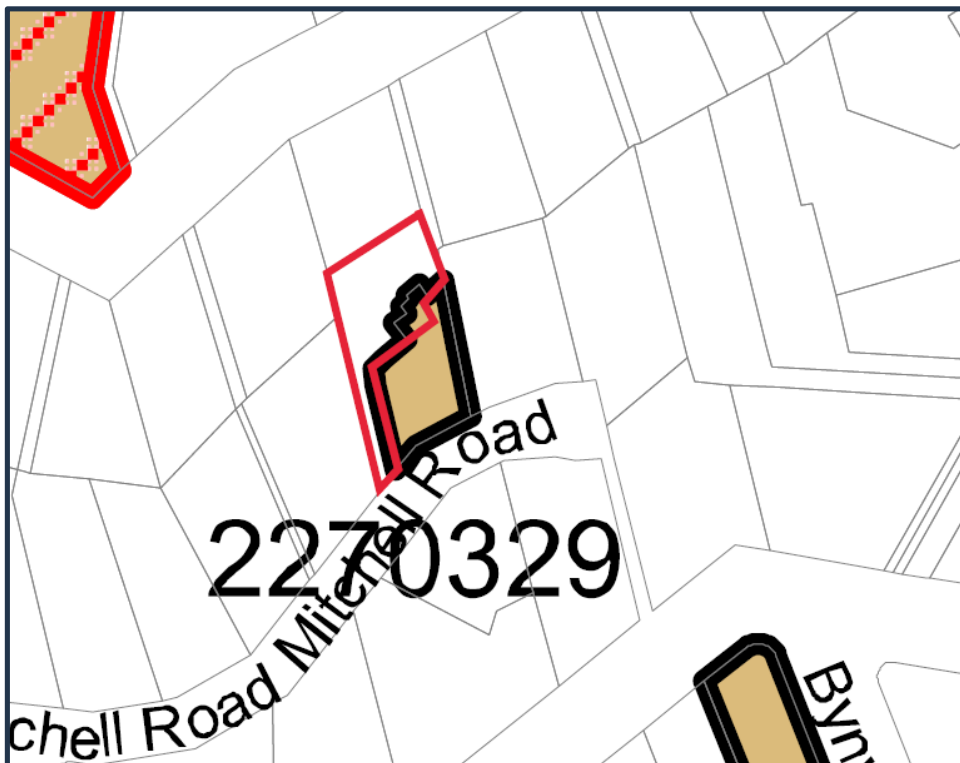


Figure 4: Heritage Map with the subject site outlined in red (Source: NSW Legislation)

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.

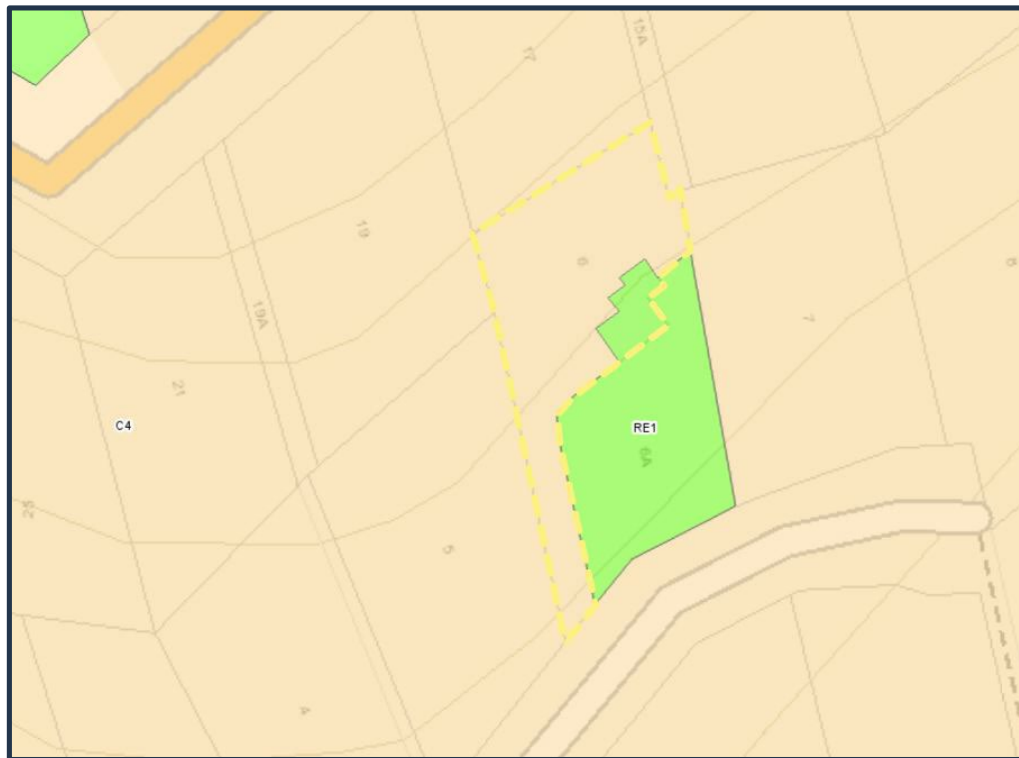


Figure 5: Map showing the land zoning of the subject site (Source: NSW Planning Portal)

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.

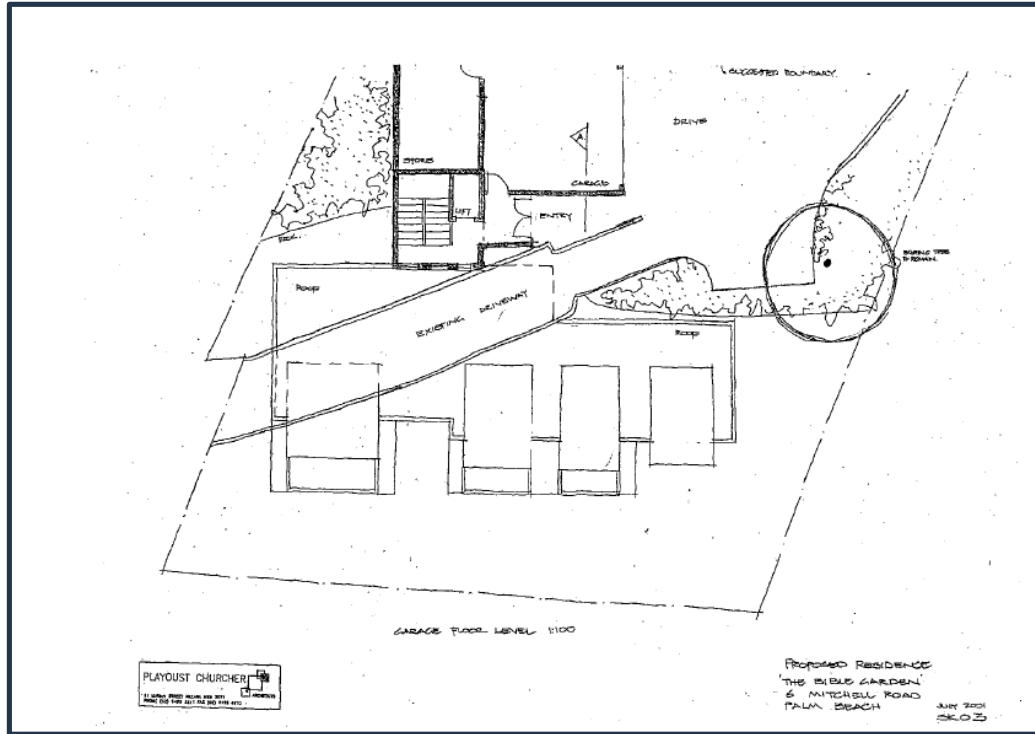


Figure 6: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road
(Source: Heads of Agreement Contract 2004)

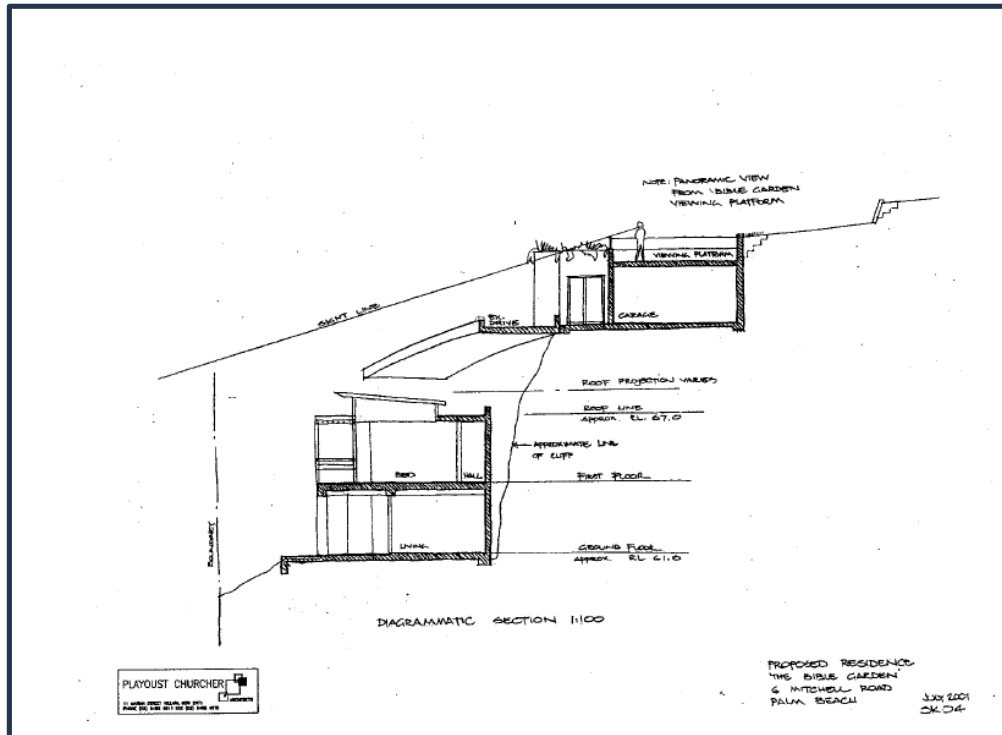


Figure 7: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

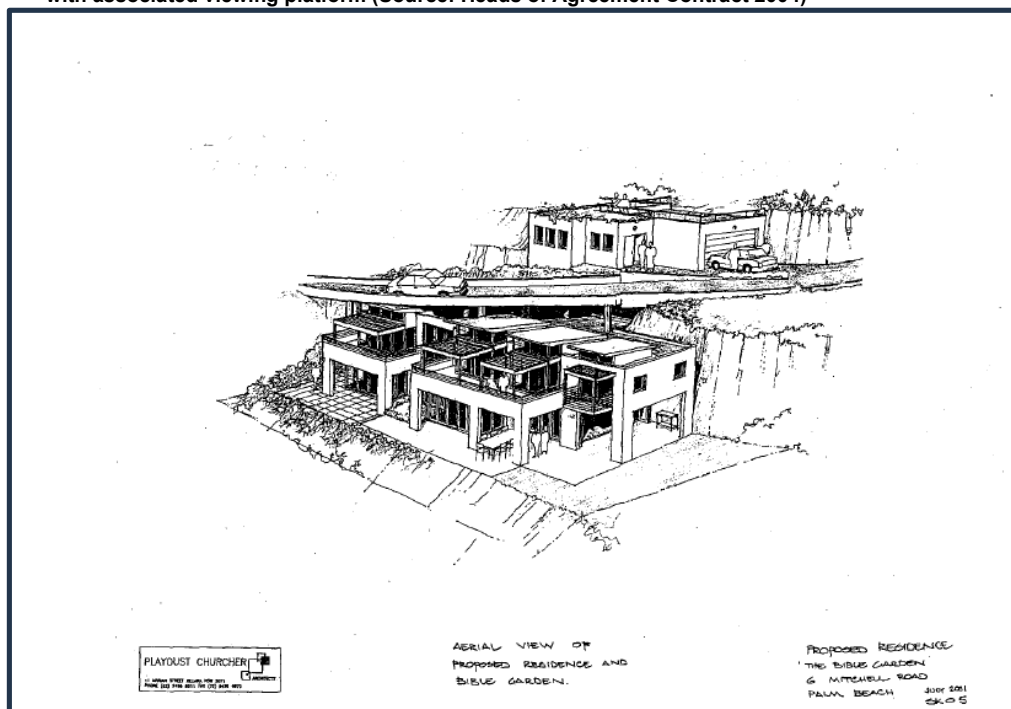


Figure 8: Concept Architectural Plans Detailing location of Garage on southern portion of 6 Mitchell Road with associated viewing platform (Source: Heads of Agreement Contract 2004)

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 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
<p>Planning Priority N1 – Planning for a city supported by infrastructure</p> <p>Planning Priority N2 – Working through Collaboration</p> <p>Planning Priority N3 – Providing services and social infrastructure to meet people's changing needs</p>	<p>The planning proposal is not inconsistent with the planning priorities as it will utilize existing infrastructure onsite to accommodate future residential development envisaged for the site. The proposal will not result in development that will adversely impact on the delivery of local, district or metropolitan infrastructure.</p> <p>The proposal will not impede on the provision of services or social infrastructure in the area to meet the community's changing needs. The proposal 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.</p>
<p>Planning Priority N4 – Fostering healthy, creative, culturally rich and socially connected communities</p>	<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 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.</p>
<p>Planning Priority N5 – Providing housing supply, choice and affordability with access to jobs, services and public transport.</p>	<p>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.</p>
<p>Planning Priority N6 – Creating and renewing great places and local centres, and respecting the District's heritage</p>	<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 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</p>

Table 1: Consistency with the North District Plan	
Objective	Comment
	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>Planning Priority N7 - Growing a stronger and more competitive Harbour CBD</p> <p>Planning Priority N8 - Eastern Economic Corridor is better connected and more competitive</p> <p>Planning Priority N9 - Growing and investing in health and education precinct.</p> <p>Planning Priority N10 - Growing investment, business opportunities and jobs in strategic centres</p> <p>Planning Priority N11 - Retaining and managing industrial and urban services land</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>Planning Priority N12 - Delivering integrated land use and transport planning and a 30-minute city</p> <p>Planning Priority N13 - Supporting growth of targeted industry sectors</p> <p>Planning Priority N14 - Leveraging inter-regional transport connections</p>	The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that is connected to the existing transport network within the region.

Table 1: Consistency with the North District Plan	
Objective	Comment
<p>Planning Priority N15 - Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways</p> <p>Planning Priority N16 - Protecting and enhancing bushland and biodiversity</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, 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"> • Flora and Fauna Assessment • Arborist Report • Geotech Report.
<p>Planning Priority N17 - Protecting and enhancing scenic and cultural landscapes</p>	<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>
<p>Planning Priority W18 - Better managing rural areas</p>	<p>The proposal is not inconsistent with this planning principle.</p> <p>Regardless of zoning (the predominant zoning of the site and its surrounds is C4 Environmental Living under Pittwater LEP 2014), the site is in an established residential area and will not impact on the management of existing rural areas.</p>

Table 1: Consistency with the North District Plan	
Objective	Comment
<p>Planning Priority N19 - Increasing urban tree canopy cover and delivering Green Grid connections</p> <p>Planning Priority N20 - Delivering high quality open space</p>	<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"> • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report.
<p>Planning Priority N21 - Reducing carbon emissions and managing energy, water and waste efficiently</p> <p>Planning Priority N22 - Adapting to the impacts of urban and natural hazards and climate change</p>	<p>The proposal is not inconsistent with the planning priorities as 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>

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.

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	Comment
<p>Priority 1 Healthy and valued coast and waterways</p> <p>Priority 2 Protected and enhanced bushland and biodiversity</p> <p>Priority 3 Protected scenic and cultural landscapes</p> <p>Priority 4 Protected Metropolitan Rural Area</p> <p>Priority 5 Greener urban environments</p> <p>Priority 6 High quality open space for recreation</p> <p>Priority 7 A low-carbon community, with high energy, water and waste efficiency</p> <p>Priority 8 Adapted to the impacts of natural and urban hazards and climate change</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"> • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report. <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>
<p>Priority 9 Infrastructure delivered with employment and housing growth</p>	<p>The planning proposal is not inconsistent with the planning priorities as it will utilize existing infrastructure onsite to accommodate future residential development envisaged for the site. The proposal will not result in future development that will adversely impact on the delivery of local, district or metropolitan infrastructure.</p> <p>The proposal will not impede on the provision of services or social infrastructure in the area to meet the community's changing needs. The proposal will ensure that any future development on the site will need to be</p>

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement

Planning Priority	Comment
	designed to ensure there are no adverse impacts on the adjoining public open space.
<p>Priority 10 World-class education facilities, including a university</p> <p>Priority 11 Community facilities and services that meet changing community needs</p> <p>Priority 12 An inclusive, healthy, safe and socially connected community</p> <p>Priority 13 Strong engagement and cooperation with Aboriginal communities</p> <p>Priority 14 A community enriched through the arts and connected through Creativity</p> <p>Priority 15 Housing supply, choice and affordability in the right locations</p> <p>Priority 16 Access to quality social and affordable housing</p> <p>Priority 17 Centres and neighbourhoods designed to reflect local character, lifestyle and demographic changes</p> <p>Priority 18 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>
<p>Priority 19 Frequent and efficient regional public transport connections</p> <p>Priority 20 Sustainable local transport networks</p>	<p>The proposal is not inconsistent with the planning priorities as it will facilitate future residential development that is connected to the existing transport network within the region. The establishment of future residential development on the site will generate contribution to the existing and future transport network.</p>

Table 2: Consistency with the Northern Beaches Local Strategic Planning Statement	
Planning Priority	Comment
<p>Priority 21 Redesigned road space and facilities to match changing community needs</p> <p>Priority 22 Jobs that match the skills and needs of the community</p> <p>Priority 23 French's Forest as a sustainable health and education precinct</p> <p>Priority 24 Brookvale as an employment and innovation centre</p> <p>Priority 25 Dee Why as a thriving cosmopolitan centre by the sea</p> <p>Priority 26 Manly as Sydney's premier seaside destination</p> <p>Priority 27 Mona Vale as the contemporary, urban heart of the north</p> <p>Priority 28 Safeguarded employment lands</p> <p>Priority 29 A thriving, sustainable tourism economy</p> <p>Priority 30 A diverse night-time economy</p>	<p>The proposal 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>

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.

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan	
Community Outcome	Comment
Protection of the Environment Environmental Sustainability	<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"> • Heritage Impacts Statement • Flora and Fauna Assessment • Arborist Report • Geotech Report. <p>The proposal will facilitate future sustainable residential development designed to protect and enhance the natural environment and surrounding landscape.</p>
Places for People	<p>The planning proposal is not inconsistent with this community outcome as it will utilize existing infrastructure onsite to accommodate future residential</p>

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan	
Community Outcome	Comment
	<p>development envisaged for the site. The proposal will not result in future development that will adversely impact on the delivery of local, district or metropolitan infrastructure.</p> <p>The proposal will not impede on the provision of services or social infrastructure in the area to meet the communities changing needs. The proposal 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.</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>
Community and Belonging	The proposal is not inconsistent with this community outcome as it will positively contribute to housing supply in the community.
Vibrant Local Economy	The proposal is not inconsistent with the community outcome 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.
Transport, Infrastructure and Connectivity	The proposal is not inconsistent with the community outcome as it will facilitate future residential development that is connected to the existing transport network within the region.

Table 3: Consistency with the Key Community Outcomes of the Northern Beaches Community Strategic Plan	
Community Outcome	Comment
Good Governance	The proposal is not inconsistent with the community outcome as it is reflective of the Heads of Agreement Contract entered into by Pittwater Council in 2004.
Partnership and Participation	The proposal is not inconsistent with the community outcome as it is reflective of the Heads of Agreement Contract entered into by Pittwater Council in 2004 and the proposal will be publicly exhibited as part of the gateway determination process.

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:

Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)		
SEPP	Aim	Comment
SEPP (Resilience and Hazards) 2021	<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>
SEPP (Biodiversity and Conservation) 2021	<p>Chapter 2 – Vegetation in Non-rural Areas 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>Chapter 6 – Bushland in Urban Areas 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"> • Flora and Fauna Assessment • Arborist Report • Geotech Report. <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>
SEPP (Building Sustainability Index: BASIX) 2004	<p>The aim of this policy is to mandate minimum sustainability targets for thermal comfort, energy and water use for residential development.</p>	<p>DAs for all future residential development will need to comply with the targets established under BASIX.</p>

Table 4: Consistency with Relevant State Environmental Planning Policies (SEPPs)		
SEPP	Aim	Comment
SEPP (Exempt and Complying Codes) 2008	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.
SEPP (Housing) 2021	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:

Table 5: Consistency with Relevant Section 9.1 Ministerial Directions		
Direction	Requirement	Comment
Focus Area 1 – Planning Systems		
1.1 Implementation of Regional Plans	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.
1.4 Site Specific Provisions	<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

3.1 Conservation Zones	<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"> • 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. • No proposed changes in the RE1 zone permitted uses as part of this process. • There are some minor proposed changes in uses for the C4 zone but they are unlikely to impact the use of that land. <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>
3.2 Heritage Conservation	<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>

	(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.	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. The proposal is therefore consistent with the direction.
Focus Area 4 – Resilience and Hazards		
4.4 Remediation of Contaminated Land	<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>

	<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>	
4.5 Acid Sulfate Soils	<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>	
4.6 Mine Subsidence and Unstable Land	<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>
Focus Area 5 – Transport and Infrastructure		
5.1 Integrating Land Use and Transport	<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>5.2 Reserving Land for Public Purposes</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>Focus Area 6 – Housing</p>		
<p>6.1 Residential Zones</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.

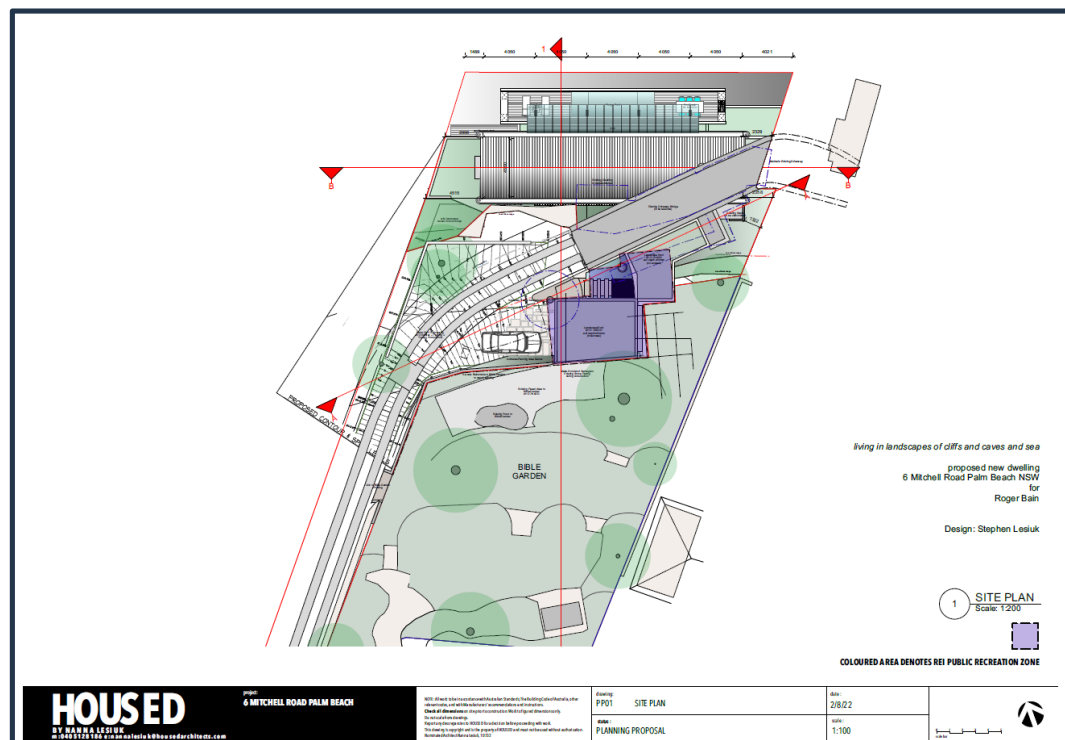


Figure 13: Concept Site Plan with the RE1 zoned portion of the site highlighted in purple (Source: Housed Architects)

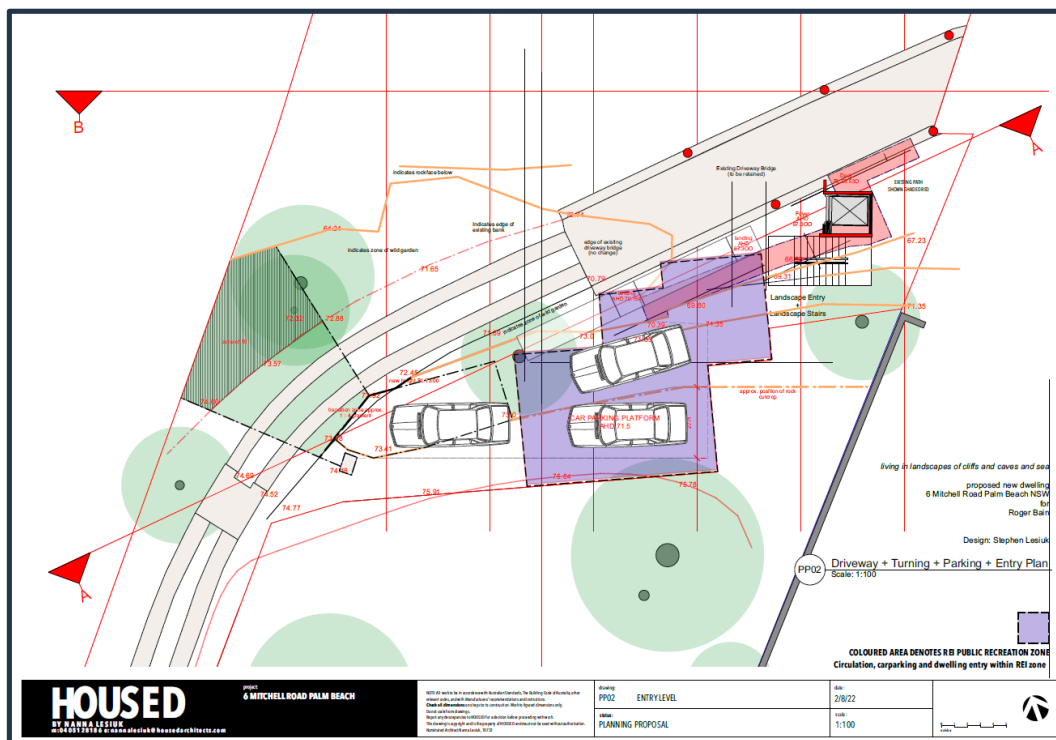


Figure 14: Concept Entry Plan detailing the RE1 zoned land as being utilized for vehicular access and garage (Source: Housed Architects)

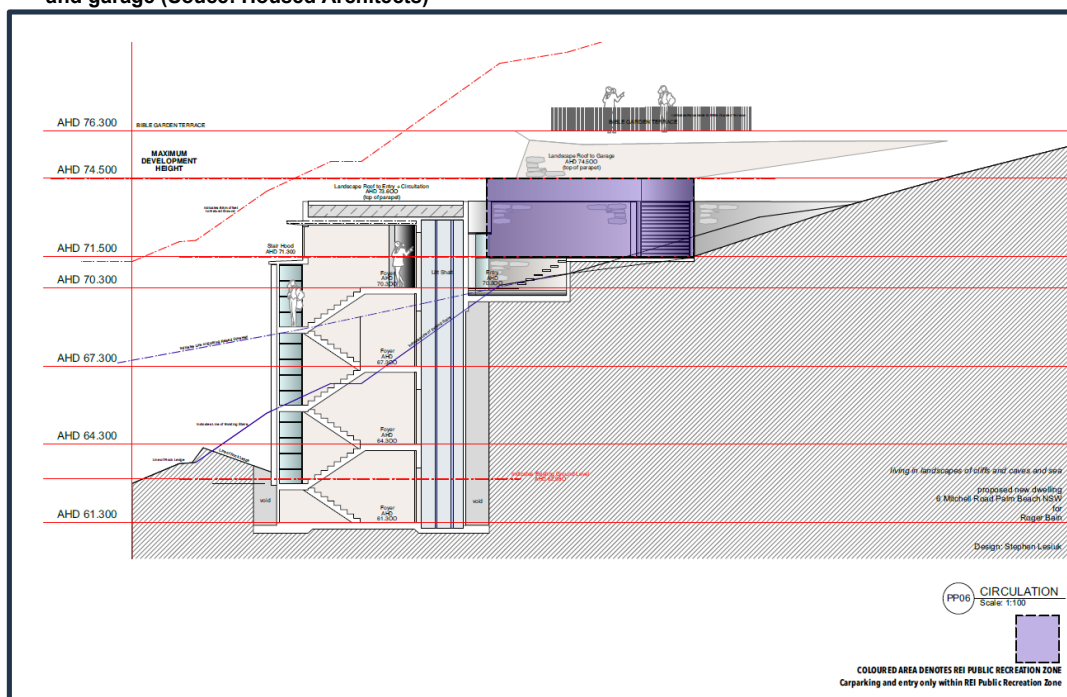


Figure 15: Concept Circulation Plan detailing the garage as below the Bible Garden and height limit (Souce: Housed Architects)

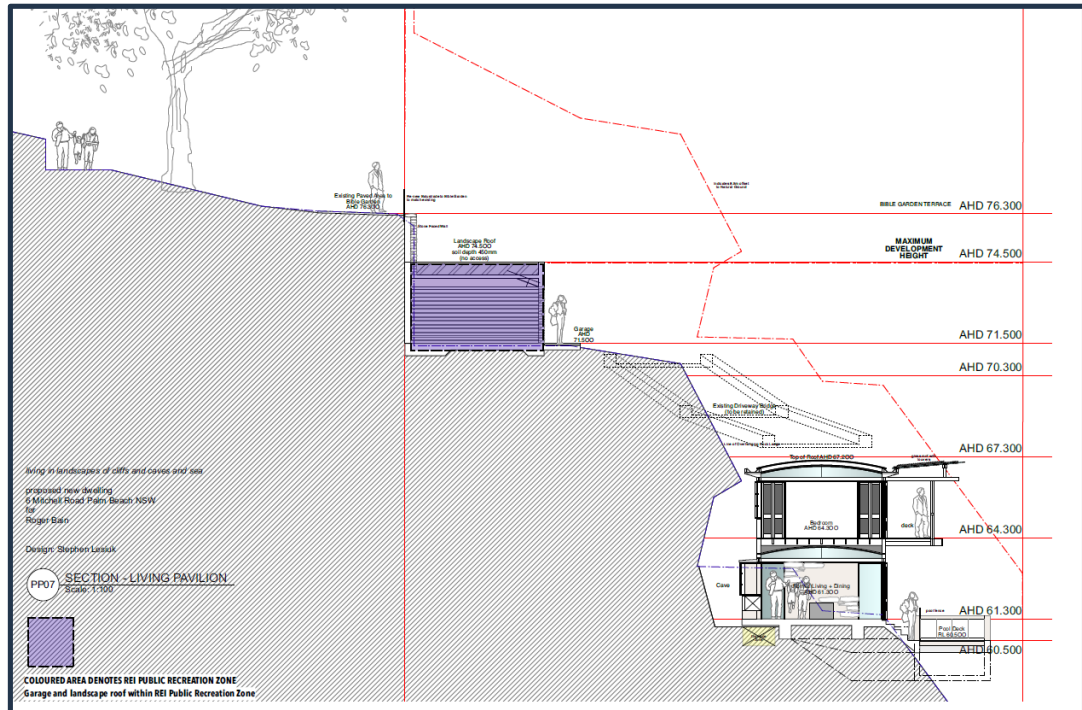


Figure 16: Concept Section detailing the garage as below the Bible Garden and height limit (Source: Housed Architects)

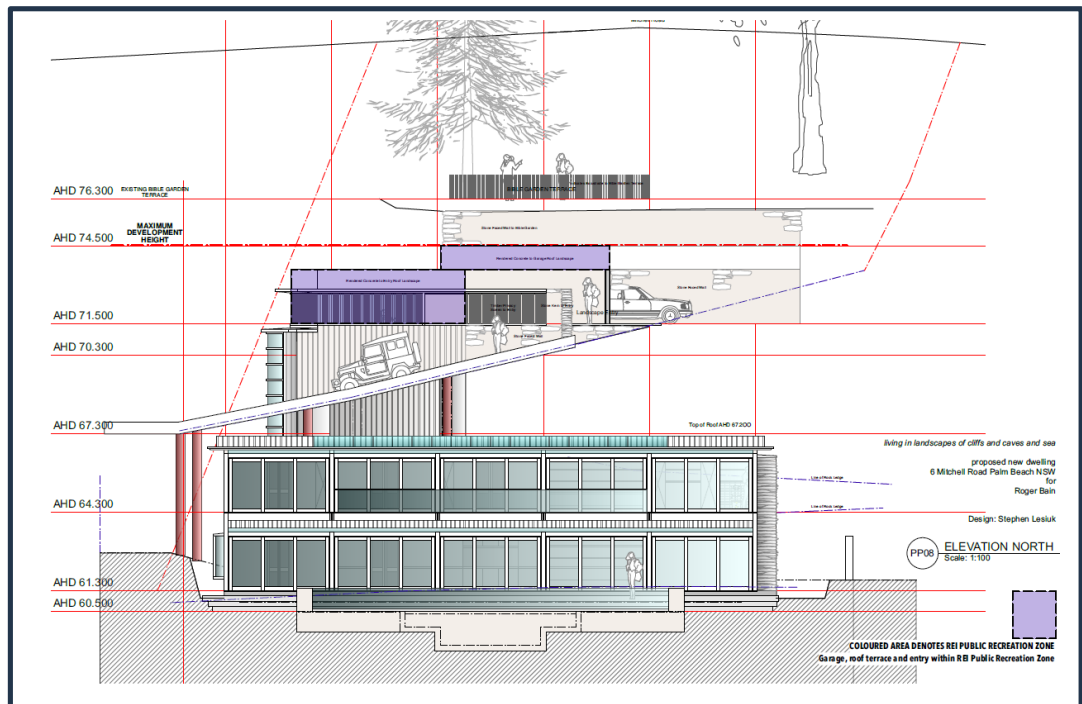


Figure 17: Concept Circulation Plan detailing the garage as below the Bible Garden and height limit (Source: Housed Architects)

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.

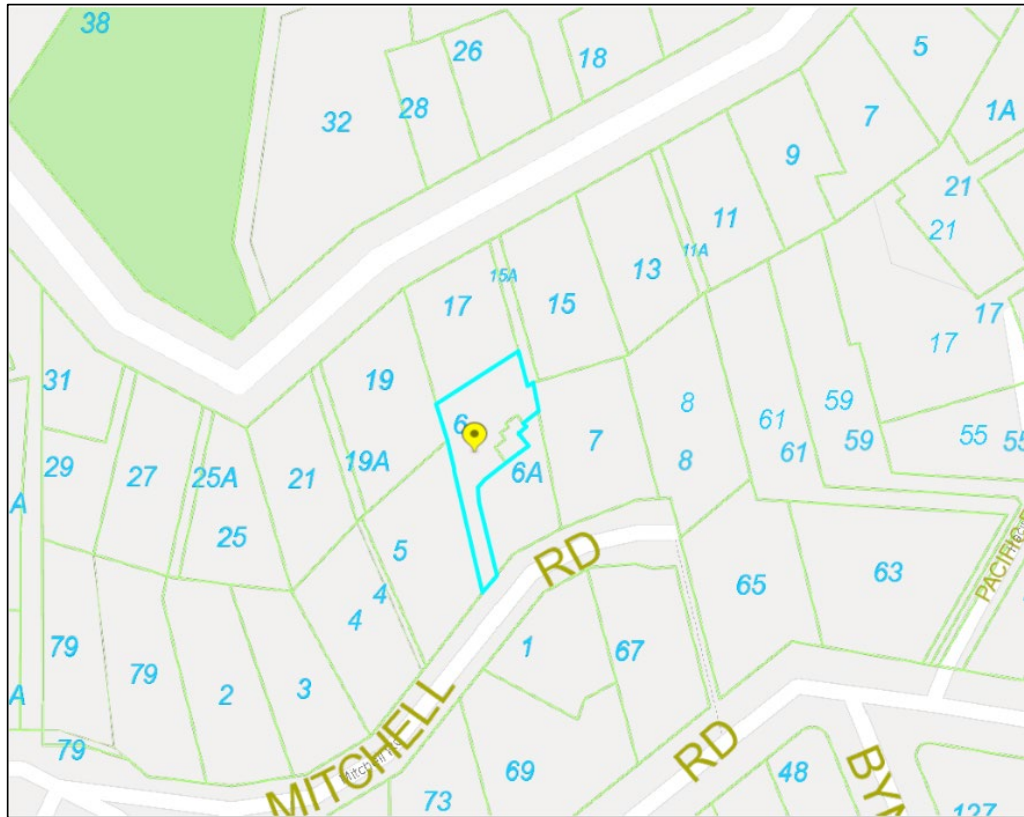
PART 4 – Mapping

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

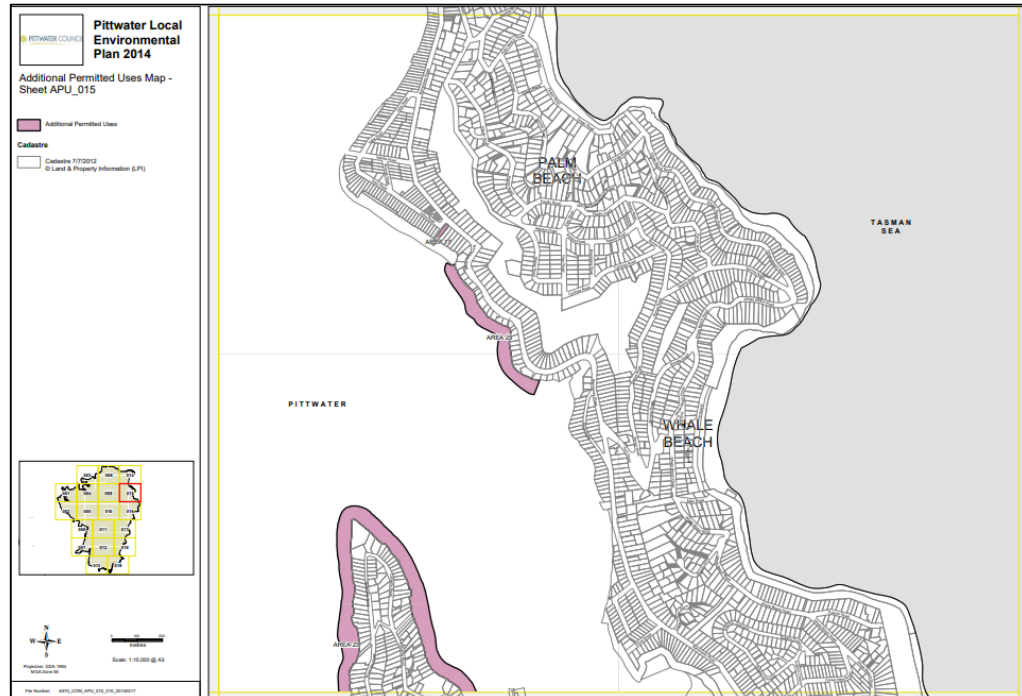
- Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site (Sheet APU_015) to identify the portion of the site zoned RE1 Public Recreation for additional permitted uses referenced in Schedule 1 of the LEP.

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

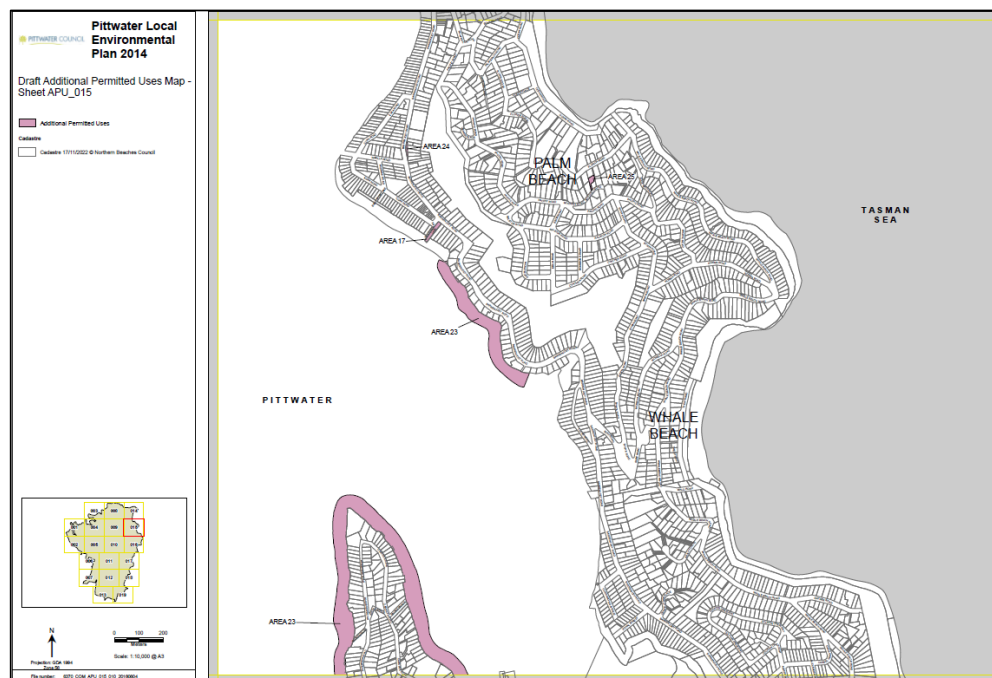
Map 1 – Site Identification Map



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)	July 2023
Public Exhibition	August 2023
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	August 2023
Dates for public hearing (if required)	September 2023
Timeframe for consideration of submissions	September 2023
Report to Council on outcomes of public exhibition	October 2023
If Council agrees, submit to Department to finalise the LEP	November 2023
Anticipated date the local plan-making authority will make the plan (if authorised)	December 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.

SIGNED
ORIGINAL

PITTWATER COUNCIL

AND

THE TRUSTEES OF THE "BIBLE GARDEN" MEMORIAL TRUST
6 MITCHELL ROAD, PALM BEACH

HEADS OF AGREEMENT

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Annexures

- A. Aerial photograph 1997 and photographs 2001
- B. 'Palm Beach from the Bible Garden' - photograph from 'Sydney's Northern Beaches 2001' Calendar (David Messent Photography – reproduced with permission)
- C. Heritage Assessment and Heritage Impact Statement
- D. Landscape Concept Plan
- E. Draft Plan of Subdivision
- F. Draft Plan of Management of the Bible Garden as Community Land (Local Government Act 1993, section 36)
- G. Objects and Activities of Incorporated Association 'Friends of the Bible Garden Memorial'
- H. Proposed Residence – Concept Sketches
- I. Proposed Residence – Compliance with Council Requirements
- J. Draft Statement of Environmental Effect
- K. Proposed Planning Process for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden Portion
- L. Responsibilities for Ongoing Management and Improvement of the Bible Garden

THESE HEADS OF AGREEMENTS are made on 9th February 2004
2004

BETWEEN **PITTWATER COUNCIL** of Unit 11, 5 Vuko Place, Warriewood,
New South Wales ("Council")

AND **THE TRUSTEES OF THE BIBLE GARDEN MEMORIAL TRUST**
C/- 48 Nelson Street Gordon NSW 2072 ("Trustees")

1. Summary

These Heads of Agreement relate to the future land use of 6 Mitchell Road, Palm Beach. The improvements on the land comprise a 'Bible Garden' (on the southern half) and a cottage and access corridor (on the northern half).

The 'Bible Garden' is a garden containing a Bible and plants mentioned in the Bible. It offers a superb view of Palm Beach, Barrenjoey and Pittwater. The Bible Garden has been open to the public for weddings, baptisms and informal visits since GH Robinson established it in the 1960s. Robinson settled the land in a charitable trust. Two of the founder's sons, GL and DL Robinson, are the current trustees.

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.

Subject to the proper exercise of its functions as a planning authority, Pittwater Council supports the proposals. The Bible Garden is a significant item of social and aesthetic heritage. The proposals would secure the long-term retention of the Bible Garden for public enjoyment.

Details of the proposed conservation and subdivision are contained in the Heads of Agreement and annexures.

2. Background

- a. The 'Bible Garden' is situated on the southern half of Lot 2 DP 213975, being land at 6 Mitchell Road Palm Beach ('6 Mitchell Road') (see Annexure A: Aerial Photograph).
- b. Gerald Lacey Robinson and Derek Lacey Robinson own 6 Mitchell Road as trustees of the Bible Garden Memorial Trust.
- c. The land at 6 Mitchell Road is naturally subdivided by a cliff. The northern half is traversed diagonally by a right of way. Over the cliff section, the right of way is provided by an elevated concrete driveway. The driveway provides residences to the east with access to Mitchell Road. A cottage exists under the elevated section of driveway.
- d. The Bible Garden was established by Gerald Hercules Robinson and officially opened on 23 June 1966.
- e. In an interview with Australian Women's Weekly (10 May 1967), GH Robinson declared 'The Garden and the view behind it provide a perfect example of the glory of God's creation' (see Annexure B: 'Palm Beach from the Bible Garden').
- f. By trust deed dated 5 April 1972 GH Robinson settled the Bible Garden in a charitable trust 'for the construction use and maintenance of Bible Gardens for all Christians particularly young Christians and for the teaching of and the creation of an expanding interest in the Holy Bible through the cultivation and study of all the plants mentioned in the Holy Bible and in any other way thereby practicable to support the teaching of the Holy Testament'.
- g. 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 cottage under the driveway and maintaining the Bible Garden for public enjoyment.
- h. In 1974 6 Mitchell Road was granted exemption from local council rates.
- i. Since the death of Beatrice in 1994, the Trustees, other members of the family of GH Robinson and like-minded members of the community have continued to maintain the Bible Garden for public enjoyment.
- j. In July 2000 6 Mitchell Road was assessed for land tax for \$214,481.40. Upon appeal the assessment was withdrawn, however the Trustees consider that the possibility of future land tax liability, and the burden of maintaining the elevated driveway and cottage pose intolerable problems for the continuation of the dual Bible Garden and residential uses of 6 Mitchell Road.
- k. The Trustees wish to subdivide the land and to fund other Trust projects from the proceeds of sale of the residential portion of 6 Mitchell Road.
- l. In March 2001 Pittwater Council received a draft proposal for subdivision of 6 Mitchell Road to enable conservation of the Bible Garden. The proposal included a Heritage Assessment and Heritage Impact Statement (Annexure C).
- m. On 30 April 2001 Pittwater Council resolved 'That Council authorise the General Manager to enter into negotiations with the owner/owner's representatives of 6 Mitchell Road, Palm Beach – 'Bible Garden' to develop a draft 'Heads of Agreement' document for the proposed subdivision and dedication of land to the Council and report back to Council with a draft Agreement once a document has been prepared.'
- n. Since 30 April 2001 Pittwater Council has received and commented upon the following documents:
 - (i) Landscape Concept Plan (Annexure D)
 - (ii) Draft Plan of Subdivision (Annexure E)
 - (iii) Draft Plan of Management for the Bible Garden as Community Land (Local Government Act 1993, section 36) (Annexure F)

- (iv) Proposed Residence – Concept Sketches (Annexure H)
 - (v) Proposed Residence – Compliance with Council Requirements (Annexure I)
 - (vi) Draft Statement of Effect (Annexure J)
 - (vii) Proposed Procedure for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden (Annexure K)
 - (viii) Responsibilities for Ongoing Maintenance and Improvement of the Bible Garden (Annexure L)
- o. The Proposed Residence – Concept Sketches (Annexure H) illustrate a possible future residential development of proposed lot 1. They have been prepared for the purpose of identifying suitable development control parameters for incorporation in the Development Control Plan/Locality Plan at the time of subdivision. A development application to build any particular residence, in accordance with the Development Control Plan/Locality Plan (as amended), would be lodged subsequently.
- (i) The boundary between the two lots has been chosen so as to provide space for an eventual two-car garage on lot 1.
 - (ii) A restrictive covenant would restrict the height of such garage and require the roof to be of load-bearing capacity suitable for use as a viewing platform from the Bible Garden area, to be finished in sandstone flagging, and to include a balustrade.
 - (iii) A stratum easement would enable use of the garage roof by visitors to the Bible Garden as a viewing platform and for the placement of landscaping improvements such as interpretation signage, planter boxes and seating.
- p. In September 2003 supporters of the Bible Garden lodged application for the incorporation of 'Friends of the Bible Garden Memorial'. The association was duly incorporated under the Associations Incorporation Act 1984 on 26 September 2003. The objects and activities of the Friends of the Bible Garden Memorial are set out in Annexure G.

3. Statement of Intent

Subject to Feasible Subdivision, as defined in the following paragraph, the Trustees propose to vest the Bible Garden in Pittwater Council, and Pittwater Council proposes to classify the Bible Garden as 'community land (area of cultural significance)' under the Local Government Act 1993 and to maintain the Bible Garden with assistance from the incorporated association 'Friends of the Bible Garden Memorial', as described in the proposed plan of management (Annexure F), the statement of objects and activities of the Friends (Annexure G), and the responsibilities for ongoing management and improvement of the Bible Garden (Annexure L).

'Feasible Subdivision' means the granting of development consent to subdivision of 6 Mitchell Road within a reasonable period as follows:

- a) lot 1 to be approximately 706.5m², subject to final survey, as indicated in the draft plan of subdivision (Annexure E);
- b) lot 1 to be subject to the development parameters which would enable the construction of a residence of the scale indicated in the concept sketches (Annexure H) and discussion of Council requirements (Annexure I);
- c) lot 2, being an area of approximately 490.7 m², to be dedicated as a public reserve (Bible Garden) as community land and rezoned accordingly (including status as a heritage item) in Pittwater Local Environmental Plan (or given corresponding status under any subsequent plan); and

- d) The Trustees will not have to fund any physical work upon 6 Mitchell Road apart from what may be required by Sydney Water in relation to a compliance certificate (Sydney Water Act 1994, section 73). (The undertaking of landscaping, car parking, retention wall or any other improvements will not be prerequisites for subdivision.)

4. Nothing to fetter Council's statutory functions

Nothing in these Heads of Agreement will be deemed to or construed so as to fetter the exercise of Council's statutory discretion as a consent authority under the Environmental Planning and Assessment Act 1979, prohibit Council from carrying out any of its statutory obligations or bind Council to perform an obligation in these Heads of Agreement. All rights and obligations of the Council in these Heads of Agreement are deemed to be expressed to be subject to this clause, and the Trust agrees that the Council is not liable to the Trust in respect of any loss of damage suffered by the Trust as a result.

5. Negotiations

The Parties acknowledge that these Heads of Agreement have been entered into after negotiations. The general principles upon which these Heads of Agreement have been negotiated include:

- a) the transactions referred to in these Heads of Agreement will benefit residents of the Pittwater Council area, as well as Australian and overseas visitors, through the protection, conservation and securing into Pittwater Council ownership of the part of the land at 6 Mitchell Road Palm Beach known as the "Bible Garden";
- b) the Parties will cooperate with each other in connection with the matters set out in these Heads of Agreement; and
- c) the Council shall keep the Trust informed on the progress of all processes resulting from these Heads of Agreement.

6. Planning Process

In order to achieve Feasible Subdivision and conservation of the Bible Garden, the parties anticipate a planning process described in Annexure K. Council will use its reasonable endeavours to achieve the indicated time frames.

7. Applications

- a) *Assessment of Applications.* Council must diligently progress the assessment of the applications and the preparation of the plans described in the Statement of Intent (clause 3).
- b) *Trustees' Acknowledgment.* The Trustees acknowledge that nothing in clause 7(a) constitutes an approval or obliges the Council to approve the applications described in the Statement of Intent (clause 3).
- c) *Cost of Applications:*
 - i. The Trust will bear the cost of preparing the applications; and
 - ii. Council will waive any lodgment and advertising fees and developer contribution in recognition of the intended gift of the Bible Garden to Council.

8. Abandoning Factors

- a) 'Abandoning Factors' means any one or more circumstances arising after the date of this Agreement which in the reasonably held opinion of a Party would make the subdivision of 6 Mitchell Road and the conservation of the Bible Garden impractical, financially burdensome, onerous, unviable, imprudent or contrary to the public interest, and includes unreasonable delay in meeting the timeframes in the planning process (Annexure K).
- b) At any time after the date of this Agreement until the granting of development consent for subdivision and the public reservation of the Bible Garden, either party may give written notice to the other party of Abandoning Factors.
- c) On giving notice of Abandoning Factors, the party giving the notice must consult with the party receiving the notice, and both parties must use all reasonable endeavours to jointly identify any opportunities which exist for resolving the Abandoning Factors and to cause to be implemented any such resolution in a way which is reasonably acceptable to the party giving the notice.

If, after one month from the date of giving the notice of Abandoning Factors, the party giving the notice has acted in accordance with clause 7(c), and the Abandoning Factors have not been resolved, either Party may give a notice of rescission to the other party and these Heads of Agreement are deemed to be rescinded.

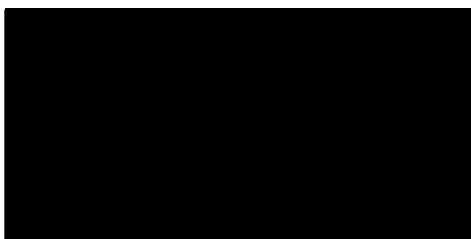
- d) On rescission of these Heads of Agreement, neither of the parties has any claim against the other party in connection with the rescission of these Heads of Agreement or the existence of Abandoning Factors.

EXECUTED as an Agreement.

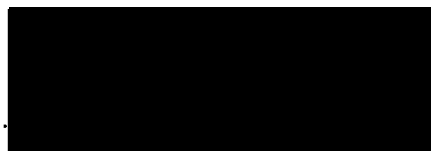
SIGNED BY PITTWATER COUNCIL

Under delegated authority in accordance with
a resolution of the Council on 9 February 2004:

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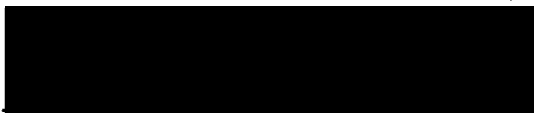
Angus Gordon, General Manager



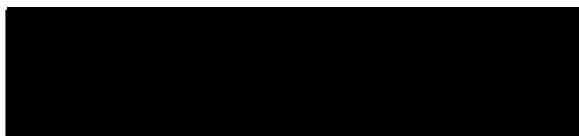
Witness (Public Officer)

**SIGNED BY THE TRUSTEES of
THE BIBLE GARDEN MEMORIAL TRUST:**

)
)



Derek Lacey Robinson



Gerald Lacey Robinson



ANNEXURE A



ANNEXURE B "PALM BEACH FROM THE BIBLE GARDEN"



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Palm Beach from the Bible Garden

ANNEXURE B



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ANNEXURE C
HERITAGE ASSESSMENT AND HERITAGE IMPACT STATEMENT

'THE BIBLE GARDEN', MITCHELL ROAD, PALM BEACH

PROPOSED SUBDIVISION

HERITAGE ASSESSMENT AND HERITAGE IMPACT STATEMENT



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for
Mr Gerald L. Robinson, a Trustee of
The Bible Garden Memorial Trust
March 2001

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1.0 INTRODUCTION

1.1 Background

This report has been commissioned by Mr Gerald L Robinson, a Trustee of the Bible Garden, 6 Mitchell Road, Palm Beach to provide an assessment of the heritage significance of the garden and an assessment of the likely impact on that significance of a proposed subdivision to separate the garden area from the residential development below it.

1.2 The Brief

The Brief agreed between the author and the client comprised the following:

- Review of existing documentary evidence relating to the 'The Bible Garden' and its landscape setting;
- Liaison with relevant stakeholders including Pittwater Council.
- Site investigations including assessment of the heritage values of the 'The Bible Garden'
- Assessment of the likely impact of the proposed subdivision on the heritage significance of the 'The Bible Garden' area in the form of a Statement of Heritage Impact (SOHI) prepared in accordance with the guidelines in the *NSW Heritage Manual* (DUAP/Heritage Council, 1996). The SOHI addresses the following:
 - why the item is of heritage significance
 - what impact the proposed works will have on that significance
 - what measures are proposed to mitigate negative impacts

1.3 Author Identification

This report has been prepared by Chris Betteridge BSc, MSc (Museum Studies), AMA, Director of Musecape Pty Ltd, Heritage Consultants. The author specialises in the identification, assessment and management of natural and cultural landscapes. He has more than 30 years experience in this field, including 10 years as environmental and landscape advisor to the Heritage Council of New South Wales and the former NSW Department of Environment and Planning and ten years in private practice as a heritage conservation practitioner. The author is a foundation member of the Australian Garden History Society, co-author of the publication *Historic Gardens: Guidelines for the preparation of conservation plans* and author of the study *Designed Landscapes in New South Wales*.

1.4 Methodology

This report has been prepared in accordance with the guidelines in the *NSW Heritage Manual* and its companion volume *Heritage Curtilages* (Heritage Council of NSW / Department of Urban Affairs and Planning, 1996).

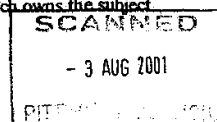
Analysis of documentary evidence involved review of relevant literature reports on the the Bible Garden and development plans for the site previously prepared by others. Analysis of physical evidence involved a site inspection by the author on 5 January 2001.

Consultations were held with relevant stakeholders.

1.5 Acknowledgments

The assistance of the following organisations and individuals in the preparation of this report is gratefully acknowledged:

Bibleinfo.com;
Ms Sheridan Burke, Australia ICOMOS (International Council on Monuments and Sites);
Mr Gordon A Frase, USA;
Ms Carolyn Kades, Pittwater Council;
Mr David Robinson, on behalf of Mr Gerald L Robinson, a trustee of the charitable trust which owns the subject land.



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2.0 ANALYSIS OF DOCUMENTARY EVIDENCE

2.1 The Concept of Bible Gardens

In their book *Sacred Gardens* (Piatkus, 2000), authors Martin Palmer and David Manning categorise Christian gardens into three main types – symbolic, thematic and pragmatic. Symbolic gardens are exemplified by the monastic gardens developed by monks of the Benedictine and other religious orders in Britain from the 6th century AD onwards. These gardens for quiet reflection were created through a fusion of “space and place, plants and symbolism, usefulness and beauty, all caught up in a vision of nature, humanity and God as being in a unity of purpose and intention”. Thematic Christian gardens tell a story and are exemplified by Easter gardens, celebrating the death and Resurrection of Christ and by Marian gardens, gardens of flowers associated with the Virgin Mary. Pragmatic Christian gardens are exemplified by the monastic gardens in which healing and economic plants were grown, and by churchyards in which the dead lie buried or are commemorated in what is often referred to as ‘God’s acre’. The recent popularity of gardens of Biblical plants or the creation of Biblically-themed gardens demonstrate the long and continuing relationship between Christianity and the garden. The Bible Garden at Palm Beach is both symbolic and thematic – its location and magnificent views symbolise the wonders of God’s creation while the plantings illustrate many of the themes in the Bible.

2.2 Historical Summary of the Bible Garden at Palm Beach

The following summary history of the Bible Garden at Palm Beach has been derived from an article about its founder Gerald H Robinson published in *The Australian Women’s Weekly* on 10 May 1967, from a brochure produced in February 1977 by his daughter, Church of England Deaconess Beatrice V Robinson, and from information provided by one of his sons, Gerald L. Robinson.

Gerald H Robinson, the managing director of a car distributing firm, purchased a block of land in Mitchell Road, Palm Beach in about 1957. He read about a bible garden established by a Professor Tatum Whitehead in the grounds of Bangor Cathedral in North Wales. Robinson visited the Welsh bible garden and was impressed with what he saw. On his return to Sydney in 1963, he commenced work on developing a garden devoted to the plants in the Bible on his Palm Beach land. Already in his seventies, Gerald H Robinson did most of the work himself, laying out the garden in biblical chronological order, commencing with the plants mentioned in the book of Genesis and ending with a plant to represent immortality. Of the 148 plants mentioned in the Old and New Testaments, 143 were planted in the Bible Garden.

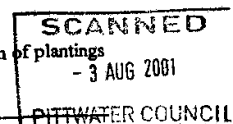
Plantings in the Bible Garden were based on research findings available at the time and on Mr Robinson’s choice of plants similar to those mentioned in the Bible if the exact species were not available or were unlikely to survive in the humid coastal environment of Palm Beach. (The bible garden at Bangor Cathedral displays only those biblical plants that can cope with the harsh North Wales climate). Plant beds were laid out in similar fashion to those at Bangor and were given numbered markers, keyed to a 15-page brochure compiled by Mr Robinson.

The Bible Garden at Palm Beach was officially opened on Saturday 26 March 1966 by Mr Justice Richardson. Gerald Robinson declared “the garden and the view behind it [to] provide a perfect example of the glory of God’s creation”. The garden was open to the public free of charge, with a box at the entrance for “thank-offerings” which continue to be given to the Sunday School of St David’s Church at Palm Beach.

Gerald H Robinson wished that the Bible Garden should continue after his death and he gave it to the Bible Garden Memorial Trust, an ecumenical trust established to continue the garden and/or others in the future, in such a way as to further the teachings of Jesus Christ in the Scriptures. The Trustees in February 1977 were the Right Reverend F O Hulme-Moir, a son Gerald L. Robinson and daughter Beatrice V Robinson.

Between the date of the garden’s opening and 1977, a house called “Tree Tops” was constructed under a concrete driveway which provided access from the Bible Garden to the adjoining properties to the east. This house was occupied until her death in 1994 by Beatrice Robinson. During Beatrice’s occupation, the house included a display room in which visitors could study bible plant illustrations and books, material describing the Bible Garden and other items of Christian literature. In recent years the garden has been carefully maintained. Over the years some of the original plants have died and labels have disappeared.

Some visitors to the Garden and associations have indicated willingness to support some restoration of plantings and maintenance.



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3.0 ANALYSIS OF PHYSICAL EVIDENCE

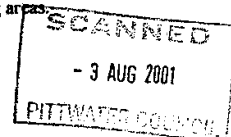
3.1 Site Location and Description

3.1.1 Site Location

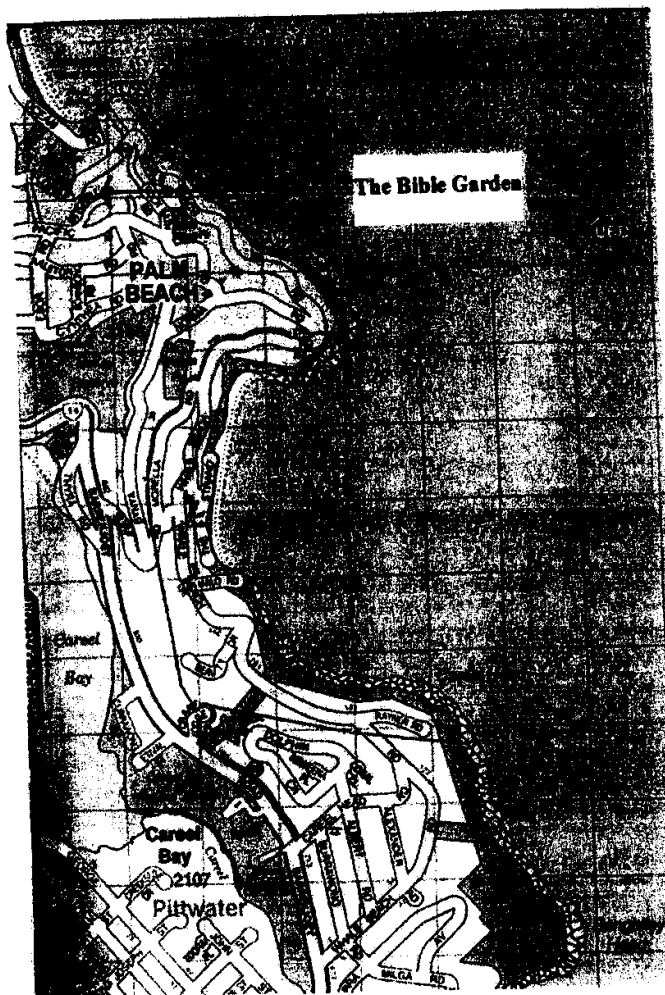
The subject land is located on Mitchell Road at Palm Beach, in Sydney's northern beaches, as shown on Maps 1 and 2 below.



Map 1 Location of the Bible Garden at Palm Beach in relation to surrounding areas



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Map 2 Street location of the Bible Garden in Mitchell Road, Palm Beach.

3.1.2 Site Description

The subject land, 1195 square metres in area, is located on the upper level of the sandstone escarpment to the south of Cabbage Tree Boat Harbour, at the southern end of Palm Beach. The land has a frontage of approximately 28 metres to Mitchell Road, a cul-de-sac off Pacific Road. The site has a northwesterly aspect and slopes steeply down from the road, with a fall of approximately 22 metres from the highest point at the Mitchell Road frontage to the lowest level. Residential properties border the site to the east and west.

To the right of the entrance is an interpretive sign and to the left is a commemorative bronze plaque and a donation box for 'thank offerings'. A driveway of two concrete tyre tracks with turf between extends down the

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western side of the lot, then sweeps towards the north across a reinforced concrete elevated causeway, providing a right of way to the adjoining properties to the east. A single carport with metal deck roof is located to the south of the drive just west of the causeway.

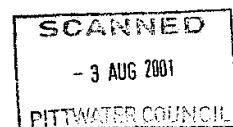
The property is naturally subdivided by a cliff into an upper, Bible Garden section and a lower, residential section. The major lookout from the Garden is a terraced area at the top of the cliff. Located in this area is a plaque including biblical excerpts, seating and a copy of the Bible. The driveway accentuates the subdivision of the lower causeway and residential section.

The Bible Garden is located to the east and south of the driveway, with a series of lawn terraces between slopes and garden beds. Concrete block retaining walls have been constructed along the northern edges of the terraces. Major trees include a wild stone fruit tree, cypress and evergreen oak on the Mitchell Road boundary, two large pines, a mulberry and a carob on the flat northern area of the garden and a number of trees along the eastern boundary.

An ornamental pond is located on the flat area towards the centre of the flat northern area of the garden and there are two metal garden sheds along the eastern boundary.

To the southeast of the elevated driveway a flight of steel stairs provides pedestrian access to a two storey fibro cottage 'Tree Tops' which is located under the elevated driveway. From the elevated driveway is a sheer drop of about 8 metres to the lawn in front of the cottage.

A survey plan of the site is shown as Map 3 on the following page.



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4.0 ASSESSMENT OF SIGNIFICANCE

4.1 Principles and Definitions

The concept of 'cultural significance' or 'heritage value' embraces the value of a place or item that cannot be expressed solely in financial terms. Assessment of cultural significance endeavours to establish why a place or item is considered important and is valued by the community. Cultural significance is embodied in the fabric of the place (including its setting and relationship to other items), the records associated with the place and the response that the place evokes in the contemporary community.

The *NSW Heritage Manual* published by the Heritage Council of NSW and the Department of Urban Affairs and Planning, outlines broad criteria for assessing the nature of significance – historical, aesthetic, social and technical/research value. These criteria are considered in addition to two other criteria (rarity and representativeness) that relate to the comparative significance to be considered in assessing the significance of potential heritage items.

Curtilage is defined in the *Macquarie Dictionary* (2nd Edition, 1991) as 'the area of land occupied by a dwelling and its yard and outbuildings, actually enclosed or considered as enclosed.' This definition does not take into account the importance of the landscape setting of a building or building group, which may include a substantial garden and views and vistas to and from buildings. There have been numerous and varied legal determinations of curtilages for heritage buildings and heritage conservation practitioners have grappled with the problem for many years. Many of these opinions and attempts at solving the issue of curtilage are described in the publication *Heritage Curtilages* (Heritage Council/Department of Urban Affairs and Planning, 1996), a companion volume to the *NSW Heritage Manual*.

Essentially, the curtilage of a heritage item is that area of land necessary to enable its significance to be conserved in context and to enable its heritage value to be interpreted adequately. This area is usually but not always the lot or lots on which the item stands and, for statutory purposes, is usually but not always restricted to land in the same ownership as the item. The boundaries for an adequate curtilage may be the historic lot boundaries or a smaller area resulting from previous subdivision(s). They may also include adjoining lands critical to retention of views and vistas, although these values may be conserved through planning controls other than those used to protect the building and its immediate setting.

4.2 The Setting and Curtilage of The Bible Garden

The visual catchment of the Bible Garden extends well beyond the land in the ownership of the garden itself. It extends well to the north and northwest and includes areas of national park, Pittwater, Broken Bay and the Central Coast. For statutory purposes, the curtilage has been determined as that area bounded by Mitchell Road, the eastern boundary as far north as the northern edge of the elevated driveway, the northern edge of the driveway across to the western boundary, then along the western boundary to Mitchell Road. The final northern subdivision boundary location will depend on the nature and location of any future carport and/or lookout platform.

4.3 The Significance of The Bible Garden

Given the extraordinary quality of the view from the Bible Garden, its unusual nature and the comparative rarity of this type of designed landscape in an international context, the significance of the item has been assessed in accordance with the criteria adopted by the Heritage Council of New South Wales for listing on the State Heritage Register (SHR). To be assessed for listing on the SHR an item will, in the opinion of the Heritage Council, meet one or more of seven criteria relating to historical, aesthetic, associational or research/educational values and rarity, threat or interpretive potential.

It is considered that the Bible Garden at Palm Beach is important in demonstrating aesthetic characteristics and a high degree of creative achievement in NSW (Criterion c). The garden has strong association with a particular community ie Christians in NSW for spiritual reasons (Criterion d). The Bible Garden possesses uncommon and rare aspects of the cultural history of NSW (Criterion f). The garden is also important in demonstrating the principal characteristics of a class of cultural places in NSW ie special interest designed landscapes. The potential to demonstrate the physical and aesthetic attributes of the natural environment of Palm Beach and Broken Bay (Criterion g).

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4.4 Statement of Significance

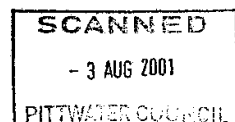
The Bible Garden at Mitchell Road, Palm Beach is an item of State heritage significance for New South Wales. It is the result of the creativity of Gerald Hercules Robinson, a devout Christian who was inspired to construct a garden of biblical plants in a magnificent natural setting. As a rare example of its type of designed landscape it has and continues to provide inspiration to visitors of all religions as a place for quiet contemplation of the wonders of creation. The garden has special associations with the Christian community for spiritual reasons and has considerable educational potential arising from its special plant collection and the natural environment in which it is located. The significance of the Bible Garden warrants appropriate statutory protection and active management to retain and enhance its value to the community.

5.0 THE PROPOSAL

In an effort to conserve the Bible Garden for the foreseeable future, the Bible Garden Memorial Trust is considering a proposal that the lot on which the garden has been constructed should be subdivided into two lots. An appropriate curtilage for the Bible Garden would be retained in one lot, while the lower lot would be used for residential purposes.

Architect Luke Playoust and Landscape Architect Judith Fritsche have prepared a Landscape Concept plan, dated February 2001 which provides for visitor car parking, improved access from Mitchell Road, new vehicle accommodation for the residence below the elevated driveway (with viewing platform above) and a new residence that extends further northwest and north than the existing cottage under the elevated driveway. Luke Playoust has prepared a Section through the Site.

If subdivision is approved, The Bible Garden Memorial Trust may wish to donate the Bible Garden to Pittwater Council as a community asset to be managed jointly by Council and the Trust, possibly assisted by 'Friends'.



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6.0 LANDSCAPE AND VISUAL IMPACT ASSESSMENT

6.1 Visibility

6.2.1 Viewing Places

The visual catchment of the subject land, conditioned by topography and vegetation, provides visual access to the site from public places primarily from Mitchell Road and from points extending in an arc from the northwest to the northeast. The land is visible also from nearby privately owned residential properties to its north, east, south and west. The public's visual experience of the subject land is primarily from Mitchell Road, and to a lesser extent from areas to the north, although a detailed visual assessment of the latter has not been carried out.

6.2.2 Views from Specific Locations

The following assessment of the Proposal is based on the assumption that there will be no mitigative measures taken to reduce likely impacts i.e. what are the likely visual impacts of the proposed subdivision on the existing landscape, with its existing tree cover. The extent and effectiveness of proposed conditions on development are discussed in Section 6.5.

As viewed from Mitchell Road, the viewer will see no change to the site as result of subdivision per se. There will be minor changes arising from proposed landscaping works but these are not expected to have a negative effect on the heritage significance of the site or the visitor experience.

6.2.3 Position and Sequence of Views

Sequences of views may be possible from the north, interrupted by topographic changes and vegetation. The character of the land would not change from its present state. The site would be seen as one of a number of residential developments on the escarpment behind Palm Beach. Any new house will be visible in the landscape but the nature and scale of development will be such that its impact will be less than for some other recent developments nearby.

6.2.4 View Composition

Most public viewing locations of the Bible Garden will be level with the site (ie within the garden) or above the site (ie on Mitchell Road) in relative elevation. The visibility of elements to be added to the site subsequent to subdivision will vary with viewing position and relative elevation. The intrinsic capability of the site to visually absorb the density and type of development proposed is considered to be high but will be significantly increased by appropriate landscaping.

6.2.5 Change to the intrinsic character of the site

The character of the site is expected to remain essentially the same as at present.

6.3 Assessment of visual absorption capacity

The visual absorption capacity of the landscape for the development is judged to be high, even without mitigative measures, based on the following considerations:

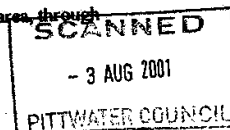
The extent and density of the Proposal is comparable with that on the site at present.

The land has high intrinsic visual absorption capacity because of its topography and natural vegetation cover.

The Proposal will not be highly visible from significant viewing points in the Bible Garden, or from major public viewing points elsewhere.

Within the site itself, the subdivision lots have been designed to reduce visual impacts on the Bible Garden.

The development will seek to emulate better examples of recent residential development in the area, through careful siting, landscaping, building forms and recessive exterior finishes.



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6.4 Visual qualities of the proposed development

The proposed subdivision will merely formalise the present arrangement which is based on topographic separation between the Bible Garden and the residential development below. While any new structures will be permanent elements in the landscape, their visual impact will be reduced by careful siting, landscape screening and appropriate design qualities.

The visual evidence of the subdivision is likely to be low and is not considered likely to obscure or materially reduce the significant elements in the landscape of the Bible Garden. The subdivision is unlikely to reduce the viewer's ability to interpret the cultural landscape of the Bible Garden or its context.

The proposed landscape improvements to the garden are not considered likely to have an adverse impact on the design concept or significant elements within the garden. The visual quality of the proposed new house below the elevated driveway will depend on its final design and exterior finishes. It is essential that it should not intrude on the visitor experience of the garden or its views.

6.5 Specific visual impacts

6.5.1 Contrasts

Visual contrasts caused by the development through changes to the intrinsic character of the landscape of the site will be minimised through careful siting, landscaping, building forms and scale and recessive exterior finishes. There will be very little need for changes to landform.

6.5.2 Interruption

The proposed development is considered unlikely to interrupt any major views to or from the Bible Garden. Any new development will be located so that the Bible Garden can still be read as a discrete entity and appreciated for its original purpose.

6.5.3 Prominence

The prominence of the Proposal will be reduced by the lot design and careful controls over the scale, form, design and materials of any new development.

6.6 Extent of and significance of impacts

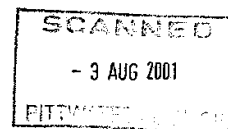
6.6.1 Extent of impacts

The initial extent of impacts will be ameliorated by the mitigative measures recommended and long term impacts will reduce as landscaping matures. Given the location of the Proposal, the present character of the landscape and the nature of the proposed development, the extent of impacts is judged to be low and acceptable.

6.6.2 Significance of impacts

The importance of the impact is judged to be low since subdivision of the lower part of the existing site from the Bible Garden and sensitive redevelopment of the lower lot will have a negligible impact on the garden's significance.

Considered together, the extent and significance of impacts are assessed to be low and acceptable. The recommended mitigative measures are considered likely to be effective.



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7.0 STATEMENT OF HERITAGE IMPACT

7.1 Need for reflecting existing land uses in appropriate zonings and subdivision

The residential use of the lower part of the subject land threatens possible land tax burdens on the Trustees, even though the upper part is undeveloped except for the Bible Garden. Subdivision of the lower part of the land for continuing residential use and conservation of the Bible Garden with appropriate zoning and statutory protection would give the garden protection commensurate with its significance. Subdivision would also allow the burden of maintenance of the elevated concrete driveway to lie with the owner of the lower residential allotment, rather than with the owners of the Bible Garden allotment. Active management of the Bible Garden to maintain its design intent and appropriate planning controls over the garden's visual catchment would also be necessary.

7.2 Need for Development adjacent to a Heritage Item

The proposed development is on the land owned by the Applicant. While it is adjacent to the heritage item ie the Bible Garden, it does not affect the original concept or design intent of the garden, nor does it significantly affect important views to or from the Bible Garden.

7.3 Likely Impact on The Bible Garden

The historical significance of the Bible Garden will be retained but can only be understood by the community by way of interpretive media such as signage, local histories, tourist brochures, self-guiding trails. The historic layout of the garden will be retained, but the plantings and hard landscape elements will need to be managed and enhanced if the original concept is to be respected.

The impact on aesthetic significance will be minimal. The major views to the north of the Bible Garden will be unaffected by the Proposal. The view towards the Bible Garden from the public road (Mitchell Road) will be slightly affected by the Proposal. These impacts are considered acceptable and manageable. They will be minimised by careful subdivision design, careful siting of new buildings, additional planting and by controls over the form, scale and exterior finishes of new buildings as recommended in Section 6.5 below.

7.4 Mitigative Measures

The impact of new development adjacent to a heritage item needs to be minimised by the implementation of appropriate mitigative measures. The suggested curtilage for the Bible Garden is recognition of its sphere of influence in the landscape. Many developers are now creating residential developments which include tighter controls over building footprints, setbacks, the design of dwellings, construction materials and landscaping. Impacts of the Proposal will be reduced by implementation of comprehensive and detailed controls over, height, scale, form and exterior finishes of any new structures.

If approved by Pittwater Council, these controls will ensure that new development on the site is of a high quality and that the impacts on the heritage significance of the Bible Garden are minimised. Recommended mitigative measures are listed below.

7.4.1 Subdivision Design

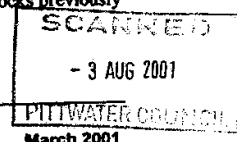
The subdivision boundary should be determined to allow for retention of the significant area of the Bible Garden and planning control over any new garage/carport, access stairs and other improvements to the lower lot.

7.4.2 Landscaping

A large specimen of *Angophora costata* previously grew on the lower section of the existing lot, providing a filtered view from the upper levels. It would be appropriate to replace this tree with a specimen of the same species propagated from local seed, so that the original landscape effect can be regained.

Other landscaping on the lower lot should be designed in such a way that it does not obscure the view from the Bible Garden. Preference on the lower lot should be given to local indigenous species. New plantings in the Bible Garden should include specimens of plants mentioned in the Bible. There is an opportunity to improve hard landscape elements by use of natural materials such as sandstone rather than the concrete blocks previously used.

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Heritage Assessment & Heritage Impact Statement by Chris Betteridge, Musecape Pty Ltd



7.4.3 Building Envelope

The building envelope for any new dwelling under the elevated driveway should not allow any visual intrusion into the view from the Bible Garden, either from the existing viewing point near the Ten Commandments plaque or from points further to the south.

7.4.4 Entrance Drive

The existing entrance drive from Mitchell Road is two concrete vehicle tracks, with an elevated concrete causeway bridging the gap to the adjoining property downhill to the east. This type of surface should be retained for the driveway. Any new hard surfaces should be coloured to blend with the existing landscape.

7.4.5 Driveways

Any subsidiary driveways should be paved in material and colour chosen to blend with the existing landscape.

7.4.6 Gates and Fences

There are no gates or fences to the street frontage of the site at present and this is considered desirable.

7.4.7 Power and Phone Lines

All power and phone lines should be undergrounded.

7.4.8 Water Supply and Storage Facilities

Any new water storage facilities such as rainwater tanks should be located and finished to minimise visual impact.

7.4.9 Residential Dwellings

Residential buildings should be designed to reduce their visual bulk and to blend with the existing landscape character. Building form, scale and exterior finishes will be compatible with the established character of the region and designed to reduce the impact on views towards the site from surrounding areas. Compatible contemporary design of a high standard is to be preferred to obvious historical reference and simple forms are to be preferred to complex designs.

Materials and exterior finishes which reproduce or complement the natural colours of the landscape will be preferred, such as restricted palettes of tertiary colours which blend naturally with the surrounding landscape. Highly reflective surfaces such as large areas of unshaded glass or untreated metal roofing should be avoided, as should materials which are stridently coloured or strongly contrasted with adjoining materials.

Traditional materials such as stone, earth coloured brickwork, bagged brickwork and painted or pigmented concrete blockwork should be considered for exterior walling. Painted corrugated steel or natural earth-coloured tile or shingle roofing is appropriate.

7.4.10 Ancillary Buildings

Ancillary buildings such as separate garages or carports should be sited to minimise visual impact and designed and coloured to complement residential dwellings.

7.4.11 Car Parking

The Proposal provides for a double carport for the proposed residential lot and for three car parking spaces for the Bible Garden. This is considered adequate for the nature of use of the Bible Garden. Additional parking demand for special events at the Bible Garden will continue to require visitors to park some distance from the Garden, as has been the case since the Garden was founded in 1966.

7.4.12 Effluent Disposal

Effluent disposal must be to Council's requirements and is unlikely to have a negative impact on the heritage significance of the item.

SEARCHED
- 3 AUG 2001
INDEXED

8.0 CONCLUSION & RECOMMENDATIONS

8.1 Conclusion

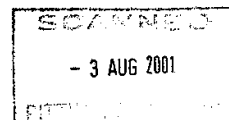
It is considered that the Bible Garden at Mitchell Road, Palm Beach is an item of environmental heritage at a State level. It should be afforded statutory protection by listing on the State Heritage Register and in the Schedule of Items of the Environmental Heritage in Pittwater Local Environmental Plan 1993.

It is considered that the Proposal to subdivide the existing lot will have minor and acceptable impacts on the heritage significance of the Bible Garden and that these impacts can be reduced and managed by implementation of the Mitigative Measures recommended in Section 7.4 above.

8.2 Recommendations

It is recommended:

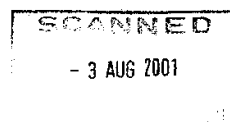
1. that the Bible Garden should be afforded statutory protection by listing on the State Heritage Register and in the Schedule of Items of the Environmental Heritage in Pittwater Local Environmental Plan 1993;
2. that Pittwater Council give favourable consideration to an application to subdivide the existing lot on which the Bible Garden is located into two lots, the lot boundary to be determined in such a way that the significant parts of The Bible Garden are retained;
3. that if subdivision is approved, it should be subject to the mitigative measures in Section 7.4 above and any other conditions imposed by Council to conserve heritage significance;
4. that Pittwater Council consider an appropriate zoning for the Bible Garden such as Special Uses (Bible Garden), with an appropriate residential zoning on the remaining lot;
5. that Pittwater Council give favourable consideration to any proposal by the Bible Garden Memorial Trust to donate the Bible Garden to Council as a rare community asset;
6. that, if Council should acquire the Bible garden by gift, that it be designated Community Land of Cultural Significance and that, in accordance with the requirements of the Local Government Act, a Plan of Management be prepared for the site;
7. that the Bible Garden be managed by a joint body including representation of the existing Trust, Council and relevant community groups with expertise in management of cultural landscapes of heritage significance. (Such expertise may be available from groups such as the Palm Beach Association, the Australian Garden History Society, an eventual 'Friends of the Bible Garden', the Friends of the Royal Botanic Gardens Sydney and the Friends of Rookwood).



'The Bible Garden', 6 Mitchell Road, Palm Beach - Proposed Subdivision
Heritage Assessment & Heritage Impact Statement by Chris Betteridge, Musecape Pty Ltd March 2001

9.0 SOURCES CONSULTED

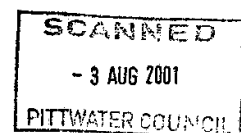
Anon.	<i>Album of Plants of Israel.</i> Index of Scientific and Hebrew names published on the Internet. http://www.tau.ac.il/~ibs/album/index2.htm
Anon.	<i>Biblical Garden.</i> List of some plants in the garden of the Paradise Valley United Methodist Church, Arizona, USA. http://www.pvumc.org/about/biblicalgarden.html
Anon.	<i>Biblical Garden.</i> Web site of Highlands Presbyterian Church, Gainesville, Florida, USA. http://gnv.fdt.net/~hpc/garden/
Anon.	<i>100+ Plants in the Biblical Garden.</i> List published on the web site of the First Congregational Church of Fair Haven (Vermont) UCC. http://www.sover.net/~hkfamily/Pages/Plant List.html
Anon.	<i>Sacred Places in Wales: Bangor Cathedral.</i> Historical notes on the Cathedral and Biblical Garden. http://welshdragon.net/sacred/bangor/htm
Boyan, Jenny	'Bible Garden' <i>The Australian Women's Weekly</i> , 10 May 1967
Darom, David	<i>Beautiful Plants of the Bible: from the Hyssop to the Mighty Cedar Trees.</i> Herzlia, Israel, Palphot Ltd, nd (c.1990s)
Duke, Jim	<i>Biblical Botany.</i> Module 12 in an Internet course. http://www.geocities.com/Athens/Parthenon/3664/bible-plants.html
Gardening Australia	<i>Biblical Plants.</i> Notes from the Australian Broadcasting Corporation TV program shown on 26 November 1999. http://www.abc.net.au/gardening/stories/s72994.htm
Jacob, Irene	<i>King Tut's Vegetable Garden: Israel and Her Neighbours: Along with Greece and Rome.</i> Web site of the Rodef Shalom Congregation, Oakland, Pennsylvania. http://www.rodefshalom.org/Garden/initial.htm
Meratante, Anthony S	<i>The Magic Garden: The Myth and Folklore of Flowers, Plants, Trees and Herbs.</i> New York, etc., Harper & Row, 1976
Moldenke, Harold N	<i>Flowers of the Madonna.</i> Reprint from Horticulture, December 1953 on Mary's Gardens Home Page. http://www.mgardens.org/HM-FOTM-HO.html
Palmer, Martin & David Manning	<i>Sacred Gardens: A Guide to the Traditions, Meaning and Design of Beautiful and Tranquil Places.</i> London, Judy Piatkus (Publishers) Ltd, 2000
Robinson, Beatrice V	<i>Bible Garden, Mitchell Road, Palm Beach, NSW.</i> Typed brochure prepared by former curator of the Garden, February 1977
Simon, Judy	<i>Neot Kedumim: The Biblical Landscape Reserve in Israel.</i> Summary description of open air museum in Israel. http://www.neot-kedumim.org.il/
Zohary, Michael	<i>Plants of the Bible.</i> Cambridge, UK, Press Syndicate of the University of Cambridge, 1982



22

11.0 APPENDICES

- 11.1 Article from *The Australian Women's Weekly* 10 May 1967
- 11.2 Interpretive brochure by Beatrice V Robinson, February 1977
- 11.3 Information leaflet on The Bible Garden



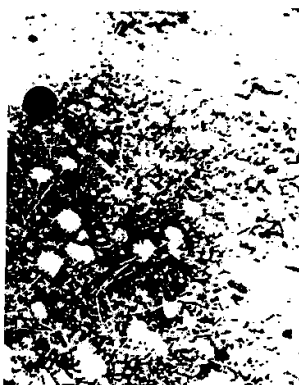
'The Bible Garden', 6 Mitchell Road, Palm Beach - Proposed Subdivision
Heritage Assessment & Heritage Impact Statement by Chris Betteridge, Musecape Pty Ltd March 2001



OF KNOWLEDGE of good and evil, with whose Eve was tempted, is thought to have probably the apricot ("apple" is a mistranslation).



THE GRAPEVINE. "I am the true vine, and my Father is the husbandman. Every branch in me that beareth not fruit he taketh away..." (John 15: 1, 2.)



LILIES OF THE FIELD ("consider... how they grow; they toil not, neither do they spin") are thought by some scholars to be the chamomile (anemone).

Page 24

On a hill with a view, a Sydney man
has devotedly planted out his land

BIBLE GARDEN

ONE of Australia's most unusual gardens nestles gently on a hillside at Palm Beach, overlooking Pittwater, Barrenjoey Head, and the Pacific Ocean.

At first glance the bright patches of color intermingled with the vivid green of grass and shady trees are just part of an ordinary garden. But walk into it, and you will find that it is a Bible Garden.

In it 143 of the 148 plants, trees, and shrubs mentioned in the Old and New Testaments have been lovingly planted in the last three and a half years by its owner, Mr. Gerald H. Robinson, a Sydney businessman.

With twinkling brown eyes and a salt-and-pepper beard, Mr. Robinson, who looks a little like Santa Claus out of uniform, had the idea of planting a Bible Garden when he read about a similar one next to the Cathedral at Bangor, Wales.

He bought a block of land at Palm Beach about ten years ago, but didn't want to build on it because he already had a home at St. Ives and an apartment in town.

"I couldn't decide what to do," he said.

"Then I read about the garden in Wales planted by Professor Tatam Whitehead, and I thought this would be ideal for my land."

"I went to Wales to see it. I was most impressed and on my return in 1963 I started work on my land."

Married, with two sons and a daughter, Mr. Robinson does most of the gardening himself.

"My sons have their families to look after, and my daughter, a Church of England deaconess, is busy with her parish. I have a man come in now and then to mow the lawns. I'm over 70, you know, but I do prefer to do the gardening myself. Somebody else might pull out one of my special plants thinking it's a weed," he said.

Despite his three and a half years' work on the garden, Mr. Robinson is not satisfied.

"My ambition is to get more plants from the Holy Land. I have already imported some, but they aren't all flourishing as they would in their natural environment," he said.

"At first I wasn't too sure what to name the garden. I was toying with the idea of calling it an 'Ecumenical Garden', but decided that that was too much of a mouthful, and that 'Bible Garden' was much simpler."

On the day of our visit he was busy making new red plastic markers, which carry the names of the plants and biblical references.

"At first, I used all different colored markers, then I discovered that the birds carried them away — I don't

know what they do with them. But they won't have anything to do with the seed ones, fortunately," he said.

Laid out in chronological order, the garden starts with the plants of Genesis and winds around to Helichrysum oriental, which Mr. Robinson has planted to represent immortality.

As one walks in the gate, the hed on the right contains wheat, oats, and grasses, the plants of the Creation.

"And the earth brought forth grass, and here yielding seed after his kind, and the tree yielding fruit, whose seed was in itself, after his kind." (Genesis 1: 12.)

In the same bed grows the conjectured tree of knowledge, of good and evil, the apricot—not the apple as one might expect.

"The original Hebrew specified no particular fruit, only one 'sweet of smell and taste'. Before the 17th century, almost all fruit was known as an apple."



GARDENER Gerald H. Robinson is managing director of a large car-distributing firm.

Scholars today believe that the apricot was the only fruit existing at that time which fulfilled the Hebrew description, explained Mr. Robinson.

In the garden is the Mediterranean cypress, believed to be the gopherwood Noah used for his boat.

Beside it is the olive, from Genesis 8: 11. "And the dove came in to him in the evening; and, lo, in her mouth was an olive leaf plucked off: so Noah knew that the waters were abated from off the earth."

After the Flood, Noah became a husbandman and planted a vineyard. So Mr. Robinson has grown a grapevine.

Passing by the oak, under which Abraham built the first recorded altar to God, the visitor comes to the bramble, in which a ram caught, its horns and was offered up as a sacrifice instead of Isaac.

"And Abraham lifted up his eyes, and looked, and behold behind him a ram caught in a thicket by his horns: and Abraham went and took the ram,

and offered him up for a burnt offering in the stead of his son." (Genesis 22: 13.)

Isaac later had a son, Esau, who sold his birthright to his brother Jacob for "mess of pottage," probably a soup made of lentils. Lentils are planted next to the bramble.

The corn of Pharaoh's dream, the rushes which sheltered Moses as a baby, the withes of the willow that bound Samson, the holly oak, whose branches caught Absalom, and the Cedars of Lebanon of Solomon's Temple — all these are represented, and many more.

Mr. Robinson has read widely on his subject. Scholars aren't unanimous about the identity of every biblical plant, so the choice is sometimes conjectural.

The herb marjoram is said to be the hyssop which the Israelites dipped in the blood of the Passover Lamb and then painted on their lintels and doorposts to deliver them from the tenth plague, which killed the first-born son in every family.

After their exodus from Egypt, the Israelites would have starved in the wilderness if God had not sent manna from Heaven.

Scholars believe that there are at least four possible sources of manna. One of them is the tamarisk tree, host to a tiny insect which pricks the leaves and branches, causing a sugary juice to ooze out. This dries and settles on the ground.

"The lilies of the field" (Matthew 6: 28) are believed to be either the multi-colored anemone or the chamomile (anemone). To be on the safe side Mr. Robinson grows both.

Many of Jesus' parables mentioned plants — the mustard seed, a form of rye-grass, and the yew (mulberry tree). All these grow freely in the garden.

There are, too, the palm whose branches were thrown before Christ as he made his entry into Jerusalem, the Cereus siliquestrum, on which Judas is said to have hanged himself, and the myrtle and aloes used to anoint Christ's body.

Mr. Robinson has compiled a 15-page brochure which explains the Bible Garden to its many visitors.

Church groups often bring parties and arrange outings there on weekends.

Officially opened in March, 1966, by Mr. Justice Richardson ("I cannot remember the exact date, only that it was the wettest Saturday in March," said Mr. Robinson), the garden is open to the public free of charge. There is a box at the gate for "thank-offerings," which are given to St. David's Church, Palm Beach.

Although a house could be built on the land, Mr. Robinson does not believe that it is wasted. He says, "The garden and the view behind it provide a perfect example of the glory of God's creation."

SCOTT JENNY BOYAN
- 3 AUG 2001
THE AUSTRALIAN WOMEN'S WEEKLY

THE AUSTRALIAN WOMEN'S WEEKLY - May 10, 1967

Appendix 11.1 Article from The Australian Women's Weekly
10 May 1967

"And God called the dry land Earth; and the
gathering together of the waters called he Seas;
and God saw it was good." (Genesis 1; 10.)



AT WORK in the garden, with its 143 labelled varieties of biblical plants. Mr. Robinson does most of the gardening himself.

PICTURES BY STAFF PHOTOGRAPHER KEN BORG



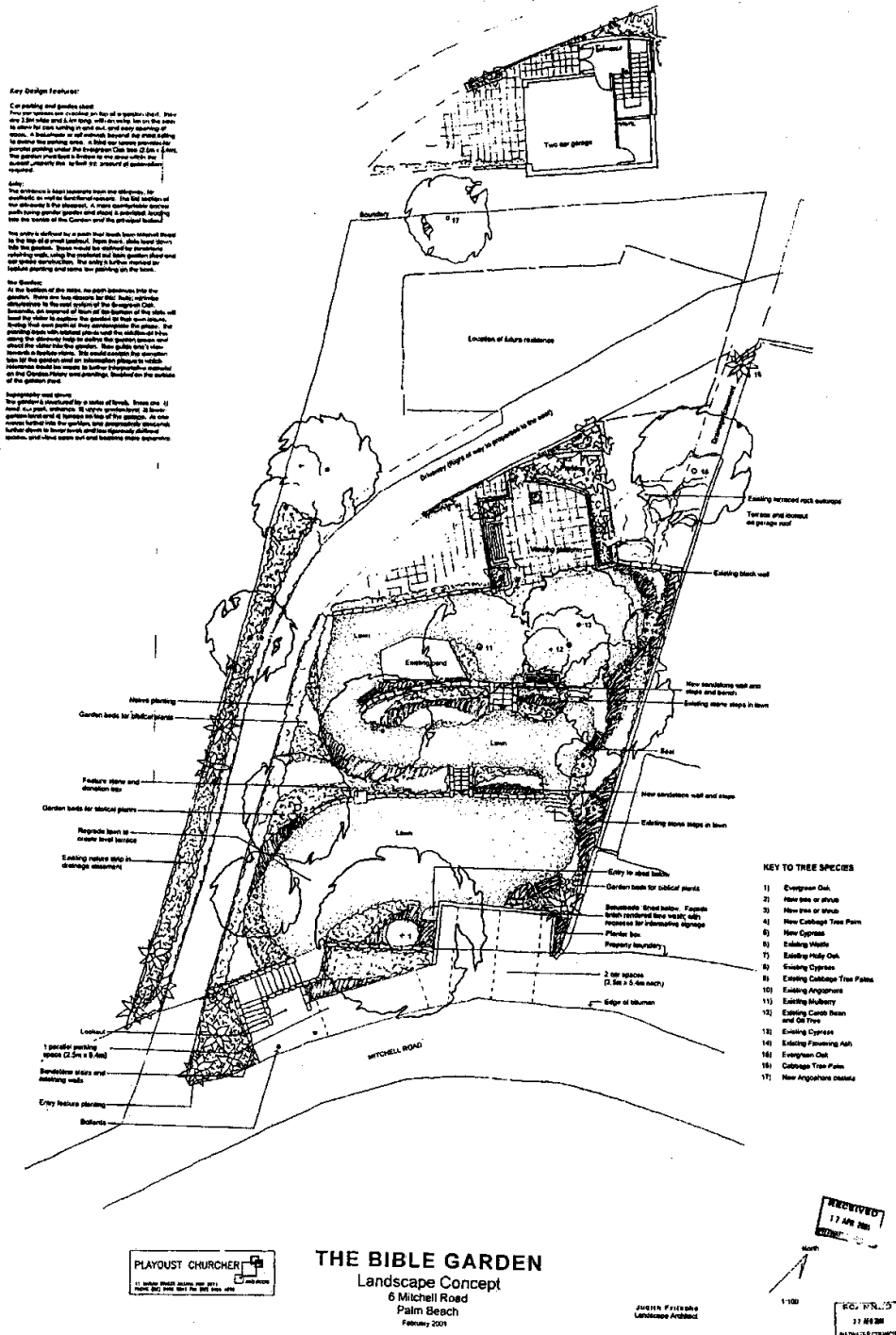
ACACIA, in appearance the nearest available
to the Middle East acacia which provided the
wood Moses used to house the Commandments.



LEFT: Myrtle ("...instead
of the briar shall come up
the myrtle tree"—Isaiah).

ABOVE: Gourd, or castor-oil tree.
God "prepared a gourd, and made
it to come up over Jonah

LANDSCAPE CONCEPT PLAN **ANNEXURE D**

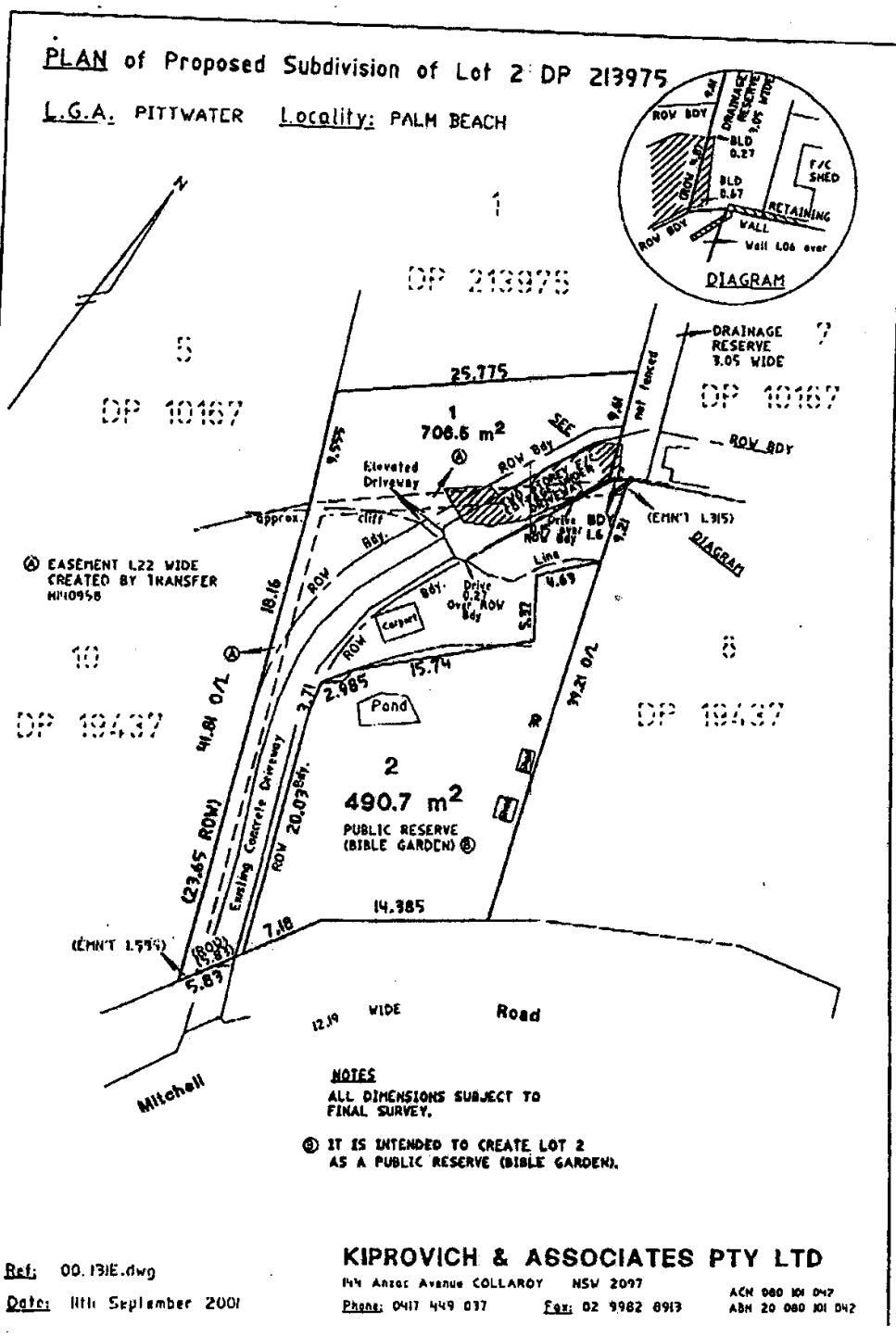


ANNEXURE E

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ANNEXURE F**Draft Plan of Management of the 'Bible Garden' as Community Land
(Local Government Act 1993, section 36)**

Land: proposed lot 2 in plan of subdivision of 6 Mitchell Road, Palm Beach (the 'Bible Garden')

Classification of the land as 'community land (area of cultural significance)' (section 36(4)(d) Local Government Act 1993)

Objectives (section 36(3)(b))

Conservation and enhancement of the land as a bible garden, in particular for:

- The cultivation of plants mentioned in the Bible,
- Ecumenical contemplation,
- Admiring the view north, and
- Weddings, baptisms and informal visits

Performance Targets (section 36(3)(b))

- Timely and effective undertaking of routine maintenance
- Maintaining appropriate public liability insurance
- Encouraging active, ongoing assistance from the incorporated association 'Friends of the Bible Garden Memorial' ('Friends')
- Assisting with signage and other means of publicising the Bible Garden, as discussed with the committee of the Friends from time to time

Means by which Council proposes to achieve the plan's objectives and performance targets (section 36(3)(c)):

- Management by a committee of Council the members of which include the committee of the Friends

Assessment. Manner in which Council proposes to assess its performance with respect to the plan's objectives and performance targets (section 36(3)(d)):

- Consideration of periodic reports from the Friends, including annual financial and activity reports, and periodic landscaping and planting plans

ANNEXURE G

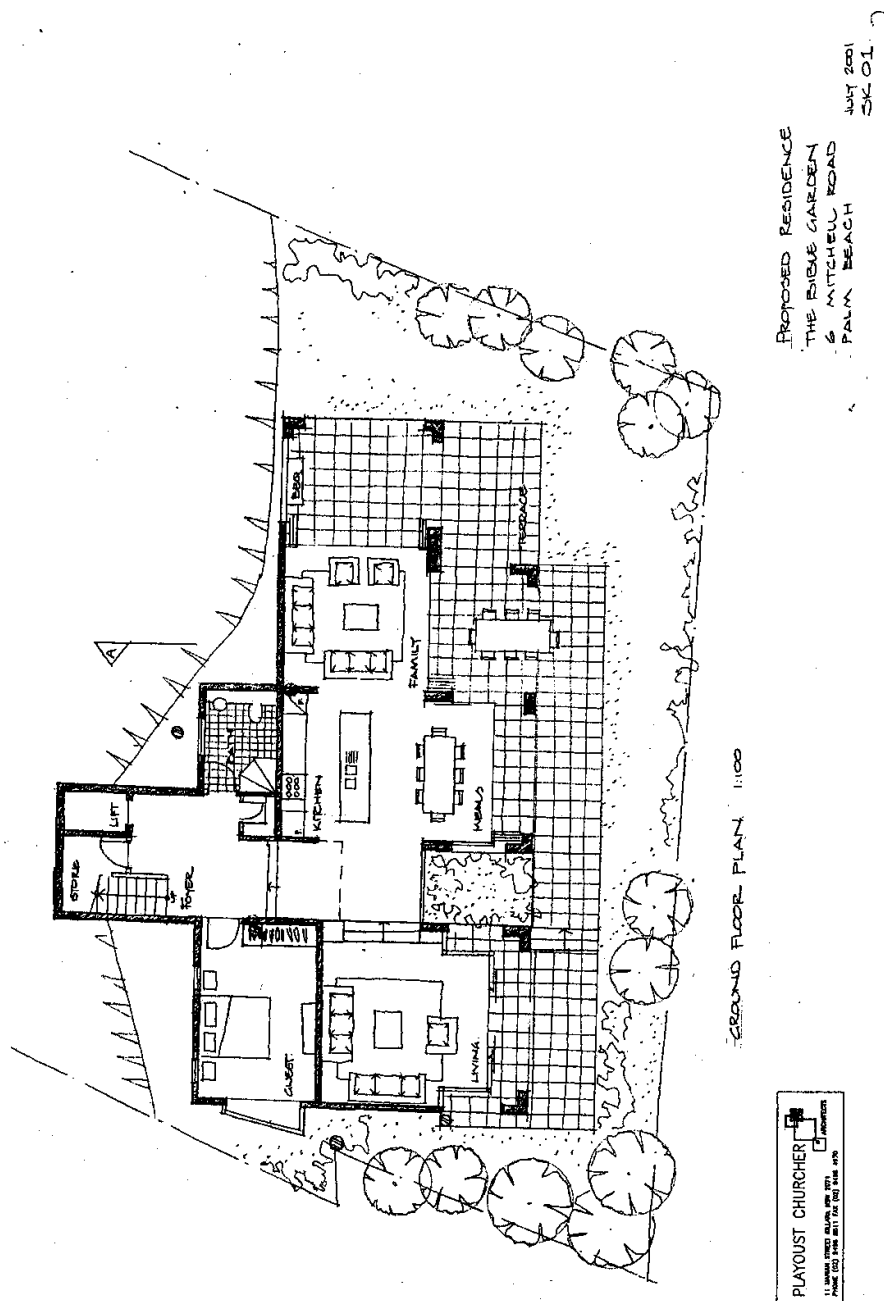
Annexure to Application for Incorporation of 'Friends of the Bible Garden'

The **objects** of the Association will be to support the conservation, maintenance and enhancement of the Bible Garden at Mitchell Road, Palm Beach as a place of ecumenical contemplation and a place that promotes consideration of God's creation, the Bible and the teachings of Jesus Christ.

The **principal activities** of the association will be:

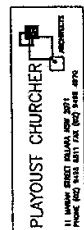
1. assisting Pittwater Council to conserve and enhance the Bible Garden, and to promote the public enjoyment of the Bible Garden;
2. volunteering gardening and other services, including:
 - a) coordinating bookings of the Bible Garden for wedding and christening ceremonies;
 - b) preparing and implementing periodic landscaping and planting plans;
 - c) planting and labelling of biblical and other plants in accordance with periodic plans; and
 - d) maintaining the garden;
3. fundraising;
4. publishing a newsletter; and
5. any other activities to support the Bible Garden.

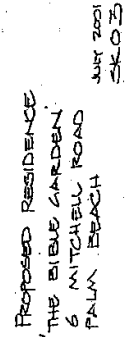
ANNEXURE H PROPOSED RESIDENCE SKETCH



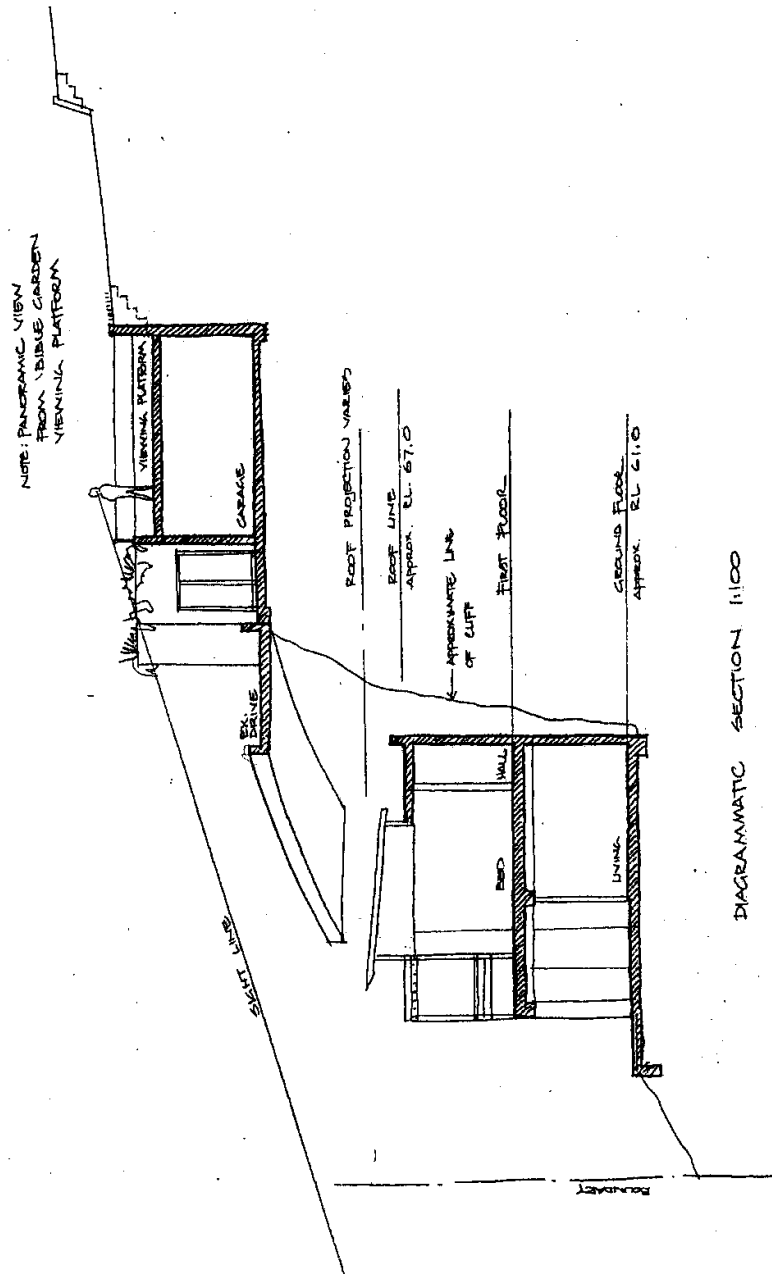
PROPOSED RESIDENCE
'THE BLUE GARDEN'
6 MITCHELL ROAD
PALM BEACH

FIRST FLOOR PLAN 1:100





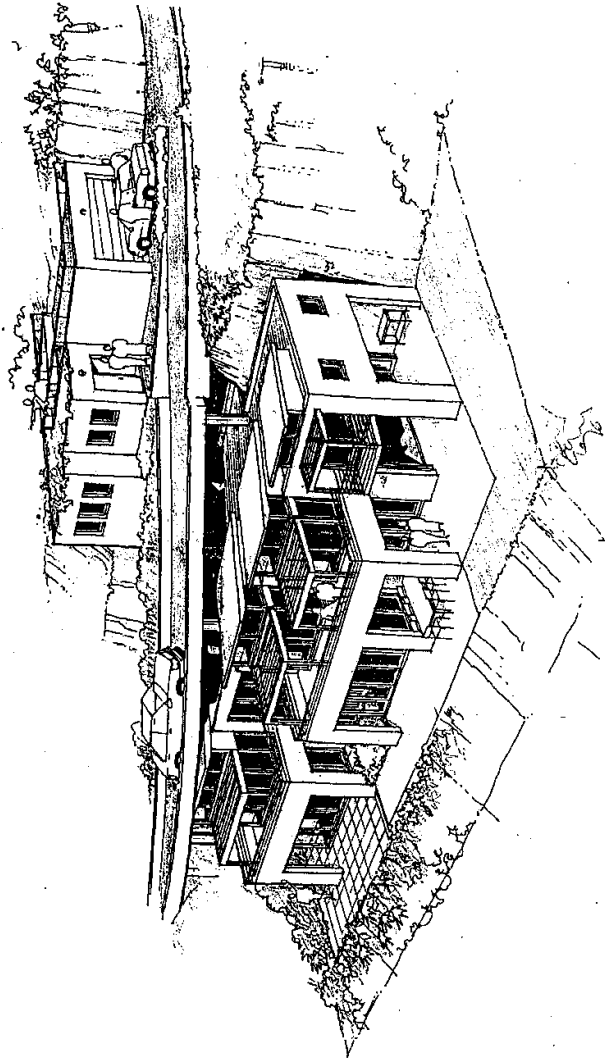
Page 36



PROPOSED RESIDENCE
THE BIVUE GARDEN
6 MITCHELL ROAD
PALM BEACH

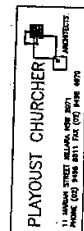
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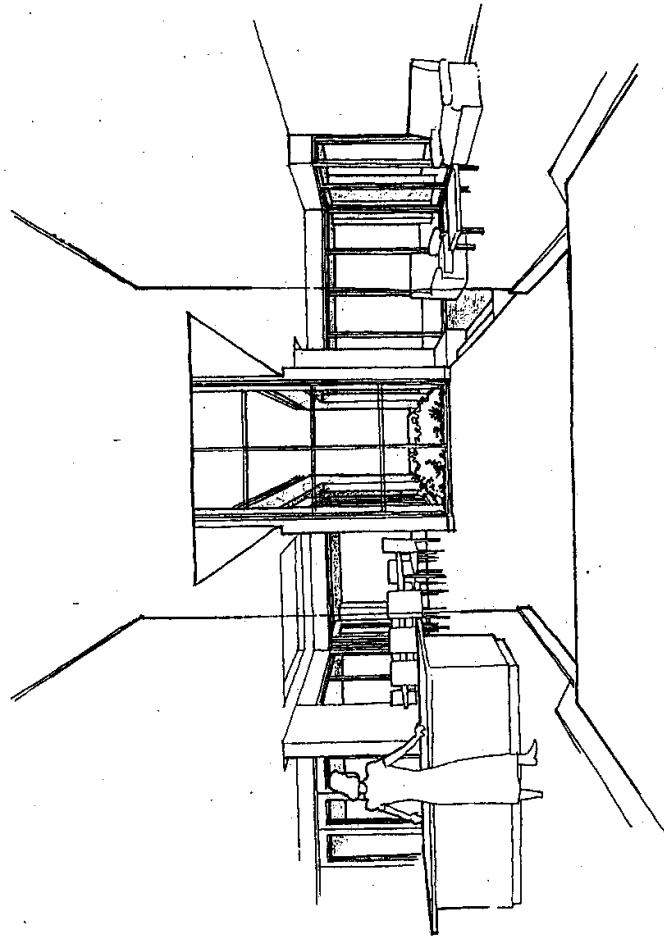
PLAYOUST CHURCHER
ARCHITECTS
11 AUDUBON STREET, WILMINGTON, MASS 01897
PHONE (617) 462-0811 FAX (617) 464-0770



AERIAL VIEW OF
PROPOSED RESIDENCE AND
BIBLE GARDEN.

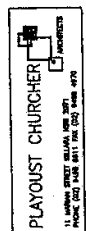
PROPOSED RESIDENCE
THE BIBLE GARDEN
6 MITCHELL ROAD
PALM BEACH
JULY 2001
SK05





INTERNAL PERSPECTIVE VIEW - GROUND FLOOR

PROPOSED RESIDENCE
 'THE BIBLE GARDEN'
 6 MITCHELL ROAD
 PALM BEACH 2201
 SK06



ANNEXURE I

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11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9498 8611 FAX (02) 9498 4970
PLAYOUST CHURCHER ARCHITECTS SINCE 1961

13 September 2001

PROPOSED RESIDENCE 6 Mitchell Road, Palm Beach

Introduction

The following concept sketches are intended to illustrate a possible future residential development of proposed Lot 1. They have been prepared for the purpose of identifying suitable development parameters for incorporation in the Development Control Plan/Locality Plan at the time of subdivision. The sketches illustrate the proposed design control parameters, being the envelopes, setbacks and areas that are particular to this site and vary considerably to the DCP.

Development consent is not sought in relation to the residence proposed in the concept sketches. Rather a development application to build any particular residence in accordance with the Development Control Plan/Locality Plan (as amended) will be lodged subsequent to subdivision.

1.0 Compliance with Council Requirements

Under the "Palm Beach Ridgeline" Locality Plan and Building Code, Council sets out various objectives and controls. The following is an explanation of how the proposal responds and complies to each issue.

1.1 Built Form

1.1.1 Designated Slips Areas

The site is located within the designated slip area and a geo-technical report will be required to support a development application. The development control plan states that at no time shall disturbance exceed 40% of the site and the development shall not detrimentally affect the long term stability of the area.

The R.O.W and access road, residence and terraces on lot 1 disturbed in excess of 40% of the natural topography of lot 1 when they were constructed in the 1960s. The design of the new residence has been tailored to the existing landform and features of the site. It is located at the lower end of the site under R.O.W.

The house is situated such that the view lines from the Bible Garden will not be interrupted.



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ROBINSON+JACOBS

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1.1.2 Site Coverage

The following are the site coverage calculations:

Total Site Area by Surveyors Submission 706.5m²

Area of Rights of Way across the site to be deducted from the site area:

R.O.W.

164.4 m²

Net Site Area:

542.1m²

Allowable Built Upon Area @ 40% net site area:

216.84m²

- Area of garage, drive & entry 160.0m²
- Less: area of Landscaped Roof Garden 36.0m²
- 124.0m²

- Add area of Ground Floor footprint 168.0m²

Proposed Total Built Upon Area (to be confirmed) 292.0m² (53.87%)

Proposal would exceed code by approximately 76.16m² (13.9%) depending on the actual subdivision boundary and subject to final survey.

Required Landscaped area @ 60% net site area: 325.26m²

Proposed Landscaped Area: 250.1m² (46.1%)

Proposal would be approximately 75.16m² below the minimum required landscaped area.

The aim of the site coverage development controls is to restrict the footprint of development on site, to enable retention of the natural vegetation and facilitate planting of additional landscaping, to minimize the bulk of buildings' (Development Control Plan No.LP3 - Palm Beach Ridgeline Locality Plan at 3.1.3)

The proposed developments envelope for lot 1 exceeds the controls in the DCP but is consistent with the stated aim of the controls.

- The alternative of residential redevelopment of the undivided site would result in a larger permissible built upon area than if the proposed development is allowed on lot 1, with lot 2 being excluded from residential development through rezoning.
- The proposal would not have an adverse effect on natural vegetation, which was substantially altered in the 1900's when the elevated concrete driveway was constructed and the remainder of lot 1 was terraced. An *angophora costata* would be planted near the northern boundary to replace the existing dead specimen.
- The bulk of buildings is minimised by their location underneath the existing elevated driveway

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1.1.3 Side Boundary Setback and Spatial Separation

The side boundary setback is to be one third of the height of the building, from the highest point to the existing ground line

West Boundary – The proposal would comply with this requirement.

East Boundary – Due to the staggered boundary, the wall complies in part with a setback of 2.3m. However, reduces to a 900m dimension at some points of the building. It is important to note that most of the non-compliance occurs under the existing right of way. The existing dwelling is built onto the boundary.

The proximity of the surrounding residences are sufficiently distant so that Council's spatial separation requirements should not apply. There is no residence adjacent to the West, and the proposed residence to the East will be located partly underneath the elevated concrete access driveway, on the Eastern side of a 3.05 metre wide drainage reserve.

1.1.4 Building Lines

We propose that a 3.5m rear building line (to the North) excluding terraces apply to the site.

1.1.5 Building Height

The slope of the land is greater than 20%, thus the maximum building height shall be 10.0 metres. The proposed residence will be well below the maximum permitted height. The building varies in height and has a height above existing ground level of between 7 and 7.5 metres on both the east and west elevations.

1.1.6 Visibility/Viewlines

The proposed residence has been designed to have no impact or views either to or from the Bible Garden. As per the Heritage Report prepared by Musecape Pty Ltd, the development is located so that the Bible Garden can still be read as a discrete entity and appreciated for its original purpose.

Due to the nature of the site and its topography, the residence is located at the northern end of the site below the existing driveway.

The two-storey residence will have a clearance under the driveway varying from approximately 1.2 metres to 4.5 metres. As a result, of its location, views from the Bible Garden will be maintained.

The location of the garage also allows a viewing platform to be located on the garage roof. Again, the location and design will not allow any visual intrusion into the view from the Bible Garden. Refer Section Drawing SK04.

Page 3 of 4

PLAYBOY CHURCHER ARCHITECTS 11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9456 8811 FAX (02) 9456 4970

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Pg: 6

1.1.7 Building Materials

Proposed building materials will be in sympathy with the surrounding locality. Natural materials such as stone and timber will be used extensively, while painted surfaces will be of natural earthy tones to evoke the character of the Australian bush, and beach.

Materials used will be:

- Stone facing
- Timber cladding and decking
- Painted rendered walls
- Painted steel framing
- Timber framed glazing
- Colorbond steel roof sheeting

Although reinforced concrete will be used extensively for the structure of the residence, there will be no unpainted concrete exposed externally. Correct overhangs have been provided for the large areas of glass, eliminating the need for reflective tinting to the glass to provide sun protection.

1.1.8 Car parking

Council requires a minimum of two off street carparking areas. It was considered that the most sensitive position for the carparking on this site was under a rooftop viewing terrace which forms part of the Bible Garden. Part of the viewing terrace will also be landscaped by way of planters which are over the store and stair.

Due to the nature of the site, the garages and entry to the residence are located below the Bible Garden viewing lines therefore the garage and entry will not become a dominant element in the landscape.

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PLAYOUST CHURCHER ARCHITECTS 11 MARIAN STREET KILLARA NSW 2071 TEL (02) 9428 8811 FAX (02) 9428 4970

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ANNEXURE J STATEMENT OF ENVIRONMENTAL EFFECT

Statement of Effect

The environmental effects of the proposed subdivision are regarded as minimal, given the purpose of the application, namely to give planning and land title recognition to the existing distinct Bible Garden and residential uses of the land.

The environmental effects of subdivision of 6 Mitchell Road, so as to retain a part of the land as a Bible Garden (lot 2), would be significantly less than if the whole of the land is sold for residential redevelopment.

See also '7.0 Statement of Heritage Impact' in the Heritage Assessment (annexure C) and in 'Proposed Residence – Compliance with Council Requirements' (annexure I).

ANNEXURE K**Proposed Planning Process for Subdivision of 6 Mitchell Road and Conservation of the Bible Garden Portion****1. Public Exhibition - Draft Heads of Agreement**

Draft Heads of Agreement exhibited for public comment.

Timeframe: exhibition period commences within 1 month of receipt of draft documents from Trustees

2. Heads of Agreement Signed

Following consideration of public submissions, Council and Trustees sign the Heads of Agreement.

Timeframe: within 1 month of the last day of the exhibition period

3. Lodgment 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)

Timeframe: within 1 month from date of the Heads of Agreement

4. Public exhibition

Public exhibition of DA, draft DCP, draft plan of management of the Bible Garden as community land (Local Government Act 1993, section 36), the objects and activities of the incorporated association Friends of the Bible Garden Memorial Inc, and proposal to establish a standing committee of Council responsible for the management of the Bible Garden and whose members include the committee of the Friends of the Bible Garden Memorial Inc.

Timeframe: within 2 months of lodgment of applications

5. Approvals

Subject to due compliance with Council's statutory role as a planning authority:

- 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

Timeframe: within 5 months from date of lodgment of applications

6. Issuing of separate land titles and vesting

- Issuing of separate certificates of title and vesting of Bible Garden area in Pittwater Council as Public Reserve (Bible Garden)
- Council adopts Plan of Management of the Bible Garden as Community Land (Local Government Act 1993, section 36) and forms a management committee which includes the committee of the Friends of Bible Garden Memorial Inc

Timeframe: within 7 months of date of lodgment of applications

7. Rezoning of Bible Garden portion

Council proceeds to amend Pittwater Local Environmental Plan 1993 (or make corresponding arrangements under any successor plan) so as to rezone Bible Garden in accordance with the dedication of Public Reserve (Bible Garden) stated in the plan of subdivision, and include the Bible Garden as a heritage item. Council submits the draft plan etc to the Director-General of the Department of Infrastructure, Planning and Natural Resources.

Timeframe: within 11 months of date of lodgment of applications

- Various new sandstone walls for garden beds, and sets of stairs within the garden, and bench and seat
- New feature stone and donation box
- Regraded lawn to create a level terrace
- Viewing platform projecting beyond the NW boundary. This improvement would be provided by the eventual owner of the subdivided northern portion of 6 Mitchell Road, who would make the excavation necessary for a two-car garage, and create a load-bearing roof to the garage to serve as a viewing platform for visitors to the Bible Garden. The roof would be flagged in sandstone and include a balustrade.
- Sandstone paving, interpretation signage, planter boxes, seating and pond upgrade to integrate the existing viewing area with the new viewing platform.

The proposal to subdivide 6 Mitchell Road Palm Beach and give the southern half to Council as 'community land' does not provide a budget for funding the above capital improvements to the Bible Garden. Proceeds of sale of the northern (residential) portion of the land are to be used to fund other projects of the Bible Garden Memorial Trust.

The Friends will seek to fundraise for capital works, and Council and the Friends will work together to seek any potential sources of capital works funding over time.

ANNEXURE L

RESPONSIBILITIES FOR ONGOING MANAGEMENT AND IMPROVEMENT OF THE BIBLE GARDEN

Background

While public reserves are an asset for the community, they can be expensive to maintain. In relation to the proposed gift of the Bible Garden to Council, joint Friends of the Bible Garden-Council maintenance and improvement is proposed. The committee of the incorporated association Friends of the Bible Garden Memorial ('Friends') would be recognised as a formal management committee of Council.

Maintenance: Role of Council

- Prepare and periodically update a plan of management for the Bible Garden, in accordance with the 'community land' provisions of the Local Government Act 1993
- Maintain public liability insurance
- Take bookings for weddings or christenings, and/or collect fees, in accordance with arrangements with the Friends. (The committee of the Friends, as a formal committee of Council, could handle reservations and collect fees on behalf of Council, or Council's Reserves Booking Officer could do so. Pittwater Council presently has both models working well in respect of its other reserves and community buildings.)
- Designate a suitable liaison officer from its Parks and Reserves staff and, upon request, provide advice to the Friends
- Assist with publicity, for example:
 - Street signage
 - Council's website
 - By making available to interested persons periodic reports provided by the Friends to Council, such as financial reports, landscape plans and planting reports
- Provide other assistance as may be agreed with the Friends from time-to-time, for example lawn-mowing

Maintenance: Role of Friends

- Assisting Pittwater Council to conserve and enhance the Bible Garden, and to promote the public enjoyment of the Bible Garden;
- Volunteering gardening and other services, including:
 - Coordinating bookings of the Bible Garden for wedding and christening ceremonies;
 - Preparing and implementing periodic landscaping and planting plans;
 - Planting and labelling of biblical and other plants in accordance with periodic plans; and
 - Maintaining the garden;
 - Fundraising;
 - Publishing a newsletter; and
 - Any other activities to support the Bible Garden.

Capital Improvements

The Landscape Concept Plan (Annexure D) (Judith Fritsche, Landscape Architect, February 2001) includes the following capital improvements to the Bible Garden:

- Improved parking at Mitchell Road boundary, including 3 formed car spaces. Two of the spaces would form the roof (with balustrade) of a garden shed. The shed would include recesses for interpretive signage.
- Improved pedestrian access from Mitchell Road, including bollards, sandstone stairs and retaining walls



Key Design Features:

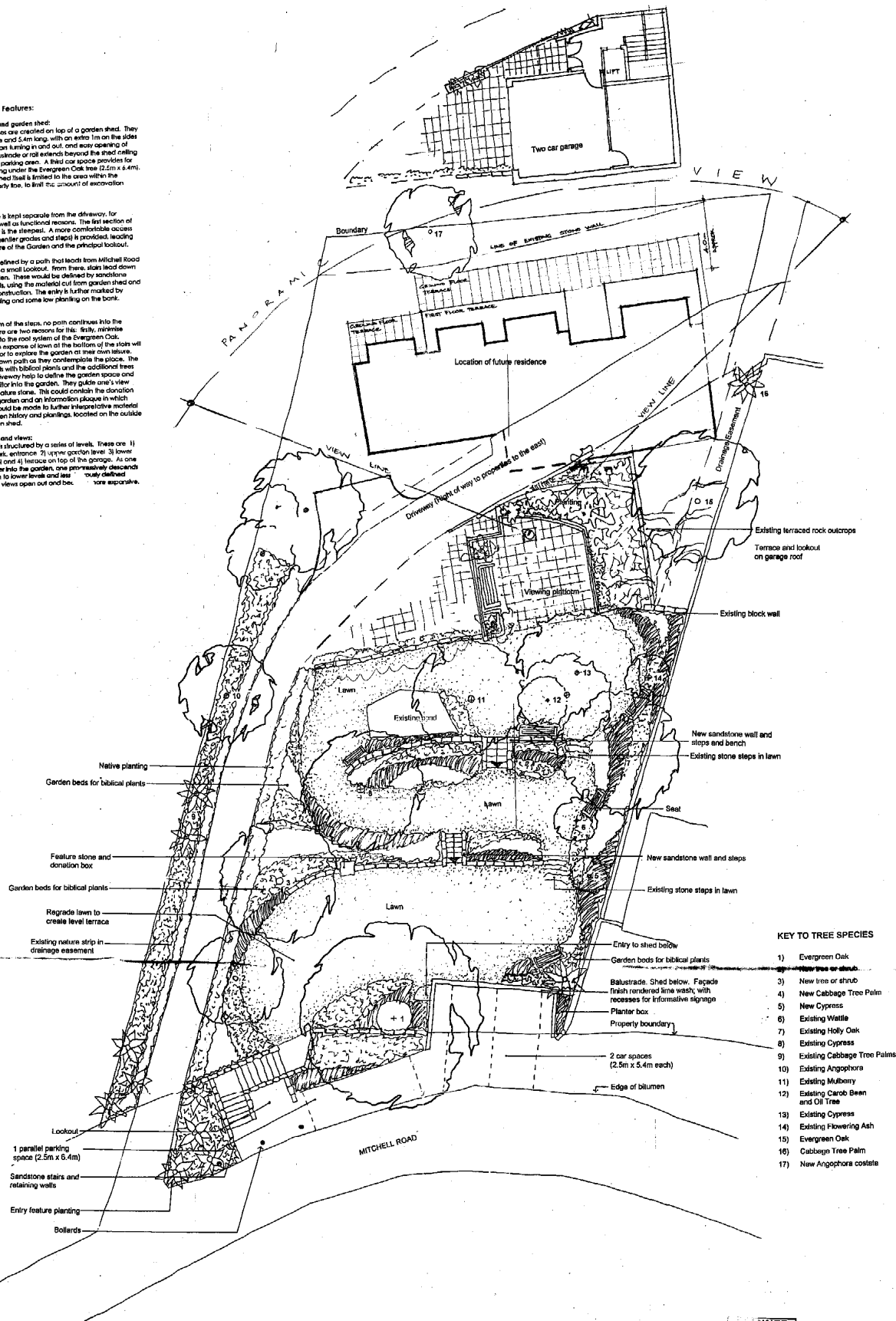
Car parking and garden shed:
Two car spaces are created on top of a garden shed. They are 2.5m wide and 5.4m long, with an extra 1m on the sides to allow for car turning in and out, and easy opening of doors. A balustrade or rail extends beyond the shed ceiling to define the parking area. A third car space provides for parallel parking under the Evergreen Oak tree (2.5m x 5.4m). The garden shed floor is limited to the area within the current property line, to limit the amount of excavation required.

Entry:
The entrance is kept separate from the driveway, for aesthetic as well as functional reasons. The first section of the driveway is the steepest. A more comfortable access path (using garden grades and steps) is provided, leading into the centre of the Garden and the principal lookout.

The entry is defined by a path that leads from Mitchell Road to the top of a small Lookout, from there, stairs lead down into the garden. These would be defined by sandstone retaining walls, using the material cut from garden shed and car space construction. The entry is further marked by feature planting and some low planting on the bank.

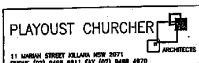
The Garden:
At the bottom of the steps, no path continues into the garden. There are two reasons for this. Firstly, minimise disturbance to the root system of the Evergreen Oak. Secondly, on exposure of lawn at the bottom of the steps will lead the visitor to explore the garden at their own pace, finding their own path as they contemplate the place. The planting beds with biblical plants and the additional trees along the driveway help to define the garden space and direct the visitor into the garden. They guide one's view towards a feature stone. This could contain the donation box for the garden and an information plaque in which reference could be made to further interpretative material on the Garden history and plantings, located on the outside of the garden shed.

Topography and views:
The garden is structured by a series of levels. There are: 1) road, 2) car park, entrance 3) upper garden level 4) lower garden level and 5) terrace on top of the garage. As one moves further into the garden, one progressively descends further down to lower levels and less "routinely defined" spaces, and views open out and become expansive.



KEY TO TREE SPECIES

- 1) Evergreen Oak
- 2) New tree or shrub
- 3) New Cabbage Tree Palm
- 4) New Cypress
- 5) Existing Wattle
- 6) Existing Holly Oak
- 7) Existing Cypress
- 8) Existing Cabbage Tree Palms
- 9) Existing Angophora
- 10) Existing Mulberry
- 11) Existing Carob Bean and Oil Tree
- 12) Existing Cypress
- 13) Existing Flowering Ash
- 14) Evergreen Oak
- 15) Cabbage Tree Palm
- 16) New Angophora costata



THE BIBLE GARDEN
Landscape Concept
6 Mitchell Road
Palm Beach
February 2001

Judith Fritzsche
Landscape Architect



No.	Date Received	Issue Raised	Council Response to Issue
1	30/09/2022	More information needed on the proposal.	Contacted submitter via phone and explained the contents of Planning Proposal. No future submission made by the submitter.
2	10/10/2022	Wanting the garage area to be moved further east and lowered. Rooftop gardens rarely become a permanent fixture on a property, due to various problems or lack of interest. That would be my concern with this being so close to the max development height. Can the vegetation height on the rooftop be at the max development height.	Both suggestions go to design details of a future built form, that would be subject to a future Development Application being lodged on the site.
3	11/10/2022	Wanting more exhibition time.	The request is noted. Council extended the Non-Statutory Exhibition period to Friday 21st October 2022 and submitter advised accordingly. A latter submission, known as Submission #5, is made on behalf of the same landowners.
4	12/10/2022	New structure will obscure view. Concerned that with the owner being responsible for the upkeep of the proposed roof garden it will revert to a weedy mess and plants growing up to further obscure the view from the Bible Garden due to it being out of sight and concern to the owner and upkeep not being enforced.	The proposal will amend the PLEP2014 to include provisions to the subject site that any future residential development cannot exceed a height of 74.5 AHD for the whole property. This will ensure scenic views of Palm Beach from the Bible Gardens will not be obstructed. The submitter is talking about the concept plans provided with the Planning Proposal documentation, that show the rooftop garden on top of the garage. The concept plans are information only and do not form part of the recommended Planning Proposal document before Council (see Attachment 1 to the report). Issues regarding the management of any future rooftop garden is to be addressed during an assessment of a Development Application.
5	21/20/2022	1) Making of the Planning Proposal is without a connected development application is contrary to section 3.38 of the Environmental Planning and Assessment Act 1979 (EP & A Act);	The Environmental Planning and Assessment Act (the EP&A Act) does not require a Planning Proposal is to be accompanied by a development application. The EP&A Act allows a Planning Proposal to be lodged for assessment.
		2) Planning Proposal is unclear in its terms; the additional clause into schedule 1 of the LEP should be clear & unambiguous. The submitter provides amendments to how the proposal is to be written.	The submitter suggests the description of 6 Mitchell Road alone, without the Lot and DP reference, may be uncertain. It is worth noting that as a document, the Planning Proposal is not meant to read and be worded as a legal instrument in much the same way as the Local Environmental Plan it is seeking to amend. The proponent's Planning Proposal clearly states, in plain English, It is clear the location of land as the area applicable to the clause is shown on the street address that the Planning Proposal relates and insofar what it is proposing to amend under the Pittwater LEP. Council staff, have prepared an amended Planning Proposal for Council to consider, as Attachment 1 to this report. It clearly states: the Planning Proposal will be a site-specific provision applying only to 6 Mitchell Road Palm Beach (to be identified on the Additional Permitted Land Uses Map of the LEP).
		3)Exhibition of the Planning Proposal is unlawful;	Council notified the proponent's Planning Proposal application. This notification phase is the first phase, an opportunity to obtain the local community's views on the proponent's Planning Proposal and is in accordance with Council adopted Community Participation Plan (May 2020). This is best practice approach in community engagement. It is not unlawful, especially as Council is considering the application and views from local community as part of its assessment of the proponent's Planning Proposal and before it determines whether to progress the Planning Proposal to Gateway Determination.
		4) Above breaches lead to the invalidity of any amendment made as a consequence of the Planning Proposal.	The issues raised by the submitter above, namely 1 to 3 inclusive, have been responded to accordingly. None of the issues raised are in breach of the EP&A Act.
6	28/10/2022	Lack of concern for the stone wall on the northern boundary (bordering with the adjoining property 17 Florida Road Palm Beach) of the subject site. The steep slope and conditions hazards and risk to 17 Florida Road, Palm Beach.	The stone wall in which the submitter refers to is located on the northern boundary of the subject site bordering with the adjoining neighbouring property 17 Florida Road, Palm Beach. Council notes the issue raised by the submitter however the geotechnical report submitted with the Planning Proposal do not conclude to require specific provisions that must be included in a site-specific provision as part of the additional permitted land use for this site (this is the basic premise of the proponent's Planning Proposal). Any issues regarding the structural adequacy of the stone wall and geotech hazards of the land is in the future design of a development on this site, that requires addressing in the assessment of a future Development Application.
*An additional submission was received by Council and was subsequently withdrawn by the submitter. The withdrawn submission has not been included in this table.			

4.2 PEX2022/0003 PLANNING PROPOSAL AT 6 MITCHELL ROAD, PALM BEACH

PROCEEDINGS IN BRIEF

The proposal is to amend Pittwater Local Environmental Plan 2014 by adding "dwelling houses" as an additional permissible use on that portion of the subject land zoned RE1 below RL 74.5AHD.

At the public meeting which followed the Panel was addressed by two (2) objectors on behalf of the neighbours.

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

RECOMMENDATION OF PLANNING PANEL

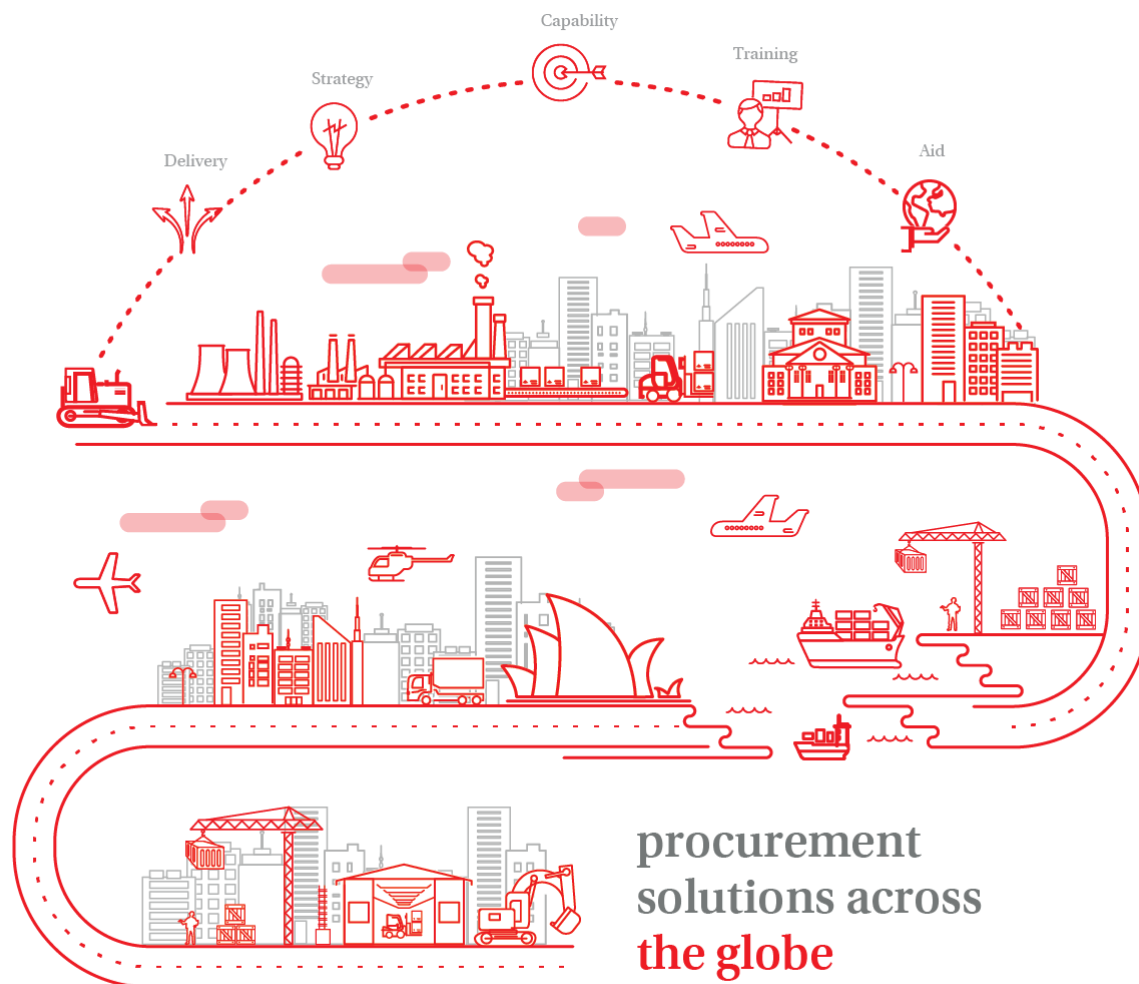
That the Northern Beaches Local Planning Panel recommends that Council **support** the planning proposal set out in Attachment 2 to the Council assessment report to permit a dwelling house limited to a building height of RL 74.5AHD as an additional permitted use on 6 Mitchell Road Palm Beach, for the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

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

Use of certain land at 6 Mitchell Road, Palm Beach

- (1) This clause applies to land at 6 Mitchell Road, Palm Beach, being Lot 1. DP1086858 and identified as "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.

Vote: 4/0



Contact for this Report

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Planning Proposal for 6 Mitchell
Road, Palm Beach
(PEX2022/0003)

Probity Report

Northern Beaches Council

25 January 2023



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1. Introduction

Northern Beaches Council (Council) received a Planning Proposal Application relating to privately owned land located at 6 Mitchell Road, Palm Beach (Planning Proposal No: PEX2022/0003). The application is a proponent-initiated Planning Proposal under the Environmental Planning and Assessment Act. The proposal seeks to amend Pittwater Local Environmental Plan 2014 by adding “dwelling houses” as an additional permissible use on that portion of the subject land zoned RE1.

The land that is the subject of the application immediately abuts land owned by Council. In accordance with the Council's Community Participation Plan, as Council is an affected property owner to this application. Council's Property Team and Parks & Recreation Team (as the Asset Manager) will be invited to comment on the application along with other affected property owners.

Carriage of the assessment of the application will be by staff in Council's Strategic and Place Planning Business Unit, with input from technical experts across various Council Business Units. To maintain compliance and support good practice, Council engaged Charles Kendall Australia (CKA) to provide probity advisory services relating to the assessment. This Probity Report reflects on the probity of the assessment process.

2. Probity

2.1 Probity

The term “probity” refers to integrity, uprightness and honesty. In the context of the assessment process, probity relates to:

- compliance with relevant legislation, policies and other applicable governance;
- maintaining fairness and impartiality;
- supporting accountability and transparency;
- ensuring confidentiality and security of information; and
- managing potential and actual conflicts of interest.

The probity advisor is able to provide independent scrutiny of the process. The probity advisor can provide advice to facilitate compliance with recognised probity principles and can assist to resolve probity-related issues.

2.2 Specific Duties Included in the Probity Advisor Role

The role of the probity advisor extends to the following activities.

- Act as an independent observer throughout the assessment activity.
- Scrutinise the process to provide advice with respect to compliance with relevant policies and procedures.
- Review and assess all relevant documentation to validate compliance and transparency.
- Review and provide advice regarding conflicts of interest.
- Attend meetings as required.
- Provide a final report that gives an independent view of the probity and compliance of the process.

3. Review of Assessment Process

3.1 Preparation

In preparation for the review, CKA reviewed the following documentation that relate to the Planning Proposal assessment process:



- Council's Business Process for assessment of Planning Proposal.
- Development Determination Panel (DDP) Charter (dated 30 June 2022).
- Local Environmental Plan Making Guideline (dated September 2022) Published by the NSW Department of Planning, Industry and Environment.
- Environmental Planning and Assessment Act 1979.

3.2 Conflicts of Interest

It was identified that as Council is an affected property owner to the application, Council has an interest and Council's Property Team and Parks & Recreation Team (as the Asset Manager) would be invited to comment on the application along with other affected property owners. This would be undertaken through the normal Council process. To manage this situation and maintain probity, Council ensured separation between the assessment of the Planning Proposal and Council's role as an affected property owner.

In addition, conflict of interest disclosures were received from the following Council officers involved in the process:

- Andrew Pigott
- Brendan Smith
- Joseph Tramonte
- Neil Cocks
- Amanda Clarke
- Liza Cordoba
- Nemani Robertson
- Rachael Thelander
- Robert Blackall
- Shivani Tapas
- Brendan Gavin

No individuals identified any conflicts of interest with respect to the that required management.

3.3 Internal Referrals

In accordance with the documented process, the following referrals were sent to Council stakeholders for comment regarding the application:

- To Suzy Lawrence (Principal Planner Strategic & Place Planning 2) dated 23 September 2022 regarding how Conservation Zones Review impact the subject property and particularly if the rezoning proceeds. No issues were identified in the response.
- To Brendan Smith (Team Leader Biodiversity and Planning Environment & Biodiversity - Bushland & Biodiversity) regarding any Environment and Biodiversity feedback. No issues were identified in the response.
- To Brendan Gavin (Principal Planner Heritage - European - Strategic & Place Planning 1) regarding Non-Indigenous Heritage feedback. The response identified that Heritage can support the planning proposal, but there are some concerns to be considered at the development application stage.
- To Jeremy Smith Manager (Park Assets - Planning Design & Delivery) for feedback from Park Assets. The response identified that Park Assets are able to support the planning proposal but raised some issues relating to the Deed of Management. It was determined that these issues are not specifically related to the Planning Proposal but may be addressed later.



3.4 Community Consultation

3.4.1 Notification

The Planning Proposal was originally placed on non-statutory public exhibition for fourteen days in accordance with the Northern Beaches Community Participation Plan from 28 September to 13 October 2022. Notification letters were sent to the following owners and occupiers:

- Anthony William Cripps.
- Suzannah Victoria Plowman.
- Simon Trentham Fielding May.
- Jason Bradley Smith..
- David Andrew Thomas Thomas & Elizabeth Helen Thomas.
- Nancye Elizabeth Walton.
- The Resident at 15A Florida Road, Palm Beach NSW.
- Paul Howard Warren & Elizabeth Warren.
- The Resident at 6A Mitchell Road, Palm Beach NSW.
- W G Adams.
- Council's Property Team and Parks and Recreation Team.

In addition to the notification letters, Council undertook the following communications:

- Emails to community members who have registered their interest;
- An updated Council Public Exhibition website 'Your Say' with relevant information; and
- Information in Council's Community News.

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

3.4.2 Submissions

A total of six valid submissions were received during the non-statutory exhibition period, which raised the following issues:

- 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
- That the Planning Proposal is unlawful.

One (1) submission was received after 21 October 2022 but was still considered in the review process. The submissions included a response from Piper Alderman on behalf of Jason and Jodie Smith raising concerns that:

- the making of the Planning Proposal without a connected development application is contrary to section 3.38 of the Environmental Planning and Assessment Act 1979 (EP & A Act);
- The notification of the Planning Proposal is contrary to 3.40(1) of the Act;



- the breaches lead to the invalidity of any amendment made pursuant to the LEP as a result of the Planning Proposal; and
- the Planning Proposal is unclear in its terms.

Council has considered the issues raised in submissions and prepared a response table which was attached to the report to Council.

3.5 Planning Proposal Assessment

The Planning Proposal for Amendments to Pittwater Local Environmental Plan 2014 (PLEP 2014) 6 Mitchell Road, Palm Beach was provided in November 2022.

CKA reviewed the following documentation relating to the assessment of the Planning Proposal:

- The Planning Proposal for Amendments to Pittwater Local Environmental Plan 2014 (PLEP 2014) 6 Mitchell Road, Palm Beach dated November 2022
- Northern Beaches Local Planning Panel Assessment Report for PEX2022/0003 Planning Proposal at 6 Mitchell Road, Palm Beach.
- Minutes of the Northern Beaches Local Planning Panel Meeting held via teleconference on Wednesday 14 December 2022.
- An Email dated 12 December 2022 regarding a question raised by NBLPP Panel member, Kara Krason and the subsequent response from Robert Platt via email on 13 December 2022.
- The Council Report for Planning Proposal for PEX2022/0003 at 6 Mitchell Road Palm Beach.

4. Findings

Based on the probity advisor's observations and the information provided by Northern Beaches Council and reviewed by the probity advisor, it is the opinion of the probity advisor that:

- The assessment of the Planning Proposal for 6 Mitchell Road, Palm Beach (PEX2022/0003) has been undertaken in accordance with Council's procedures;
- all relevant parties were aware of responsibilities to disclose conflicts of interest and there were no conflicts of interest identified by the Council officers involved in the process;
- The interest of Council as an affected property owner was effectively managed, with appropriate separation in place;
- The Planning Proposal was assessed fairly, with no evidence of bias;
- The submissions received through the community consultation and internal referrals were appropriately considered through the process.
- the principles of probity have been observed throughout the process; and
- the process has been undertaken in accordance with applicable legislation, guidelines and policies.

No probity issues have been identified that would prohibit progress of the proposal.

Probity Advisor

Dated: 25 January 2023



Mark Henderson

MANLY VALE DEVELOPMENTS NO. 2 PTY LIMITED

23 March 2022

The General Manager
Northern Beaches Council
P.O Box 82
MANLY NSW 2095

Dear General Manager

RE: DEVELOPMENT APPLICATION 2020/0824 (the "DA")
PROPERTY: 321-331 CONDAMINE STREET, MANLY VALE (the "Property")

Manly Vale Developments No. 2 Pty Limited ("Owner") has made the above DA in respect of the above Property.

This letter constitutes an offer by the Owner to enter into a voluntary planning agreement ("VPA") with Northern Beaches Council in connection with the DA.

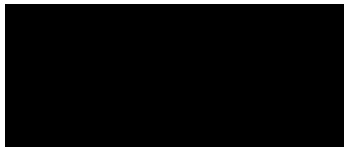
The Owner offers the following to be implemented by way of voluntary planning agreement:

1. The parties to the VPA will be the Owner (being the registered owner of the Property) and the Council.
2. The VPA will apply to the Property and will be registered on title within 14 days of the VPA being executed by all parties.
3. The VPA will apply to the development the subject of the DA ("Development").
4. The provision to be made under the VPA will be the dedication to Council of 1.4m wide x 38.075m long strip of land adjacent to Summerville Place to be used to widen Summerville Place ("the Land"). A plan showing the proposed area of dedication is attached to this letter.
6. The dedication of the Land would occur by way of plan of subdivision to be registered once the building and civil works are complete and prior to the issue of any occupation certificate in respect of the Development.
7. A right of footway will be created as an easement in gross (limited in height) in accordance with the hatching shown on the plan annexed.
7. The VPA shall not exclude the application of section 7.11, 7.12 or 7.24 of the EP&A Act.
8. The dedication of the Land shall not be taken into consideration in determining a development contribution under section 7.11.
9. The Land to be dedicated shall be used for the purpose of widening Summerville Place.
10. The VPA will provide for security by being registered on title of the Property so that it runs with the Land and by including a provision in the VPA that the Property cannot be transferred unless the Owner causes the transferee to enter into a deed by which the transferee agrees to be bound by the VPA.
11. The VPA will not operate unless and until Council grants consent to the DA.

12. In the event that consent is granted to the DA then a condition will be imposed on the Consent requiring the Owner to enter into the VPA upon Council notifying the Applicant in writing that it agrees to enter into the VPA.
13. The VPA will be otherwise in accordance with Council's Planning Agreement Guidelines December 2019.
14. The Owners obligations under the VPA will be undertaken and completed at the Owners cost. For the avoidance of doubt there will be no cost to Northern Beaches Council.

Yours faithfully

MANLY VALE DEVELOPMENTS NO. 2 PTY LIMITED



.....

DRAFT
Planning Agreement
Environmental Planning and Assessment Act 1979 (NSW)
321-331 Condamine Street Manly Vale New South Wales

This Agreement is dated:

PARTIES

Northern Beaches Council (ABN 57 284 295 198) of 725 Pittwater Road, Dee Why, New South Wales (**Council**)

and

Manly Vale Developments No 2 Pty Limited (ACN 604 334 796) of 'Stanton Financial Services 1 & 2', 50 Murray Street, Sydney, New South Wales (**Developer**)

BACKGROUND

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land.
- C. On 24 July 2020, the Developer lodged Development Application DA2020/0824 with Council for Development Consent to carry out the Development on the Land.
- D. The Developer made an offer to enter into a planning agreement associated with the Development Application on 22 December 2021.
- E. The Development Application DA2020/0824 was the subject of Land and Environment Court proceedings. On 11 February 2022 the Land and Environment Court granted Development Consent to the Development Application subject to conditions, including a deferred commencement condition requiring the Developer to enter into a planning agreement with Council to dedicate a 1.4 metre wide by 38.075 metre long, strip of Land adjacent to Somerville Place, Manly Vale, for the purposes of road widening and consistent with the Developer's offer dated 22 December 2021. A right of footway will also be created as an easement benefiting Council.
- F. The Developer has offered to enter into this Agreement with Council to secure the dedication of the Land and creation of easement referred to in E above.

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OPERATIVE PROVISIONS

It is agreed:

1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*.

Address for Service means the address of each Party appearing in Clause 11 or any new address notified by any Party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Consent Authority has the same meaning as in the Act.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Developer means the Developer and the Landowner, unless other specified in this Agreement.

Development means a shop-top housing development comprising a four-storey building over a two-level basement carpark with four retail tenancies, storage areas, plant rooms, loading bay, and three levels of apartments above and around a centralised internal courtyard, as approved under the Development Consent for DA2020/0824.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose.

Land means Lots 20-22 and 25 in DP11320, and Lot 123 in DP37259.

Party means a party to this Agreement, including their successors and assigns.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919 (NSW)*.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Subdivision Certificate has the same meaning as in the Act.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.

2. Operation and application of this Agreement

2.1 Operation of this Agreement

This Agreement commences on the date that it is signed by all the parties.

2.2 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2.3 Application of this Agreement

This Agreement applies to the Land and the Development.

2.4 Application of sections 7.11, 7.12 and 7.24 of the Act

This Agreement shall not exclude the application of sections 7.11, 7.12 and 7.24 of the Act.

3. Interest in Land

The Developer represents and warrants that it is:

- 3.1** the owner of the Land; and
- 3.2** legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 4 to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 4.

4. Registration

- 4.1** Within 14 Business Days of receiving a copy of this Agreement executed by Council, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:

- 4.1.1** the consent of each person, as required by the Registrar-General, who:

- 4.1.1.1** has an estate or interest in the Land registered under the Real property Act; or

- 4.1.1.2** is seized or possessed of an estate or interest in the Land,

to the registration of this Agreement on the title to the Land and to the terms of this Agreement; and the execution of any documents;

- 4.1.2** the production of the relevant certificates of title; and

- 4.1.3** the lodgement of this Agreement in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land within 14 Business Days of execution of this Agreement.

4.2 Evidence of registration

The Developer must provide Council with evidence of the registration of this Agreement pursuant to clause 4 within 14 Business Days of such lodgement at the NSW Land Registry Services. This must be in the form of a title search for the Land (all allotments) from Land Registry services.

5. Development contributions to be made under this Agreement

SCHEDULE 1 – REFERENCE SCHEDULE

Specify the development contributions to be made under the Agreement; when they are to be made; and the manner in which they are to be made.

Item	Name	Description
1	Dedicated Land	<p>Land being approximately 53m2 in size shown in the draft Proposed Plan of Subdivision of LOTS 20-22 & 25 in DP11320 AND LOT 123 in DP37259, Issue A, dated 17 January 2022 (Plan of Subdivision) and contained in Attachment 1, for the purpose of widening the road reserve at Somerville Place.</p> <p>The timing of the dedication is to occur:</p> <ul style="list-style-type: none"> • following the construction of Somerville Place by the Developer and appropriate inspections/signoff by Council, and • via the issue of a Subdivision Certificate by Council, and • prior to the issue of an Occupation Certificate for Development Consent DA2020/0824.
2	Public Benefits	<p>Creation of an easement benefiting Council for public access across a privately owned footpath, as shown in the Proposed Plan of Subdivision contained in Attachment 1.</p> <p>The easement is to be created through the registration of a Subdivision Certificate issued by Council.</p> <p>The easement is to be created prior to the issue of an Occupation Certificate for Development Consent DA2020/0824.</p>

6. Dedication of Land

SCHEDULE 2 – DEVELOPER'S WORK

Specify the times at which, the manner in which and the public purposes of the dedication

Item of Work	Development Stage	Final Inspection Stage	Relevant Drawing Numbers
Road widening and pedestrian footpath	As part of the Development Consent	First inspection required during construction. Final inspection to occur following the completion of	Gartner Trovato Architects Civil Works Plan C01, C02 and C03

		construction and prior to dedication of the land and registration of the easement	
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7. Application of section 7.11 and section 7.12 of the Act to the development

This Agreement shall not exclude the application of sections 7.11, 7.12 and 7.24 of the Act.

8. Review of this Agreement

This Agreement may be reviewed with agreement from both parties and in accordance with all legislative requirements.

9. Dispute resolution**9.1 Not Commence**

A Party must not commence any court proceedings relating to a dispute unless it complies with this Clause 9.

9.2 Notice of Dispute

If a Party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other Party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No Party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

9.3 Response to Notice

Within ten (10) business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

9.4 Negotiation

The nominated representative must:

- (a) meet to discuss the matter in good faith within five (5) business days after service by the Respondent of notice of its representative.
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

9.5 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute (Dispute Notice) by mediation under clause 9.6 or by expert determination under clause 9.7.

9.6 Mediation

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- a) the parties must agree to the terms of reference of the mediation within five (5) business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute.
- b) the Mediator will be agreed between the parties, or failing agreement within five (5) business days of receipt of the Dispute Notice, either Party may request the President of the Resolution Institute to appoint a mediator.
- c) the Mediator appointed pursuant to this clause 9.6 must:
 - i. have reasonable qualifications and practical experience in the area of the dispute; and

- ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties.
- e) the parties must, within five (5) business days of receipt of the Dispute Notice, notify each other of their representatives who will be involved in the mediation.
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- g) in relation to costs and expenses:
 - i. each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that Party.

9.7 Expert Determination

If the dispute is not resolved under clause 9.4 or 9.6 the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- a) The dispute must be determined by an independent expert in the relevant field:
 - i. agreed upon and appointed jointly by Council and the Developer; or
 - ii. in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales.
- b) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause.
- c) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination.
- d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice.
- e) each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- f) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any Party, in which

event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

9.8 Litigation

If the dispute is not finally resolved in accordance with this clause 9, either Party is at liberty to litigate the dispute.

9.9 Continue to perform obligations

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

10. Enforcement

- 10.1** Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.
- 10.2** Until such time as the land has been dedicated to Council and the easement has been registered, the Developer must:
- a) Notify Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made.
 - b) At the time it lodges any application for a construction certificate notify the Certifying Authority in writing of the existence and terms of this Agreement.
 - c) Procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue an Occupation Certificate until Council provides written confirmation that the contribution identified in clause 5 – Schedule 1 has been provided.
- 10.3 Right to Lodge a Caveat**
- 10.3.1. The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of Development Consent and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.
- 10.3.2. The Developer will upon execution of this Agreement deliver to Council a caveat in registrable form with the consent to caveat signed by the Developer notifying Council's interest created by this Agreement together with a cheque in favour of NSW Land Registry Services for the registration fee on the caveat.
- 10.3.3. Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms.

- 10.3.4. Upon registration of the Agreement on the title to the Land in accordance with clause 4 or surrender of the Development Consent, the Developer will be entitled to withdrawal of the caveat.

11. Notices

- 11.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- a) Delivered or posted to that Party at its address set out below.
- b) Emailed to that Party at its email address set out below.

Council

Attention: CEO, Northern Beaches Council

Address: PO Box 82 Manly, NSW, 1655

Email: council@northernbeaches.nsw.gov.au

Developer

Attention: Moe Jarra

Address: PO Box 456, Pyrmont NSW 2009

Email: reception@citegroup.com.au and mj@citegroup.com.au

- 11.2 If a Party gives the other Party three (3) business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

- 11.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- a) If it is delivered, when it is left at the relevant address.
- b) If it is sent by post, two (2) business days after it is posted.
- c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

- 11.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

12. Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is

not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

13. Assignment and dealings

Until the Land is dedicated and the easement is registered, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

- 13.1** Gives Council no less than twenty (20) business days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land.
- 13.2** Procures that any buyer, transferee, assignee or novatee promptly executes an Agreement in favour of Council whereby the buyer, transferee, assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Agreement.
- 13.3** In the event of a proposed charge, mortgage, encumbrance or other dealing with the Land, the novatee provides to Council a bank guarantee unlimited in time from a bank and on terms acceptable to Council to secure the payment of the development contribution.

14. Costs

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer.

15. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

16. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

17. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

DRAFT Planning Agreement 321-331 Condamine Street Manly Vale

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

21. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

22. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

23. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Execution

Dated:

Executed as a deed:

**Executed by Manly Vale Developments
No 2 Pty Ltd (ACN 604 334 796)** in
accordance with section 127(1) of the
Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

**Signed sealed and delivered by Northern
Beaches Council** by its authorised delegate
in the presence of:

_____ ←
Signature of Witness

_____ ←
Signature of delegate

Signature of witness

Name of delegate (print)

Address of witness

Authority

Note: the purpose of this explanatory note is to provide details about this Agreement. This explanatory note should not be used to assist in construing this Agreement.

Explanatory Note

Proposed draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979 (NSW)*

1. Parties

Northern Beaches Council (*Planning Authority*)

Manly Vale Developments No 2 Pty Ltd (*Developer*)

2. Description of subject land

Lots 20-22 and 25 in DP11320, and Lot 123 in DP37259

3. Description of proposed change to environmental planning instrument/development application

DA2020/0824 for shop-top housing development comprising a four-storey building over a two-level basement carpark with four retail tenancies, storage areas, plant rooms, loading bay, and three levels of apartments above and around a centralised internal courtyard, as approved under the Development Consent for DA2020/0824.

4. Summary of objectives, nature and effect of the proposed draft Planning Agreement

The Planning Agreement will deliver the following contributions to Council:

Dedication of Land to Council being approximately 53m² in size shown in the draft Proposed Plan of Subdivision of LOTS 20-22 & 25 in DP11320 AND LOT 123 in DP37259, Issue A, dated 17 January 2022 (**Plan of Subdivision**), for the purpose of widening the road reserve at Somerville Place and contained in **Attachment 1**.

Creation of an easement benefiting Council for public access across a privately owned footpath, as shown in the Plan of Subdivision.

The following public benefits are afforded by this Planning Agreement:

- The dedication of Land will be at no cost to Council and will provide a widened road reserve, resulting in it being 6 metres in width, and goes towards partially achieving the planned future outcome for Somerville Place.
- Widening this section of Somerville Place improves the utility of this road (which will be reconstructed under DA2020/0824) and will contribute to the future anticipated two-way operation, improving traffic movements.
- Public access, by way of a registered easement benefiting Council, over the privately-owned land (that will contain a footpath constructed under DA2020/0824) provides a safe pedestrian access to the local road network.

DRAFT Planning Agreement 321-331 Condamine Street Manly Vale

5. Timing of delivery of the public community benefit *(Note: Information is to be provided on the timing of delivery of the proposed benefits in relation to the issuing of construction, occupation or subdivision certificates.)*

Name	Timing
Dedicated Land	<p>The dedication of Land to Council is to occur:</p> <ul style="list-style-type: none"> • following the construction of Somerville Place and appropriate inspections/signoff by Council, and • via the issue of a Subdivision Certificate by Council, and • prior to the issue of an Occupation Certificate for DA2020/0824.
Easement	<p>The easement is to be created through the registration of a Subdivision Certificate issued by Council.</p> <p>The easement is to be created prior to the issue of an Occupation Certificate for DA2020/0824.</p>

6. Other Matters

Signed and dated by all Parties

Note: This template has been drafted for a proposed draft planning agreement, but applies equally to a proposed amendment or revocation of a VPA

Attachment 1 – Draft Plan of Subdivision

PLAN FORM 2 (A2) WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION SHEET 1 OF 1 SHEETS

DRAFT PLAN - SUBJECT TO FINAL SURVEY

SOMERVILLE PLACE

SUNSHINE STREET

CONDAMINE STREET

Proposed Lot 1
(BEING THE SUBDIVISION OF LOTS
20-22 & 25 IN DP11320 AND LOT
123 IN DP37259)

(R) PROPOSED ROAD WIDENING OF SOMERVILLE PLACE (TO BE DEDICATED TO THE PUBLIC)

PROPOSED EASEMENTS

(A) RIGHT OF FOOTWAY VARIABLE WIDTH

THIS PLAN REPRESENTS A PROPOSAL TO SUBDIVIDE THE SITE FOR THE PURPOSE OF ROAD WIDENING AND IS SUBJECT TO COUNCIL APPROVAL.


ALL DIMENSIONS SHOWN ARE SUBJECT TO FINAL SURVEY

THE PLAN IS NOT SUITABLE FOR REGISTRATION AT LRS AND NUMEROUS AMENDMENTS AND ADDITIONS WILL BE REQUIRED TO MEET THE REQUIREMENTS OF COUNCIL AND LAND REGISTRY SERVICES

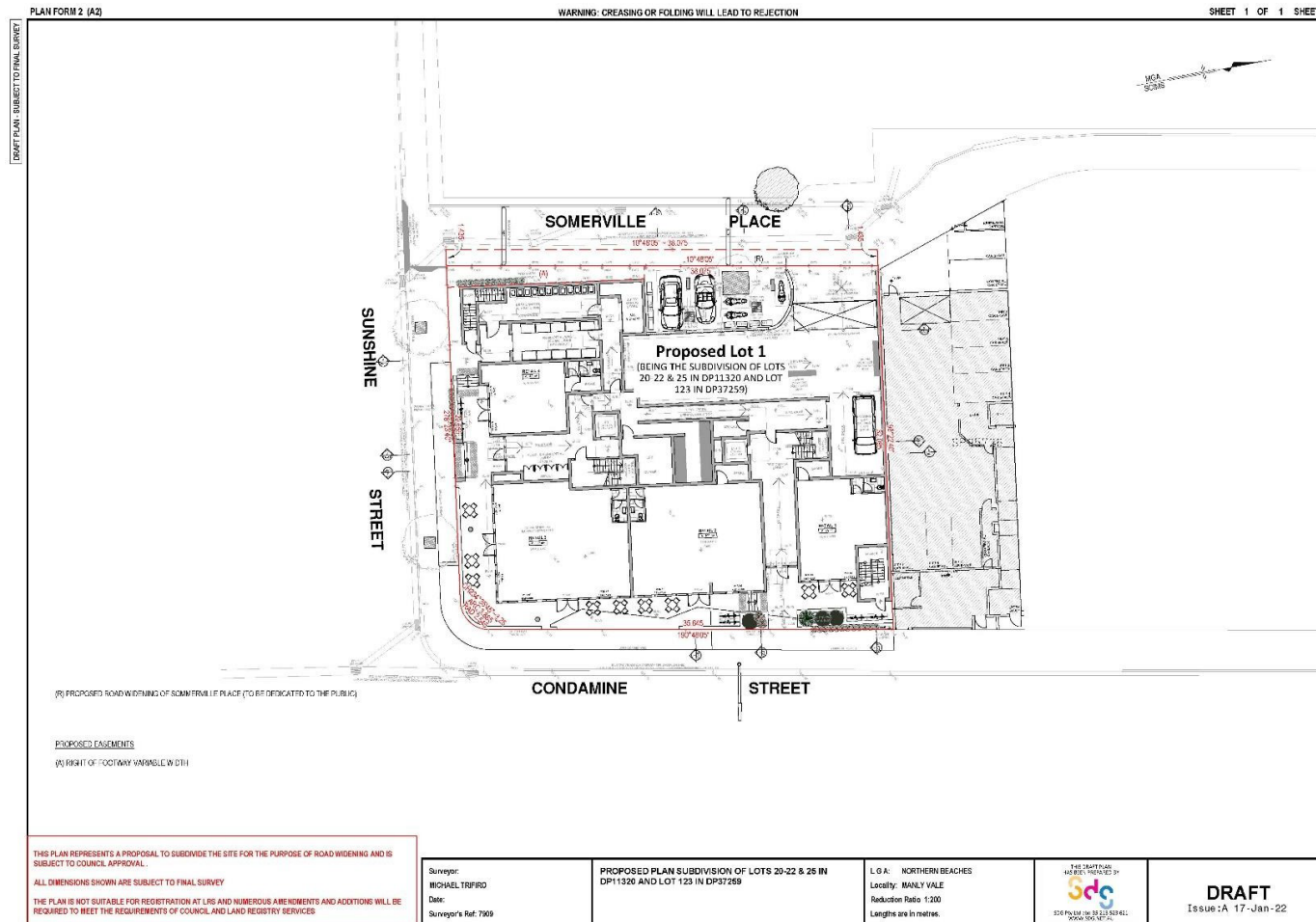
Surveyor:
MICHAEL TRIFIRO
Date:
Surveyor's Ref: 7509

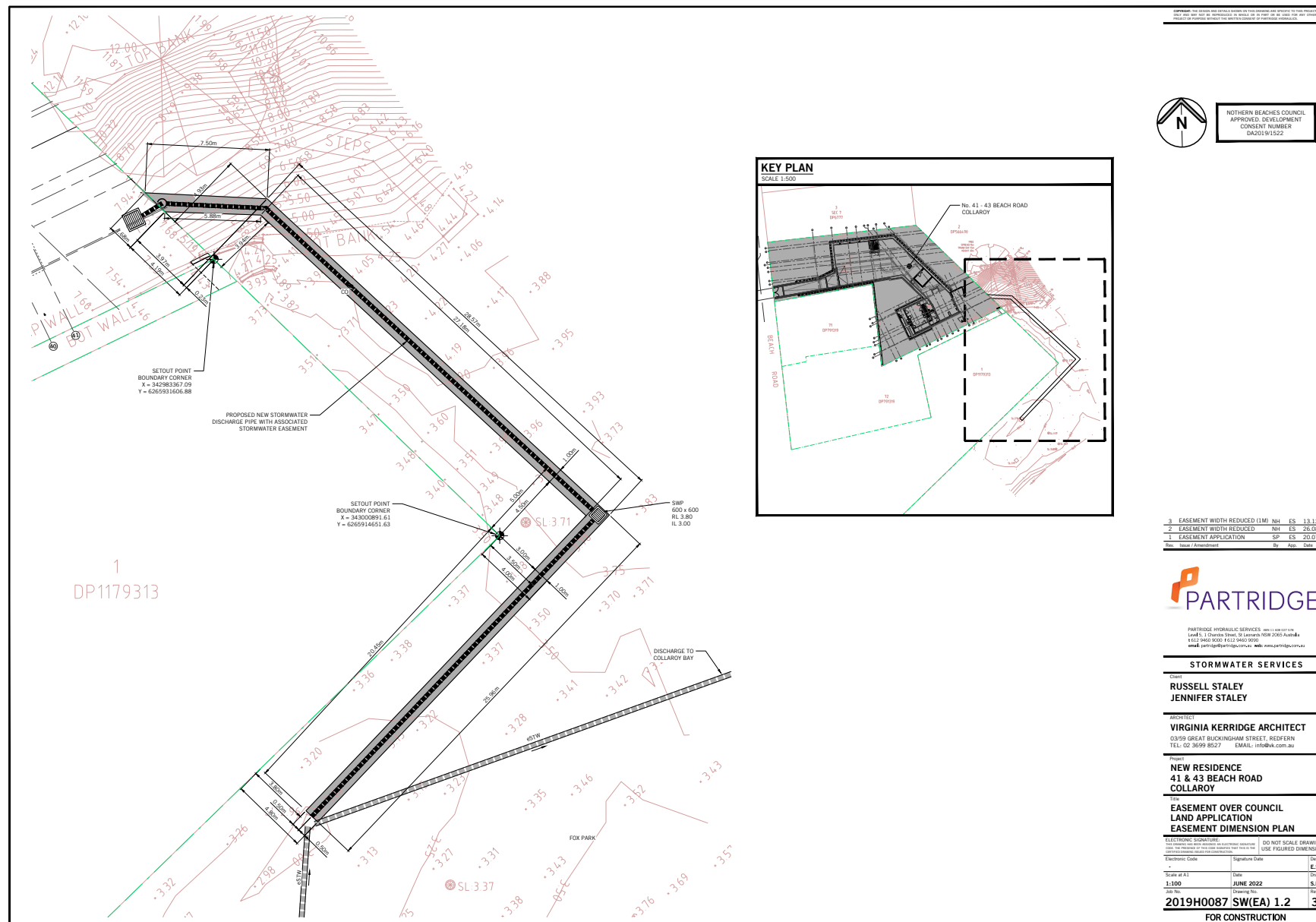
PROPOSED PLAN SUBDIVISION OF LOTS 20-22 & 25 IN DP11320 AND LOT 123 IN DP37259

LGA: NORTHERN BEACHES
Locality: MANLY VALE
Reduction Ratio 1:200
Lengths are in metres.

1:200 2021 LGA
MAP PREPARED BY

100% FULLY QUALITY ASSURED
WWW.SDS.CO.NZ

DRAFT
Issue: A 17-Jan-22







Community and Stakeholder Engagement Report

Proposed Easement over Fox Reserve, Collaroy

Consultation period: Friday 4 November 2022 to Sunday 4 December 2022

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1. Summary




This report outlines the outcomes of community and stakeholder engagement as part of a proposal to grant an easement that would drain water over Fox Reserve, Collaroy to benefit 41 and 43 Beach Road, Collaroy.

The feedback collected during consultation indicated concern for the proposed easement over Fox Reserve with comments citing the loss of public land due to the easement to drain water.




Feedback also suggested Council should consider the effects on the surrounding land that would result from the easement.

The proposed easement is for the formalisation and connection of a private drainage line to the existing stormwater pipe. This easement will not result in the loss of public land or recreational use.

1.1. Key outcomes

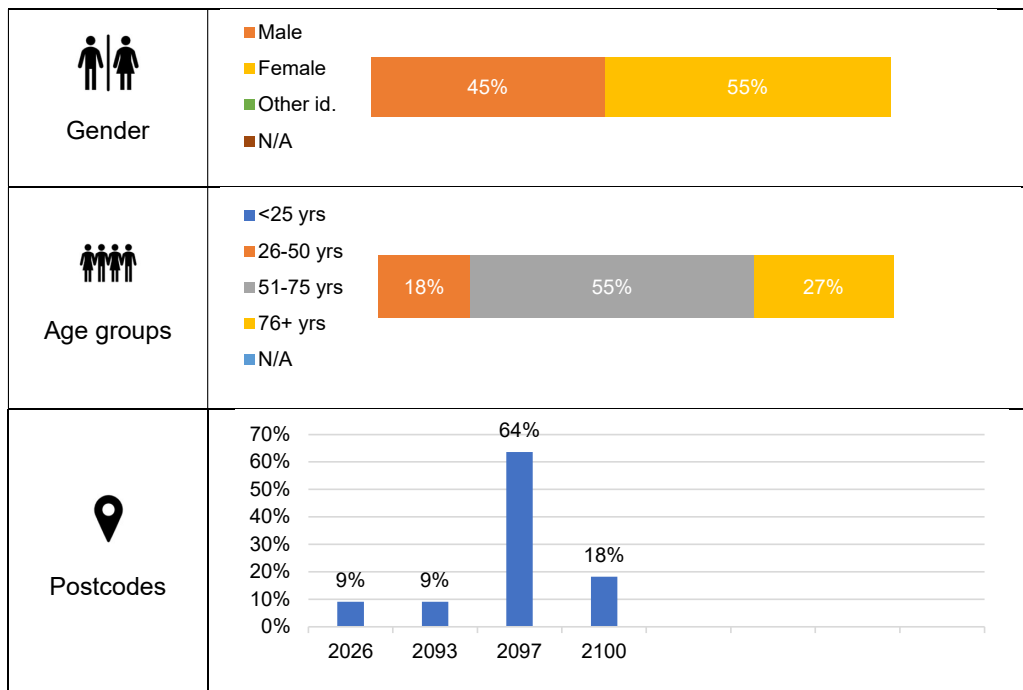
 Total unique responses	11	
 How responses were received	Submission form	Completions: 11
 Feedback themes	Loss of public land Environmental Impact Trees	Compensation Alternative means to drain water

1.2. How we engaged

 Have Your Say: visitation stats	Visitors: 691	Visits: 795	Average time onsite: 1 min 40 secs
 Print media and collateral	Mailout to neighbouring residences Site signs used:		Distribution: 13 Number of signs: 1
 Community Engagement (fortnightly) newsletter: 2 editions Council (weekly) e-News: 1 edition			Distribution: Approx. 22,000 subscribers Distribution: Approx. 180,000 subscribers

Electronic direct mail (EDM)		
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1.3. Who responded¹



2. Background

A Stormwater Drainage application (S68A2022/0003) was submitted to Council in March 2022 to propose outfall arrangements to drain water. Council's Development Engineering team has refused the application for the following reason:

"The private stormwater drainage line that is proposed to run through the adjacent Council public reserve and connect to an existing drainage pit requires the creation a drainage easement."

Therefore, the applicant has submitted an Easement over Council Land application.

3. Engagement objectives

Community and stakeholder engagement aimed to:

- build community and stakeholder awareness of participation activities
- provide accessible information so community and stakeholders can participate in a meaningful way

¹ Demographic data was gathered by request only. The data represented only includes those respondents who provided this detail.

- identify community and stakeholder concerns, local knowledge and values.

4. Engagement approach

Community and stakeholder engagement for the proposed easement over Fox Reserve, Collaroy was conducted between Friday 4 November 2022 and Sunday 4 December 2022.

The engagement was planned, implemented and reported in accordance with Council's [Community Engagement Matrix](#) (2017).

A project page² was established on our have your say platform with information provided in an accessible and easy to read format.

The project was primarily promoted through onsite signage, resident letter notifications, and our regular email newsletter (EDM) channels.

Feedback was captured through an online submission form embedded onto the have your say project page, with an open-field comments box providing community members a space to share their feedback about the proposal.

Email and written submissions were also invited and contact details for the project manager provided should there be questions from the community.

5. Findings

A review of the feedback collected during consultation indicated a number of objections for the proposed easement over Fox Reserve, with comments citing concern about the loss of public land due to the easement to drain water.

Feedback also suggested Council should consider the effects on the surrounding land that would result from the easement.

Issues and considerations raised in the feedback are outlined in the table below and Council responses are provided.

Table 1: Issues, change requests and other considerations

Theme	Issues, change requests and other considerations raised	Council's response
Loss of public land	This land is for the public and should not be just for the benefit of an individual	An easement is a common legal agreement between Council and adjacent property owners to allow for the connection of services from a neighbouring property to services that run through Council land such as stormwater, sewer, and water

² <https://yoursay.northernbeaches.nsw.gov.au/proposed-easement-over-fox-reserve-collaroy>

		<p>mains. Easements do not result in the loss of any public land as they only confer rights for the property owner to connect underground services and do not provide for exclusive use or access. The proposed easement for the stormwater connection will be required to be underground for minimal disturbance to the reserve. There is also precedence with existing easements on Fox Reserve for underground stormwater connections. There has been no impact on the recreational use of this public reserve from these existing easements.</p>
Environmental Impact	<p>There is concern about the environmental impact from the creation of this easement such as sand erosion and flooding occurring in the Collaroy area.</p>	<p>The proposed easement is to connect private stormwater into an existing stormwater pipe. The additional amount of water being discharged into the existing pipe will not be materially increased and therefore will not materially increase the existing stormwater discharge into Fisherman's Beach. The connection to a formal stormwater system will improve overland flow running from the property across Fox Reserve.</p>
Trees	<p>Concern about the impact on the nearby Norfolk trees</p>	<p>A condition of consent for the Development Approval (DA2019/1522) is that all trees in the Reserve must be protected.</p> <p>Council has assessed the location of the easement with the location of the surrounding trees. Due to the distance from the easement pipes, there will be no impact to trees in the reserve.</p>
Compensation	<p>The one-time compensation payment is not comparable to the</p>	<p>The applicant is required to pay compensation to Council based on the impact of the</p>

	future needs of the reserve for the community.	<p>proposed easement on the current value of the reserve. The compensation fee to be paid would contribute to the ongoing maintenance and upgrade of Northern Beaches' parks and reserves.</p> <p>The easement does not confer exclusive access to the Reserve and after the pipes are installed and the applicant restores the Reserve, current use can be resumed.</p>
Alternative means to drain water	There should be other means for the property to drain water other than through public land	<p>The approved Development Application (DA2019/1522) included a condition for stormwater disposal to a level spreader system.</p> <p>However, certain weather events raised some issues with the above approach.</p> <p>To seek an alternative solution to drain water, the applicant has proposed a private stormwater drainage line through Fox Reserve and connection to the existing drainage pit.</p>

Appendix 1 Verbatim community and stakeholder responses*

Number	Submission
1	<p>I am someone who walks in this area and has so for years.</p> <p>Will the easement impact the norfolk pines and native trees already on the slope of the proposed area and cause them damage?</p> <p>The section in front of the properties has 2 large norfolk and 1 small norfolk that's roots go into the proposed easement area. Also there already is so much beach erosion in that location that the area where the easement is to be granted will remove all the current plant growth that is holding the sand there. It would take well over a year for that to regrow and in that time there will be an increase in sand/ beach erosion because of it.</p> <p>Considering the owners have so much land already why ruin the natural habitat, why does the drainage have to go to this location?</p> <p>It will ruin the area permanently if the easement is granted</p>
2	<p>Propose Easement over Fox Reserve, Collaroy.</p> <p>I've grown up at xx xxxxxxxxxxx xxx, Collaroy with my family and now visit my parents often to this beautiful place and community.</p> <p>Due to my upbringing in the "basin" area - walks to Long Reef, swims, windsurfing and diving/snorkelling at the back on Collaroy pool and basin area – I chose to study Marine Science at Sydney University (majoring in Sedimentology / Oceanography and Applied Maths) so I could contribute to the regeneration and restoration of the natural world – that was grounded in science. A lofty vision at the time, but one I have pursued in my career.</p> <p>I am now Managing Director of the xxxxxx xxxx xxxxxxxxxxx which engages in campaigns and investments that help shape a more sustainable future. We support initiatives that will lead to pollution reduction and natural ecosystem regeneration.</p> <p>Hence, as a Marine Scientist, a conservationist and a passionate local - I strongly object to the proposed easement over Fox Reserve, Collaroy for the following reasons:</p> <ul style="list-style-type: none"> - • The proposed drainage of the storm water in this area will further degrade the natural ecosystem. Over the last 40 years Fox Reserve has already seen overreach in vegetation clearing and cliff destruction. I welcome the stairs that have been constructed to protect the cliff face, but more must be done to enhance and restore this area rather than see proposals such as these which benefit a few "prime homeowners" and not the whole community for generations to come. • The aesthetic of the park would be compromised for all users (now and in the future) of the Reserve; and • The "payment of compensation" to the council is short-lived by any measurement that is applied to nature for decades to come. This needs to be accounted for, as many decisions are made for a decade at most – without due compensation given to generations. <p>I am happy to provide any further details.</p>

**Personal details and inappropriate language have been redacted where possible. Spelling and grammatical errors have been amended only where misinterpretation or offence may be caused.*

	xxxx xxxxxxxx Ph: xxxx xxx xxx
3	<p>I am very much against the proposal to put an easement in Fox Park for the filling reason;-</p> <p>1) The problem with the water was caused by the removal of the cliff by the developers. We all saw this coming as they bulldozed the rock to below sea level at lot41. Therefore as,</p> <p>2)the developer created the problem they have the responsibility to solve it on there own land, NOT ON PUBLIC LAND making the easement would be the Councils problem for ever.</p> <p>3) Problems with the easement would increase with time, creating increased expense for the Council. No amount of compensation now will cover the future expenses money.</p> <p>4) where the easement is planed is in a dip and will become water logged. This is where we sit/lie.</p> <p>Being a Scientist I understand the problems the easement will cause and my objection are based on Scientific Knowledge.</p> <p>I know the spot where the easement is planned and my family xxxxx have lived xxxxx very close to Fox Park xxxxx. And that spot is we sit/lie, picnic often on a daily basic.</p> <p>I would find it very irresponsible of the Council to allow this easement.</p> <p>Kind Regards, xxxxxxx xxxxxxxx</p>
4	<i>No submission recorded</i>
5	<p>1. It seems odd that an easement was necessary prior to the xxxxxx. Why is it necessary now?</p> <p>2. It also has all the hallmarks of very rich people throwing their weight around and getting a benefit that would not be provided to less influential people.</p> <p>3. There is precious little open space which is available to the public, and the reduction of such space, however small, for the benefit of private individuals should not be permitted by the Council.</p> <p>4. Why was the stormwater situation not resolved as part of the DA process. To be considering it now smacks of incompetence or arrogance.</p> <p>5. I am strongly against the Council granting this easement. Let the xxxxxxxx sort their own water drainage on their very large property.</p>
6	<p>I do not support this proposal.</p> <p>Public space is slowly being eroded away by property owners. This is a limited resource and once gone is gone for good. This is a short-term gain for the current property owners (until they sell it), but the public space should be preserved for future generations.</p> <p>xxxx xxxxx, Collaroy</p>
7	<p>I oppose the proposed grant of an easement over Council's Community Land known as Fox Reserve (Lot 2 DP 566490). The declared purpose of the easement to provide stormwater drainage seeks to permanently deny the public access and/or amenity within Fox reserve in order to provide a solution to a private issue. The stormwater issues for 41 and 43 Beach Road (Lots 1/DP300846 and 7/DP7391) are issues inherent to and created by the developer of the site and there is no justification for council to permit public funds and amenity to be impacted to resolve an issue that could and should have been resolved on the developer's site at the developer's expense. Had the developer taken adequate steps within the original design of their developments to address the stormwater runoff issues then there would be no need for access to public land to resolve their issue. It is not fair that (a) the community access</p>

	<p>and amenity at the site will be impacted, (b) that it will be a permanently impact, and (c) that the fragile nature of the natural sands, dunes and hillside leading to the upper portion of the reserve to the east of the developer's lots will be impacted by the works. Consequently I oppose this proposed easement.</p> <p>xxxx xxxxxxxx, xxxx-xxx-xxx</p>
8	<p>I do not consider that an easement on public land should be necessary. When developing private land, it seems reasonable to me that all works necessary for drainage are completed ON the private land. If there is inadequate land space available for dealing with associated drainage issues then it seems sensible that the development plans be adjusted to create the necessary space, rather than seeking to take this space from public land. I was unable to find any information which explained why the drainage works could not be completed on their own land, and why public land should be accessed. The land proposed for the easement is a highly sensitive and unstable dune area, and it seems sensible to me that this land be left undisturbed and the required drainage issues be dealt with on the private property. If this development sought to secure a drainage easement over a neighbouring private property, I doubt that it would be granted. Therefore the same principles should apply to public land.</p>
9	<p>I object to the drainage easement</p> <p>The building site was very heavily excavated well below the existing topography of the land.</p> <p>The proposal to drain storm water onto Fox park via an easement only will increase the likelihood of the area being flooded. The proposed exit of the storm water is sited in a dip of the existing land and would not easily drain away with the result of pools of water. This would seriously impact on the existing amenity.</p> <p>I therefore strongly oppose the granting of the easement</p>
10	<p>Dear Sir/ Madam,</p> <p>The proposal to gain an easement in an area that is subject to intermittent inundation now would appear to be completely unsustainable in the future.</p> <p>The requirement from council to deal with water retention and removal from a site would have been dealt with at the time of the proposal. This seems very late in the scheme of works to be proposing an alternative for water disposal from the site.</p> <p>The planned works would be, in the fullness of time subject to further inundation. It does not seem to me to be appropriate for council to be allowing any building closer to the ocean. The inadvisability of this is demonstrated by the sea wall building on the beach.</p> <p>Regards, xxxxx xxxxxxxx</p>
11	<p>As a local resident I am very concerned about this encroachment onto an already threatened foreshore due to sea level rise and global warming. Does this also cause disturbance to an already threatened and at risk beachfront?</p> <p>Why can't the storm water be disposed of in the usual means?</p>

Document administration	
Version	1.0
Date	18 January 2023
Approval	Content provided and approved by Property Commercial & Tourist Assets Team and Park Assets - Planning Design & Delivery Team. Responsible manager: Dominic Varde and Jeremy Smith
Status	Final
Notes	Community and stakeholder views contained in this report do not necessarily reflect the views of the Northern Beaches Council or indicate a commitment to a particular course of action.





Annam Road Reserve, Bayview
Proposed Community Garden

**Environmental Approval
Checklist
&
Draft Review of
Environmental Factors**
(EP&A Act - Part 5, Div 5.1)

Notes:

1. This document includes a MANDATORY checklist for ALL Capex projects.
2. This document includes an REF template (should this be required – as identified in the checklist).
3. Ensure that all licenses and approvals are received prior to the undertaking of any works.
4. Ensure all mandatory sections are completed prior to signature.
5. Make sure to provide necessary supporting evidence where applicable.

TRIM FOLDER / NUMBER C001799, 2022/524171

SECTION 1 - Details

(MANDATORY)

PROPOSAL TITLE: Annam Road Reserve, Bayview Proposed Community Garden

PROJECT OFFICER: [REDACTED]

BUSINESS UNIT PROPOSING ACTIVITY: Parks & Recreation

SECTION 2 - Applicability

(MANDATORY)

Is the proposed work a routine activity?

Where a routine activity is - simple, small-scale activities associated with regular (daily, weekly, monthly, etc.) and general upkeep or maintenance of a building, plant, or structure against normal wear and tear.

YES / NO

If Yes, activity can be undertaken without assessment but must be in line with relevant standards and assessment recorded in the appropriate location.

If No proceed to Section 3.

Note 1: must ensure "minimal" environmental impact by use of one of the following:

- Standard operating procedure;
- relevant Australian Standards;
- the Building Code of Australia;
- any relevant NSW Roads and Traffic Authority design guidelines;
- Ausspec;
- Northern Beaches Councils standard operating procedure;
- Northern Beaches Councils Pesticide notification plan;
- All product labels and warnings;
- Works that have previously been approved.

Note 2: If any Aboriginal cultural material or heritage constraints are found on any job site, all work should cease and the Office of Environment and Heritage and the Metropolitan Local Aboriginal Land Council notified immediately in accordance with the National Parks and Wildlife Act. An assessment can be undertaken by the Aboriginal Heritage Officer via Aboriginal Heritage Office.

SECTION 3 - Background

(MANDATORY)

Please attach any additional information to support the assessment

DESCRIPTION OF ACTIVITY:

A group of residents (the garden group) have applied to Council to establish a community garden at Annam Road Reserve which is located at 13 Annam Road, Bayview (Figure 1).

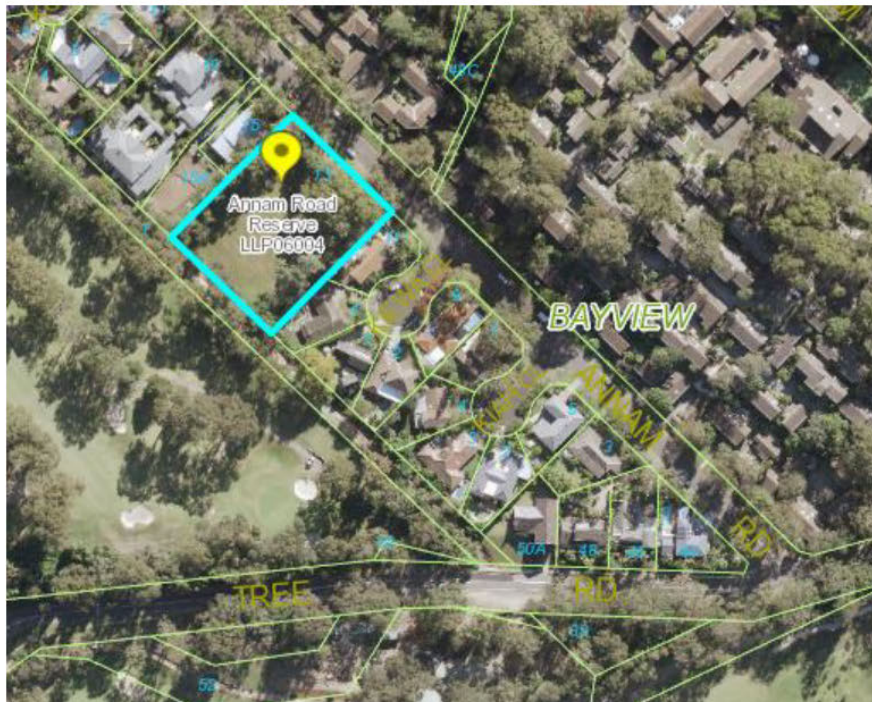


Figure 1. Annam Road Reserve, Bayview

The garden group are intending to grow organic produce (fruit and vegetables), flowering plants, promote sustainable lifestyles, provide a neighbourhood meeting place with opportunities for social interactions and to promote physical activity. Their objectives are:

- *To create a unique, safe, and supportive garden within the suburb of Bayview for the local community.*
- *To promote a sense of community where trust, effort, knowledge, skills, and responsibility are shared, where creativity and the environment are nurtured, and where philanthropy can flourish.*
- *To become a happy, enjoyable meeting place for the local community. A place where shared ideas of organic food growing, food preparation and eating become the norm and where education, peer learning and sustainable use of land as a valuable food resource is shared with the local community.*
- *To facilitate recreational activities that contribute to the physical and mental health and well-being of the local community as well providing environmental, social, and educational benefits.*
- *To work collaboratively with the community, government and businesses to establish a network to facilitate the establishment and on-going support of the Bayview Community Garden to make it a successful social activity for the local community.*

The garden group have developed a concept plan for a garden of approximately 450m² in size located on the eastern part of the reserve (Figure 2). The reserve is approximately 4,220m² in size with no park infrastructure.



Figure 2. Proposed garden location in Annam Road Reserve, Bayview

Their concept plan (Figure 3) is a formal layout which includes a covered gazebo, table and seats, shed, work bench, water tank, bbq, paths, stepping stones, raised garden beds, compost receptacles and worm farms, water feature, sculptures, large pots or urns, stone or timber block seats and a bike rack. The garden group have also asked about a driveway from Annam road to the proposed garden and access to water.

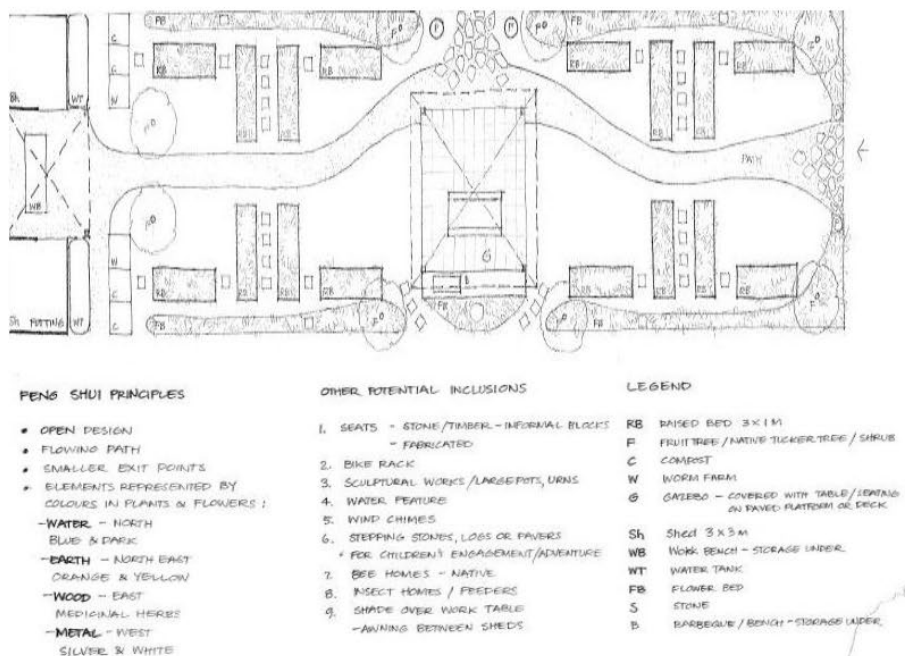


Figure 3. Draft concept plan for a proposed garden at Annam Road Reserve, Bayview

A preliminary review of the concept plan was undertaken and the water feature and wind chimes are not supported. Also, water access close to the garden would be required. Access to and from the road to the garden to be reviewed as part of the finalisation of the concept plan.

REASON FOR ACTIVITY: A group of residents (the garden group) have applied to Council to establish a community garden at Annam Road Reserve which is located at 13 Annam Road, Bayview (Figure 1).

LOCATION: 13 Annam Road, Bayview

LAND OWNER: Annam Road Reserve is community land owned by Council.

LAND ZONE: Public Recreation RE1. The proposal is consistent with RE1 and the Pittwater Natural Area Plan of management (which applies to this reserve).

TIMING AND DURATION OF WORKS

The timing and duration of works to establish a community garden in Annam Reserve would be determined once the processes outlined in Council's Community Gardens Policy and Guidelines (2020) are successfully completed - this includes:

- Council approves public exhibition of the proposal to establish a community garden in Annam Reserve
- Publicly exhibit the proposal
- Report to Council about the outcomes of the public exhibition
- Council approves the establishment of a community garden in Annam Reserve
- Garden group enter into an agreement (MoU) with Council for their management and development of the community garden
- Council reviews and agrees on the final garden concept plan, costings and the timing and duration of works to establish the garden
- Garden group acquires funds for the works they are responsible for as outlined in the agreement (MoU). Council approves funding through the usual budget process for work it is responsible for.
- Council reviews and agrees to the final concept plan and provides Owners Consent to commence works

APPROXIMATE COST:

The costs to establish and maintain the community garden will be establish when Council reviews the final garden concept plan (see the section above for more detail).

SECTION 3 continued (MANDATORY)

*All Tables below **MUST** be completed*

Table 1 will determine if the activity is Exempt Development. If the activity is Exempt Development, then no further assessment is required (other than sections 1-4).

Table 1			Yes	No
Q1	Is the activity listed as Exempt Development? (within SEPP Transport & Infrastructure 2021) If YES provide details below. For assistance please refer to a Principal Planner from the Development Assessment business unit.	<i>If YES, provide detail below and complete items 2 to 6 to determine if environmental assessment required</i> <i>If NO Continue to Table 2</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

WHY IS ACTIVITY EXEMPT: (provide details here of relevant section from exempt clauses and other relevant detail)				
WILL THE ACTIVITY:				
Q2	Involve the removal or damage to any remnant native vegetation or any construction works within Tree Protection Zones (under the drip line). Note. this excludes issues where there is a significant public risk posed from the vegetation. For assistance please see Natural Environment Officer in Bushland and Biodiversity team. *The proposal may require an additional tap that is in the canopy zone.	<p><i>If YES to any of these items, activity is not exempt continue to Table 2- Q7.</i></p> <p><i>If all items are NO, complete Approvals and Licences and Certifications</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Q3	Involve construction within 40 metres of a waterway that will impact geomorphology, groundwater, water quality or appearance of the foreshore or waterway. Note. This excludes the removal of built up sediment and maintenance works within drainage channels to restore the channel. For assistance please talk to the Senior Environment Officer – Catchments in Environment & Sustainability.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Q4	Have a negative impact on amenity in the area either during or post works.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Q5	Be immediately adjacent to or within a Threatened Ecological Community. (Check SEA or for assistance please talk to the Natural Environment Officer in Bushland and Biodiversity team)		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Q6	Disturb more than 40m ² excluding man-made surfaces (e.g./ road, sportsfield turf) and linear work such as trenching or kerb & gutter.		<input type="checkbox"/>	<input checked="" type="checkbox"/>

..continue to next page for exempt development

Certification Exempt

I certify that the proposed activity is exempt and will be undertaken in accordance with any relevant environmental controls, standards, procedures, etc. and that any other agency requirements will be met.

Executive Manager	Business Unit	Signature	Date
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Note 1: For EXEMPT Activities no further assessment is required. However, licenses or permits from other agencies may be required please complete section 4. If the activity is exempt the Executive Manager for the business unit of the proposal should complete the above certification.

Note 2: It is advisable that an informal impact assessment is undertaken as a risk management measure.

Table 2 will determine if the activity is Permissible Without Consent. If the activity is Permissible Without Consent then no Development Application is required.

Table 2			
	Assessment	Description and References	Tick box
Q7	Permitted Without Consent	<p>The activity is "Permitted Without Consent". Assessment is via Part 5 of the EP&A Act 1979 and Form 1 – Impact Assessment is to be completed, and/or an REF prepared.</p> <p>List the relevant Clause from SEPP Infrastructure or the LEP that determined this outcome below. For assistance please refer to a Principal Planner from the Development Assessment business unit.</p>	<input checked="" type="checkbox"/>
<p>Why is the Activity Permitted Without Consent:</p> <p>The use/activity can be described as a recreation area and garden landscaping, which does not require development consent by virtue of being development "permitted without consent" under the SEPP 2021 Transport and Infrastructure as follows:</p> <p>DIVISION 12 PARKS AND OTHER PUBLIC RESERVES</p> <p>Clause 2.73 DEVELOPMENT PERMITTED WITHOUT CONSENT</p> <p>(3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council – (a) development for any of the following purposes –</p> <p>(ii) recreation areas and recreation facilities (outdoor), but not including grandstands. (iv) lighting, if light spill and artificial sky glow is minimised in accordance with the Lighting for Roads and Public Spaces Standard.</p> <p>(v) landscaping, including landscape structures or features (such as artwork) and irrigation systems.</p> <p>(vi) food preparation and related facilities for people using the reserve</p> <p>Clause 2.74 EXEMPT DEVELOPMENT</p> <p>(1) Development for any of the following purposes that is carried out in the prescribed circumstances is exempt development</p> <p>(a) construction, maintenance and repair of:</p> <p>(i) walking tracks, boardwalks and raised walking paths, ramps, minor pedestrian bridges, stairways, gates, seats, barbecues, shelters and shade structures,</p>			

(1) (viii) seats, picnic tables, barbecues, bins (including frames and screening), shelters or shade structures.

Key planning controls

Attributes (Control Codes)		
Class	Type	Description
PlanLand	05AUG17-L	Flood Risk Management Policy 2017 - Low Risk
PlanLand	05AUG17-M	Flood Risk Management Policy 2017 - Medium Risk
PlanLand	3P21	Pittwater Z1 Development Control Plan
PlanLand	544	SEPP 44 Koala Habitat Protection
PlanLand	SINFam2016	DRAFT SEPP Infrastructure Amend Review 2016
PlanLand	5MPE	SEPP Mining Petroleum Prod& Extractive Ind 2007
PlanLand	5SR	SEPP (State & Regional Development) 2011
PlanLand	5SSD	SEPP State Significant Precincts 2005
PlanLand	5TMP	SEPP Miscellaneous Consent Provisions 2007
PlanLand	5VNRA	SEPP Vegetation in Non-Rural Areas 2017
PlanLand	620	Deemed SEPP - Hawkesbury-Nepean River
PlanLand	986	149 Response - Subject to Acquisition - Negative
PlanLand	989	149 Response - Road Widening - Negative
SILEP	ASS-05	Acid Sulfate Soils Map - Class 5
SILEP	BIO	Biodiversity Map
SILEP	HOB-I	Height of Buildings Map - I Maximum 8.5m
SILEP	LAP	Land Application Map
SILEP	LZN-RE1	Land Zoning Map - RE1 Public Recreation
P21DCP-BC	MDCP001	Pittwater LGA including the Pitt Waterway
P21DCP-BC	MDCP014	Flood Prone Land
P21DCP-BC	MDCP037	NOT the Pitt Waterway or WV Land Release Area
P21DCP-BC	MDCP039	NOT the Pitt Waterway/Scotland Is/Western FS
P21DCP-BC	MDCP047	NOT the Pitt Waterway
P21DCP-BC	MDCP053	NOT PittWway:WV/Release:AdjBushRes:NewpCtr: EHVC
P21DCP-BC	MDCP065	Wildlife Corridor (excl. Cat1/Cat2/Core Species)
P21DCP-BC	MDCP078	NOT Heritage item/area & NOT in vicinity
P21DCP-BC	MDCP080	Scenic Protection - General
P21DCP-D04	MDCP080d	Church Pt/Bayview - Scenic Protection - General
P21DCP-BC	MDCP081	NOT PittWway / NewpCtr / WV Land Release / EHVC
P21DCP-BC	MDCP082	NOT Newport Commercial Centre / EH Village Centre
P21DCP-BC	MDCP091	NOT Pitt Waterway / WV Land Release Area / EHVC
P21DCP-BC	MDCP092	NOT Pitt Waterway or Elanora Heights Village Centr
P21DCP-BC	MDCP093	Pittwater LGA & the Pitt Waterway NOT incl EHVC
P21DCP-BC	MDCP094	Section 94 - Residential Development
P21DCP-D04	MDCP250	Church Pt/Bayview Locality
P21DCP-D04	MDCP255	Church Pt/Bayview - NOT Flora&Fauna Cat 1/2 Area

Figure 5. Key attributes and planning controls. Ref. Council's Spatially Enabled Application (SEA)

Q8	Permitted With Consent	The activity is Permitted With Consent – a Development Application to be prepared and lodged with Council under Part 4 of the EP&A Act.	<input type="checkbox"/>
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SECTION 4 – Approvals from other Agencies

(MANDATORY)

Table 3 will identify what approvals, licenses and permits from other Agencies are required to undertake the proposed works. These approvals, permits and licenses MUST be obtained prior to the commencement of works. In some instances the agencies may request an Environmental and/or Species Impact Statement prior to granting approval.

Table 3			
Is the activity:	Approval required		If Yes
	YES	NO	

Working within or impacting on Threatened Species/Populations and/or Threatened Ecological Communities and/or causing any possible damage to those threatened species or communities. For assistance check SEA or for assistance please talk to the Natural Environment Officer in Environment & Sustainability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Must complete an REF and depending on the assessment the proposed works may require a license from Office of Environment & Heritage (OEH).
Working near Aquatic Reserves, Aquatic Habitat or damaging any marine vegetation such as sea grass, mangroves, etc. For assistance please talk to the Senior Environment Officer in Environment & Sustainability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	A Permit from the Department of Primary Industries is required.
Dredging of water or banks of creeks	<input type="checkbox"/>	<input checked="" type="checkbox"/>	A Permit from the Department of Primary Industries is required
Working within the 'place' of a Heritage Item identified under the NSW Heritage Act	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Refer to Councils Heritage Officer
Working near known aboriginal relics, places, or potential Aboriginal relics or places – Check with the Aboriginal Heritage Office. see APPENDIX 2 Aboriginal heritage potential desktop assessment checklist	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Must notify the Office of Environment and Heritage prior to commencing works
Working on vacant Crown Lands not under Council Control and/or Council not Trustee - check with the property office.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Permission must be sought from the Department of Primary Industries
Working on a Classified Roads – not under a current maintenance program	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Approval required from NSW Roads and Maritime Services
If polluting a waterway ie. dewatering, herbicide application, etc	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Licence from the Office of Environment and Heritage
Check Dial Before You Dig to identify any services that may be impacted	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contact the relevant service authority
On the open coast or estuary. Assistance can be provided from the Coast & Catchments team in Environment & Climate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Approval from the Office of Environment and Heritage may be required.
On land which is not owned or controlled by Council.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contact the landowner to obtain approval

Certification Sections 1-4

I certify that the above information in **Sections 1 to 4** is correct and I have endeavoured to clarify that all requirements have been met.

Project Officer [Redacted]	Business Unit Parks & Recreation	Signature [Redacted]	Date [Redacted]
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SECTION 5 – Form 1-REF - Consideration of Impacts of the Activity (MANDATORY if Q7 in Table 2 is YES)

Notes:

1. This Form 1 & Form 2 must be completed and evidence provided (you can refer to and attach additional documents to this assessment)
2. Assessment of all impacts must be provided; reason and justification for answers must be provided.
3. For all construction impacts of Minor or greater possible impacts, mitigation measures must be included and a final Impact determined. Additional information detailing justification and/or mitigation of the impact may need to be referenced, provided and attached to the assessment.
4. Possible impact is to be determined utilising the descriptions in the table below.
5. Construction impact - refer to all activities of undertaking the works, ongoing impacts, cumulative impacts, maintenance and permanent impacts.

1 - Negligible	2 - Minor	3 - Moderate or Greater
Does not create a nuisance	Creates a temporary nuisance	Creates a continuous or ongoing nuisance
Impacts contained within work site	Impact short term/localised, for life of project	Impact ongoing/long term or widespread impact
No detectable/noticeable change	Measurable change/may be offensive	Obvious change/offensive
Complies with industry guidelines	Exceeds industry guidelines (minor)	Exceeds industry guidelines (major)
Reasonable inconvenience/financial loss	Sustained/short term inconvenience/financial loss	Unacceptable inconvenience/financial loss
Change but similar to original land use	Slight or temporary change to land use	Transforms a locality permanently
No damage to heritage items or native flora or fauna	Heritage items or native flora and fauna able to be repaired/rehabilitated	Permanent damage/loss of a heritage item/flora or fauna from an area
No foreseen increase to risk from natural hazards	Slight increase to risk from natural hazards	Major increase to risk from natural hazards
Waste disposed/recycled of at licensed waste facility or reused immediately	Waste stockpiled with end use unknown, potential for temporary impact to air, soil, water	Long term contamination of air, soil or water due to waste disposal
No remediation required following work to prevent/remove pollution	Minor /short term site remediation required at completion of work to prevent/remove pollution	Extensive site remediation required over extended timeframe to prevent/remove pollution (e.g. soil or water contamination, severe soil erosion, large scale revegetation)

FORM - 1 REF – To address Part 8, Clause 171(2) Factors from the EP&A Regulation 2021

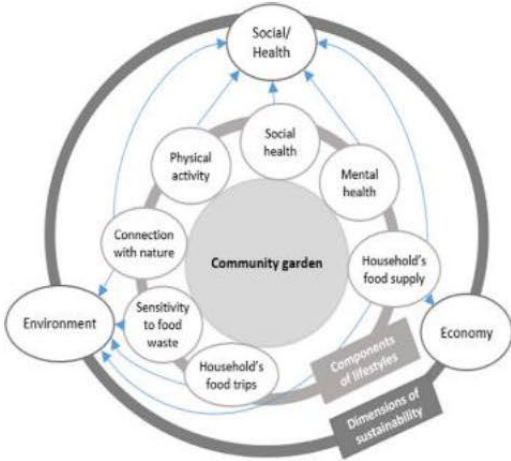
FORM 1 - IMPACT ASSESSMENT

	Description	Construction Impact			Mitigation Measures (detail measures)	Ongoing Impact		
A	Any environmental impact on a community <i>eg Social, economic and cultural impacts</i>							
	Impacts of the activity are considered minor: impacts are localised and will extend for the life of the project.	1	2	3	<p>The project will be presented to the Council for consideration for public exhibition. Neighbours will be notified via a letter box drop. Feedback received will be taken into consideration prior to approving the creation of the garden.</p> <p>Should the proposal be approved by the Council, noise will be managed in accordance with the <i>Protection of the Environment Operations Act, 1997 No 156</i>.</p> <p>It is proposed that garden activities are restricted to 7am to 8pm or dusk whichever is the earlier.</p>	1	2	3
	The community garden and its activities may have some impact on adjoining residences e.g. from noise	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Overall the activity is anticipated to have a positive impact socially, culturally, economically and culturally.							
B	Any transformation of a locality <i>eg . Human and non-human environment</i>							
	Impacts of the activity are considered minor: the activity will change the use of a portion of the locality/Reserve from turf into a community garden and related activities.	1	2	3	<p>To minimise transformation of the locality, the community garden has been located at the eastern side of the Reserve. This retains the majority of the open space for the wider community.</p>	1	2	3
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C	Any environmental impact on the ecosystems of the locality <i>Flora, fauna, ecological integrity, biological diversity, connectivity/fragmentation, air, water including hydrology, soil</i>							

<p>The key site attributes and the associated planning controls are provided in Table 2, Figure 5. The most relevant controls are summarised below:</p> <p>Impacts of the activity are considered minor.</p> <p>The Reserve contains stands of canopy trees particularly Turpentine trees (<i>Syncarpia glomulifera</i>) along the northern and eastern boundaries. However, the proposed community garden consists mostly of soft landscaping located on turf and distanced four metres from the tree trunks on the eastern side of the Reserve. See Figure 1 on page 3. The construction of the community garden by the group and their ongoing activities are not expected to impact negatively on the site ecosystems.</p> <p>The Reserve is mapped as Biodiversity under the Pittwater LEP 2014. (See Figure 9). A portion of the site is mapped as Littoral Rainforest Proximity area under the Coastal Management SEPP.</p> <p>The site is mapped as a Wildlife Corridor (excl. Cat1/Cat2/Core Species) under the Pittwater 21 DCP.</p> <p>The site is not mapped as having any threatened native vegetation communities, and there are no previous records of threatened species at the site.</p> <p>There is potential fauna and threatened species associated with the adjoining bushland within the neighbouring golf course and Barkala estate lands.</p> <p>A locally significant species that may frequent the site is the long-nosed bandicoot and perhaps other ground fauna such as blue tongued lizards or water dragons etc.</p> <p>The site is listed as Koala Habitat Protection in the SEPP 44. (Ref. SEA).</p>	<p>1</p> <p><input type="checkbox"/></p>	<p>2</p> <p><input checked="" type="checkbox"/></p>	<p>3</p> <p><input type="checkbox"/></p>	<p>An agreement with Council will require the community garden be located on the turf area, away from the canopy trees.</p> <p>Council's arborists suggested a four-metre buffer between the eastern boundary of the garden and the existing canopy trees. They also suggested that the northern boundary of the community garden be located clear of the canopy to provide solar access.</p> <p>Council's arborists will comment on the location of a tap within the canopy zone and supervise this work if required. Canopy trees will be protected in accordance with AS4970-2009.</p> <p>Water quality – the agreement with the garden group will specify that stockpiles of soil will be covered with fabric.</p> <p>The site's acid Sulphate Class 5 does not require any risk mitigation measures as advised by Northern Beaches Council Environment Health department.</p> <p>No poisons are to be used on the site that might impact native fauna. Should plantings need to be protected from herbivory then a physical exclusion measure such as mesh or wire is to be used to keep native animals out of the vegetable patches or the like.</p> <p>All existing canopy trees will be retained. This is consistent with the principles of the Koala SEPP 2021 which requires koala habitat to be properly considered during the development process and for council's to strategically manage koala habitat through koala plans of management.</p>	<p>1</p> <p><input type="checkbox"/></p>	<p>2</p> <p><input checked="" type="checkbox"/></p>	<p>3</p> <p><input type="checkbox"/></p>
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Annam Road Reserve is not impacted by flooding. Although the northern and southern boundaries may be subject to flooding.													
D	Any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality <i>eg Visual, recreational, scientific and other</i>												
Impacts of the activity are considered minor.				1	2	3	The location of the proposed garden is such that it does not abut neighbouring resident's fences and a buffer is allowed for. The concept plan will consider a design that is sympathetic to its location. The garden group will be required to ensure the garden is appropriately maintained to ensure visual amenity is not unreasonably impacted. Council will inspect the garden regularly.				1	2	3
The existing visual amenity of the Reserve is characterised as a large area of parkland (4234m ²) with canopy trees lining the boundaries. It is anticipated that the community garden will not be visually prominent from the street.				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>					<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The community garden will change the aesthetic and visual quality of the Reserve from within and for adjoining properties - from turf / parkland to part developed garden.													
The applicant's members include landscapers and artists. Their vision is to create a formal garden as a place for gardening and socialising.													
E	Any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations <i>eg Aboriginal heritage (including intangible cultural significance), architectural heritage, social/community values and identity, scenic values and other</i>												
Cultural, historical, archaeological etc values are considered negligible.				1	2	3	The proposal and the concept plan has been developed to enhance the visual amenity, aesthetic values and recreational opportunities of the park. Council is required to approve the final concept plan and will monitor the ongoing management of the garden to ensure Council's requirements are met.				1	2	3
There are no recorded Aboriginal heritage sites located within the Reserve.				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The parkland has recreational and aesthetic value for local residents. Much of the original parkland would be retained for other uses.													

F	Any impact on the habitat of protected animals (within the meaning of the Biodiversity Conservation Act 2016) <i>eg Listed species and habitat requirements/ critical habitat</i>								
	There are no threatened species recorded at Annam Road Reserve.	1	2	3	N/A	1	2	3	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G	Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air <i>eg Listed species, non-listed species and key threatening processes</i>								
	Potential impacts are considered minor.	1	2	3	Mitigation measures for protecting animals, plants and other forms of life are provided in this Table under Item C.	1	2	3	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

H	Any long-term effects on the environment <i>eg Ecological, social and economic</i>				Any works in the garden would be reversible in that the community garden could be removed in the future and turf reinstated should that be required.			
		1	2	3		1	2	3
	<p>Potential negative impacts of the activity are considered negligible.</p> <p>Some of the positive impacts of a community garden include linking people with nature, growing healthy organic vegetables, growing food locally (avoiding transport footprint), recycling food waste. Opportunities for socialising and connecting people are foreseen which can provide well being benefits.</p> <p>Community gardens promote sustainable lifestyles. See image below.</p>  <p>https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-019-6815-0/figures/1</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I	Any degradation of the quality of the environment <i>eg Ecological, social and economic</i>	1	2	3	Negative impacts of the activity are considered negligible. The works are aimed at improving the social, recreational and aesthetic values of the park through providing an inclusive garden space for all to enjoy, either as members or as visitors.	1	2	3	Any works in the garden would be reversible in that the community garden could be removed in the future and turf reinstated should that be required.
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J	Any risk to the safety of the environment <i>eg Public health, contamination, bushfire, sea level rise, flood, storm surge, wind speeds, extreme heat, urban heat and climate change adaptation</i>	1	2	3	N/A	1	2	3	
	Negative impacts of the activity on public health and the environment are considered negligible. In contrast, positive impacts include: Improved community health, through social and educational opportunities as well as gardening as a form of exercise. Improved sustainability through providing a local healthy food source by organic means and composting food waste.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
K	Any reduction in the range of beneficial uses of the environment <i>eg Natural resources, community resources and existing uses</i>	1	2	3	N/A	1	2	3	
	Negative impacts of the activity are considered negligible. Much of the original parkland would be retained. The community garden would provide added value by providing food resources for members and education on growing food for visitors.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					A community garden would provide additional resources through the provision of fresh, organic food for families, reduced food transport, sustainable practices such as composting, worm farming, and most community gardens operate a "swap and drop" facility (compost neighbourhood kitchen scraps). Community gardens offer beneficial social outcomes. They help to build strong communities. They provide opportunities for people with a common interest in gardening and the environment to come together. Community gardens provide a venue for local schools to meet the requirements of the NSW Government's "Kitchen gardening for sustainability and wellbeing" K to 6 syllabus.				

L	Any pollution of the environment <i>eg Air (including odours and greenhouse gases); water (including runoff patterns, flooding/tidal regimes, water quality health); soil (including contamination, erosion, instability risks); noise and vibration (including consideration of sensitive receptors); or light pollution</i>							
	Issues relating to air, water, vibration and light are considered minor.	1	2	3	The garden group will need to carry materials from the nature strip to their site. In some instances (such as garden soil, compost and mulch), the materials may need to be delivered and stored (short term) on the nature strip. In these situations, the group will be required to apply through the "Place Building Materials on Footpaths Application 20/21" online form and pay the associated fees. Materials that could cause dust will need to be covered by a fabric. Noise mitigation measures are covered in this Table under Item A. All relevant legislation and Council policies and directions is to be adhered to.	1	2	3
	Soil delivered and stockpiled on the nature strip or site before use could create some dust for neighbouring residences	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Various levels of noise will occur during construction, gardening activities and socialising.							

M	Any environmental problems associated with the disposal of waste <i>eg Transportation, disposal and contamination</i>								
	No environmental problems due to waste disposal are anticipated.	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	The garden group will be responsible for the removal of day-to-day waste. Council can assist with vegetation waste removal for larger amounts as agreed.	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	
N	Any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply <i>eg Land, soil, water, air, minerals and energy</i>								
	No demands on resources that are in short supply are anticipated.	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	N/A	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	
O	Any cumulative environmental effect with other existing or likely future activities <i>eg Existing activities and future activities</i>								
	There are no other future activities proposed for the reserve. No cumulative environmental effects are anticipated.	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	N/A	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	
P	Any impact on coastal processes and coastal hazards, including those under projected climate change conditions <i>eg Coastal processes and hazards (impacts arising from the proposed activity on coastal processes and hazards and impacts on the proposed activity from coastal processes and hazards), climate scenarios</i>								
	The site is not on the coast. No impact on coastal processes and hazards are anticipated.	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	N/A	1 <input checked="" type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	

Q	Any applicable local strategic planning statement, regional strategic plan or district strategic plan made under Division 3.1 of the Act (EP&A Act 1979, Part 3.1 Strategic Planning) <i>eg Issues, objectives, policies and actions identified in local, district and regional plans</i>										
The community garden proposal is consistent with the following outcomes Towards 2040 – Local Strategic Planning Statement The community garden is consistent with Priorities under the chapters Sustainability, Efficiency, Liveability and Great places, including the following priorities: Greener urban environments (Priority 5) High quality open space for recreation (Priority 6) Provide community facilities and services that meet changing community need (Priority 11) An inclusive, healthy, safe and socially connected community (Priority 12) A community enriched through the arts and connected through creativity (Priority 14)"				1	2	3	N/A		1	2	3
				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R	Any other relevant environmental factors <i>eg Any other factors relevant in assessing impacts on the environment to the fullest extent</i>										
No other relevant environmental factors are anticipated. There is potential for improved vehicle and pedestrian access which would be addressed through a separate process should it be pursued.				1	2	3	There is potential for improved vehicle and pedestrian access which would be addressed through a separate process should it be pursued.		1	2	3
				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FORM 2 Declarations

(MANDATORY)

Declarations	YES	NO
Sustainability Principles have been applied to the assessment of Environmental, Social, and Economic factors of this project. See Item H.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
This Impact Assessment provides a true and fair review of the proposal in relation to its likely affects on the environment. It addresses, as best as possible, the impacts affecting or likely to affect the environment as a result of the activity. It provides sufficient information to determine whether this is likely to be a significant impact on the environment as a consequence of the activity.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alternate methods, activities or designs been investigated for alternate method of delivery for all activities other than Level 1 Impacts.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Community Consultation has been undertaken as per the Community Engagement Framework. * Community consultation will be undertaken should the consultation be endorsed by Council for public exhibition	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The implementation of the recommended mitigation measures will minimise the identified impacts/risks.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
All material supporting the assessment has been detailed in the assessment of the item above with a copy attached to this assessment, this is detailed in Addendum 1.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A risk assessment will be undertaken to ensure that Work Health and Safety requirements are met on the site at all times.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
This environmental review (and a formal REF if required) must be published on Council's website, before activity commences, if any of the following are true - Environmental Planning and Assessment Regulation 2021 (Part 8, clause 171 (4). Refer to legislation to check other requirements... https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-759		
(a) the activity has a capital investment value of more than \$5 million, or	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) the activity requires an approval or permit as referred to in any of the following provisions before it may be carried out—		
(i) Fisheries Management Act 1994, sections 144, 201, 205 or 219,	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(ii) Heritage Act 1977, section 57,	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(iii) National Parks and Wildlife Act 1974, section 90,	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(iv) Protection of the Environment Operations Act 1997, sections 47–49 or 122, or	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(c) the determining authority considers that it is in the public interest to publish the review.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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SECTION 6 – Assessment Result	(MANDATORY)
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Based on the information in Section 5 (ie Forms 1 and 2), the assessment results in the following LEVEL of impact (tick one of the following):

- ☐ LEVEL 4: All items assessed as 1 Negligible Impact - **NO FURTHER ASSESSMENT REQUIRED - Proceed to Section 7**
- ☒ LEVEL 3: Some items assessed as 2 Minor Impact and others as 1 Negligible with proposed mitigation - **CURRENT ASSESSMENT ADEQUATE – Proceed to Section 7**
- ☐ LEVEL 2: Any item assessed as 3 Moderate or Greater Impact **and/or** any works occurring in Endangered Ecological Communities or impacting species as Scheduled in the Biodiversity Conservation Act – a formal **REVIEW OF ENVIRONMENTAL FACTORS REQUIRED** addressing these issues and attach to this assessment. - **Proceed to Section 7**
- ☐ LEVEL 1 – In the assessment numerous items are assessed as 3 Moderate or Greater Impact and deemed to have environmental **and/or** other impact determined as significant by any consent authority (including Council officers) as determined in Part 5 of the *Environmental Planning and Assessment Act 1979* (listed SECTION 4 – Approvals and Other Agencies) - **ENVIRONMENTAL and/or SPECIES IMPACT STATEMENT REQUIRED.** This requires a report to Council with concurrence of the relevant agency. No self-determination possible. For assistance please speak to a Principal Planner from the Development Assessment unit. - **Proceed to Section 7**

SECTION 7 – Consultation	(MANDATORY)
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The level of consultation and engagement required is to be determined by Council's community engagement matrix (from Community Engagement Framework).

<https://www.northernbeaches.nsw.gov.au/council/publications/policies/community-engagement-policy>

In accordance with Council's Community Engagement Matrix, the level of community consultation required for the proposed community garden is assessed as "Level 4. Lower Impact – Local". This is because, the project involves a small change or improvement to a facility at the local level.

Should the project be approved by the Council for public exhibition, the consultation will include:
Public exhibition for a minimum of 28 days and will include:

- Letters to residents and other stakeholders
- On site signs
- On site meeting where the proposed area for the community garden will be pegged out on site as a visual aid
- A Your Say project page with an online submission form
- Submissions will also be accepted via email and post.
- Submissions will be reviewed and reported back to the Council.

SECTION 8 – Approval (If proposal permissible without consent)

(MANDATORY)

8.1 REVIEW OF ENVIRONMENTAL FACTORS

Tick the option which accurately reflects the requirements of a Review of Environmental Factors for the proposal:

- ☒ A formal Review of Environmental factors is not required. This REF document is satisfactory considering the low impact nature of the proposal.
- ☐ A formal Review of Environmental factors is required and has been submitted and is attached.
- ☐ A formal Review of Environmental factors has been submitted, it is considered that the overall impact on the environment is significant. The proposal should not proceed until an Environmental and/or Species Impact Statement is prepared and approved.

Project Officer

Business
Parks and Recreation

Signature

Date

8.2 DETERMINATION


For proposal that is “permitted without consent” the following Decision Statement is required.

The determination is undertaken by an authorised person - an individual authorised by the determining authority to determine the proposal under Division 5.1 of the EP&A Act and Part 8, Division 1 of the EP&A Regulation. That authorised person will produce a decision statement.

- A. For proposal that is “permitted without consent” with Level 3 or 4 impact, under current delegations any Executive Manager in the Transport & Assets directorate may provide determination.

- the proposed activity ~~is~~/is not likely to have a significant impact on the environment and therefore an EIS ~~is~~ / is not required
 - the proposed activity ~~will~~/will not be carried out in a declared area of outstanding biodiversity value and ~~is~~/is not likely to significantly affect threatened species, populations or ecological communities, or their habitats or impact biodiversity values, meaning a Species Impact Statement (SIS) and/or a Biodiversity Development Assessment Report (BDAR) ~~is~~/is not required
 - the proposed activity may/~~may not~~ proceed and the reasons for the decision
 - mitigation measures are/~~are not~~ required to eliminate, minimise or manage environmental impacts, indicating where in the REF document the mitigation measures are set out, as well as any additional mitigation measures and/or conditions required and the reasons for these mitigation measures and conditions. (Note, the mitigation measures relate to impacts are considered either negligible or minor)
 - A determining authority may also choose to note whether referral to the Commonwealth Department of Agriculture, Water and the Environment has been considered.
- If a SIS and/or BDAR is prepared, and the determining authority is a Minister, the decision statement will identify any recommendations from the Environment Agency Head or the Primary Industries Head that have not been accepted.

The proposal has been assessed and can proceed, subject to the inclusion of the stated mitigation measures below (if any):

	Business Unit	Signature	Date
	Parks and Recreation		

- B. For proposal that is “permitted without consent” with Level 2 (Section 6) proposals, under current delegations endorsement from the **Executive Manager Development Assessment (or delegate)** is required.

In this case, this completed form is to be forwarded to the Development Assessments team who will review and determine with conditions (as appropriate) by provision of a separate memo.

NA

APPENDIX 1**Biodiversity Conservation Act 2016 – Part 7 Division 1 Section 7.3**

7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

- a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
 - i. is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - ii. is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
 - c) in relation to the habitat of a threatened species or ecological community:
 - i. the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - ii. whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - iii. the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,
 - d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),
 - e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.
- (2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.

APPENDIX 2

Aboriginal heritage desktop assessment checklist (direct reference from Aboriginal Heritage Office)

1. Check Aboriginal heritage potential mapping and Aboriginal site data			
a) What level of potential is the subject area in	<input type="checkbox"/>	Very High	
	<input type="checkbox"/>	High	
	<input checked="" type="checkbox"/>	Moderate	
	<input type="checkbox"/>	Low	
	<input type="checkbox"/>	Very Low	
Comments: The area is mapped as having moderate potential for Aboriginal heritage, however, this is unlikely given that they area is disturbed.			
b) Are there registered Aboriginal site within or within the vicinity of the subject area?	<input type="checkbox"/>	Immediate vicinity	
	<input type="checkbox"/>	Within 100-200m	
	<input checked="" type="checkbox"/>	Not recorded nearby	
Comments: No known Aboriginal sites are recorded within the subject area			
2. Check landscape features present in the subject area			
a) Are any of the following features present in the subject area? No	<input type="checkbox"/>	Watercourses (creek lines, drainage lines even if ephemeral)	
	<input type="checkbox"/>	Foreshore	
	<input type="checkbox"/>	Cliff lines or boulders (higher than 1m)	
	<input type="checkbox"/>	Overhangs or caves	
	<input type="checkbox"/>	Level sandstone outcrops (>2m ²)	
	<input type="checkbox"/>	Deep sandy deposits	
Comments: The site does not contain these features.			
b) What is the land use history of the subject area? The center of the site has been cleared of vegetation, turfed and maintained as mown parkland. The north, east and western boundary areas contain local native canopy trees.	<input type="checkbox"/>	Heavily modified	
	<input checked="" type="checkbox"/>	Moderately modified	
	<input type="checkbox"/>	Limited modification	
	<input type="checkbox"/>	No known modification	
Aboriginal heritage potential identified:		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes/unsure, refer to AHO		Date referred:	
If no, works may proceed with caution			

If the garden is supported by Council a Memorandum of Understanding (MoU) between Council and the garden group would be established. The MoU would include, among other things, the mitigation measures listed in this document. The mitigation measures in this document aim to protect the aesthetic values, the natural environment, and the amenity of the Reserve and are supported by the garden group.