

**APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE**

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

11B HILL STREET, WARRIEWOOD

**FOR THE DEMOLITION OF THE EXISTING STRUCTURES AND PROPOSED TORRENS TITLE SUBDIVISION
OF ONE LOT INTO TWO**

**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: Demolition of the existing structures and the proposed Torrens Title subdivision of one lot into two lots
At: 11B Hill Street, Warriewood
Owner: Wayne Bardwell
Applicant: Wayne Bardwell c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request 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 550m² 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 1 and 2, will have the following indices:

Site Area (Lot 1):	512m ²
Site Area (Lot 2):	550m ²

Lot 1 will present a variation of 38m² or 6.9% from the standard.

This request includes consideration of the Swept Path Assessment prepared by Transport and Traffic Planning Associates, dated 5 May 2022.

2.1 Is Clause 4.1 of the LEP a development standard?

(The definition of “development standard” in clause 1.4 of the Environmental Planning and Assessment Act 1979 (“EP&A Act”) means standards fixed in relation to an aspect of a development and includes:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*

It follows that clause 4.1 of PLEP 2011 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 550m² in this area of Warriewood.

Proposed Lot 1 will present a lot size of 512m², excluding the access handle, which is a variation to the standard of 38m² or 6.9%.

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 C4 Environmental Living and is subject to the provisions of Clause 4.6(6).

Clause 4.6(6) states that development consent must not be granted under this clause for a subdivision of land in Zone C4 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.*

The proposal does not result in 2 or more lots of less than the minimum lot size, while the subdivision will not result in at least one lot that is less than 90% of the minimum area specified for such a lot by the development standard.

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 demolition of the existing structures and create the opportunity to construct a new dwelling within each of the proposed new lots.

The subdivision of one lot into two lots, it is considered to be consistent with the stated Objectives of the C4 Environmental Living, 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 demolition of the existing structures and the proposed Torrens Title subdivision of one lot into two lots.

As indicated in the concept dwelling design information provided with the application for each lot, together with the engineering design for the proposed stormwater management system, the proposed subdivision will provide lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the minimum allotment size standard is unnecessary and unreasonable in the circumstances of the case. Each lot will ultimately provide for a low-impact residential development that will be sympathetic to the landform and landscape.

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 550m² in this area of Warriewood.
- 5.3 Proposed Lot 1 will present a lot size of 512m², which is a variation to the standard of 38m² or 6.9%.

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 C4 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 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 by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The C4 Environmental Living Zone contemplates low density residential uses on the land. The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 below. 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 (m ²)
14 Hill Street, WARRIEWOOD NSW 2102	18	14485	455
12 Hill Street, WARRIEWOOD NSW 2102	19	14485	467
10 Hill Street, WARRIEWOOD NSW 2102	20	985317	462
8 Hill Street, WARRIEWOOD NSW 2102	1	862488	466
8 Elimatta Road, WARRIEWOOD NSW 2102	3	849706	405
8A Elimatta Road, WARRIEWOOD NSW 2102	4	849706	308
10 Elimatta Road, WARRIEWOOD NSW 2102	1	849706	342
10A Elimatta Road, WARRIEWOOD NSW 2102	2	849706	286

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 to all sides along Hill Street, as well as the immediate area surrounding the site.

As detailed in the concept dwelling design is provided to support the submission, Proposed Lot 1 can readily accommodate a future dwelling that provides for a footprint that will maintain Council's required side and rear setbacks together with a landscaped area that achieves the minimum 60% requirement.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

This control is not relevant in this instance as the land is zoned for residential development and is not suitable for commercial or industrial development.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

This control is not relevant in this instance as the land is not within a rural locality and is not sensitive to fragmentation.

(d) to achieve low intensity of land use in localities of environmental significance,

The subject site is noted as being of environmental and importance noting the zoning. The proposed duly considers the environmental importance of the land and surrounding area and provides for a low-density residential dwelling consistent with the surrounding land use. It is envisaged the proposal will provide for a low-intensity land use.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The land has not been classified as being bushfire prone land.

(f) to protect and enhance existing remnant bushland,

The subject site does not contain remnant bushland and therefore this control is not relevant in this instance

(g) to retain and protect existing significant natural landscape features,

The site is not noted as containing existing significant natural landscape features. The proposed works do not require any significant land disturbance and other than for some potential minor earthworks to ultimately provide for a level building platform with a future Development Application, the general topography of the site will be maintained.

(h) to manage biodiversity,

The development not will not require the removal of any significant protected vegetation. Some trees will be removed within the building platform however these works would be carried out at the time of the construction of a future dwelling.

An Arboricultural Impact Assessment has been provided which notes that the majority of the trees on the site and in the neighbouring properties will be maintained..

(i) to provide for appropriate stormwater management and sewer infrastructure.

Each lot will have access to a stormwater disposal system in accordance with Council's controls. Stormwater from each lot will be directed by an inter-allotment drainage pipe through a drainage easement to the rear of the site to be drained to Lakeview Parade.

Both lots will have access to Water Board sewer infrastructure.

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.*
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, which promotes the orderly & economic use of the land (cl 1.3(c)).

The above environmental planning grounds is not a general proposition. It is a unique circumstance to the proposed development, particularly the provision of new allotments that provide 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 platforms will allow for the development of the site’s in a manner which is compatible with Council’s current planning controls and will result not result in subdivision which is a typical to the character of the area, given the size and configuration the proposed allotments is compatible with the surrounding subdivision

pattern. 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 C4 Environmental Living zone?

- (a) Section 4.2 of this written request suggests the 1st & 2nd tests in *Wehbe* is made good by the development.
- (b) Each of the objectives of the C4 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 C4 Environmental Living for the following reasons:

The site is located in the C4 Environmental Living Zone. The objectives of the C4 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 non-compliance of each lot with the minimum subdivision lot size, the proposed subdivision of one lot into two will be consistent with the individual Objectives of the C4 Environmental Living zone for the following reasons:

- ***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.

The subdivision, resulting lot sizes and future dwelling houses have been carefully considered with regard to the ecological, scientific and aesthetic values of the land and surrounding area. The proposed subdivision and future dwellings will not be incompatible with the established built environment and subdivision pattern of the surrounding C4 zoning.

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 C4 Environmental Living zone.

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality.

Each of the proposed allotments can readily accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan and in the concept dwelling design provided with the application.

As documented in the Swept Path Assessment prepared by Transport and Traffic Planning Associates, the vehicle passing bay and traffic light control system will allow for appropriate access for vehicles to enter and leave the site, without further impact on the resulting allotment sizes for each lot.

Notwithstanding that proposed Lot 1 will not comply with the minimum allotment size, the parcel of land is suitable for the provision of an additional dwelling, which can provide for the provision for vehicle parking, turning and egress from the site in accordance with the Swept path Assessment prepared by Transport and Traffic Planning Associates..

- ***To ensure that residential development does not have an adverse effect on those values.***

It is considered that the residential development, being two future dwelling houses will not have an adverse impact on the above values. It is noted that Council, in their pre-DA advice, requested that the existing Norfolk Island Pine be retained due to its high aesthetic and landscape value. The proposal has taken note of this and ensured the retention of this tree, as evident by the arboricultural impact assessment prepared for the application.

The lot sizes and configuration as well have been carefully considered and are capable of providing for dwelling houses consistent with the values of the zoning, as well as result in minimal amenity impact to adjoining properties.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

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

This objective is achieved in that the proposal will provide for modest, single dwellings sited and designed in a manner which is sensitive to the landform and landscape. This is evident by the largely compliant concept dwelling designs provided by JJ Drafting. The built form is considered to be of a low-density and scale that will ultimately integrate into the landform and landscape.

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.

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

There are no known species of riparian and foreshore vegetation, nor wildlife corridors located within vicinity of the subject site.

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 PLEP?

- (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 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.

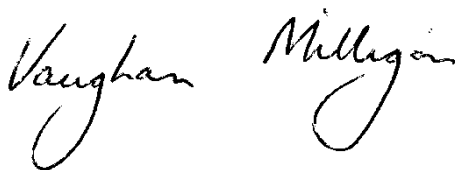
8.0 Conclusion

This written request to vary 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 request 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 C4 Environmental Living Zone.

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

In my opinion, 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