

**Leichhardt LEP 2013 - Amendments to Floor Space Ratio for Residential Development in R1
General Residential zone**

Proposal Title : Leichhardt LEP 2013 - Amendments to Floor Space Ratio for Residential Development in R1 General Residential zone

Proposal Summary : The planning proposal seeks to amend the current Floor Space Ratio controls under Clause 4.4 of Leichhardt LEP 2013 for residential development in the R1 General Residential zone. The proposed amendments to FSR within the R1 General Residential zone will vary depending on lot size and locality. The planning proposal will amend the FSR maps and a range of FSRs will apply to 6 areas - Annandale, Balmain, Birchgrove, Leichhardt, Lilyfield and Rozelle.

PP Number : PP_2015_LEICH_005_00 **Dop File No :** 15/15673

Proposal Details

Date Planning Proposal Received : 19-Nov-2015 **LGA covered :** Leichhardt

Region : Metro(CBD) **RPA :** Leichhardt Municipal Council

State Electorate : BALMAIN **Section of the Act :** 55 - Planning Proposal

LEP Type : Policy

Location Details

Street :

Suburb : **City :** **Postcode :**

Land Parcel : All land zoned General Residential (R1)

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	Metro Inner West subregion	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :	The Department of Planning and Environment's Code of Conduct has been complied with.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	The Department of Planning and Environment is not aware of any meetings or communications with registered lobbyists concerning this planning proposal.		

Supporting notes

Internal Supporting Notes :

A review of Council's floor space controls was initiated in response to the Department of Planning and Environment's concerns raised in 2009, that Leichhardt Council was making excessive use of State Environmental Planning Policy No. 1 (SEPP 1), in relation to the variation of development standards, in particular Floor Space Ratio (FSR).

The Department's concerns were that the FSR and landscaped area controls under the Leichhardt LEP 2000 were too restrictive. Council's current FSR controls do not accurately reflect existing development and restrict the redevelopment of existing dwellings.

The Department agreed to grant Leichhardt Council as an interim measure, a SEPP 1 concurrence which required only the development applications with variations in excess of 60% of the FSR development standard (and 40% of the landscaped area standard) to be referred for determination at a Council meeting. This reduced the volume of applications that would otherwise be required to go to Council meetings for determination, ie. those which exceeded the development standard by 10%.

On 20 December 2013, Leichhardt LEP 2013 was notified and the LEP came into force on 3 February 2014. The Standard Instrument LEP incorporated clause 4.6 'Variations to Development Standards' which replaced SEPP 1 when Leichhardt LEP 2013 was made. At the time the LEP was made, the Department requested Council provide a final FSR review and lodge a planning proposal to amend and update FSRs in the LEP.

Council's ongoing review of FSR for residential areas has culminated into a report and Council undertook its own public consultation, including exhibition, of the FSR review documents in April 2015.

On 19 October 2015, Council submitted a planning proposal to the Department. Additional information was requested to clarify mapping details in relation to consistency with the Standard Instrument requirements, and this was provided by Council on 19 November 2015

to support the planning proposal.

CURRENT CONTROLS

Under Leichhardt LEP 2013, all residential land was translated into the R1 General Residential zone. The current FSR controls are provided under clauses 4.4, 4.4A and 4.5 and the FSR maps of the Leichhardt LEP 2013 and are a translation of the FSRs that applied under Leichhardt LEP 2000.

The maps indicate a current maximum FSR for the R1 General Residential zone as follows:

Leichhardt, Lilyfield, part of Rozelle (west) - 0.5:1

Annandale - 0.6:1

Balmain, Birchgrove, part of Rozelle (east) - 0.7:1.

Council translated the numerical FSR controls from Leichhardt LEP 2000. Due to the definition changes under the standard instrument and the manner in which floor space is calculated, Council considers that approximately 10-15% more floor space is permitted under LEP 2013. Therefore, the introduction of the Standard Instrument definition for FSR has resulted in a slight increase in the permissible FSR for residential development when compared to the previous LEP definition.

PROPOSED CONTROLS

Council has undertaken an FSR review study. The findings of the study are:

- * the smaller the lot size the higher the FSR of dwellings approved by Council;
- * the approved FSR of dwellings varies between planning areas, which reflects the unique character of each suburb;
- * the approved FSR of dwellings for lots 0-300 sq m tend to be over the current controls, which confirms that most variations occur on small lots; and
- * the majority of residential lots across the Leichhardt LGA are less than 300 sq m in size.

Council's report considered four options as part of its review of the floor space ratio controls, and assesses the effectiveness of the proposed options with regard to reduction of reliance on clause 4.6 to vary FSR controls:

Option 1: Proposes no change to the current controls.

Option 2: Proposes a modest change, and in some cases a lower FSR for larger lot sizes than the current control. Council estimates that a large number of Development applications will still require the use of clause 4.6 for FSR, equating to on av. approx. 29% of DAs will need to be reported to the panel for variations in excess of 10%.

Option 3: Proposes an improved change which would reduce reliance on clause 4.6. Estimates approx. 10% of applications would exceed the control by 10% variation and would be required to go to Council meeting for determination.

Option 4: Proposes a significant reduction on the reliance of cl. 4.6. Estimates approx. 4% of applications would exceed the control by 10% variation and would be required to go to Council meeting for determination.

The FSR review study outcomes include a recommendation to update the planning controls in accordance with Option 3. The review recommended that on balance, Option 3 would reduce Council's reliance on clause 4.6 whilst minimising the risk of unintended consequences including higher property values, changes to character of neighbourhoods and higher density development. The Leichhardt Independent Planning Panel co-chairs were also consulted on the FSR review and made comments on the review, with both co-chairs also recommending Option 3 be adopted.

However, at its Policy Meeting on 9 June 2015, Leichhardt Council resolved to submit a planning proposal consistent with the recommendations of Option 2 in the Floor Space Ratio review. Introducing the Option 2 controls are considered by Council to provide sufficiently significant benefits compared with the current FSR controls and are a

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significant improvement on the current controls as they acknowledge the diversity of lot sizes across the LGA, reflect what is being approved by Council, and reduce Council's reliance on clause 4.6.

The differences between Option 2 and Option 3 are provided below:

Option (2) proposed as follows:

	0-149.9sq m	150-299.9sqm	300-449.9sqm	450sqm
Annandale (Area 2)	0.8:1	0.7:1	0.6:1	0.6:1
Balmain (Area 3)	0.9:1	0.7:1	0.7:1	0.5:1
Birchgrove (Area 4)	1.0:1	0.8:1	0.6:1	0.6:1
Leichhardt (Area 5)	0.7:1	0.6:1	0.5:1	0.5:1
Lilyfield (Area 6)	0.9:1	0.6:1	0.5:1	0.5:1
Rozelle (Area 7)	0.8:1	0.6:1	0.6:1	0.5:1

Option (3) proposed as follows:

	0-149.9sq m	150-299.9sqm	300-449.9sqm	450sqm
Annandale (Area 2)	0.9:1	0.8:1	0.7:1	0.6:1
Balmain (Area 3)	1.0:1	0.9:1	0.8:1	0.7:1
Birchgrove (Area 4)	1.0:1	0.9:1	0.8:1	0.7:1
Leichhardt (Area 5)	0.8:1	0.7:1	0.6:1	0.5:1
Lilyfield (Area 6)	0.9:1	0.8:1	0.7:1	0.7:1
Rozelle (Area 7)	0.9:1	0.8:1	0.7:1	0.7:1

External Supporting
Notes :

The planning proposal will amend the FSR controls in the Residential zone in order to reduce the need for variations to development applications for proposals that exceed the minimum FSR control. The aim of the proposal is to implement FSR controls that more accurately reflect the current pattern of development across the LGA.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The objective of the planning proposal is to amend the floor space ratio controls for all land zoned R1 General Residential to ensure that:

- (i) the controls provide a more accurate representation of Council's current pattern of development approvals; and
- (ii) there is a reduced reliance on Clause 4.6 to vary the FSR control in approving development applications in the R1 zone.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The planning proposal seeks to amend Clause 4.4 Floor Space Ratio and the accompanying FSR maps for land zoned R1 General Residential under Leichhardt LEP 2013.

The Planning proposal proposes to:

- amend clause 4.4 Floor Space Ratio to insert sub-clauses which will allow an FSR above the maximum of 0.5:1 which is based on lot size and also differentiated by suburb location;
- amend the FSR maps to apply a maximum FSR of 0.5:1 to all land zoned R1 (General Residential) under Leichhardt LEP 2013 and identify the 6 areas on the FSR map according to suburb (Areas 2 to 7) which will correspond with tables in the sub-clauses under Clause 4.4 of the LEP. For each area, a range of FSRs will apply varying from 0.5 up to 1.0:1 with permissible FSR reducing as lot size increases.

The proposed FSRs are based on lot size and suburb as Council consider that each locality has a different character/built form. The FSR mapping will allocate a standard FSR control of 0.5:1 to all R1 land. 0.5:1 is the lowest FSR applied to R1 land under the proposed

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controls. The mapping will label R1 zoned land in each suburb as Area 2, Area 3, Area 4, Area 5, Area 6 and Area 7. Each area will correlate to a specific sub-clause in Clause 4.4 - Floor Space Ratio. Each sub-clause will have a table that identifies the FSR control for the lot size.

The proposed clause is generally consistent with the Standard Instrument LEP direction for Floor Space Ratio and the Standard Technical Guidelines for Mapping. It is noted that other LEPs have adopted clauses which vary FSR within the same zone for different localities, however it is noted that this proposal provides a range of FSRs for a more extensive number of localities ie. 6 areas.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **N/A**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

DIRECTION 3.1 RESIDENTIAL ZONES:

This Direction relates to planning proposals that affect land within an existing residential zone and requires that a planning proposal must not contain provisions which will reduce the permissible residential density of land.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary that the provisions of the planning proposal that are inconsistent are justified by a strategy or is of minor significance.

The proposed FSR controls (Option 2) will reduce FSR in the following localities/areas:

- Balmain for lot sizes 450m+ from 0.7:1 reduced to 0.5:1;
- Birchgrove for lot sizes 300-449.5m and 450m+ from 0.7:1 reduced to 0.6:1;
- Rozelle (East) for lot sizes 150-299.9m and 300-449.9m from 0.7:1 reduced to 0.6:1 and for lot sizes 450m + from 0.7:1 reduced to 0.5:1.

Council's response to Direction 3.1 is that while there is a small proportion of lots that will have their permissible FSR reduced, the majority of lots will have their existing FSR controls maintained or increased. Furthermore, the existing controls are not representative of development approval patterns in Leichhardt. Council have not provided any further justification or a strategy responding to the requirements of the Direction.

It is therefore considered that the planning proposal is inconsistent with Direction 3.1 Residential Zones as the proposal intends to reduce FSR on larger lots in Balmain,

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Birchgrove and Rozelle. The extent of these areas have also not been mapped to determine how many lots will have their FSRs reduced. Therefore Council has not justified an offset of residential densities across the LGA. This inconsistency is not considered to be minor and has not been adequately justified.

It is noted that there is generally no reduction in existing FSRs under Option 3, with the exception of Rozelle (east) which is proposed to be reduced from 0.7:1 to 0.6:1. It is therefore recommended that the planning proposal be amended prior to exhibition to reflect the controls put forward by Option 3, as recommended by Council's Floor Space Ratio Review, with an additional amendment to Option 3 to ensure that no lots will have its FSR reduced below its current FSR provision (ie. for Rozelle (east)).

However, should Council wish to proceed with Option 2, as resolved by Council, additional justification for this option would be required, including consideration that current controls for the locations where FSR reductions are proposed be retained.

DIRECTION 4.1 ACID SULFATE SOILS and DIRECTION 4.3 FLOOD PRONE LAND:

Direction 4.1 requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils unless it has considered an acid sulfate soils study assessing the appropriateness of the change of land use.

Direction 4.3 applies where a planning proposal creates, removes or alters a zone or provision that affects flood prone land.

Council has identified the planning proposal is inconsistent with these directions. Council's discussion of the inconsistency states that while the numerical FSR controls may be increased for many lots zoned R1, this will not result in an increase in the pattern of residential density.

The Department considers that the proposal will formally allow an increase of FSR which will potentially include greater site area coverage on land identified as being flood prone and to classes of land 2, 3 and 5 under the Acid Sulfate Soils map in the Leichhardt LEP 2013. Council has not provided adequate consideration of the proposals inconsistency with these directions.

It is noted that Leichhardt LEP 2013 adopts clause 6.1 Acid sulfate soils and clause 6.3 Flood planning, which ensures development considers the impact to acid sulfate soils and flood prone land, therefore these inconsistencies are considered to be minor and justifiable.

Notwithstanding, it is recommended the gateway condition the planning proposal be updated prior to public exhibition to further justify and provide adequate consideration of the inconsistency with s117 Directions 4.1 Acid sulfate soils and 4.3 Flood prone land

DIRECTION 7.1 IMPLEMENTATION OF A PLAN FOR GROWING SYDNEY:

The Direction gives legal effect to A Plan for Growing Sydney and requires planning proposals to be consistent with the Plan. The reduction of FSRs in certain localities is inconsistent with this direction. See further detail under "Assessment Criteria".

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment :

The mapping provided is generally acceptable with regard to the Standard Instrument Technical Guidelines for mapping. Some labels appear to be missing and map checking and updates will be required by condition prior to exhibition as part of the Gateway determination.

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Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council intends for the planning proposal to be exhibited for 28 days and the Department supports this intention.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Leichhardt LEP 2013 was notified on 23 December 2013 and commenced on 3 February 2014. The Department requested Council lodge a subsequent planning proposal to update and amend FSRs in the LEP, as a result of Council's excessive use of SEPP1 to vary FSR development standards in determining Development applications.**

Assessment Criteria

Need for planning proposal :

The proposed amendments to FSR controls for all R1 (General Residential) zoned land requires an LEP amendment to the Leichhardt LEP 2013. A planning proposal is the best way of achieving the proposed changes to the LEP and the Department has requested a planning proposal be lodged to amend the LEP. The planning proposal is a result of a review of floor space ratio controls over a number of years by Council.

Consistency with strategic planning framework :

A PLAN FOR GROWING SYDNEY:

Council considers that the introduction of new floor space ratio controls that better align with the existing pattern of development approvals will improve clarity and reduce complexity in development assessments. The reduced need for variations under Clause 4.6 and more accurate FSR controls will make it easier for property owners to renovate or extend their homes to suit their needs/lifestyles.

The Department considers that the intent of the planning proposal is generally consistent with A Plan for Growing Sydney, in particular Direction 2.3 Improve housing choice to suit different needs and lifestyles, with the exception of lowering existing FSRs in some localities, which would be inconsistent with Direction 2.1 Accelerate housing supply across Sydney.

It is considered that the planning proposal should at the least retain current FSR controls and not reduce FSRs below current controls on any land. As such, it is recommended that Council should revise the planning proposal to incorporate the controls put forward by Option 3, as recommended by Council's Floor Space Ratio Review, and further ensure that no lots will have its FSR reduced below its current FSR provision (ie. for Rozelle (east)), as previously outlined in the 'Justification' section, within the Direction 3.1 Residential Zones discussion.

Environmental social economic impacts :

The proposal does not affect land that has been identified as containing critical habitat or threatened species, populations or ecological communities or their habitats. The issue of acid sulfate soils and flooding have previously been discussed under the 'Justification'

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section in accordance with the relevant section 117 Direction.

The proposal identifies it will provide a positive social and economic outcome as amendments to FSR aim to reduce the number of variations sought with regard to FSR requirements under the Leichhardt LEP 2013.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

Legal Services

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Leichhardt Council - proposed amendments LEP 2013.pdf	Proposal	No
cover letter.pdf	Proposal Covering Letter	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**

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4.3 Flood Prone Land
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions
7.1 Implementation of A Plan for Growing Sydney

Additional Information : It is recommended that the planning proposal proceed subject to the following conditions:

1. Prior to undertaking public exhibition, the planning proposal is to be updated to:
- adopt Option 3 of the FSR study / review and ensure that no lots will have its FSR reduced below its current FSR provision (i.e. for Rozelle (east));
- further justify and provide adequate consideration of s117 Directions 3.1 Residential zones, 4.1 Acid sulfate soils and and 4.3 Flood prone land; and
- ensure all maps are checked, labelled and updated for accuracy.

2. The planning proposal be made publicly available for a minimum of 28 days.

3. A public hearing is not required to be held into the matter.

4. The time frame for completing the LEP is to be 9 months from the week following the date of Gateway determination.

Supporting Reasons : Subject to meeting the above conditions, the planning proposal is generally supported as it:

(i) is generally consistent with the Standard Instrument clause and mapping requirements; and

(ii) will more adequately reflect existing development in the LGA and will assist in reducing variations under clause 4.6 for residential development applications with regard to meeting Floor space ratio requirements.

Signature:



Printed Name:

Diane Sarkies

Date:

11/12/15

