

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR A PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO AND
CONSTRUCTION OF A NEW CONCRETE DRIVEWAY**

LOCATED AT

5 BUSHRANGERS HILL, NEWPORT

FOR

SOLINA PTY LTD



**Prepared
September 2020**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by Byrne & Associates Consulting Surveyors & Engineers, Plan No A1 – 9822P4 dated 14 March 2020 to detail a proposed Torrens Title subdivision of one lot into two and construction of a new concrete driveway on vacant land at **5 Bushrangers Hill, Newport**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

A search of Council's records into the property's development history revealed a number of development applications related to the parcel and the adjacent site which is the same ownership.

Development Application No. 490/16 for construction of a detached secondary dwelling, including the consolidation of access handles, was lodged on 27 October 2016, and later withdrawn.

Development Application No. 197/17 for a proposed boundary adjustment and construction of a secondary dwelling and carport was approved by Council on 29 August 2017.

2.0 Property Description

The subject allotment is described as 5 Bushrangers Hill, Newport being Lot 6 within Deposited Plan 263921 and is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

This site has been identified on Council's Geotechnical Hazard Map and a Geotechnical Report has been prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 and accompanies this submission.

The site is noted within the Class 5 Acid Sulfate Soils area. This matter will be addressed further within this report.

3.0 Site Description

The subject site is a vacant, battle-axe shaped allotment located on the southern side of Bushrangers Hill. Vehicular access to the site is currently provided from Walworth Avenue via the common accessway of Bushrangers Hill.

The details of the lot are contained within the survey report prepared by Byrne & Associates Pty Ltd, Plan No. A1 – 9822D, dated 8 August 2005, which accompanies the DA submission and has been further updated in the Plan of Subdivision dated 14 March 2020.

The site enjoys rights to drain water to the existing common drainage system in Bushrangers Hill.

The site has historically been utilised in conjunction with the adjacent dwelling at No 6 Bushrangers Hill.

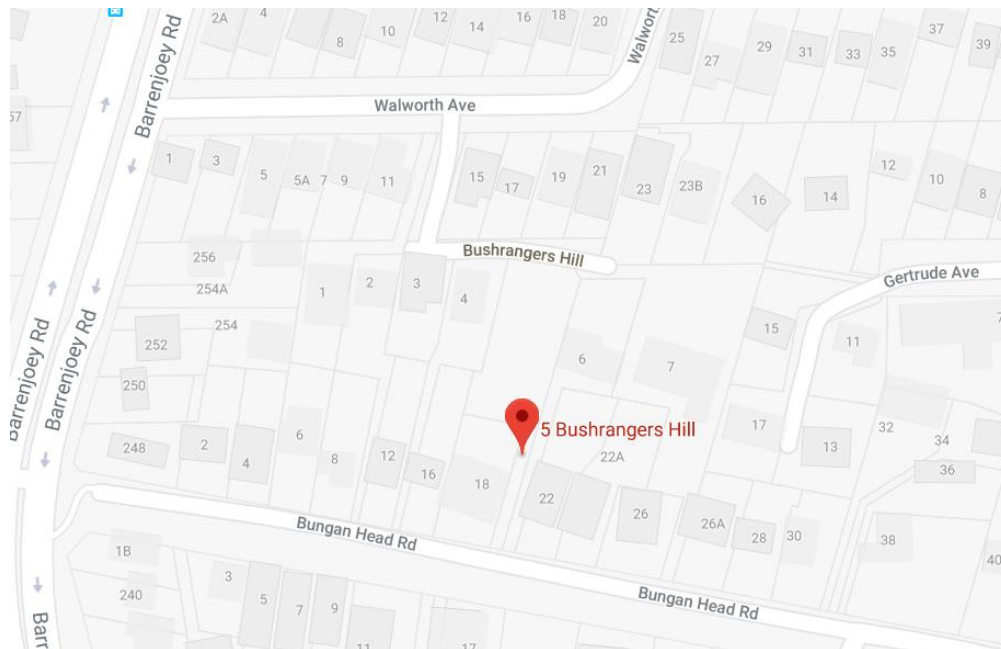


Fig 1: Location of Subject Site
(Source: Google Maps)



Fig 2: View of the subject site, looking south from the common accessway



Fig 3: View of the access driveway to the subject site, looking south-east from the common accessway



Fig 4: View of the subject lot and the adjoining development at No 5 access driveway to the subject site, looking south-east from the common accessway



Fig 5: View of the subject lot and the adjoining development at No 4 Bushrangers Hill, looking south-east from the common accessway



Fig 7: View looking east along the driveway access to the subject lot from the common accessway in Bushrangers Hill



Fig 8: View of the common accessway in Bushrangers Hill, looking south from Walworth Avenue

4.0 The Surrounding Environment

The general vicinity of the site is characterised by residential dwellings and a range of detached outbuildings, of a variety of architectural styles.

The varying age of development in the area has resulted in a mix of materials and finishes.

The surrounding properties comprise a range of original style dwellings with an emergence of modern dwellings and additions. The surrounding dwellings comprise a mix of dwellings between one and three storeys in height.

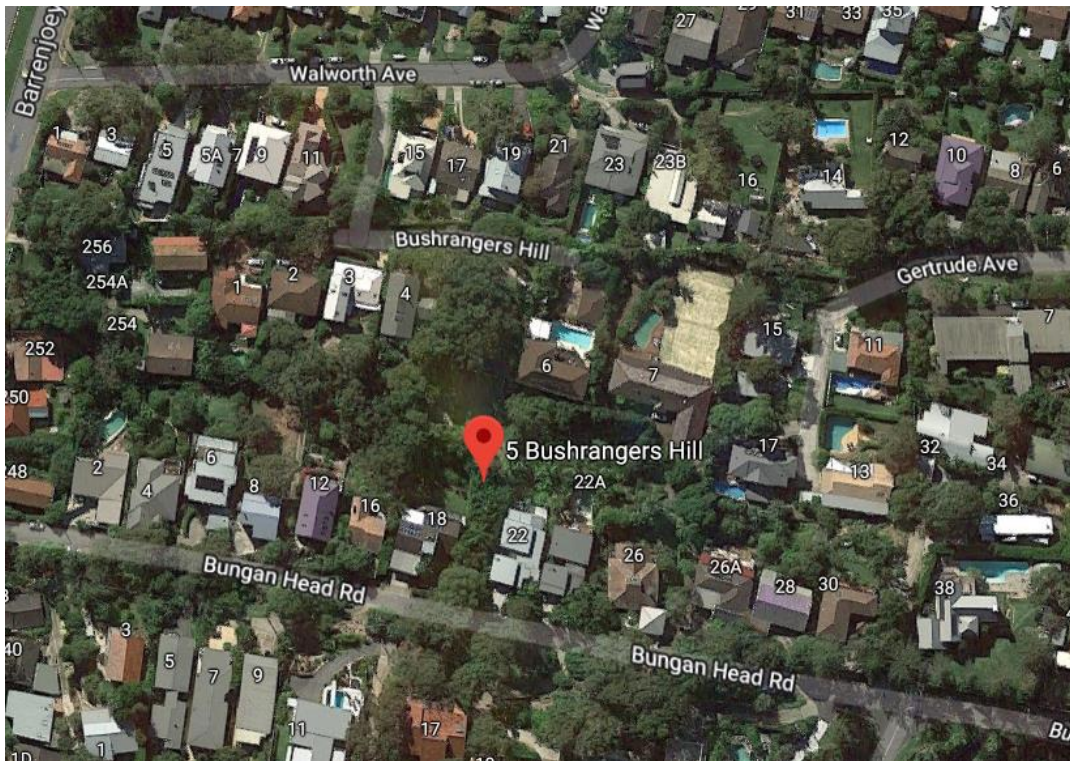


Fig 9: Aerial Photograph
(Source: Google maps)

6.0 Proposed Development

As detailed within the accompanying plans the proposal seeks consent for the Torrens Title subdivision of one lot into two and construction of a new concrete driveway.

The existing site has a total area of 1804m².

The proposed northern lot is identified as Lot 22, and the proposed southern lot is identified as Lot 21.

The proposed lot size is as follows:

Proposed Lot	Proposed Lot Size
Lot 21	715.8m ²
Lot 22	881.2m ² (673.6m ² exclusive of ROW)

Proposed Lot 22 has a total site area of 881.2m², however with the exclusion of the existing right-of-way access affecting the northern portion of land, together with the proposed right of accessway to Proposed Lot 21, the site area is defined is 673.6m². Proposed Lot 22 will be present a non-compliance of 26.4 m² or a departure from the control of 3.77%. A submission under clause 4.6 of the Pittwater Local Environmental Plan 2014 has been prepared it is provided as an annexure to this submission.

In addition, the proposal seeks to provide for the construction of a concrete driveway from Bushrangers Hill, along the eastern side of the site, to provide vehicular access to each of the proposed lots. The proposed driveway is detailed in the Civil Driveway Access Plan, Project No. 190801, dated 23 October 2019.

The indicative future building footprint for each lot is marked on the plans. The building footprints have been selected to maximise the retention of the existing trees on site. The proposal will require the removal of three trees to accommodate the future dwellings. Accordingly, the proposal is accompanied by an Arboricultural Report prepared by Landscape Matrix, dated 25 February 2020.

7.0 Zoning and Development Controls

7.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of the site as a vacant lot within a residential area, the site is not considered to be subject to contamination and further investigation is not required at this stage.

7.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

As the proposal seeks to provide for Torrens title subdivision of one lot into two and construction of a new concrete driveway, a BASIX certificate is not required.

7.3 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The site is zoned E4 Environmental Living under the provisions of the PLEP 2014.

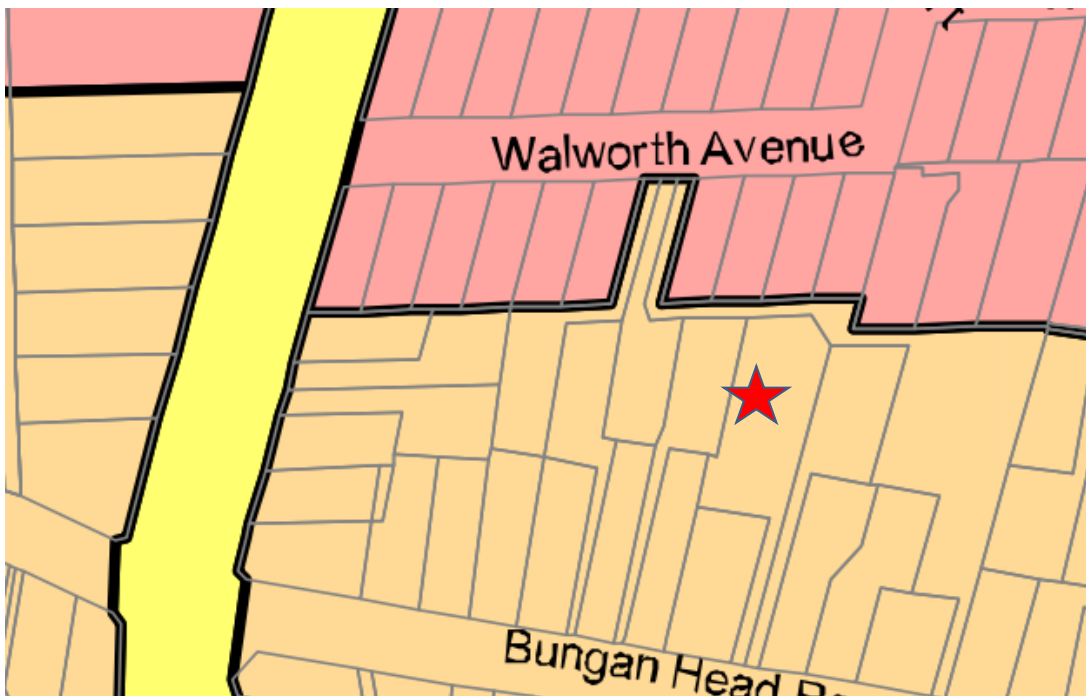


Fig 10: Extract of Pittwater Local Environmental Plan 2014

The proposed Torrens title subdivision of one lot into two and construction of a new concrete driveway is considered to be permissible with the consent of Council.

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

It is considered that the proposed Torrens Title subdivision of one lot into two and construction of a new concrete driveway will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will see sufficient space to accommodate future low density residential development within the indicative building footprints.
- The proposed subdivision respects the pattern of development of other sites in the vicinity and therefore complements the locality.
- The proposal does not have any unreasonable impact on long distance views.

Clause 4.1 – Minimum subdivision lot size

This site has been identified as being subject to a minimum subdivision lot size of 700m². The proposed Lots 21 and 22 will have a lot size of 715.8m² and 881.2m² (673.6m² exclusive of access handle & existing ROW access respectively, and therefore Lot 22 will be marginally less than Council's required minimum lot size (departure from the minimum area of 3.77%).

A submission under Clause 4.6 of Pittwater LEP 2014 has been prepared to support the proposal.

Clause 4.6 – Exceptions to development and standards

Clause 4.6(6) as a relevant consideration in this application as it states:

- 6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made it did not include all of these zones.

The subject land is zoned Environmental Living with the proposal seeking to subdivide the existing lot into two new lots.

The proposed subdivision will not be contrary to the provisions of clause 4.6(6) as the proposed lot configuration allows for proposed Lot 21 to achieve the required minimum area of 700m² and proposed Lot 22 will not be less than 90% of the required minimum area of 700m² (96.2% of the required minimum area achieved).

Clause 7.1 – Acid Sulfate Soils

The site is identified as being within the Class 5 Acid Sulfate Soils area. The proposal will not require any significant excavation of the site. As the proposal does not see any disturbance to the site, it is not anticipated that acid sulfate soils will be encountered.

Clause 7.2 – Earthworks

The proposal will not require any substantial disturbance of the existing site conditions. The works will be carried out in accordance with the recommendations of the consulting Structural and Geotechnical Engineers, and will therefore satisfy the provisions of this clause.

Clause 7.7 – Geotechnical Hazards

The Geotechnical Investigation prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 has been provided to address the provisions of this Clause.

The report concludes that the proposed developments are suitable for the site and the site can achieve the Acceptable Risk Management Criteria of Council's Geotechnical Risk Policy.

Clause 7.10 – Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- the supply of water,
- the supply of electricity,
- the disposal and management of sewage,
- stormwater drainage or on-site conservation,
- suitable vehicular access.

Services will be provided to the proposed lots as required.

There are no other clauses of the PLEP 2014 that are considered to be relevant to the proposed development.

7.4 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP Section B (General Controls), Section C (Development Type Controls) and Section D10 Newport Locality Statement provides a range of outcomes and controls which form the primary criteria control for development within the subject locality.

7.4.1 Section A Introduction

The desired character of the Newport Locality is summarised as:

"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any multi unit housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including

providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements.”

It is considered that the proposal is consistent with the desired character of the locality by providing for a Torrens Title subdivision, with resulting lots which are consistent with the low-density scale of the area.

The proposal will maintain the majority of the existing trees on site, in order to maintain consistency with the bushland character of the locality.

7.4.2 Section B General Controls

The General Controls applicable to the proposed subdivision of one lot into two are summarised as:

B2.2 Land Subdivision – Low Density Residential Areas

The controls seek to achieve the outcomes:

Achieve the desired future character of the locality.

Maintenance of the existing environment. (En)

Equitable preservation of views and vistas to and/or from public/private places. (S)

The built form does not dominate the natural setting. (En)

Population density does not exceed the capacity of local and regional services. (En, S, Ec)

Population density does not exceed the capacity of local and regional transport facilities. (En, S, Ec)

The proposal seeks to provide for the Torrens Title subdivision of the existing lot into two.

Lots 21 and 22 will have a lot size of 715.m² and 881.2m² (673.6m² exclusive of the proposed an existing ROW access), which results in Lot 22 being marginally less than Council’s minimum requirement of 700m² (3.77% departure from the minimum area).

The following table summarises the controls of Clause B2.2:

Requirement	Proposal	Compliance
Minimum Allotment Size – 700m ²	Lot 21: 715.8m ²	Yes
	Lot 22: 881.2m ² (673.6m ² exclusive of access handle)	Yes
Minimum Allotment Width – 16m	Lot 21: 25.47m	Yes
	Lot 22: 25.47m (21.97m excl. ROW)	Yes

Minimum Allotment Depth – 27m	Lot 21: 27.135m Lot 22: 28.035m	Yes Yes
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The proposal includes the building envelope to the minimum area of one 75 m² which together with a compliant lot with an depths, indicates that future dwellings within Proposed Lot 21 and 22 can be readily accommodated and will retain substantial setbacks to the adjoining neighbours and provide for an appropriate level of residential amenity.

B3.1 Landslip Hazard

The controls seek to achieve the outcomes:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

The controls seek to ensure that all development complies with Council's Interim Geotechnical Risk Management Policy for Pittwater. A report has been provided for Council's consideration, prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 which concludes that the site is stable subject to the recommendations contained within the report.

The works will be constructed in accordance with the recommendations contained within the Geotechnical Investigation.

B4.3 Flora and Fauna Habitat Enhancement Category 2 Land

The controls seek to achieve the outcomes:

Conservation, enhancement and/or creation of habitats for locally native flora and fauna to ensure the long-term viability of locally native flora and fauna and their habitats. (En)

The proposal is accompanied by an Arboricultural Impact Report prepared by Landscape Matrix, dated 25 February 2020.

The proposal which includes a provision of future dwellings within the identified building platforms will result in the removal of four trees, including a Grey Ironbark (Tree No. 7), and two Grey Gums (Tree No. 9 and 10), which are affected by the building platforms and subdivision infrastructure works.

The Report notes Tree No. 7 is of high landscape significance and in good health.

Tree No. 9 is of low landscape significance and exhibits poor vigour moderate health, exhibiting poor vigour and high levels of epic, growth and dieback.

Tree No. 10 is of high landscape significance and in good health, with evidence of past winding and possible decay. Monitoring of the tree is recommended by the arborist.

Tree No. 12 which is to be removed to accommodate the civil and subdivision works has been identified as being in poor health and of low landscape significance.

The remaining trees on site will be retained and protected in accordance with the recommendations contained within the report. The site maintains numerous canopy trees, and additional replacement plantings can be provided as required with the future Development Applications for dwellings within the identified building platforms.

The future development of the respective allotments is capable of maintaining a generous area of soft landscaping.

The proposal is therefore not considered to have any implications for the biodiversity of the site.

B5.7 Stormwater Management - On-Site Stormwater Detention

The controls seek to achieve the outcomes:

Rates of stormwater discharged into receiving environment maintained or reduced. (Ec, S)

The proposal is accompanied by a Site Stormwater Management Plan prepared by RTS Civil Consulting Engineers, Project No. 190801, dated 23 October 2019, which details the proposed onsite detention arrangements. Subject to compliance with the proposed stormwater design, the proposal will satisfy the provisions of this clause.

B6.1 Access driveways and works on the public road reserve – Low Density Residential

The controls seek to achieve the outcomes:

Safe and convenient access. (S)
Adverse visual impact of driveways is reduced. (En)
Pedestrian safety. (S)
An effective road drainage system. (En, S)
Maximise the retention of trees and native vegetation in the road reserve. (En, S)

The proposal seeks to provide for the construction of a concrete driveway from Bushrangers Hill, along the eastern side of the site, to provide vehicular access to each of the proposed lots. The proposed driveway is detailed in the Civil Driveway Access Plan, prepared by RTS Civil Consulting Engineers Project No. 190801, dated 23 October 2019.

The proposed driveway will provide safe and convenient access to the proposed lots.

B8.2 Construction and Demolition – Erosion and Sediment Management

The controls seek to achieve the outcomes:

Waterways, coastal areas, watercourses, drainage systems and the public domain are protected from the transportation of sedimentation from development sites. (En)

Reduction of waste throughout all phases of development. (En)

Public safety is ensured. (S)

Protection of the public domain. (S, En)

This clause requires that erosion and sediment controls are installed on site to prevent the migration of sediment to adjoining properties, roads or waterways. Appropriate erosion and sediment barriers will be installed prior to the commencement of any works on site.

7.4.3 Section C Design Criteria for Residential Development

The Design Criteria applicable to the proposed new carport and secondary dwelling are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcomes:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

The required controls to achieve the outcomes are to ensure that the development will provide for the reasonable retention and protection of the existing significant trees and to provide for locally occurring species within any proposed replanting of the site.

The proposal is accompanied by an Arboricultural Report prepared by Landscape Matrix, dated 25 February 2020.

The proposal seeks to remove four trees, however the site maintains numerous canopy trees, which will be retained and protected in accordance with the recommendations contained within the report. Additional replacement plantings can be provided as required.

The future development of the respective allotments is capable of maintaining a generous area of soft landscaping.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)

Opportunities for vandalism are minimised. (S, Ec)

Inform applicants of Council's requirements for crime and safety

management for new development. (S)
Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)
Identify crime and safety priority areas in Pittwater LGA (S, Ec)
Improve community safety and reduce the fear of crime in the Pittwater LGA (S)
Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The site is currently vacant. The proposed subdivision will not see a decrease in safety enjoyed by the Pittwater community.

C4.1 Subdivision - Protection from Hazards

The controls seek to achieve the outcomes:

Protection of people. (S)
Protection of the natural environment. (En)
Protection of private and public infrastructure and assets. (S)

The controls seek to ensure that all development complies with Council's Interim Geotechnical Risk Management Policy for Pittwater. A report has been provided for Council's consideration, prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 which concludes that the site is stable subject to the recommendations contained within the report.

C4.2 Subdivision - Access Driveways and Off-Street Parking

The controls seek to achieve the outcomes:

Safe and functional access for vehicles, cyclists and pedestrians. (S)
Safe and convenient access and parking is provided on each lot.

The proposal seeks to provide for the construction of a concrete driveway from Bushrangers Hill, along the eastern side of the site, to provide vehicular access to each of the proposed lots. The proposed driveway is detailed in the Civil Driveway Access Plan, Project No. 190801, dated 23 October 2019.

The proposed driveway will provide safe and convenient access to the proposed lots.

A defined passing Bay has not been provided as the lots are located off a private access driveway with suitable queueing area and adequate site distance for vehicles utilising the driveway. Vehicle conflict can be readily avoided and if necessary, the driveway apron to the future dwelling within Lot 22 can be designed to provide for passing bay of a minimum 5m width.

Car parking will be provided as part of the future development applications for dwellings on the lots.

C4.5 Subdivision – Utility Services

The controls seek to achieve the outcomes:

Adequate utility services capacity to meet the demands of subdivision development. (En, S)
Safety of building occupants being maintained and enhanced. (S)
Security of utility services is improved. (S)
Opportunities for street tree planting enhanced. (En)
Visual pollution by aerial cables is reduced. (En, S)
Improved safety by removal of visual clutter. (En, S)

Utility services will be provided to the respective lots as required.

C4.7 Subdivision – Amenity and Design

The controls seek to achieve the outcomes:

Desired character of the locality.
Protection of the natural environment. (En)
Ecologically sustainable development. (En)
Minimal design constraints. (S)
Adequate access and services. (En, S)
Access driveways to public roads are minimised.

The proposal outlines vehicular access and indicative building footprints in accordance with the provisions of this clause.

In order to ensure safety from hazards, a report has been provided for Council's consideration, prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 which concludes that the site is stable subject to the recommendations contained within the report.

The indicative building envelopes are capable of accommodating buildings which are in keeping with the desired future character of the locality. An assessment will be carried out as part of the future development applications for the dwellings.

8.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

8.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

8.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

8.3 Any development control plan

The development has been designed to comply with the requirements of Council's Pittwater 21 Development Control Plan.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

8.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

8.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

8.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for Torrens Title subdivision of one lot into two and construction of a new concrete driveway, which will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 and Council's Codes and Policies, in particular the Pittwater 21 DCP and the Newport Locality Statement.

8.7 The suitability of the site for the development

The subject land is currently zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development and is permissible under the provisions of the LEP.

8.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

8.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

9.0 Conclusion

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. Notwithstanding the minor non-compliance with the minimum lot area for Proposed Lot 22 (3.77% departure from the minimum area) the design of the subdivision with the available building areas which can readily support future dwellings and the supporting services and appropriate driveway access to future building platforms, satisfactorily addresses Council's development controls.

The land presents an opportunity for additional housing within the area, with dwellings that can provide for good residential amenity. By protecting and maintaining the amenity of the neighbouring properties and presenting opportunity for new housing that complements the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning

Annexure: Clause 4.6 Submission

APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

5 BUSHRANGERS HILL, NEWPORT

**FOR THE PROPOSED TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS AND
CONSTRUCTION OF A DRIVEWAY ACCESS**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS
DETAILED IN CLAUSE 4.1 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

For: Proposed Torrens Title subdivision of one lot into two lots, and construction of a new access driveway
At: 5 Bushrangers Hill, Newport
Owner: Solina Pty Ltd
Applicant: Solina Pty Ltd c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written submission is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.1 restricts the minimum subdivision lot size in this locality to 700m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 21 and 22, will have the following indices:

Site Area (Lot 21):	715.8m ²
Site Area (Lot 22):	881.2m ² (673.6m ² excl. existing and proposed ROW access)

Lot 21 will comply with Council's minimum area requirement.

Lot 22 will present a variation of 26.4m² or 3.77% from the standard.

The controls of Clause 4.1 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.1 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.1 relates to the size of the allotments. Accordingly, Clause 4.1 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.1 (the Minimum subdivision lot size) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to Clause 4.1 of PLEP which specifies a minimum lot size of 700m² in this area of Newport.

Proposed Lot 21 will present a lot size of 715.8m², which complies with Council's minimum area requirement.

Proposed Lot 22 will present a lot size of 673.6m², which is a variation to the standard of 26.4m² or 3.77%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

The proposed subdivision is subject to Clause 4.6(6) which restricts the size of allotments to be subdivided in certain zones. The site is zoned E4 Environmental Living and is therefore subject to the provisions of Clause 4.6(6).

Clause 4.6(6) as a relevant consideration in this application as it states:

- 6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made it did not include all of these zones.

The subject land is zoned Environmental Living with the proposal seeking to subdivide the existing lot into two new lots.

The proposed subdivision will not be contrary to the provisions of clause 4.6(6) as the proposed lot configuration allows for proposed Lot 21 to achieve the required minimum area of 700m² (715.8m²) and proposed Lot 22 (673.6m²) will not be less than 90% of the required minimum area of 700m² (96.2% of the required minimum area achieved).

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.1 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for the provision of an additional allotment and create the opportunity for two new future dwellings with access from the existing common access way, within the low density and which respects the environmental qualities of the land and the stated Objectives of the E4 Environmental Living zone which are noted as:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

As sought by the zone objectives, the proposal will provide for proposed Torrens Title subdivision of one lot into two lots, and construction of a new access driveway to the proposed building envelope area, with the proposal being sensitive to the location and the topography of the locality.

The two new lots will have shared pedestrian and vehicular access from the common access way in Bushrangers Hill to Walworth Avenue.

Despite the non-compliance with the minimum lot size control for Proposed Lot 22, the proposed subdivision will result in lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the minimum site area standard is unnecessary and unreasonable in the circumstances of the case.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the minimum subdivision lot size standard contained in Clause 4.1 of PLEP.
- 5.2 Clause 4.1 of PLEP specifies a minimum subdivision lot size of 600m² in this area of Newport.
- 5.3 Proposed Lot 21 will present a lot size of 715.8m², which complies with the minimum area requirement.

Proposed Lot 22 will present a lot size of 881.2m², which is a variation to the standard of 26.4m² or 3.77%.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
- 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in*

granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is Clause 4.1 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.1 and the objectives for development for in the E4 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.1 of PLEP?

7.0. Request for Variation

7.1 Is Clause 4.1 of PLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.1 relates to the size of the proposed allotments. Accordingly, Clause 4.1 is a development standard.

7.2 Is compliance with Clause 4.1 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum subdivision lot size standard, as outlined under Clause 4.1, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to protect residential character and amenity by providing for subdivision were all resulting lots are consistent with the desired character the locality, and the pattern, size and configuration of existing lots in the locality,

The E4 Environmental Living Zone contemplates low density residential uses on the land, which are compatible with the special ecological scientific or aesthetic values recognised in the locality, which is characterised by its location at the southern slopes of Newport and with low density development is integrated with the landform and existing landscape planting.

The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 over.

The proposal is therefore considered to be in keeping with the residential character of the locality.

Table 1: Size of existing lots in the immediate locality

Address	Lot	DP	Land Area (m²)
1 Bushrangers Hill, Newport	2	263921	1044
2 Bushrangers Hill, Newport	3	263921	937
3 Bushrangers Hill, Newport	4	263921	914
4 Bushrangers Hill, Newport	5	263921	970
6 Bushrangers Hill, Newport	7	263921	1210
7 Bushrangers Hill, Newport	1	634714	3484
2 Bungan Head Road, Newport	B	371558	749
2 Bungan Head Road, Newport	E	388805	68
4 Bungan Head Road, Newport	C	371558	723
6 Bungan Head Road, Newport	1	263921	811.00
8 Bungan Head Road, Newport	1	392257	809
12 Bungan Head Road, Newport	A	381451	744
16 Bungan Head Road, Newport	A	354547	742
18 Bungan Head Road, Newport	C	419697	975
22 Bungan Head Road, Newport	91	1052243	1012
24 Bungan Head Road, Newport	92	1052243	1066
26 Bungan Head Road, Newport	1	539285	716
26A Bungan Head Road, Newport	X	163415	732
28 Bungan Head Road, Newport	1	204398	695
30 Bungan Head Road, Newport	2	204398	769
32 Bungan Head Road, Newport	4	838375	919
34 Bungan Head Road, Newport	3	838375	970
36 Bungan Head Road, Newport	2	838375	815
38 Bungan Head Road, Newport	1	838375	1661
40 Bungan Head Road, Newport	7	236330	1738.00
42 Bungan Head Road, Newport	1	599832	1060.00
42A Bungan Head Road, Newport	5	28652	710
44 Bungan Head Road, Newport	4	28652	713
46 Bungan Head Road, Newport	3	28652	699
48 Bungan Head Road, Newport	1	520320	1049
52 Myola Road, Newport	1	28652	1237
50 Myola Road, Newport	2	599832	888

48 Myola Road, Newport	4	216799	1197
46 Myola Road, Newport	3	216799	1100.00
1 Gertrude Avenue, Newport	2	216799	824
2 Gertrude Avenue, Newport	35	9877	660
2 Gertrude Avenue, Newport	34	9877	349
45 Walworth Avenue, Newport	33	9877	671
43 Walworth Avenue, Newport	32	9877	653
41 Walworth Avenue, Newport	31	9877	653
39 Walworth Avenue, Newport	30	9877	653
37 Walworth Avenue, Newport	29	9877	653
35 Walworth Avenue, Newport	28	9877	653
33 Walworth Avenue, Newport	27	9877	653
31 Walworth Avenue, Newport	26	9877	653
29 Walworth Avenue, Newport	25	9877	653
27 Walworth Avenue, Newport	24	9877	653
25 Walworth Avenue, Newport	23	9877	653
23B Walworth Avenue, Newport	3	1009503	979
23A Walworth Avenue, Newport	4	1009503	907
21 Walworth Avenue, Newport	41	9877	578
19 Walworth Avenue, Newport	42	9877	579
17 Walworth Avenue, Newport	43	9877	578
15 Walworth Avenue, Newport	44	9877	577
11 Walworth Avenue, Newport	46	9877	579
9 Walworth Avenue, Newport	47	9877	578
7 Walworth Avenue, Newport	48	9877	578
5 Walworth Avenue, Newport	49	9877	578
3 Walworth Avenue, Newport	50	9877	578
1 Walworth Avenue, Newport	51	9877	593
256 Barrenjoey Road, Newport	A	383996	577
254A Barrenjoey Road, Newport	201	605816	902.40
254 Barrenjoey Road, Newport	202	605816	903
252 Barrenjoey Road, Newport	3	19775	625
250 Barrenjoey Road, Newport	D	388805	588.10
248 Barrenjoey Road, Newport	A	371558	749

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision in the south-eastern portion of Newport.

Proposed Lots 21 & 22 can readily accommodate future dwellings with a building envelope of 175 identified which complies with Council setback requirements and has a slope and topography which can facilitate construction of future dwellings.

(b) to provide for subdivision were all resulting lots are capable of providing for the construction of a building that is safe from hazards,

The proposed lots have a modest slope (20% over the length of the site), with a gentler slope through the identified building platforms. The topography of the land does not present any challenge to the future development of the sites for new dwellings.

The proposal is supported by a Geotechnical Risk Assessment prepared by White Geotechnical Group, Reference No. J2547, dated 19 February 2020 which concludes that the site is stable subject to the recommendations contained within the report.

There are no other hazards related to the land that would affect the construction of future dwellings.

(c) to provide for subdivision were all relevant resulting lots are capable of providing for buildings that will not unacceptably impact the natural environment or the amenity of neighbouring properties.

The proposed lots present the opportunity for future dwellings which can be constructed to ensure that there will be no unacceptable impact on the natural environment or the existing privacy and amenity of the neighbouring properties.

The development not will not require the removal of any significant vegetation. Future landscape plans will be provided with the new dwelling, which will allow for the reintroduction of locally occurring planting species, complementing the by adversity in the area.

The land is largely cleared through the proposed building envelopes, with remnant vegetation which can be managed and retained through the sensitive placement of the future dwellings. For trees will be removed as a result of the construction of the driveway and future dwellings however the opportunity remains for additional tree planting within the land and the provisional landscape screening for neighbouring amenity.

The identified building platforms comply with Council setback requirements and dwellings can be designed to prevent unreasonable overlooking and overshadowing of the neighbouring properties.

The proposed lots are capable of being readily developed for future dwellings which are sensitive to the site's characteristics and the neighbouring properties.

- (d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area.**

The subject site it is not within a heritage conservation area or adjoining any heritage items. The site is not visually prominent and the future developed not the land for additional housing will not adversely affect the heritage significance of any items in the wider locality.

- (e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services.**

The proposal seeks to provide for the construction of a concrete driveway from Bushrangers Hill, along the eastern side of the site, to provide vehicular access to each of the proposed lots. The proposed driveway is detailed in the Civil Driveway Access Plan, prepared by RTS Civil Consulting Engineers Project No. 190801, dated 23 October 2019.

The proposed driveway will provide safe and convenient access to the proposed lots.

Each lot will have access to a stormwater disposal system in accordance with Council's controls. Stormwater from each lot will be directed by a gravity to the street gutter in Walworth Avenue via the existing drainage easements which benefit the land.

Both lots will have access to Water Board sewer infrastructure.

All required services will be provided to the land.

- (f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land.**

The subject site is not rural land and therefore this control is not relevant in this instance

- (g) to ensure that lot sizes and dimensions are able to accommodate develop and consistent with the relevant development controls,**

Proposed Lot 21 complies with Council's minimum site area requirements.

Proposed Lot 22 will present a departure of 3.7% from Council's minimum site area requirement.

Notwithstanding the minor non-compliance of proposed Lot 22 with the minimum site area requirement, each lot has an identified building envelope of 175m², with minimum dimensions and widths which comply with Council's requirements.

The proposed building envelope which indicates the potential location for future dwellings, complies with Council setback requirements. The site slope and figuration does not present any significant challenge to the future design of dwellings which comply with Council's minimum landscaped area requirements and can manage any adverse impacts on the neighbouring properties in terms of overshadowing or overlooking.

In summary, the land is able to accommodate future development for housing which will be consistent with the relevant development controls.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on*

environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, promotes the orderly & economic use of the land (cl 1.3(c)).
- Each lot is capable of accommodating future dwellings which will comply with Council's relevant development controls, and through sensitive architectural design, will promote good design and amenity of the built environment (cl1.3(g))

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a new allotment that provides sufficient building area to accommodate new dwellings of a size and potential floor area for future occupants, with appropriate residential amenity.

The location of the future building platform will allow for the retention of views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there

are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3A and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation to the minimum subdivision lot size, the proposed subdivision will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

The site is located in the E4 Environmental Living Zone. The objectives of the E4 zone are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values*
- *To ensure that residential development does not have an adverse effect on those values*
- *To provide for residential development of a low density and scale integrated with the landform and landscape*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

It is considered that notwithstanding the noncompliance of Proposed Lot 22 with the minimum subdivision lot size, the proposed subdivision of one lot into two will be consistent with the individual Objectives of the E4 Environmental Living zone for the following reasons (over):

➤ ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values***

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

As previously noted in Table 1 which outlined the variety lot sizes in the area, the proposed resulting lot sizes will allow for residential development in accordance with the expectations of the community for a dwelling size with appropriate amenity that is compatible with the E4 Environmental Living zone.

The area of the site which is to be developed for the future dwellings does not display any significant special ecological scientific or aesthetic values. The site is largely cleared with some remnant vegetation to the perimeter of the proposed building envelopes. Some additional tree clearing is proposed however the majority of the more substantial trees and plantings within the site will be retained.

The opportunity remains for additional screening and tree replenishment planting in conjunction with the design of the future dwellings.

The slope of the land is not present a challenge to the development and future dwellings will not be visually prominent, with the site well removed from direct public view by its common access drive to Walworth Avenue and the separation from the surrounding public spaces.

The development of the land for future housing can manage the special characteristics identified in the E4 Environmental Living zone and removed

• ***To ensure that residential developer does not have an adverse effect on those values***

As noted, the site in general and the identified building envelopes do not present any significant impediment to the development of the land for future dwellings which will be compliant with Council's development control plan requirements.

The future development of the land can be carried out in a manner which would not have an adverse impact on the special ecological scientific or aesthetic values identified in the E4 Environmental Living zone.

• ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

The proposal provides for the Torrens Title subdivision of one lot into two lots and construction of a new driveway access, in a manner which will retain the single dwelling character of the immediate area.

The site is not located within a riparian or foreshore area.

Site does contain remnant wildlife corridor, which is not continuous throughout the area. With the more significant trees to be maintained, this objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of generous areas of soft landscaping, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum subdivision lot size control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed subdivision of the land for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

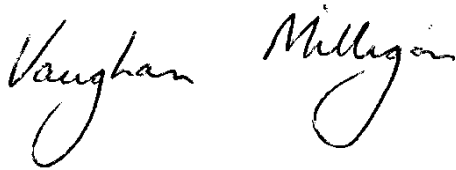
7.0 Conclusion

This objection to the minimum lot size specified in Clause 4.1 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The submission demonstrates that the lots can be readily developed in a manner which is consistent with the surrounding pattern and can achieve the Objectives of the E4 Environmental Living Zone.

The density of the proposed subdivision is appropriate for the site and locality.

Strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN
Town Planner