

URBIS

# Clause 4.6 Variation Request

Ascham School  
Student Accommodation

19 Darling Point Road, Darling Point

Prepared for  
**Ascham School**  
September 2024

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# 1. Introduction

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Ascham School (**Ascham, the Applicant**). It accompanies a Development Application (**DA**) for the proposed use of the existing residential flat building at 19 Darling Point Road, Darling Point and its associated alterations and additions for 'campus student accommodation'.

The building will be used to provide new student accommodation facilities for the use of boarders at Ascham. The proposal also includes minor alterations to the Ascham campus (37 Darling Point Road, Darling Point) to connect the new student accommodation to the existing campus.

The Request seeks an exception from the Floor Space Ratio (**FSR**) development standard prescribed for the site under clause 4.4 of *Woollahra Local Environmental Plan 2014 (WLEP)*. The variation request is made pursuant to clause 4.6 of WLEP.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Ltd and dated June 2024.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** detailed assessment and justification of the proposed variation in accordance with the *Guide to Varying Development Standards* (November 2023).
- **Section 6:** summary and conclusion.

## 2. Site Context

### 2.1. Site Description

Ascham School covers a significant landholding within the suburbs of Edgecliff and Darling Point as illustrated in red in **Figure 1**. Ascham has been providing high quality education for day and boarding students since 1886, driven by a strong and widely respected academic program from Prep to Year 12.

The school has recently acquired a directly adjoining lot- at 19 Darling Point Road, Darling Point (refer to **Picture 2**). The lot currently accommodates a three storey residential flat building containing six units sitting over a garage level containing three parking spaces accessed from Darling Point Road.

**The subject site for the purposes of the proposed development includes 19 Darling Point Road as well as 37 Darling Point (Lot A DP 108600) within the existing Ascham School Campus.**

Figure 1 Existing School Boundary and Proposed Site of Works



Picture 1 Existing Site Boundary

Source: Urbis



Picture 2 Proposed Site Boundary with 19 Darling Point Road

The site currently accommodates a three-storey residential flat building containing six units with three garage parking spaces accessed from Darling Point Road. There are two existing mature trees to the rear of the site.

To the immediate north of the site is a two-storey brick dwelling known as 23 Darling Point Road. To the south is a large area of open space associated with the Ranelagh high-rise apartment building at 17 Darling Point Road. To the west of the site across Darling Point Road is a seven-storey residential flat building 'Kimberley Court', and further east are other buildings and spaces associated with the Ascham School campus.

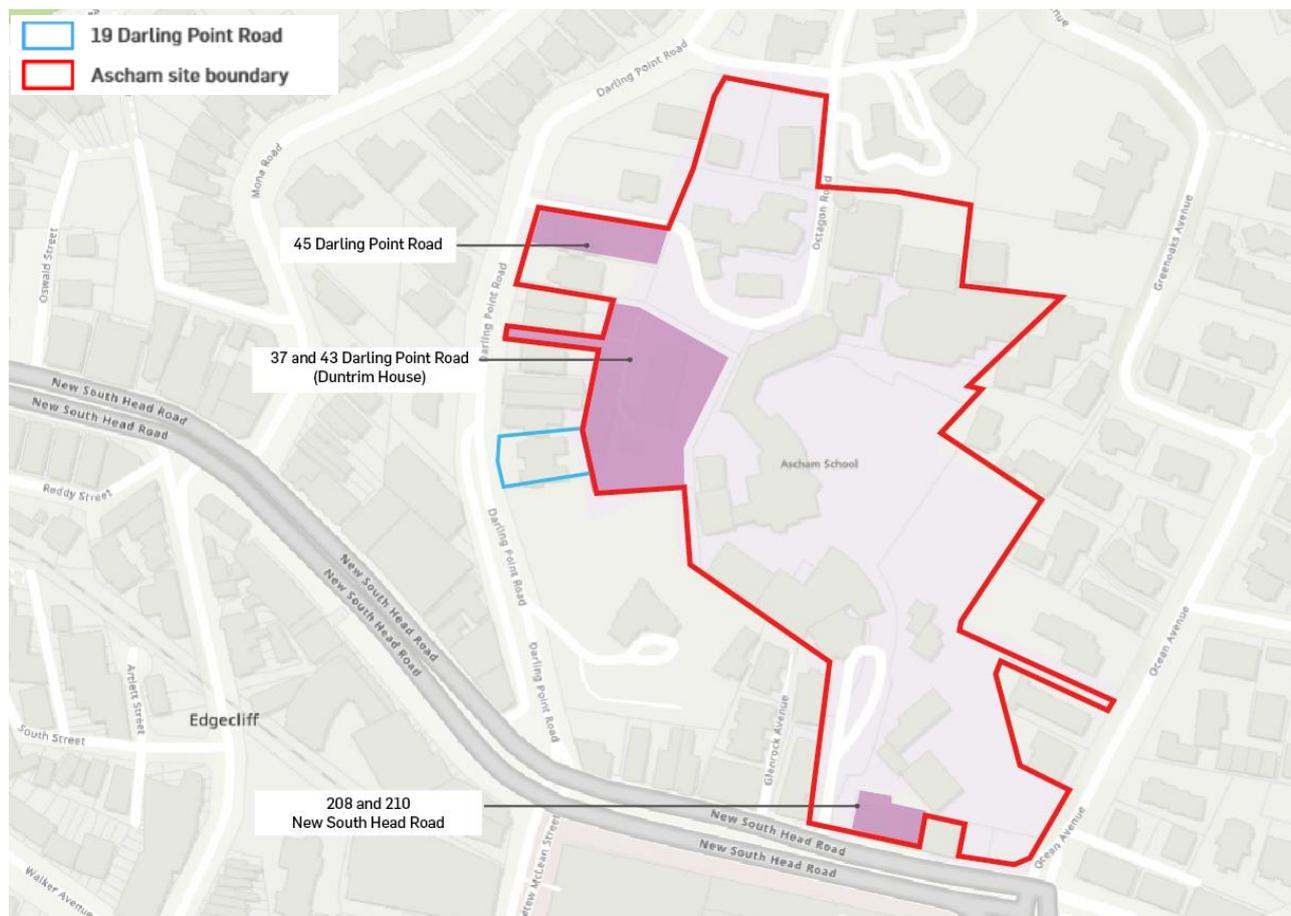
## 2.2. Floor Space Ratio Context

The primary lot address for the Ascham campus (188 New South Head Road, Edgecliff) has no applicable FSR development standard. This approach is typical of school (and other infrastructure) campuses allowing for a more 'merits-based assessment' of the bulk and scale of various different types of buildings required within these campuses. However, **Figure 2** identifies four sites that form part of the Ascham campus that have an FSR control:

1. **Duntrim House** (37 and 43 Darling Point Road) was purchased by Ascham in 2011 and was previously owned by Sydney Hospital. Development consent (DA 550/2013/1) was granted by the Joint Regional Planning Panel on 22 April 2014 for alterations, additions and use of Duntrim House and annexe building for school boarding facilities.
2. **45 Darling Point Road** was purchased by Ascham in 2018. Development consent (DA 139/2019) was granted by Woollahra Council on 26 June 2019 for a change of use from a residential dwelling to an educational establishment (classrooms and uniform shop).
3. **208 New South Head Road** was purchased by Ascham and used as the uniform shop for many years. Development consent (DA 433/2021/1) was granted by the Sydney East Regional Planning Panel on 20 July 2022 for demolition of 208 New South Head Road for the construction of a new school hall and classrooms.
4. **210 New South Head Road** was purchased by Ascham in 2011. It currently does not have any approval for any educational purposes and is used as a shop.

In summary, all four sites that have an FSR development standard within the main campus boundary are based on the historical use of these sites (i.e. prior to their ownership by Ascham). As No. 19 is now owned by Ascham and is being integrated within the school's broader campus, there exists greater opportunity for flexibility in considering the FSR applying to this lot.

Figure 2 Sites with applicable FSR development standards within the Ascham campus



Source: Urbis

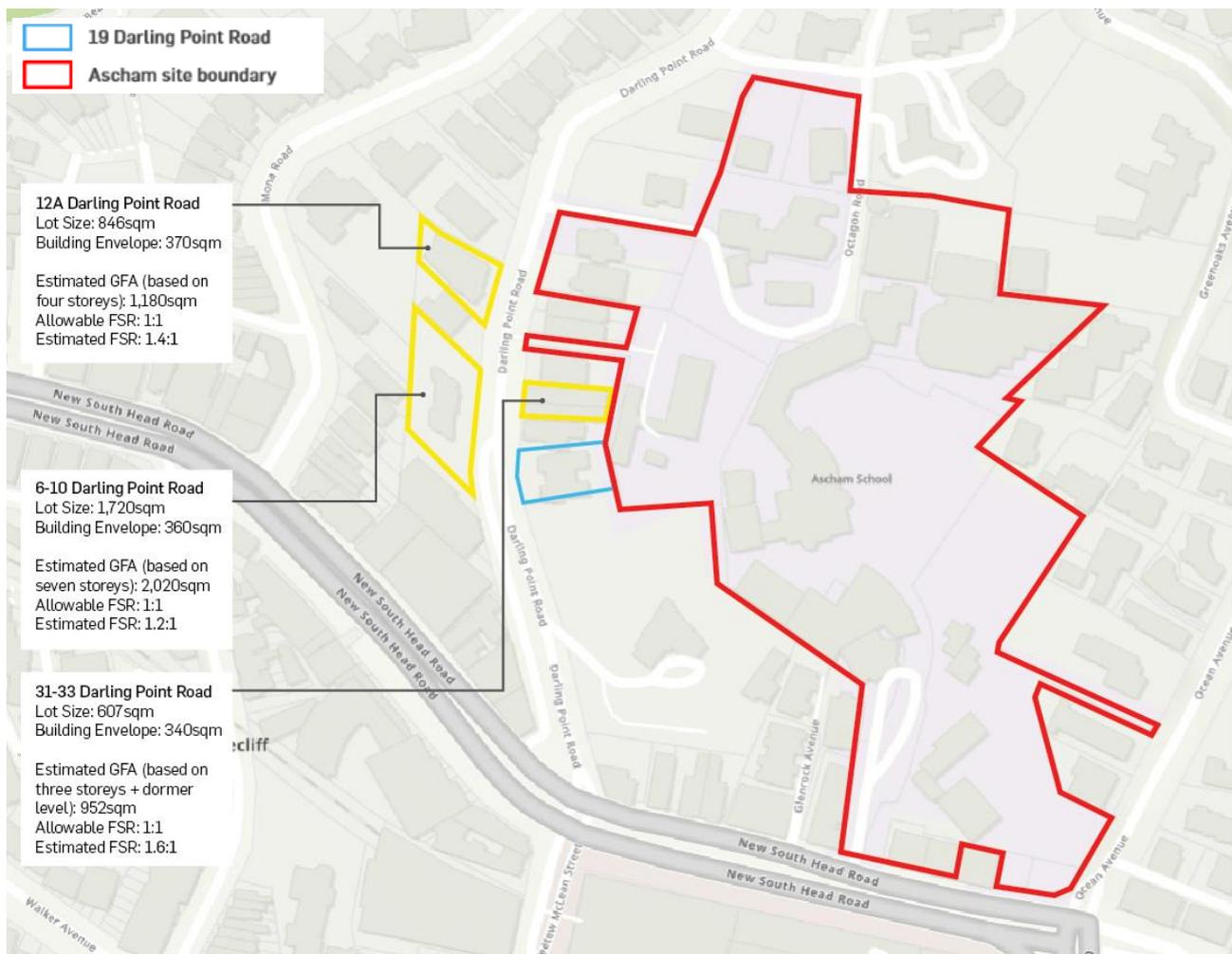
The current FSR controls on the sites surrounding the Ascham campus generally ranges between 0.65:1 to 1.3:1 for residential uses and up to 1.55:1 for shop-top housing and commercial uses along New South Head Road. Sites along New South Head Road generally have a higher FSR due to the primacy associated with this corridor, the commercial nature of development within the Edgecliff commercial centre, and the greater ability to absorb impacts associated with built form.

Along Darling Point Road, the FSR standards varies between 1:1 to 1.3:1. Based on the fluctuating floor space controls, there is variation in the scale of buildings within the immediate site locality.

A review of properties along Darling Point Road demonstrates that a number of buildings in the immediate locality of the Ascham campus have an FSR exceeding their applicable development standard. Where a 1:1 FSR applies, **Figure 3** demonstrates sites with estimated FSRs ranging from 1.2:1 to 1.6:1 on three lots in the immediate vicinity of 19 Darling Point Road. **Picture 1** illustrates that 31-33 Darling Point Road provides a similar built form to the subject site as viewed from Darling Point Road.

Overall, this analysis demonstrates that the existing locality contains built form that exceeds current controls and this built form contributes to a mix of building styles and forms. These circumstances, coupled with the fact the Ascham Campus is (predominantly) not controlled by a defined FSR, reinforces that a flexible approach can be taken.

Figure 3 Site Context – FSR Analysis



Source: Urbis

Note: Cadastral boundaries and building envelopes shown indicatively based on NSW Cadastre Web Service. All areas have been measured from SixMaps for indicative purposes only. GFA estimations have been calculated via an average efficiency of 80% of the measured building envelopes.

Figure 4 Site Context – FSR Analysis – Surrounding properties



Picture 3 31-33 Darling Point Road



Picture 4 12A Darling Point Road



Picture 5 6-10 Darling Point Road

## 2.3. Heritage

The existing building at 19 Darling Point Road is not identified as a local heritage item. The main Ascham campus is identified as a locally listed heritage item (I239) within the WLEP. The item is described as:

*Ascham school precinct comprising: “Fiona” including interiors and former entrance gates, “Glenrock” including interiors and inner and outer gates, the Dower House including interiors, sandstone works, remaining open space and oval adjacent to “Fiona”, 4 Moreton Bay Figs,*

Separately, heritage item I87 – “Duntrim”—*building and interiors (formerly a house) and grounds, including a Norfolk Island Pine* is located at 37 Darling Point Road, Lot A, DP 108600 and provides the existing boarding facilities for Ascham. This lot is located at the rear of 19 Darling Point Road, with landscaping and minor civil works proposed within Lot A, DP 108600 as part of the current DA to connect 19 Darling Point Road to the main campus.

Other locally listed items within the Ascham school campus which are not impacted by this proposal include:

- Item 179 – “The Octagon”— building and interior (Octagon Road, Lot 1 in DP 723473)
- Item 181– “Yeomerry”—building and interiors (1 St Marks Road, Lot 10 in DP 5444)

Other locally listed heritage items surrounding the site include:

- Item 114 – “Concrete balustrade” (Darling Point Road reserve, near intersection with New South Head Road)
- Item 238 – “Building and interiors” (136 New South Head Road, Lot 1 in DP 663495)

### 3. Proposed Development

This Clause 4.6 Variation Request has been prepared to accompany a DA for the change of use and associated alterations and additions to the residential flat building at 19 Darling Point Road, Darling Point for the purposes of campus student accommodation. The proposal also includes minor alterations to the Ascham campus (37 Darling Point Road, Darling Point) to connect the student accommodation to the existing campus.

The building and its grounds will be used by Ascham for its boarding students and associated staff and will directly connect to the wider campus via a new pedestrian link from this property through to the facilities and classrooms within the existing adjacent school campus. Minor works are also proposed within the existing Ascham campus (37 Darling Point Road) to facilitate this connection as shown in **Figure 5**.

Figure 5 Proposed landscape site plan



Source: 360 Degrees Landscape Architecture

The change of use to the existing residential flat building at No.19 to campus student accommodation will enable the boarding capacity of Ascham to increase from 125 to 137; however, the total number of students at Ascham will not change (which is currently regulated under DA 550/2013 involving a total student cap of 1,240).

Specifically, the development will involve:

- Excavation and extension of the ground level (and first floor above) to facilitate an in-house art room, gym and laundry, office, reception space and staff accommodation
- Installation of lift to provide access to all levels of the building
- Alterations and additions throughout the building and associated fit-out works to accommodate:
  - Student bedrooms, bathrooms, kitchenettes, study space and common rooms and outdoor terrace (the building will have a total capacity for 39 students)
  - Two on-site staff accommodation rooms
- Rooftop alterations, including occupation of attic space for bedrooms, and roof-top solar panels
- Removal of two trees within the rear yard of No. 19
- Additional landscaping within No. 19, including screen planting within boundaries, as well as new landscaping within the interface of the main Ascham campus (landscaping will involve replacing the 2 trees required to be removed with 18 new trees)

- Construction of a ramp/pedestrian accessway to connect the rear of No. 19 to the existing campus
- Demolition of the existing chicken coup/shed within the existing campus to facilitate the accessway
- Associated landscaping and minor civil works within the interface of No. 19 and the existing campus

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Ltd and dated June 2024. The proposal is also detailed within the architectural, civil and landscape drawings that form part of the DA.

# 4. Development Standard to be Varied

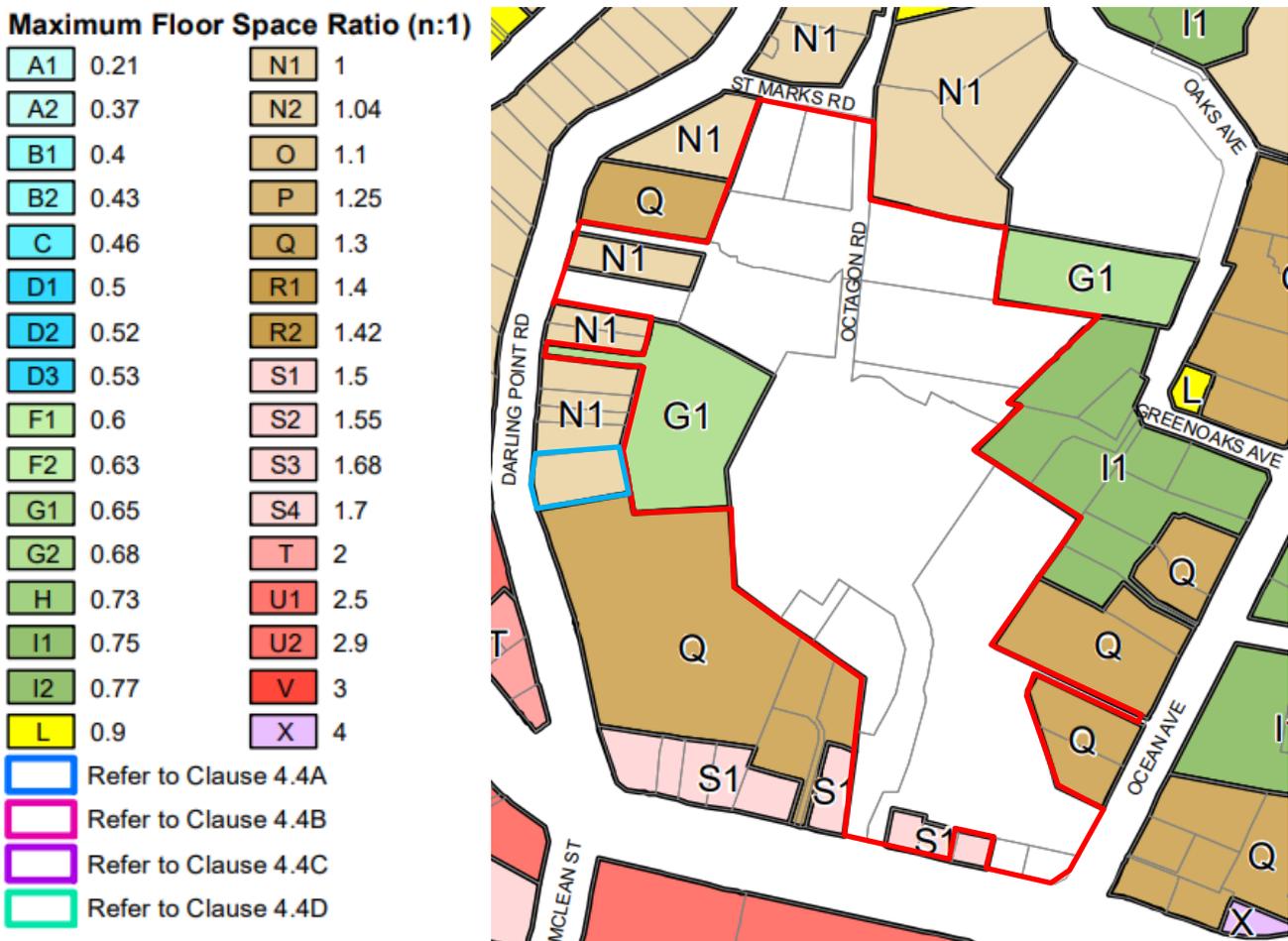
This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in Section 5 of the report.

## 4.1. FSR Development Standard

The following floor space controls apply for the site as prescribed within clause 4.4 of the WLEP and the associated Floor Space Ratio Map (Figure 6):

- 19 Darling Point Road (proposed campus student accommodation) – N1 1:1
- 37 Darling Point Road (within existing Ascham campus) – G1 0.65:1
- 188 New South Head Road, Edgecliff (Ascham main landholding) – no applicable FSR control

Figure 6 Floor Space Ratio Map with Ascham School boundary in red and 19 Darling Point Road in blue



Source: WLEP

## 4.2. Extent of Variation

The FSR prescribed by clause 4.4 of WLEP is a numeric development standard capable of being varied under clause 4.6(2) of WLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of WLEP.

WLEP defines 'gross floor area' as:

*the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

*but excludes—*

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

Having regard to 19 Darling Point Road in isolation, the proposed variation to the maximum FSR control is summarised in **Table 1** and **Figure 4**.

Table 1 Proposed Variation to Standard

	<b>Maximum Permitted</b>	<b>Proposed Development</b>	<b>Exceedance</b>
<b>GFA</b>	962sqm	1,295sqm	333sqm
<b>FSR</b>	1:1	1.35:1	0.25:1 (or 35%)

Figure 7 GFA Diagrams



Source: Tribe Studio Architects

### 4.3. Land Use Zoning

Woollahra Local Environmental Plan 2014 (WLEP) is the primary environmental planning instrument applying to the site and the proposed development.

The majority of the Ascham campus is located within the **SP2 Educational Establishment zone**. Although 19 Darling Point Road is located within the **R3 Medium Density Residential zone**.

# 5. Justification for the Proposed Variation

Clause 4.6 of WLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of WLEP are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (c) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The following sections of the report provide detailed responses to the key questions required to be addressed within the Guide to Varying Development Standards (November 2023) and clause 4.6 of WLEP.

## 5.1. How Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e). An applicant must satisfy at least one.

- a) *Are the objectives of the development standard achieved notwithstanding non-compliance with the standard?***

The specific objectives of the FSR as specified in clause 4.4 of WLEP are detailed in **Table 2**. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 Assessment of Consistency with Clause 4.4 Objectives

Objectives	Assessment
<p>(a) <i>for development in Zone R3 Medium Density Residential—</i></p> <p>(i) <i>to ensure the bulk and scale of new development is compatible with the desired future character of the area,</i></p>	<p>The proposal seeks to develop a high amenity, contemporary extension to an existing Inter-War residential flat building.</p> <p>The Darling Point precinct is an established residential area with a rich mixture of architectural styles and forms. The desired future character for the Precinct is outlined in Section B.1.2.2 of the <i>Woollahra Development Control Plan 2015 (the DCP)</i>. In summary, the DCP sets out the following principles which determine the desired future character:</p> <ul style="list-style-type: none"> <li>▪ <i>Development is to retain the visual prominence of the tree canopy, particularly along the ridgeline of Darling Point Road.</i></li> </ul>

Objectives	Assessment
	<ul style="list-style-type: none"> <li>▪ <i>Development reflects the scale of the existing built form and retains the character of the original building particularly in regard to the roof form, massing, details, materials and finishes.</i></li> <li>▪ <i>Development adjoining a contributory item or heritage conservation area is to have regard to the architectural values of the building and establish a sympathetic interface.</i></li> <li>▪ <i>Where new development occurs, the buildings are to provide a height, bulk, and scale compatible with those buildings that are predominantly two to four storeys in height, and have regard to the visual impact of the development from the harbour.</i></li> </ul> <p>As demonstrated in the <b>Architectural Design Statement and Architectural Plans</b> prepared by Tribe Studio Architects, the proposed development will have a positive visual impact on the character of the surrounding area. A variety of existing and new materials and finishes, which are high quality and low maintenance, will enhance the appearance of the development. The proposed extension is integrated with landscape elements softening any perceived bulk and scale.</p> <p>The proposal also results in an improved tree canopy from approximately 132.46sqm (14%) to 292sqm (30%).</p> <p>The overall design aims to ensure that existing heritage elements of the building are retained or reinstated, with additional built form sensitively arranged such that it is not highly visible from the public domain but where visible, is still read as contemporary.</p> <p>The variance in FSR is generally associated with the rear extension located on the ground and first floor of the development. As noted in the <b>Heritage Impact Statement</b> prepared by Hector Abrahams Architects, the demolition of rear elements will avoid the removal of architecturally valuable fabric. Furthermore, the design of the new rear elevation respects the geometry and form of the existing block.</p> <p>The introduction of new built form provides a ‘front door’ from within the school campus for its boarding students and associated staff and provides a true connection to the wider Ascham campus. Accommodation within the existing attic level is also introduced behind the existing roof ridgeline along Darling Point Road, creating additional accommodation within the existing height plane. This space has been carefully designed to minimise visual impact from the streetscape and adjoining properties. New side dormer windows have been designed in consultation with Council’s Heritage Officers and</p>

Objectives	Assessment
	<p>are set back from the edge of the roof and do not exceed the existing ridge line.</p>
<p><i>(ii) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain</i></p>	<p>The proposed FSR exceedance minimises adverse environmental effects on the amenity of adjoining properties when compared to a compliant design having regard to:</p> <ul style="list-style-type: none"> <li>▪ Visual amenity</li> <li>▪ Privacy</li> <li>▪ Overshadowing</li> </ul> <p>Detailed consideration of these matters as they relate to impacts on adjoining properties is provided in <b>Section 5.2</b> and concludes these impacts are minimised. Assessment of the impacts of the proposal on the public domain are further detailed below.</p> <p>The non-compliant floor space is located to the rear of the existing building at ground and first floor level and within the existing attic space. As demonstrated within <b>Figure 8</b>, below and also within the visual analysis prepared by Tribe Studio Architects that accompanies the DA:</p> <ul style="list-style-type: none"> <li>▪ The existing building (and the contribution it makes to the Darling Point Road streetscape) will be retained.</li> <li>▪ The rear extension will not be readily visible from the public domain along Darling Point Road.</li> <li>▪ The new dormer windows sit behind the street elevation and will not be visible when viewed directly in front of the site.</li> <li>▪ The scale and pattern of adjoining buildings to the north together with the existing Fig Tree restrict views of the new dormer windows from the north along Darling Point Road.</li> <li>▪ As a result of the topography of the site and existing sandstone wall, views from the public domain along Darling Point Road to the south will be limited to very discreet positions along the road and footpath. From these specific locations, the new dormer windows have been designed as recessive elements within the roof profile and will therefore maintain the existing massing and scale of the built form.</li> </ul> <p>Further, as shown on the architectural plans and solar access diagrams, the position of the dormer windows and rear extension does not create privacy impacts between the public domain and the subject property, nor materially impact upon solar access to the public domain.</p>

Objectives	Assessment
	Having regard to the above, the proposed development will not adversely impact on the use or enjoyment of the public domain along Darling Point Road.

Figure 8 Comparative View Analysis



Picture 6 Current view from Darling Point Road



Picture 7 Proposed view from Darling Point Road

Source: Tribe Studio Architects

*(iii) to ensure that development allows adequate provision on the land for deep soil planting, tree canopy cover and areas of private open space,*

Additional built form is generally located within the existing building envelope, excluding the rear extension. As illustrated in the **Landscape Plans** prepared by 360 Landscape, the proposal introduces deep soil planting within the front, rear and side setbacks.

The proposal provides 164.4sqm of deep soil in accordance with the DCP definition, and an additional 142.22sqm of permeable paving that allows the growth and sustenance of tree planting, vegetation screening and water filtration (which is recognised as deep soil planting under the Apartment Design Guide). This results in a total of 59.8% of deep soil planting outside of the buildable area. This provision allows trees and substantive landscape screening to be provided within the front, side and rear setbacks, and is hence adequate for the building.

The landscape design has incorporated mature trees that increases the total tree canopy across the site from 14% to 30% of the total site area.

The building's use has changed to provide campus student accommodation. This means that individual areas of private open space are no longer required, rather consolidated areas of private (communal) open space for students. In this respect, the proposal provides adequate areas on the site through the rear garden area and the outdoor terrace on Level 02.

Objectives	Assessment
<i>(b) for buildings in Zone E1 Local Centre and Zone MU1 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.</i>	N/A – site is within R3 Medium Density Residential zone

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

***b) Are the underlying objectives or purpose of the development standard not relevant to the development?***

This way is not relevant in the circumstances of this application.

***c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?***

This way is not relevant in the circumstances of this application.

***d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?***

This way is not relevant in the circumstances of this application.

***e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?***

As No.19 is now owned by Ascham and part of the Ascham Campus (which is reflected by the integrated design of the proposal), the underlying residential zoning (and its associated FSR) has reduced relevance. This circumstance provides a case for it being unnecessary to strictly apply the FSR standard, and instead apply a merits-based approach.

## **5.2. Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

Strict compliance with the development standard would not deliver any meaningful benefits to the owners or occupants of the surrounding properties or the general public in the particular circumstance and would lead to a suboptimal outcome in land use planning terms. There is an absence of environmental harm arising from the proposed contravention of the standard and positive planning benefits arising from the proposed development as outlined below.

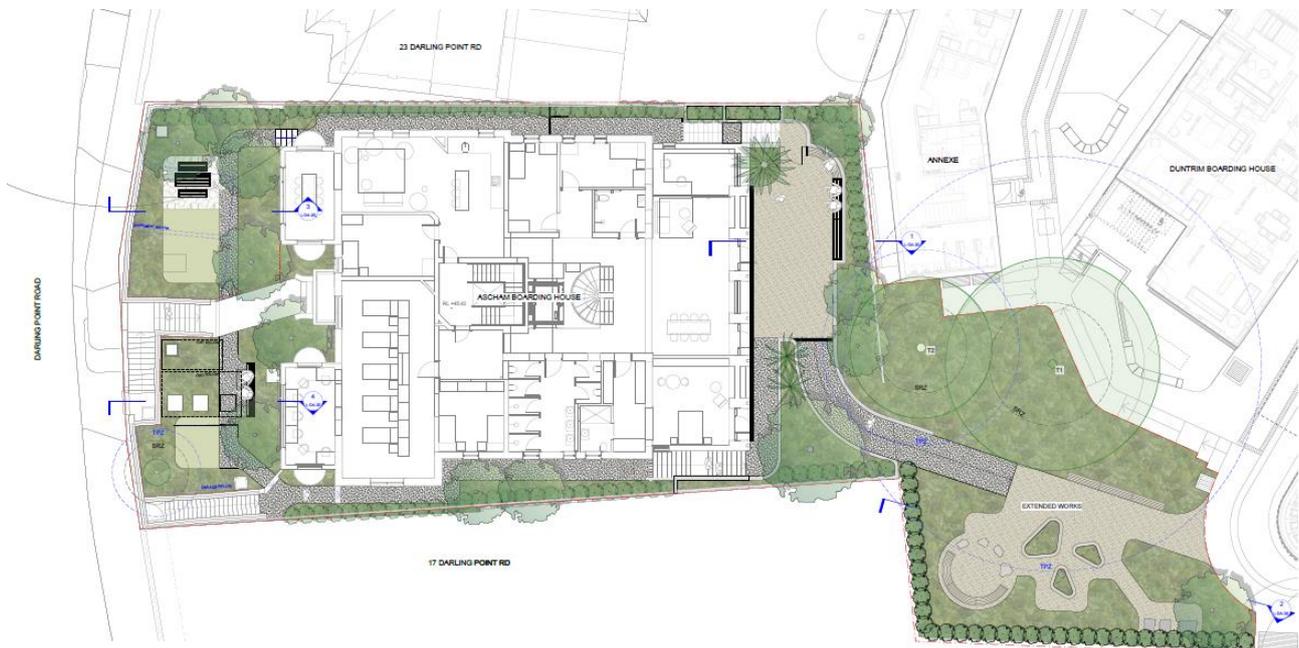
### **Massing and Built Form**

The proposal results in a built form that responds well to the constraints of the site and in particular, the steep topography between Darling Point Road and the eastern boundary of the site. As shown in **Figure 6**, the existing rear garden of 19 Darling Point Road sits well below the main Ascham campus to the east and then slopes down to the ground floor of the existing residential building within the site.

Figure 9 Photograph of existing rear garden of 19 Darling Point Road



Figure 10 Landscape Plan



Source: 360 Degrees Landscape Architecture

The introduction of a new two storey addition to the rear of the building provides the opportunity to:

- Minimise interventions to the architecturally valuable fabric within the existing building, whilst adapting the building to deliver high-quality student accommodation for boarders.
- Provide specific space and functions within the building to improve the internal amenities of the boarding house (i.e art room, gym and laundry) as well as staff and surveillance areas that will assist in provide a safe and 'regulated environment' (i.e reception/greeting area, office, staff accommodation).

- Carefully manipulate the levels and landscaping to the rear of the site to introduce a new ‘front door’ and connection within and to the Campus (refer **Figure 11**).
- Insert a vertical lift and access system that provides equitable access from the main school campus throughout all levels of the building whilst minimising intervention to the building (refer to **Figure 12**).

The rear addition provides a well resolved solution to the changing levels across the site and does so in a manner that complements the scale and proportions of the existing building.

The attic space has been introduced behind the existing roof ridgeline along Darling Point Road, creating additional accommodation within the existing height plane. This space has been carefully designed to minimise visual impact from the streetscape and adjoining properties. New side dormer windows are set back from the edge of the roof by 2.1m and do not exceed the existing ridge line. The space at this level has been finely detailed and designed in consultation with Council’s Heritage Officers to ensure the new dormer windows are recessive and do not dominate the building or the skyline. As shown previously in **Figure 5**, the bulk and scale of the proposed additions are largely not visible from the public domain and maintains an appropriate visual relationship with the existing character and landscape of the local area.

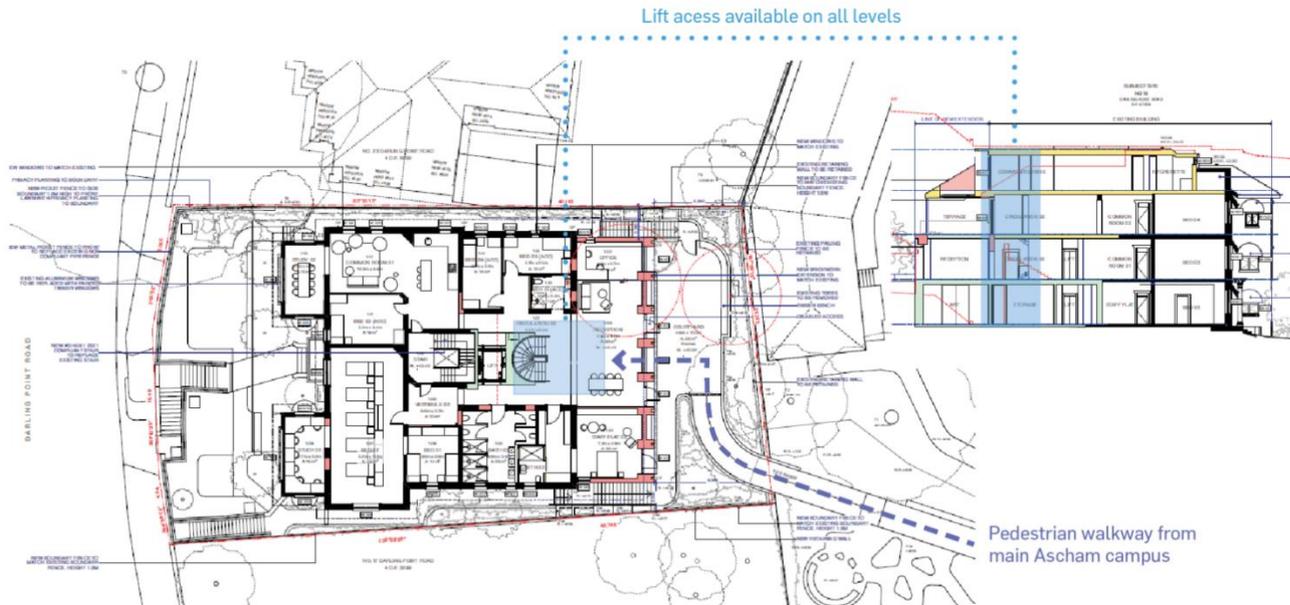
The increase in floor space proposed allows for a high-quality development to be delivered that provides a range of facilities expected within student accommodation while retaining the existing character of the site as a four-storey residential flat building. Should the redevelopment be proposed with a compliant FSR, this would compromise: the quality of the outcome in terms of accommodation and support facilities; its ability to provide equitable access to the main campus; as well as providing an integrated design with the main campus. It would also likely result in the removal of accommodation from one level within the building which does not meet the boarding needs of Ascham.

Figure 11 Perspective of east elevation from the main Ascham campus



Source: Tribe Studio Architects

Figure 12 Lift and Vertical Access



Source: Tribe Studio Architects + Urbis

### Amenity for Neighbouring Properties

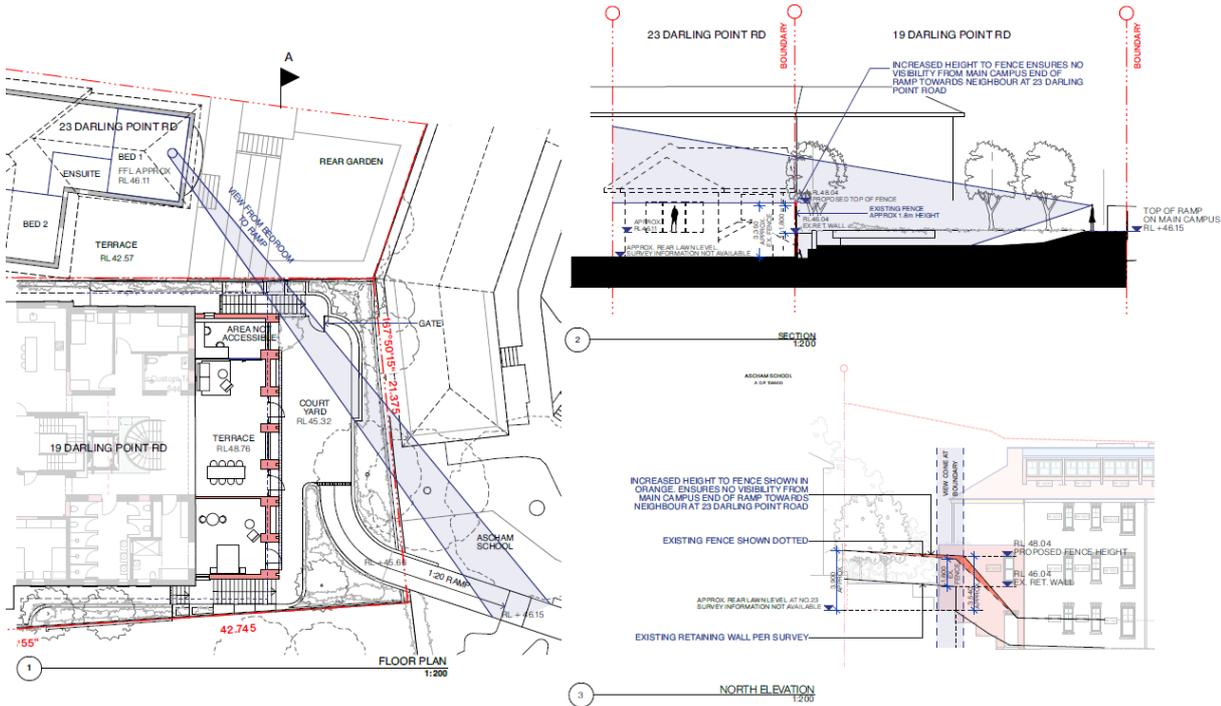
The proposed development has been designed to ensure there will be no unacceptable environmental impacts to neighbouring properties.

Due to the expansive open space associated with No. 17 Darling Point Road, the proposal is located over 60m from the residential units within the Ranelagh building to the south providing substantial separation distance for visual amenity and privacy.

The new built form to the rear has been cut into the site and set back between 2.31m at Ground Level to Level 01 with an additional setback of 4.49m (6.8m total) for the terrace on Level 02. Views of the proposed rear extension from within the primary living areas of No. 23 will be limited due to the viewing angle and the screening effect of the existing building (refer to **Figure 13**).

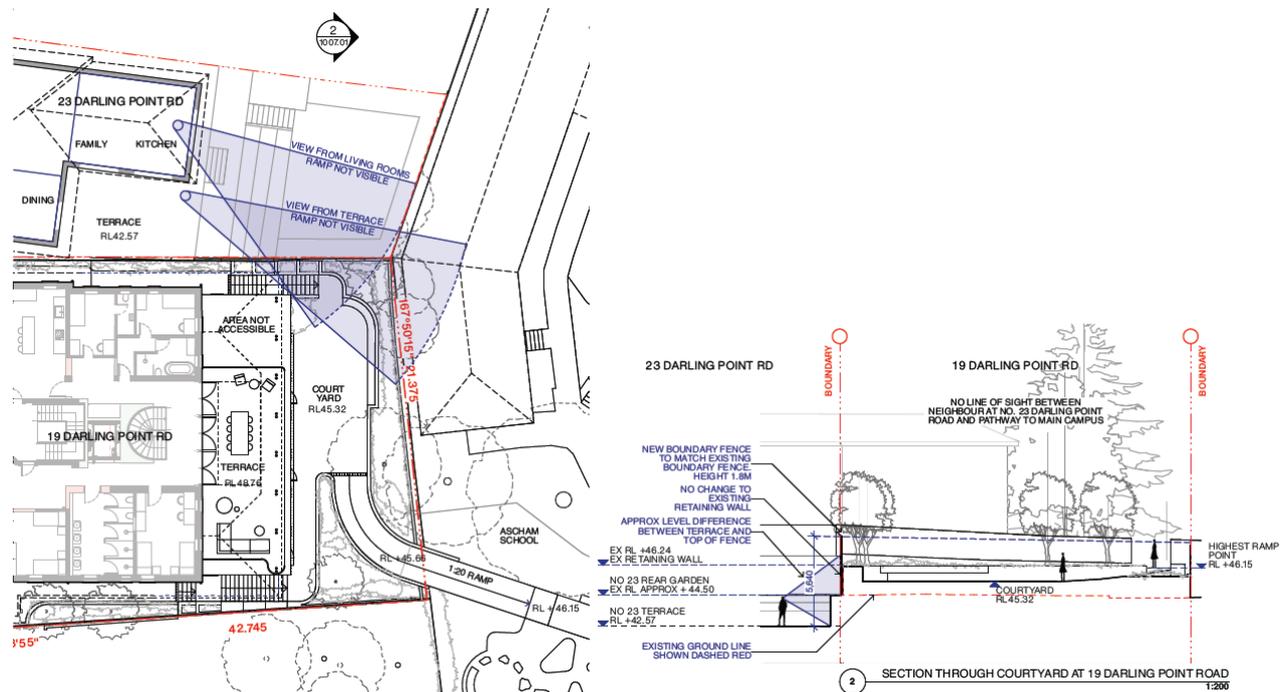
In addition (and as shown in **Figure 13**), the proposed boundary fence (which reaches a height of two metres extending from the north-eastern corner of 19 Darling Point Road for a distance of 8m) and the screen planting which reaches up to 2 metres within No.19 (capable of reaching a mature height of 4 to 4.5 metres) will not result in any direct privacy impact between the rear yard of No.19 (as well as from the first-floor window of this property) and the internal area or rear yard of No.23.

Figure 13 Sightlines from 23 Darling Point Road (first floor) to 19 Darling Point Road



Source: Tribe Studio Architects

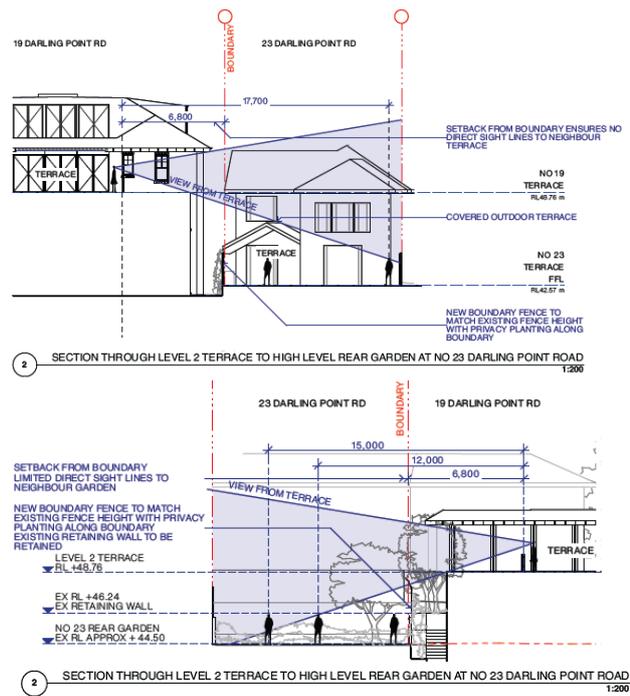
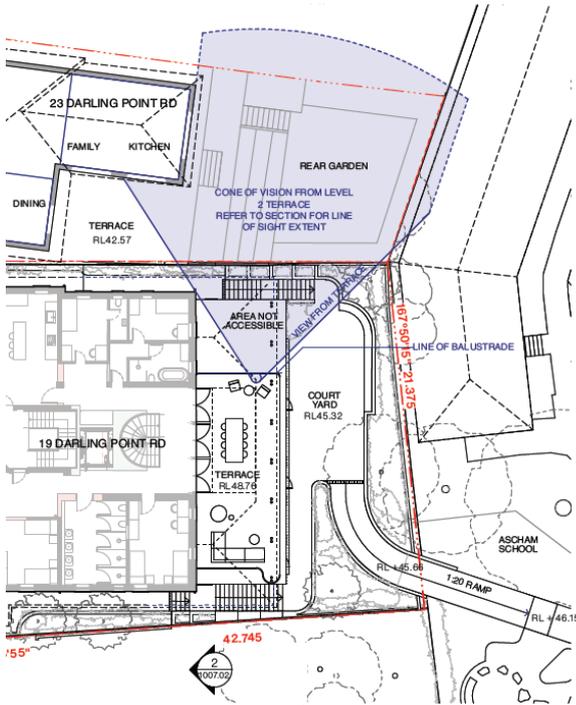
Figure 14 Sightlines from 23 Darling Point Road to 19 Darling Point Road



Source: Tribe Studio Architects

As illustrated in **Figure 15**, the Level 02 terrace at the eastern elevation of the proposed building has specifically been recessed within the site and designed in a manner to prevent direct overlooking of the living and principal private open spaces of No. 23. In addition, landscaping incorporated into the proposal further reduces this potential.

Figure 15 Sightlines from the proposed terrace to 23 Darling Point Road

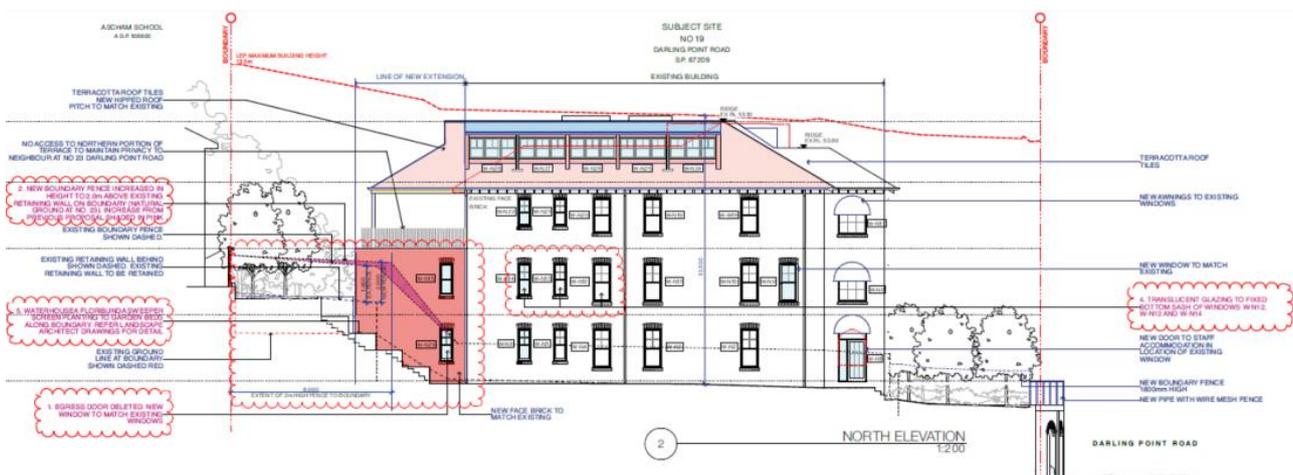


Source: Tribe Studio Architects

The subject building has a number of existing windows on its northern façade (refer to **Figure 16**) which constitute the existing level of amenity and privacy between the subject property and No.23 Darling Point Road. The layout and orientation of new windows have been thoughtfully placed with consideration of existing living room windows at No. 23 to minimise visual privacy impacts. The majority of the new windows proposed are dormer windows within the existing attic level (i.e. fourth level), which are setback 1.2m from the building line below and 3.0m from the boundary with No.23. The three existing first floor windows on the building's northern elevation adjacent to the outdoor entertaining area of No. 23 Darling Point Road will also incorporate fixed translucent glass (from the bottom sill).

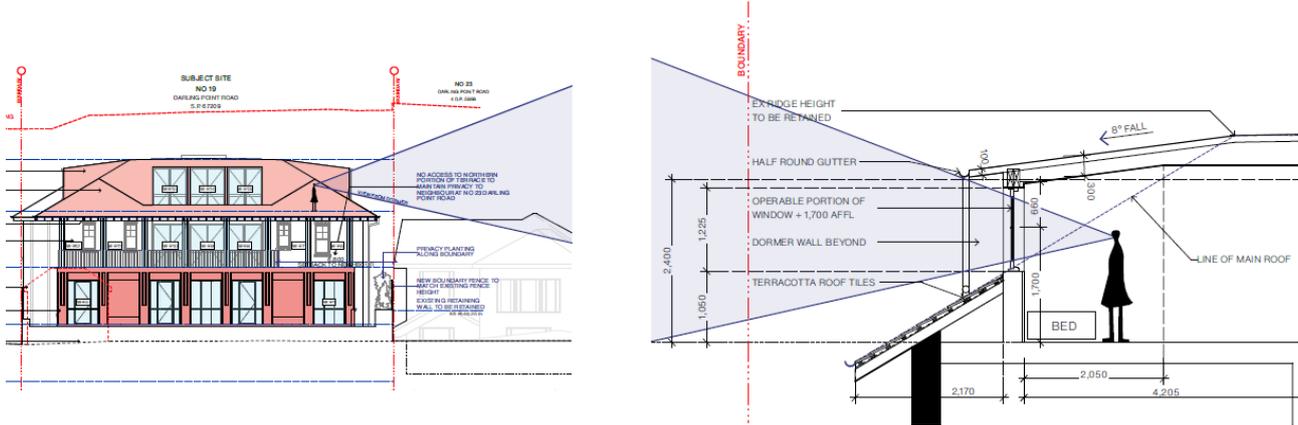
Figure 17 illustrates that views from within these rooms are 'out and over the property at No.23' rather than directly toward the windows and private open space of No. 23 and will therefore minimise visual privacy impacts.

Figure 16 North Elevation



Source: Tribe Studio Architects

Figure 17 Sightlines from dormer/attic bedrooms



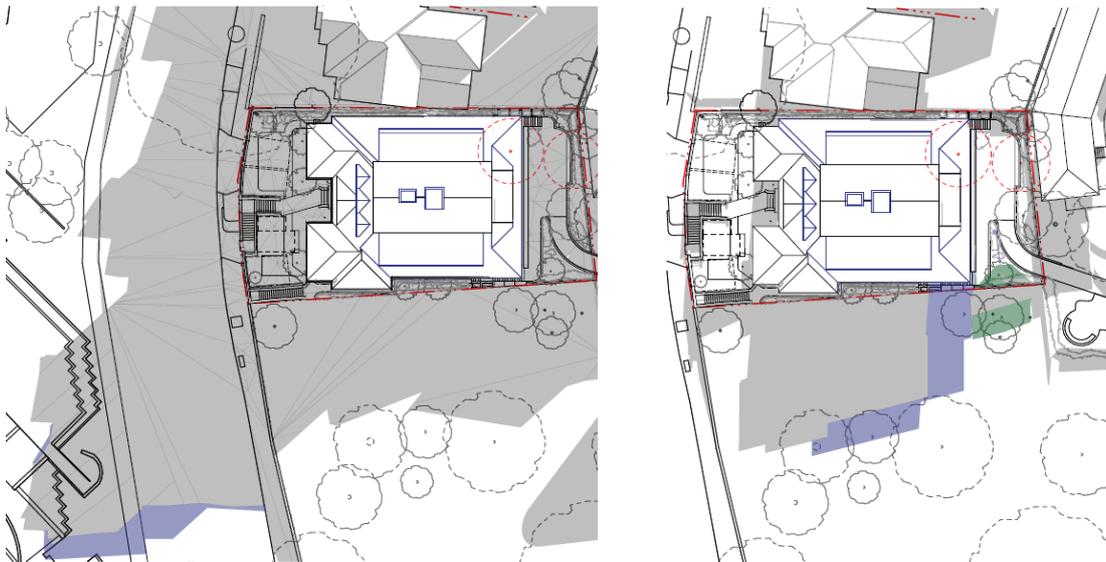
Source: Tribe Studio Architects

Shadow diagrams for 9am, 12pm and 3pm during the winter solstice have also been prepared by Tribe Studio Architects and are included in the **Architectural Plans**. An extract is provided in **Figure 6**. Based on the shadow diagrams:

- At 9.00am, additional shadows fall onto the road reserve and the basement driveway entrance to 2 Darling Point Road.
- At 12.00pm, additional overshadowing occurs on the communal open space associated with 17 Darling Point Road. This is considered negligible given the area makes up a very small portion of approximately 5,000sqm of open space associated with the neighbouring site. Between 12pm and 3pm the rear courtyard of 19 Darling Point Road maintains solar access.
- At 3.00pm, additional overshadowing occurs on the communal open space associated with 17 Darling Point Road. As noted above, this area makes up a very small portion of approximately 5,000sqm of open space are associated with the neighbouring site.

In summary, there is a minor (but inconsequential) increase in overshadowing to the site to the south as a result of the additions to the rear and upper level of the building. Nevertheless, this remains compliant with the relevant DCP controls in relation to overshadowing. Therefore, the proposal despite the compliance is considered acceptable from an overshadowing perspective.

Figure 18 Overshadowing Diagrams



Picture 8 9am June 21

Picture 9 12pm June 21



Picture 10 3pm June 21

Source: *Tribe Studio Architects*

As noted in the **Plan of Management** prepared by Ascham, operational measures are to be implemented to ensure acoustic privacy is maintained to neighbouring properties. The use of the building for student accommodation for and operated by Ascham school means that the previously ‘unregulated’ environment (in terms of amenity impacts) will be replaced by a controlled environment. As such, the additional operational parameters are likely to result in a reduction in potential impacts associated with the current use.

The side passage (within the northern setback adjoining 23 Darling Point Road) will not be accessible to students/boarders. Access along the length of this passage is only available for maintenance and emergency egress purposes. In further addressing this issue, the plans include a gate at the top of the stairs to this side passage to restrict access by students, as well as this restriction being documented within the Plan of Management. No additional points of egress are located on the northern elevation.

The Plan of Management also regulates the use of the rear garden area and outdoor terrace area on Level 02. In this respect, these outdoor areas will not be used for any form of recreation beyond 10.00pm.

The Plan of Management includes a strict ‘quiet-time and lights out’ policy, which is staggered given the age of the girls and commitment to homework, as well as assisting in staff supervision and management. The “lights out” policy is generally 10.00pm on weekdays and 10.30pm on weekends.

Given the lights out policy and that only the senior girls (Year 11 and 12) will be permitted to study within their rooms, the common room lights as well as the bedroom lights for all bedrooms associated with Years 7-10 will be turned off at 10.00pm on weekdays and by 10.30pm on weekends. This has been incorporated within the Plan of Management and will be regulated by the ‘staff on duty’.

The office at the ground level will not be used beyond 6.30pm as the staff on duty will generally use the reception area, and consequently the office light will be switched off before 10.00pm on all days. Again, this has been incorporated within the Plan of Management and will be regulated by the ‘staff on duty’.

Having regard to the proposed design, as well as operational and management procedures that will be in place, the proposal is not expected to generate unreasonable noise that will adversely impact on adjoining properties.

In summary, the proposal results in an outcome that will not adversely impact on the amenity of neighbouring properties. In fact, the introduction of operational measures via the Plan of Management provides a controlled and regulated environment with potential for an improved amenity outcome compared to impacts associated with the existing residential flat building.

## Built Heritage Considerations

The demolition of existing rear elements is supported from a heritage perspective and allows for the delivery of boarding rooms and facilities associated with student accommodation. The reduction in floor space would retain unusable fire stairs which are not compliant with current fire safety standards.

As noted in **Section 2.2** of this report, 19 Darling Point Road is not identified as a local heritage item, nor is it located within a heritage conservation area. However, the site is located adjacent to a number of heritage items including the wider Ascham campus precinct and Duntrim House. Given the heritage significance of the surrounding sites, and in response to comments from Council, a **Heritage Impact Statement, Demolition Plan** (for heritage fabric) and **Schedule of Conservation Works** have been prepared by Hector Abrahams Architects.

The proposal involves alterations to fabric of moderate significance, in order to update the building to the relevant construction codes and the new use as student accommodation. The **Heritage Impact Statement** confirms that the overall significance of the existing building (19 Darling Road) or the Ascham campus will not be diminished by these alterations. Specifically, the demolition of rear elements will avoid the removal of architecturally valuable fabric and the design of the new rear elements respects the geometry and form of the existing block.

Overall, the proposed development will respect the heritage significance of the Ascham campus and will have an acceptable impact upon the existing inter-war building. The legibility, visibility and amenity of the surrounding heritage items in the vicinity, will also be retained. If the floor space ratio contravention is not approved, it will inevitably mean that the existing residential flat building will remain and the planning benefits from the redevelopment of this aspect of the site will be lost.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed FSR non-compliance in this instance.

### 5.3. Is there any other information relevant to justifying a variation of the development standard?

The principal aim of the proposal is to deliver high-quality student accommodation while retaining the existing character of the Darling Point precinct. The proposed variation to the FSR control of the WLEP does not result in the loss of amenity to the adjoining properties with regards to visual impacts, privacy and overshadowing. The proposed gross floor area associated with the proposal is therefore considered to be acceptable, particularly when balanced against the benefits of the project, which are:

- The provision of contemporary and improved educational facilities for an existing education establishment which has been located in Edgecliff and Darling Point since 1886.
- The retention of the exterior of the building and preservation of the streetscape; use of high-quality materials that remain sympathetic to the heritage character of the locality and minimising the physical intervention of the architecturally valuable fabric of the existing building.
- The siting, scale and design of the new building elements have been designed having regard to the character of the area including heritage views and the desired future character of the Darling Point Precinct.
- The provision of specific space and functions within the building to improve the internal amenities of the boarding house (i.e art room, gym and laundry).
- The provision of staff and surveillance areas within the building that will assist in providing a safe and 'regulated environment' (i.e reception/greeting area, office, staff accommodation).
- The vast improvement to the appearance of the rear of the existing building through the integration the levels with the landscape, and introducing a new 'front door' appearance and connection within and to the main Campus.
- The provision of a vertical access system throughout the building, as well as to and from the main school campus, thereby providing equitable access for students with mobility restrictions.

The proposal is also retains the current bulk and scale of the existing residential flat building when viewed from the public domain. As noted by Roseth SC [at 22] in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191 (Project Venture)*:

*"Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."*

In order to test whether a proposal is compatible with its context, Roseth SC identifies two questions that should be asked.

#### ***Are the proposal's physical impacts on surrounding development acceptable?***

The proposal's physical impacts on surrounding development are acceptable on the following grounds:

- The proposed additional built form has been located behind the existing roof ridge (which is to be retained) and accordingly the proposed extensions will not be readily visible from the properties to the west (on the opposite side of Darling Point Road).
- The building is retained as a four-storey built form with the existing void space (within the rear elevation - which is within the U-shaped footprint of the building) being 'filled in'. Accordingly, this centralised floor space is not visible from adjoining or nearby properties.
- The rear extension consists of two levels (with a roof above the rear terrace area). This extension is recessed from the main building footprint allowing screen planting within each of the side property boundaries and is partly cut into the natural slope of the land. This means this extension is not readily visible from within the main living areas of the property to the north (No. 23 Darling Point Road) and is screened and softened from the outdoor and rear yard areas associated with No.23.
- The rear extension (including the outdoor terrace area at Level 01) has been specifically sited and designed to address privacy impacts between the subject property and No.23 as explained earlier. Further, No.23 is not affected by shadow caused by the proposal given its position to the north of the site.

- Due to the significant distance and established landscaping on No.17 Darling Point Road, the proposed physical extensions will not be readily visible from the apartments within the Ranelagh apartment building to the south, and the minor additional shadow caused by the proposal will have no impact upon the amenity of the apartment building.
- The upper-level massing is recessed behind the existing built form. Windows on the side elevations of attic level are setback 1.2m from the building line below and 3m from the boundary with No.23 Darling Point Road. The proposed rooms within the roof level are largely consumed within the existing attic space and require dormer windows that have been recessed and carefully designed to maintain the proportion of the building. Rooms to the rear of the building are also orientated in an east-west layout where possible to minimise privacy impacts on surrounding development.
- The proposed design seeks to connect and integrate the building with the main school campus to the east. As such, the existing building will benefit from the additional curtilage of the main school lot. In addition to the additional visual curtilage that the adjoining school campus provides the building, the vast site area to the south of the site associated with the Ranelagh apartment building also provides site-specific circumstances where any perception of additional bulk and scale is diminished due to the building's setting.

***Is the proposal's appearance in harmony with the buildings around it and the character of the street?***

The proposal's appearance is in harmony with adjoining buildings and the character of the street having regard to the following:

- The façade of the building along Darling Point Road is to be retained, to ensure continuous presentation of the inter-war character from the streetscape, with updates to dormers to better respond to the overall roof form. Dormers on the side elevations will only be partly visible from the southern elevation in isolated positions when travelling along Darling Point Road due to the topography of the site, street front landscaping and intervening building form.
- The rear extension is in scale with the existing building and consequently remains harmonious with adjoining buildings. It is set back from the side boundaries allowing landscape screening and softening of the building form when viewed from adjoining properties.

Overall, the proposal has been designed to remain sympathetic to both the heritage character of the existing residential flat building and the overall character of the Darling Point Precinct. The built form strategy for the site has been thoroughly planned to respond to the scale and proportionality of the existing streetscapes that surround the site. This is further described within the **Architectural Design Statement** and **Heritage Impact Statement** appended to the DA Package. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

## 6. Conclusion

It is reasonable and appropriate to vary the FSR development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- Compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the proposed development. The proposal achieves the objectives of the development standard as provided in clause 4.4 of WLEP.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There are no environmental impacts arising from the proposed variation.

For the reasons outlined above, the clause 4.6 request is well-founded. In the circumstances of this case, flexibility in the application of the FSR should be applied.

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