

**REQUEST FOR EXEMPTION**  
**PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**  
**CLAUSE 4.6**  
**EXCEPTIONS TO DEVELOPMENT STANDARDS**

**APPLICANT:** Coastplan Consulting  
**PROPOSAL:** Demolition of Existing Dwelling & Construction of Shop Top Housing  
**PROPERTY:** 51 Kalang Road Elanora Heights  
**RELEVANT DEVELOPMENT STANDARD:** Clause 4.3 Height of Buildings

**Introduction**

This submission is a request for exemption to the development standard contained in Clause 4.3 of PLEP 2014, specifically, the 11m and 8.5m height limit under Clause 4.3(2) of the LEP which applies to the subject land. This request, on behalf of the applicant, 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 submission seeks to enable council to be satisfied that-

- (i) this 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,

**The Development Standard to which the request relates**

**1. Height of Buildings**

Clause 4.3 (2) of the PLEP 2014 states:

*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map.*

The respective map identifies the site as being within Category P2 which has a height limit of 11m and 8.5m.

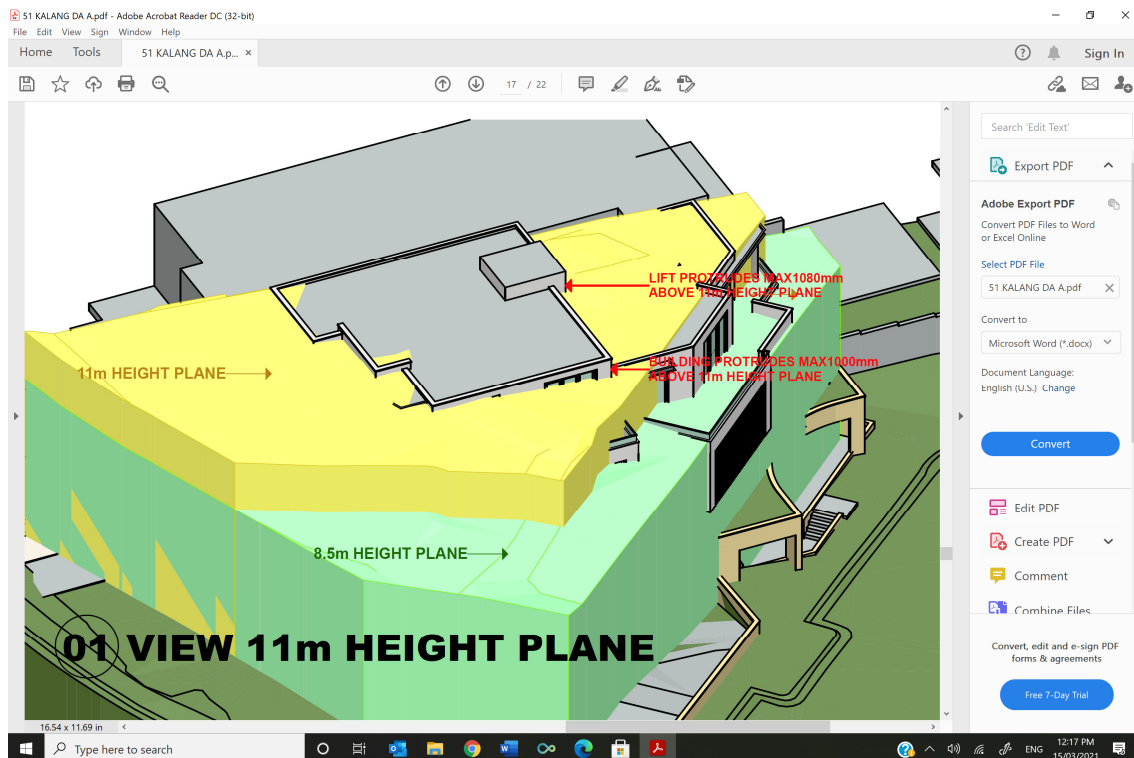
### **The Objectives of the Development Standard**

(1) The objectives of this clause are as follows—

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

### **The Nature of the Departure from the Development Standard**

The proposed residential flat building has a height of 12.08m at the highest part of the building at the lift overrun above natural ground level which exceeds the maximum height limit of 11m by up to 1.08m or 9.8% and on the corner of the building which exceeds the maximum height limit of 11m by 1m or 9%. Where the site has a maximum of 8.5m the development has a height of 11.5m at the highest part of the roof above natural ground level which exceeds the maximum height limit of 8.5m by 3m or 35%. This part of the building only relates to a small section of wall of the bedroom to unit 1.2 at 1<sup>st</sup> floor level and the bedroom and study and roof overhang to unit 2.at 2<sup>nd</sup> floor level. The extent of the encroachment above the height limit is shown in the diagram below.



## Why Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The following reasons to demonstrate that compliance with the development standard is unreasonable or unnecessary are based on the relevant reasons summarised by the Chief Judge in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] (“*Wehbe*”) and repeated in *Initial Action*[17]-[21]. The relevant matter is that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. In this regard the departure from the development standard is consistent with the objectives of the development in Clause 4.3 of the PLEP which are as follows-

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

### Comment

The additional height of the building above the height limit does not cause the building to be inconsistent with the desired character of the locality. This has been outlined in the Statement of Environmental Effects that accompanies the development application.

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

### Comment

The proposed development will be slightly higher than the existing adjoining building to the north but remains compatible with the height of this building and the other development in the Elanora Heights commercial centre. The part of the building that exceeds the 8.5m height limit relates to a small part of the corner of the bedroom at 1<sup>st</sup> floor level and the bedroom and study to unit 2.2 at 2<sup>nd</sup> floor level where the height of buildings control changes from 8.5m to 11m.

(c) to minimise any overshadowing of neighbouring properties,

**Comment**

the additional height of the building will cause indiscernible overshadowing impact on any adjoining property. The shadow diagrams indicate that the shadow cast by the development overshadow the car parking area to the community building to the south.

(d) to allow for the reasonable sharing of views,

**Comment**

The additional height of the building does not result in any loss of view to any adjoining property or other property in the locality.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

**Comment**

The building has been designed to respond to the topography of the site in that it is stepped down the site to follow the contours of the site which minimises the exceedance to the height control. However it should be noted that the stepping and overall height of the building is constrained by the existing levels of the site, the driveway access to the basement and the need to have the ground floor commercial area relatively level with the street level.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

**Comment**

The additional height of the development above the height controls will not result in any significant bulk and scale resulting in adverse visual impact on the natural environment. There are no heritage items in the locality and the site is not within a heritage conservation area. When viewed from the south in Kalang Street the

overall height of the building will not appear to be excessive. It is clear that the two height controls applying to the building of 11m reducing to 8.5m on the southern side of the site are there to achieve stepping of the height of the building at the transition between the boundary of the commercial and adjoining residential zone. Although there is some encroachment within the 8.5m limit this relates to a small section of the building and has acceptable impact on the visual amenity of the locality.

Given the above, it is apparent that the objectives of the height limit controls in Clause 4.3 of the PLEP 2014 are satisfied on this occasion, notwithstanding the departure from the standard. As such, it is unreasonable and unnecessary that the standard be strictly applied in this instance.

#### **The Environmental Planning Grounds Which Justify Contravening the Development Standards in Clause 4.3(2) of SEPP (GCC)**

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion which include the following.

- The slope of the land which falls from the front to the rear boundary results in the building being designed so it is stepped down the site to follow the contours of the site. Due to the slope of the land small parts of the building encroach on the building height limit as the building steps which results in some parts of the building being below the height limit and some being above.
- There are also two height controls relating to the site which is reflected in the desire to have the development to provide a transition between the business zone and the adjoining residential zone. The encroachments outside of the height controls will still maintain this transition. The encroachments outside of the 11m height limit relate to part of the roof and lift overrun and the encroachments outside of the 8.5m relate to a small section of the building at 1<sup>st</sup> and 2<sup>nd</sup> floor level of the building. Whilst the encroachment of the 8.5m height appears to be significant being 35% the height controls applying to the site are reasonably unique as two separate height controls apply. Any encroachment of the top floor level of the building even if it projected 1mm beyond the 11m height line would have the same numerical encroachment on the 8.5m height limit. Therefore I suggest that this encroachment be assessed in the context of the height controls and the actual extent of the encroachment by the part of the

building that has a height control of 11m into the part of the building that has a height control of 8.5m.

- The additional height of the building does not result in any significant loss of view or overshadowing impacts of the adjoining properties or the public domain.
- Lowering the height of the building by providing additional excavation will result in the ground floor shop at the front of the building below the footpath level resulting in access issues.
- The additional height of the building will still result in a development which is of comparable scale with the existing and future development in the locality with the development providing a transition between the commercial centre and the residential land to the south. Therefore, the proposal will not be out of keeping with other development in the locality.

**The Public Interest, Consistency with the Objectives of the Development Standard in Clause 4.3(2) and the objectives for development within the B4 Mixed Use Zone**

The proposed development is consistent with the objectives of the development standard that has been varied. The proposed development is also consistent with the objectives of the B2 zone which are set out below:

***Objectives of zone***

**Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide healthy, attractive, vibrant and safe local centres.
- To strengthen the role of centres as places of employment.
- To provide an active day and evening economy.
- To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.

The proposed development is consistent with the relevant objectives of the zone in that the proposal will:

- provide a range of retail, business, uses that serve the needs of people who live in, work in and visit the local area.
- encourage employment opportunities in accessible locations.


- maximise public transport patronage and encourage walking and cycling.
- Provide a development where the outcome will add to the healthy, attractive, vibrant and safe local centre.
- Provide employment opportunities.
- provide an active day and evening economy by having a mix of residential and commercial uses.
- The residential uses above street level will be compatible with the characteristics and uses of the site and its surroundings.

## **Conclusion**

The proposed development is consistent with the objectives of Clause 4.6 of the Pittwater LEP 2014 in providing an appropriate degree of flexibility in the application of the development standards relating to the proposed development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. The proposed development is also consistent with the objectives of the development standards relating to the height of buildings and the objectives of the B4 zone.

A review of this proposal in accordance with the requirements of Clause 4.6 of PLEP 2014 indicates that in this instance the written request has adequately addressed the matters required to be demonstrated by subclause (3), and the proposed development and 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.

Therefore, the justification for departure from the development standard in Clause 4.3(2) is worthy of support.



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