



## **Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

### **Proposed Façade Replacement and Alterations and Additions to Existing Residential Flat Building (Ranelagh Tower)**

3-17 Darling Point Road, Darling Point (SP 4680)

**Prepared by Willowtree Planning Pty Ltd on behalf  
of Mille Projects**




**February 2021**

**Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

**Document Control Table**

Document Control Table			
Document Reference:	WTJ-529		
Contact	Thomas Fernandez		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 – 1/03/2021	Thomas Fernandez Senior Planner	Andrew Cowan Director	Andrew Cowan Director
			

© 2021 Willowtree Planning Pty Ltd This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorised reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Willowtree Planning (NSW) Pty Ltd.

## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

### TABLE OF CONTENTS

LIST OF FIGURES .....	2
LIST OF TABLES.....	2
PART A PRELIMINARY.....	3
PART B PLANNING THRESHOLDS AND FRAMEWORK.....	5
PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS.....	7
PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO.....	12
PART E SUMMARY AND CONCLUSION .....	16

### LIST OF FIGURES

**Figure 1.** Proposed elevation of level 31 height non-compliance (See line red for existing building Max HOB) (Scott Carver, February 2021)

**Figure 2.** Sections of level 31 penthouse (See line red for existing building Max HOB) (Scott Carver, February 2021)

**Figure 3.** Existing building Photomontage (Scott Carver, February 2021)

**Figure 4.** Proposed building with Level 31 Penthouse Photomontage (Scott carver, February 2021)

### LIST OF TABLES

**Table 1:** HOB Summary (WLEP 2014)

**Table 2:** FSR Summary (WLEP 2014)

**Table 3:** Proposed GFA

## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

### PART A PRELIMINARY

#### 1.1 INTRODUCTION

The following *written request* has been prepared in accordance with the provisions of Clause 4.6 - *Exception to development standards* of the *Woollahra Local Environmental Plan 2014* (WLEP 2014) to support the Development Application (DA) for proposed façade replacement and alterations and additions to the existing residential flat building (RFB) known as Ranelagh Tower on land at 3-17 Darling Point Road, Darling Point (the site), legally described as SP 4680.

The site is zoned R3 Medium Density Residential under the WLEP 2014 and development for the purposes of an RFB is permitted with consent.

The proposal provides a technical non-compliance to the following development standards applying to the site per the WLEP 2014:

- **Clause 4.3-Height of Buildings (HOB)** – maximum 13.5m – proposed 90.73m (variation of 670% to the standard or 200mm increase to the existing building height (90.53m)) – **Refer to Part C**
- **Clause 4.4-Floor Space Ratio (FSR)** – maximum 1.3:1 - proposed 1.33:1 (variation of 2%) **Refer to Part D**

This request is prepared in consideration of the following objectives provided within Clause 4.6 of the WLEP 2014:

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

The variations are sought as a consequence of the existing built form of Ranelagh Tower; a 30 storey RFB comprising of 127 strata titled residential apartments. The building was completed in 1969 and was significant at its time as it was the largest of its kind within the area. Currently, the building exhibits a decaying façade in need of renewal within the current context and setting, which has triggered the subject proposal.

Application of the objectives of Clause 4.6 of the WLEP 2014 are considered appropriate within the circumstances of the case to provide an appropriate level of flexibility for development to correspond to the existing built form achieved on the site, which predates current legislation.

#### 1.2 PLANNING JUSTIFICATION

This Clause 4.6 Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under WLEP 2014. It considers the various planning controls, strategic planning objectives and existing characteristics of the site, and concludes that the proposed non-compliances are would achieve the objective of encouraging orderly and economic use and development of land under Section 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Further, this Clause 4.6 Variation Request has demonstrated that there are sufficient environmental planning grounds for the departure to FSR and HOB development standards in accordance with Clause 4.6(3)(b) of the LEP. In this respect, this Clause 4.6 Variation Request has provided the following:

- Identified the specific aspect or feature of the development that contravenes the relevant development standard;
- Justified why the contravention of the development standard is acceptable, rather than simply promoting the benefits of carrying out the development as a whole; and

#### **Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

- Explained on what basis there are sufficient environmental planning grounds to justify contravening the development standard.

In justifying the proposed contravention and demonstrating sufficient environmental planning grounds, this request is considered to have demonstrated how the proposed contravention itself satisfies **Section 1.3** of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

## PART B PLANNING THRESHOLDS AND FRAMEWORK

### 2.1 CLAUSE 4.6 OF THE WLEP 2014

In accordance with Clause 4.6 of WLEP 2014 a written request that seeks to justify a contravention to a development standard must demonstrate compliance with the following subclauses:

- (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.*
- (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.*
- (5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

These matters are responded to in **Part C and D** of this Request.

### 2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan (LEP) Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives of development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
  - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

#### **Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part C and D** of this Request.

**Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

**PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

The proposed development seeks an exception to Clause 4.3 - *Height of Buildings* (HOB) of the WLEP 2014.

**3.1 PROPOSED NON-COMPLIANCE**

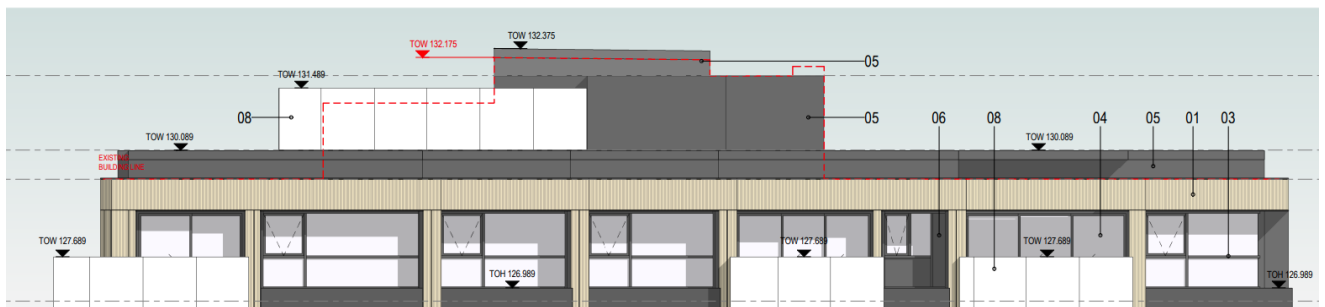
Table 1. HOB Summary (WLEP 2014)				
WLEP Clause	2014 Maximum	Existing building	Proposed	Additional HOB to existing
Clause 4.3 HOB	13.5m	90.53m	90.73m (variation of 670% to the standard)	200mm or <1%

The prominence of Ranelagh Tower within the existing streetscape is acknowledged and, by virtue, currently exhibits a significant height departure. The additional height proposed under this application is as a result of Level 31 penthouse.

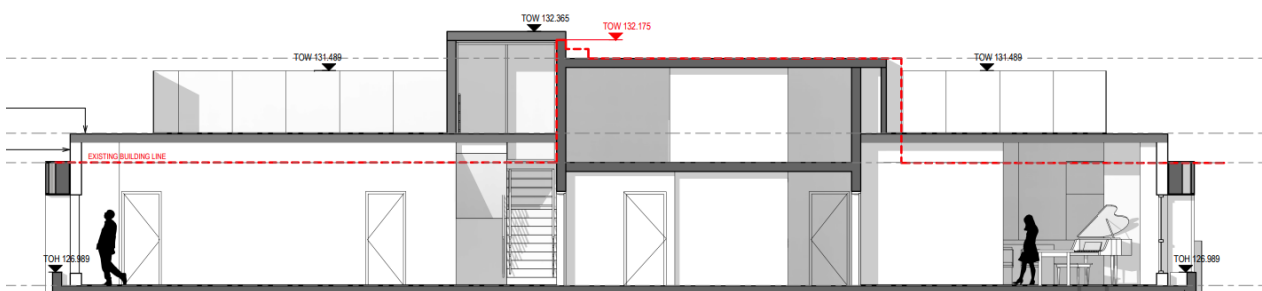
It should be noted that a façade replacement application in isolation of the proposed Level 31 Penthouse would also result in a technical non-compliance with the standard, given the development would exceed a height of 13.5m.

The additional height is minor in relation to the existing departure and would not unduly impact upon adjoining properties or the surrounding area. The following Sections consider the proposed variation against the relevant planning framework described earlier and the provisions of Clause 4.6 of the WLEP 2014 in consideration of the exception.

Refer to **Figure 1** and **2** which demonstrates the proposed height variations.



**Figure 1.** Proposed elevation of level 31 height non-compliance (See line red for existing building Max HOB) (Scott Carver, February 2021)



**Figure 2.** Sections of level 31 penthouse (See line red for existing building Max HOB) (Scott Carver, February 2021)



## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

### 3.2 CLAUSE 4.6 (3) (a) - IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE ?

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ set out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *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.*
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council 's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it Clause 4.6 Variation – Sun Access Planes Façade Upgrade to Existing Commercial Premises 2 -26 Park Street, Sydney (Lot 12 DP 1048563) 9 applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. Notwithstanding, in consideration of the above tests, the proposal is considered both unreasonable and unnecessary in the circumstances of the case for the following reasons:

- The existing RFB Tower known as Ranelagh Tower exhibits a significant breach to the current HOB Development Standard;
- Given the existing HOB, a façade renewal application in isolation of the additional penthouse level would also require an exception to the standard, as such, strict compliance is considered unreasonable in the circumstances of the case given the building predates current legislation;
- Strict compliance with the HOB Development Standard would render the application and be contrary to the objects of EP&A Act, specifically, Clause 1.3 (a) (g) and (h);
- The additional height as a result of the level 31 penthouse is minor in relation to the existing variation that the building exhibits and the departure is commensurate to existing scale, height and bulk;
- Given the minor variation the proposal does not result in a further environmental impacts to surrounding properties and maintains the existing building footprint.

In light of the above, compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case.

### 3.3 CLAUSE 4.6 (3) (b) - ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD ?

The justification for the proposed variation to the development standard for HOB is considered to be well founded and this Request demonstrates sufficient environmental planning grounds for support as, notwithstanding the proposed departure from the development standard, the proposed development:

- Does not give rise to any measurable or unreasonable visual impacts from the public domain.

The proposed additional level 31 is commensurate with the existing scale of the building and results in a minor increase to the existing RL of the building. As illustrated in **Figure 1** above, the proposal maintains the existing scale and the additional level results in the prominent design and appearance of the building being unchanged. The prominence of Ranelagh Tower within the

#### Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

existing streetscape is acknowledged and the proposed development under this application demonstrates that there are no unreasonable visual impacts to the public domain.

- Does not result in any environmental or amenity impacts to the surrounding or adjoining properties.

The additional overshadowing as a result of the minor increase to the HOB is negligible and within acceptable limits. As above, the replacement and upgrade of the decaying façade has considered the prominence of Ranelagh Tower and its integration within the existing streetscape.

The variation to the development standard for HOB is considered well founded and demonstrated sufficient environmental planning grounds for the following reasons:

- The existing RFB development is permissible with consent within the zone;
- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**;
- Strict compliance with the Development Standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.2**;
- The existing development is subject to a significant departure of the standard and this application does not seek to dramatically change the existing height or design and appearance of the building;
- The proposed variation is commensurate to the scale of the existing development streetscape;
- The visual impact of the height variation from the public domain has been minimised by ensuring the proposed development is within the existing building footprint and only exhibits a minor variation to the existing maximum RL;
- The additional overshadowing as a result of the proposed development would have a negligible impact to surrounding properties and is commensurate to existing overshadowing experienced.

For the reasons outlined above, it is considered that there are sufficient environmental planning grounds to justify the proposed variation to the HOB Development Standard under Clause 4.3 and is therefore worthy of support having regard to the matters listed within Clause 4.6 under WLEP 2014.

#### **3.4 CLAUSE 4.6 (4)(a)(ii) – IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST AND CONSISTENT WITH OBJECTIVES OF THE STANDARD AND LAND USE ZONE?**

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard, is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognised this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

The objectives of Clause 4.3 are as follows:

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood,*
- (b) to establish a transition in scale between zones to protect local amenity,*
- (c) to minimise the loss of solar access to existing buildings and open space,*
- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

The underlying purpose of Clause 4.3 is to ensure that building heights are consistent and sympathetic within the existing context and desired future character of the area. Further, Clause 4.3 provides the protection of surrounding amenity and environment by ensuring that development is of an appropriate scale.

#### Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

In response to the objectives and purpose of Clause 4.3 the following is provided:

- Ranelagh Tower predates current legislative requirements and while does not commensurate the desired built form envisaged by the current standard, is a unique and significant landmark within the locality, which provides an existing non-compliance to HOB;
- The proposal does not result in any significant additional loss of solar access and open space as works to level 31 are located within the existing building footprint and result in a minor increase of the maximum RL of the existing building from RL 132.175 to RL 132.375;
- The proposed additions to level 31 would not change the overall appearance and design of the existing building and do not dominate key elements of the buildings which contribute to the existing streetscape; and
- Given the minor variation to the HOB and sympathetic design of Level 31 within the existing building footprint, impacts to nearby properties including views, loss of privacy, overshadowing and solar access are negligible.

Additionally, Clause 4.6(4)(b)(ii) requires the consent authority to have regard to the objectives for development within the land use zone applying to the site prior to granting consent to a contravention. The site is zoned R3 Medium Density Residential, and the objectives are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The proposed development is consistent with the zone objectives for the following reasons:

- The proposed development upholds the existing housing type on site as an RFB;
- The additional level 31 penthouse would provide for the housing needs of the community and would positively contribute to the existing Ranelagh Tower without unduly impact upon surrounding development;
- Whilst the proposed development is not consistent with the HOB standard, as demonstrated above and within the accompanying SEE, the development achieves a scale that is appropriate for the existing building and considers the prominence that Ranelagh exhibits within the streetscape.

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. In light of the above, the proposed development is consistent with both the objectives of Clause 4.3 and the R3 zone under the WLEP 2014.

In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- Enhancement of the visual appearance of the site which currently exhibits an existing decaying façade;
  - Strict compliance with the HOB Standard would render the application and be contrary to Section 1.3 (g) and (h) of the EP&A Act 1979 as follows;
    - *(g) to promote good design and amenity of the built environment,*

#### **Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

- *(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*
  - The development would support the longevity of the existing building by improving the decaying façade and ensure the appropriate maintenance of the building;
- Notwithstanding non-compliance with HOB and FSR, no areas of concern have been highlighted by the accompanying SEE or this report that indicate the proposed development would have significant impact to surrounding properties and therefore is in the public interest. The additional overshadowing of the proposed development is negligible and is commensurate with the existing amenity impacts of the building.

In light of the above, the proposed development is considered to be within acceptable limits and would not be contrary to the public interest.

## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

## PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

The proposed development seeks an exception to Clause 4.4 – *Floor Space Ratio* (FSR) of the WLEP 2014.

### 4.1 PROPOSED NON-COMPLIANCE

The existing site area is 9300m<sup>2</sup>.

Table 2: FSR Summary (WLEP 2014)			
WLEP 2014 Clause	Maximum	Existing	Proposed
Clause 4.4 FSR	1.3:1 or 12 090m <sup>2</sup>	1.26:1 or 11 703m <sup>2</sup>	1.33 or 12 347m <sup>2</sup> (Variation of 2% to maximum)

A detailed breakdown of the proposed Gross floor Area (GFA) is provided below:

Table 3: Proposed GFA	
Existing GFA	11 703m <sup>2</sup>
Permissible GFA	12 090m <sup>2</sup>
Proposed Façade Additional GFA	330m <sup>2</sup>
Proposed Penthouse Additional GFA	294m <sup>2</sup>
Proposed carpark lift lobby GFA	20m <sup>2</sup>
Total proposed additional GFA	644m <sup>2</sup>
Proposed additional as a percentage (%)	5.2%
Total GFA	12, 347m <sup>2</sup>
Difference to permissible GFA	257m <sup>2</sup>
Proposed FSR	1.33:1

The proposed GFA as a result of the façade replacement is evident as the existing floor area is extended slightly to the proposed cladding. The additional GFA resultant from this is minor however is required to be included for the purposes of GFA Calculation.

The additional Level 31 Penthouse is respectful of the existing building bulk and scale as illustrated in **Figure 3** and **Figure 4** below. The proposed additions maintain the existing building footprint of Ranelagh Tower by filling in existing building elements of the roof level.

The following Sections consider the proposed variation against the relevant planning framework described earlier and the provisions of Clause 4.6 of the WLEP 2014.

**Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)



**Figure 3.** Existing building Photomontage (Scott Carver, February 2021)



**Figure 4.** Proposed building with Level 31 Penthouse Photomontage (Scott carver, February 2021)

**4.2 CLAUSE 4.6 (3)(a) - IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827* as outlined in **Section 3.2** above, compliance with the standard is considered unnecessary in the circumstances of the case for the following reasons:

- The existing RFB Tower known as Ranelagh Tower exhibits a significant breach to the HOB Development Standard and the additional level 31 level penthouse has been designed to consider existing maximum RL and maintains the existing building footprint and scale;
- The proposed variation to FSR, being 2%, is considered minor in relation to the existing building on site given:

#### Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

- The additional penthouse level maintains the existing bulk of the building as illustrated in **Figure 4** above and is consistent with the overall existing design of the building;
- The additional gross floor area (GFA) to carparking areas is minimal and would improve accessibility and functionality within the site;
- The proposed development would have no undue impacts to the surrounding context and setting;
- The proposal would not impinge on the fabric, settings and views of surrounding Heritage Items as demonstrated within **Appendix 7** of the DA Package as the building maintains existing distances, bulk and design.

As provided above, and within the provisions of Clause 4.6, a contravention to the FSR Development Standard would allow for an acceptable amount of flexibility to provide a better outcome for the existing development, Ranelagh Tower. Accordingly, the development standard is considered unnecessary in the circumstances of the case.

#### 4.3 CLAUSE 4.6 (3)(b) - ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD ?

The justification for the proposed variation to the development standard for FSR is considered to be well founded and this Request demonstrates sufficient environmental planning grounds for support as, notwithstanding the proposed departure from the development standard, the proposed development:

- Does not give rise to any measurable or unreasonable visual impacts from the public domain.

The proposed additional GFA as a result of level 31 is commensurate with the existing scale of the building and would be wholly within the existing building footprint of Ranelagh Tower. As illustrated in **Figure 3** above, the proposal maintains the existing scale and the additional level results in the design and appearance of the building being unchanged. The prominence of Ranelagh Tower within the existing streetscape is acknowledged and the proposed development under this application demonstrates that there are no unreasonable visual impacts to the public domain as a result of the additional floor space proposed.

- Does not result in any environmental or amenity impacts to the surrounding or adjoining properties.

The additional overshadowing as a result of level 31 penthouse is negligible and within acceptable limits. The additional GFA sought within the carparking areas of the development would have no impact to surrounding properties and would enhance overall accessibility of the building.

The variation to the FSR development standard is considered well founded and has demonstrated sufficient environmental planning grounds for the following reasons:

- The existing RFB development is permissible with consent within the zone;
- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 4.1**;
- Strict compliance with the Development Standard is unnecessary for the reasons outlined in **Section 4.2**;
- The proposed variation is commensurate to the scale of the existing development within the streetscape;
- The visual impact of the FSR variation from the public domain is minimised by ensuring the proposed development is within the existing building footprint;
- The additional overshadowing as a result of the proposed development would have a negligible impact to surrounding properties and is commensurate to existing overshadowing experienced.

For the reasons outlined above, it is considered that there are sufficient environmental planning grounds to justify the proposed variation to the FSR Development Standard under Clause 4.4 and is therefore worthy of support having regard to the matters listed within Clause 4.6 under WLEP 2014 and the relevant planning framework.

#### **Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)**

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

#### **4.4 CLAUSE 4.6(4)(ii) - IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST AND CONSISTENT WITH OBJECTIVES OF THE STANDARD AND ZONE?**

As outlined in **Section 3.1** above a key determination of the appropriateness of a Clause 4.6 Variation is the proposed development's compliance with the underlying objectives and purpose of that development standard.

The objectives of Clause 4.4 FSR is as follows:

- (a) *for development in Zone R3 Medium Density Residential—*
- (i) *to ensure the bulk and scale of new development is compatible with the desired future character of the area, and*
  - (ii) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and*
  - (iii) *to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space,*

The underlying purpose of Clause 4.4 is to ensure that bulk and scale of development is compatible within the existing context and desired future character of the area. Further, Clause 4.4 ensures the environmental impacts and amenity impacts to adjoining properties and the public domain are minimised from the proposed development.

In response to the objectives and purpose of Clause 4.4 the following is provided:

- The additional penthouse is within the existing building footprint, and as provided above, results in a minor increase to the existing building height of the RFB and 2% variation to the FSR Standard;
- The proposed bulk and scale results in minor additional loss of solar access and open space as works to level 31 are located within the existing building footprint. The additional impacts are negligible in relation to the existing bulk and scale of the building;
- The proposed additions to level 31 would not change the overall appearance and design of the existing building and do not dominate key elements of the building which contribute to the existing streetscape;
- Additional GFA within the car parking areas of the development would enhance the accessibility and functionality for residents within the building;
- The variation does not give rise to any changes to deep soil planting or existing private open space on site.

Additionally, Clause 4.6(4)(ii) requires consideration of the proposed development against the objectives of the zone applying to the land as provided within **Section 3.4** above.

In addition to reasons in response to the objectives of the zone provided earlier, this Section demonstrates, the proposed development achieves a suitable scale consistent with the existing development on site and would not give rise to any additional environmental or amenity impacts. Accordingly, the proposed development is consistent with the objectives of the R3 zone, notwithstanding non-compliance of the FSR Development Standard.



## Clause 4.6 Variation Request (Height of Buildings and Floor Space Ratio)

Proposed Façade replacement and alterations and additions to existing residential flat building (Ranelagh Tower)  
3-17 Darling Point Road, Darling Point (SP 4680)

---

## PART E SUMMARY AND CONCLUSION

### 5.1 SUMMARY

This variation request provides sufficient justification of the proposed contraventions against the provisions of Clause 4.6 of the WLEP 2014, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*.

The request outlines that:

- Compliance with the development standards is unreasonable and unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standards;

Additionally, it is further noted:

- The proposed development is permissible with consent within the zone;
- Strict compliance with the standards would hinder the achievement of the objects provided within Section 1.3 of the EP&A Act;
- The proposed development is consistent with the surrounding locality; and
- No unreasonable environmental or amenity impacts are associated with the proposed development.

Overall, it is considered on balance, that the proposed Clause 4.6 Variation to the HOB and FSR development standard is appropriate and is justified having regard to the matters listed within Clause 4.6 of the WLEP 2014.

### 5.2 CONCLUSION

For the reasons outlined within this request, it is considered that the exceptions to Clause 4.3 HOB and 4.4 FSR of the WLEP 2014 are worthy of support in this instance and appropriate in the circumstances of the case.

In conclusion, it is requested that the Woollahra Local Planning Panel (WLPP) exercise its discretion and find that this Clause 4.6 Variation Request adequately addresses the relevant heads of consideration under Subclause 4.6(3) of the WLEP 2014.