

INNOVATIVE

ITEM NUMBER	6.1
SUBJECT	Pre-Gateway - Planning Proposal - Amendment to Clause 4.6 at Epping Town Centre
REFERENCE	F2018/03031 - D06564960
REPORT OF	Student Project Officer
PREVIOUS ITEMS	14.5 - Epping Town Centre Traffic Study and other Epping Planning Review Matters - Council - 09 Jul 2018 6.30pm

PURPOSE:

The purpose of this report is to commence a planning proposal process to fulfil a part resolution of Council from its 9 July 2018 Council Meeting (Item 14.5). This report seeks the Local Planning Panel's endorsement to proceed with the Planning Proposal to amend Clause 4.6 of *Parramatta LEP 2011* and *Hornsby LEP 2013* within Epping town centre.

RECOMMENDATION

That the Local Planning Panel recommend to Council:

- (a) **That** Council endorses the Planning Proposal – Amendment to Clause 4.6 of Epping Town Centre, shown at **Attachment 1**, for submission to the Department of Planning and Environment with a request for a Gateway Determination.
- (b) **That** Council retains this position until further infrastructure is provided in the locality to satisfactorily resolve the existing traffic congestion issues within Epping town centre.
- (c) **That** Council advises the Department of Planning and Environment that the Acting CEO will be exercising the plan-making delegations for this Planning Proposal as authorised by Council on 26 November 2012.
- (d) **Further, that** Council authorises the Acting CEO to correct any minor policy inconsistencies and any anomalies of an administrative nature relating to the Planning Proposal that may arise during the amendment process.

BACKGROUND

1. The Epping Town Centre Traffic Study commissioned by Council and finalised in mid-2018, as a part of the Epping Planning Review, identified significant traffic impacts associated with new development resulting from the Department of Planning and Environment's Priority Precinct process.
2. As a means to partly address identified traffic issues, on 9 July 2018, Council resolved in part:
 - (c1) *... that Council adopts the position that it does not support any*
 - *Development applications seeking an increase in residential density via clause 4.6 of the PLEP 2011.*

And that council write to both the Department of Planning & Environment (DP&E) and the Greater Sydney Commission advising them this will remain

Council's position until the State Government has provided infrastructure to resolve the through traffic issues within the Epping Town centre.

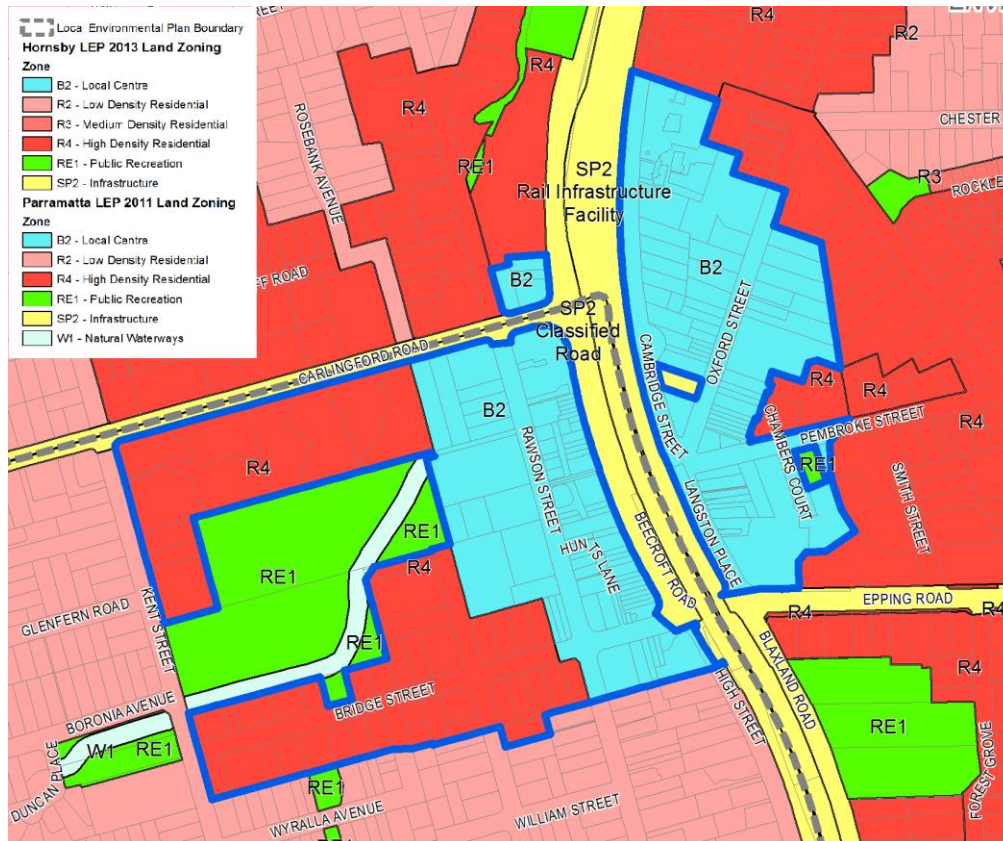
(c2) That a Planning Proposal including all necessary background studies and analysis be prepared to amend Clause 4.6 of PLEP 2011 so that it cannot be used to seek a FSR greater than that permitted on the Floor Space Ratio Map for sites within the Epping Town centre.

3. Denying applicants' access to additional floor space through this clause means that no further traffic will be added to the road network from any floor space that is generated on top of the maximum floor space mapped in the applicable LEP. It also provides some certainty to the local community that Council is not supporting additional density in Epping Town Centre until the traffic issues have been satisfactorily addressed.
4. An amendment to Clause 4.6 of *Hornsby LEP 2013* is also being sought by this report, as it was an inadvertent omission from the Resolution (c2) above.

PROPOSED LEP AMENDMENTS

5. Consistent with Council's resolution of 9 July 2018, the Planning Proposal (refer to **Attachment 1**) seeks to amend *Parramatta LEP 2011* and *Hornsby LEP 2013* by disabling the use of Clause 4.6 variations in relation to floor space ratio controls for certain types of development in the Epping town centre.
6. Refer to **Figure 1** and **Figure 2**, the areas subject to the proposed restriction of Clause 4.6 are the
 - B2 Local Centre and R4 High Density Residential zones in *Parramatta LEP 2011*; and
 - B2 Local Centre zone in *Hornsby LEP 2013*. The R4 zone is not included because *Hornsby LEP 2013* does not contain FSR as a development standard for its R4 zone. Instead, the floor space parameter is determined by building envelope controls in *Hornsby DCP 2013*. FSR controls will be introduced in the R4 zone in this area as part of the Council's current process to harmonise all LEPs.
7. In order to achieve the desired objectives, the Planning Proposal seeks to only apply to the following development in the subject area:
 - In *Parramatta LEP 2011* - residential accommodation and tourist and visitor accommodation within Zone B2 Local Centre and residential accommodation within Zone R4 High Density Residential; and
 - In *Hornsby LEP 2013* - residential accommodation and tourist and visitor accommodation within Zone B2 Local Centre.
8. The existing planning controls for the subject area such as the Height of Buildings and Floor Space Ratio, are provided at **Attachment 2**.

Figure 1 – Subject land (Source: Council's GIS)**Figure 2 – Land zoning extracted from *Parramatta LEP 2011* and *Hornsby LEP 2013* Land Zoning Maps**



Clause 4.6 operation in Epping

9. Clause 4.6 is a standard clause in NSW local environmental plans that enables minor variations to Principal Development Standards, comprising minimum lot sizes, height and floor space ratio.
10. Clause 4.6 (2) allows councils to approve development applications that exceed a development standard where applicants can demonstrate that compliance is unreasonable or unnecessary; whilst subclauses (6) (8) outlines matters where Clause 4.6 cannot be granted.
11. A copy of the standard instrument Clause 4.6 is provided at **Attachment 3**.
12. The approach of using Clause 4.6 to increase height controls is commonly shared amongst developers in Epping town centre. Council officers have tracked that almost all of the Clause 4.6 applications received in the town centre related to variations to height controls rather than any other planning controls. Refer to **Attachment 4** for examples of the applications of Clause 4.6 to developments in the town centre, in which cases, no additional density has resulted from these applications.
13. The variations to the FSR control through Clause 4.6 have rarely been exercised in Epping, partly due to Council and the relevant Planning Panel's position of not supporting any additional density beyond existing controls in the town centre because it is already significantly constrained by traffic and transport infrastructures and additional density will exacerbate this.

Precedents for restricting Clause 4.6

19. Restrictions on the application of Clause 4.6 is not a new practice and manifested in many different forms under different LEPs in various council areas. The following are examples of selected cases where councils have restricted or sought to restrict the use of Clause 4.6.

- **Case 1** - Subclause 4.6 (8) (ca) in the *Parramatta LEP 2011* restricts the operation of Clause 4.6:

A development standard that relates to the height of a building, or a floor space ratio, in Parramatta City Centre (as referred to in clause 7.1 (1)) by more than 5%.

- **Case 2** - On 29 October 2018, City of Parramatta Council made a submission to the Department regarding the Carter Street Precinct Masterplan. In the submission, one of the Council's key recommended actions was to cease the use of Clause 4.6 for FSR as follows:

Due to the significant residential densities already being accommodated within the Carter Street Precinct (noting that the revised scheme does not seek to increase yields rather redistributes the density to better respond to the changing context), Council requests that Clause 4.6 Exceptions to Development Standards under the Auburn LEP 2010 not apply to the Carter Street Precinct for FSR only. This will ensure that developers will not be able to seek incremental increases to FSR across a precinct that is already significantly constrained by traffic and transport infrastructure.

- **Case 3** – Clause 4.6 (8) (cgh) in the *City of Sydney LEP 2012* does not allow development consent to be granted for development that would contravene the maximum floor space ratio control (1:56:1) which applies on the land at 2-32 Junction Street, Forest Lodge. More clauses that restrict the operation of Clause 4.6 can also be found in the *City of Sydney LEP 2012*.

Consistency with other policies and guides

20. This Planning Proposal is consistent with the Department's *Varying development standards: A Guide 2011* which says that when assessing and determining variations to development standards:

Councils should consider whether the cumulative effect of similar approvals will undermine the objective of the development standard or the planning objectives for the zone. If the council considers that the decision should be made not to approve others like it.

21. The subject Planning Proposal is a proactive approach that Council is requesting to balance the future growth and the provision of infrastructure in the Epping town centre with the consideration of the cumulative effect of the remaining potential redevelopment sites.

Limitations on restricting Clause 4.6

22. This proposed change has no effect on Section 4.55 (formerly Section 96) Modification Applications of the *Environmental Planning and Assessment Act 1979* (Note: a Section 4.55 modification application allows minor modifications

to be made to a consent when the development is demonstrated substantially the same development). Accordingly, modifications on FSR controls can still be made for a development application that seeks additional FSR above the control via a Section 4.55 modification application. Any such modification application would be considered on its merits, having regard to traffic and other issues.

23. Some State Environment Planning Policies (SEPPs), namely Clause 45(2) of the *SEPP Housing for Seniors or People with a Disability 2004* and Clause 13(2) of the *SEPP Affordable Rental Housing 2009*, provide other pathways for FSR bonuses or development exemptions, in which case, even if the proposed restriction in Clause 4.6 is endorsed and comes into effect, these bonuses can still be applied. A copy of the relevant clause of these SEPPs are provided in **Attachment 5** and **Attachment 6**.
24. The proposed restriction does not fetter the existing FSR control. Hence, it has no impact on the housing supply in the Epping precinct or the housing target for the Parramatta Local Government Area as outlined in the Greater Sydney Commission's *Central City District Plan*. Instead, it means additional floor space beyond the controls cannot be sought.
25. It is also noted that the proposed restriction does not affect Clause 4.6 variations to other development standards, such as the height control. Council can continue to consider Clause 4.6 variations for other development standards in the subject area.

PLAN-MAKING DELEGATIONS

26. Changes to plan-making delegations were announced by the Minister for Planning and Infrastructure in October 2012, allowing Councils to make LEPs of local significance. On 26 November 2012, Council resolved to accept the delegation for plan-making functions. Council has resolved that these functions be delegated to the CEO.
27. Should Council resolve to proceed with the recommended planning proposal (**Attachment 1**), it is intended that Council will be able to exercise its plan-making delegations. This means that once the planning proposal has received a Gateway, undergone public exhibition and been adopted by Council, Council officers will deal directly with the Parliamentary Counsel Office on the legal drafting of the amendment. The LEP amendment is then signed by the CEO before being notified on the NSW Legislation website. When the planning proposal is submitted to Gateway, Council will advise the Department that it will be requesting to exercise its delegation.

CONCLUSION

28. It is recommended that this subject planning proposal proceed to Gateway to fulfil a part of Council's Resolution made on 9 July 2018. Council Officers have considered the cumulative effect of Clause 4.6 approvals on the remaining potential development sites within the Epping town centre and recommend no additional density should be sought through Clause 4.6. The proposed restriction will work to manage future growth and complement other strategic initiatives Council is undertaking to assist with addressing the traffic issues in the Epping town centre.

CONSULTATION & TIMING

29. Land Use Planning staff consulted with staff from Council's Urban Design team and Development and Traffic Services team while preparing this report.
30. Should the Local Planning Panel endorse the Planning Proposal provided at **Attachment 1**, it will be forwarded to the Department of Planning and Environment for a Gateway determination subject to Council's endorsement.

Lulu Huang
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ATTACHMENTS:

1 <u>↓</u>	Planning Proposal - Epping Town Centre Clause 4.6	27 Pages
2 <u>↓</u>	Current Height and FSR Controls	2 Pages
3 <u>↓</u>	Standard Instrument Clause 4.6	2 Pages
4 <u>↓</u>	Examples of Clause 4.6 Variations	1 Page
5 <u>↓</u>	SEPP Housing for Seniors or People with a Disability 2004 Clause 45	2 Pages
6 <u>↓</u>	SEPP Affordable Rental Housing 2009 Clause 13	2 Pages

REFERENCE MATERIAL