

**PROPOSED AMENDMENTS TO
LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013**

PLANNING PROPOSAL

**Clause 4.4 – Floor Space Ratio for Residential Development in
Zone R1**

Part 1 – Objectives or Intended Outcomes

This planning proposal seeks to amend the current Floor Space Ratio controls – Clause 4.4 – Floor Space Ratio for residential development in Zone R1, of the *Leichhardt Local Environmental Plan 2013*.

The intended outcomes of the amendments are:

- To ensure that the Floor Space Ratio controls are a more accurate representation of Council's current pattern of development approvals; and
- To reduce Council's reliance on Clause 4.6 when approving development applications for residential development in Zone R1

Part 2 – Explanation of the Provisions

Clause 4.4 of the *Leichhardt Local Environmental Plan 2013* currently reads as follows:

Clause 4.4 - Floor Space Ratio

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that residential accommodation:*
- (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
 - (ii) *provides a suitable balance between landscaped areas and the built form, and*
 - (iii) *minimises the impact of the bulk and scale of buildings,*
- (b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*

The planning proposal seeks to amend Clause 4.4 and the accompanying FSR map to amend the maximum FSR for land zoned R1 General Residential. These proposed FSR controls vary based on lot size. The approach proposed under this planning proposal is similar to the approach used by councils such as Marrickville, Canada Bay and Mosman.

As these controls are too complex to visually display on a map, the controls are based on the suggested approach for Complex Development Standards in the *Standard Technical Requirements for LEP Maps*.

The FSR mapping will allocate a standard FSR control of 0.5:1 to all R1 zoned land. 0.5:1 is the lowest FSR applied to R1 zoned land under the proposed 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" correlates to a specific sub-clause in "Clause 4.4 - Floor Space Ratio" (refer to below table). Each sub-clause will have a table displaying the specific FSR control for each lot size category. Through the "area" labelling, the map legend will direct users to refer to the appropriate sub-clause in the LEP. The user will then need to identify the particular FSR control that applies to the property based on the lot size.

For example, the owner of a 247sqm property in Leichhardt would see a brown outline labelled "Area 5" when consulting these proposed maps. This would direct them to refer to "Clause 4.4 – 2E" in the *Leichhardt Local Environmental Plan 2013*. By referring to the table in this sub-clause, this particular property would fall in the 150-299.9sqm category meaning that the FSR control for this property is 0.6:1.

Clause 4.4 - Floor Space Ratio (proposed)

(1) *The objectives of this clause are as follows:*

(a) *to ensure that residential accommodation:*

- (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- (ii) *provides a suitable balance between landscaped areas and the built form, and*
- (iii) *minimises the impact of the bulk and scale of buildings,*

(b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

(2A) *Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1.*

(2B) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged black on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	0.8:1	0.7:1	0.6:1	0.6:1

(2C) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged red on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	0.9:1	0.7:1	0.7:1	0.5:1

(2D) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged green on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	1.0:1	0.8:1	0.6:1	0.6:1

(2E) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged brown on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	0.7:1	0.6:1	0.5:1	0.5:1

(2F) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged pink on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	0.9:1	0.6:1	0.5:1	0.5:1

(2G) *Despite subclause (2), development for the purpose of residential accommodation on land shown edged yellow on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.*

Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+
Floor Space Ratio	0.8:1	0.6:1	0.6:1	0.5:1

Part 3 – Justification

Section A – Need for planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

This planning proposal is the result of an extensive review of Floor Space Ratio controls for R1 zoned land in the Leichhardt Local Government Area. The review spanned six years and involved thorough consultation within Council and with the community.

The Department of Planning and Environment has requested that Council provide the final FSR review data and lodge a planning proposal to amend the Floor Space Ratios in the LEP.

Analysis by Leichhardt Council staff in relation to the 417 residential DAs determined by Council in the 2009/10 financial year found that:-

- 169 or 41% were determined using clause 4.6 (formerly SEPP 1);
- 154 or 37% exceeded the FSR standard by 10%; and
- 42 or 10% exceeded the FSR standard by 60%.

The use of clause 4.6 is intended for exceptional circumstances, but for Leichhardt Council the use of clause 4.6 tended to become the norm. This is primarily because of Council's low FSR controls, which do not fully reflect existing development or desired future residential character in the context of the other controls used to determine the appropriate scale of development.

FSR Review (April 2009 – February 2014)

The aim of the FSR Review was to:-

- understand if Council's FSR controls were resulting in excessive use of clause 4.6 (formerly SEPP 1); and
- identify alternative FSR controls that would reflect the desired future character of the LGA.

Data Analysis

A large amount of data relating to FSR and the use of clause 4.6 (then SEPP 1) was collected via the sampling of 1,080 approved and 225 refused residential DAs evenly distributed across different suburbs and the period 2000 to 2008. Both samples (approved and refused) were of sufficient size to give confidence that the pattern of all past DAs matched that of the samples. Samples were randomly selected with no consideration given to specific dwelling types, location or owners.

The FSR for each approved development application in the sample was calculated using the standard instrument definition. An average approved FSR was then calculated for each lot size category in each suburb. This was the basis for formulating a range of FSR control options. Testing how each of the 1080 sample DAs would comply with these different FSR control options showed how each set of FSR controls would impact on Council's use of Clause 4.6.

Findings of the Review

The four key findings of the review were:

1. **The smaller the lot size the higher the FSR of dwellings approved by Council.** For example, in Balmain the average FSR of dwellings on small lots between 0-149sqm is 0.9:1, while on larger lots, over 450sqm, the average FSR of dwellings is 0.5:1.
2. **The approved FSR of dwellings varies between areas, reflecting the unique character of each suburb.** For example, the average FSR of dwellings on a 150-299sqm lot in Leichhardt is 0.6:1 but in Birchgrove it is 0.8:1.

3. **The approved FSR of dwellings on lots 0-300sqm tend to exceed the current FSR controls, which confirms that most FSR breaches occur on smaller lots.** For example, in Annandale the average actual FSR of dwellings on lot sizes 0-149sqm is 0.8:1 and for dwellings on lot sizes 150-299sqm it is 0.7:1, both of which exceed the current maximum FSR control of 0.6:1.
4. **The majority of residential lots across the Leichhardt LGA are less than 300sqm in size.** For example, 68% of all residential lots in Lilyfield are less than 300sqm while in Rozelle the proportion is 87%.

Based on the findings of the FSR Review it was recommended that any FSR controls for residential development should meet the following principles/criteria:

1. acknowledge the diversity of lot sizes across the LGA and differ between lot size;
2. acknowledge the difference in lot sizes between suburbs and differ between suburb;
3. better reflect what is being approved by Council; and
4. reduce Council's reliance on clause 4.6 (formerly SEPP 1).

The review assessed four options for new FSR controls against the principles above. The four options were:-

Option 1: No change to FSR controls except definition under the Standard Instrument;

Option 2: FSR controls that would achieve a modest reduction in Council's reliance on Clause 4.6 and reflect what is, on average, being approved by Council;

Option 3: FSR controls that would achieve a larger reduction in Council's reliance on Clause 4.6, with a more even transition between suburbs and lot size categories.

Option 4: FSR controls high enough to substantially reduce reliance on Clause 4.6

Review Finalised and Released to Public (February 2014 – June 2015)

In April 2014, Council considered a report which provided an overview of the FSR Review. Council resolved that staff undertake community consultation in relation to the FSR Review and further analysis in relation to the outputs from the community consultation.

This community consultation occurred in late 2014 and was reported to the 2015 April Policy Council Meeting. Council resolved to defer consideration of the FSR Review to seek the advice of the Co-Chairs of the Leichhardt Planning Panel and complete extra analysis of variations in FSR between lot sizes and suburbs.

Council Resolution (June 2015)

The findings of this further analysis and the advice of the Planning Panel Co-Chairs were reported to Council in June 2015. At this meeting Council resolved the following;

1. *Receive and note this report*
2. *Adopt the recommendations of Option 2 FSR Controls (Minimal change)*
3. *Prepare and submit a Planning Proposal to the Department of Planning and Environment to amend the Leichhardt Local Environmental Plan (LLEP) 2013 to introduce changes to the Floor Space Ratio that are consistent with the recommendations of Option 2 FSR controls (Minimal change) for a Gateway Determination*
4. *That the Department of Planning and Environment be requested to delegate the related plan making functions to Council*

The table below provides a comparison between the proposed FSR controls (Option 2) and the existing FSR controls.

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.8	0.9	1.0	0.7	0.9	0.8
150-299.9	0.7	0.7	0.8	0.6	0.6	0.6
300-449.9	0.6	0.7	0.6	0.5	0.5	0.6
450+	0.6	0.5	0.6	0.5	0.5	0.5
Current Control	0.6	0.7	0.7	0.5	0.5	0.5/0.7

While the Council resolution endorses a different option to the one recommended by Council officers, introducing the Option 2 controls will provide sufficiently significant benefits compared with the current FSR controls. It is estimated that approximately 29% (rather than approximately 44% currently) of the average annual number of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 10%.

Overall, the Option 2 controls are a 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 (formerly SEPP 1).

For further information refer to **Appendix A** – Council Report June 2015

Q2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Amendment of FSR for R1 zoned land requires amendment of the *Leichhardt Local Environmental Plan 2013*. A planning proposal is the only way of achieving the proposed changes to the LEP.

Section B – Relationship to strategic planning framework.

Q3. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The planning proposal is consistent with the State Government's *A Plan for Growing Sydney* and the *Draft Inner West Subregional Strategy*. The following actions and objectives outlined in the tables below are of particular relevance.

A Plan for Growing Sydney Direction	Comment
2.3 Improve housing choice to suit different needs and lifestyles	The introduction of new Floor Space Ratio controls that better align with the existing pattern of development approvals will improve the clarity and reduce the complexity of Leichhardt's development assessment system. The reduced need for Clause 4.6 and more accurate FSR controls will make it easier for property owners in the LGA to go about the process of renovating and/or extending their homes to suit their particular needs and/or lifestyle. This may help to encourage home owners to adapt their homes to suit their needs/lifestyles without having to sell and move.

Inner West Draft Subregional Strategy Action	Comment
G1.2 – Improve local planning and assessment	The introduction of new FSR controls would help create more clarity in the development assessment process as they would be more realistic and better reflect the average FSRs approved in the Leichhardt LGA. This will reduce Council's reliance on Clause 4.6 and reduce the number of DAs required to go to Planning Panel/Council meetings.

Q4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the following objectives within Council's Community Strategic Plan 'Leichhardt 2025+':

Leichhardt 2025+ Community Strategic Plan	
<i>Place where we live and work</i>	<i>Comment</i>
• Our town plan and place plans optimise the potential of our area through integrating the built and natural environment with a vision of how we want to live as a community and how areas should develop to meet future needs. • A clear, consistent and equitable planning framework and process is provided that enables people to develop our area according to a shared vision for the community. • An integrated planning process is promoted to make planning easier for the community and to establish a service that people want to use.	• The gap between the current FSR controls and the average actual approved FSR controls in this LGA produces a situation where there is a lack of clarity which can lead to distorted decision making as residents/owners base decisions on a range of assumptions which are sometimes mistaken or inaccurate. This leads to those with better knowledge being able to maximise the value of their properties (i.e. those property owners who are aware of the potential to seek LEP clause 4.6 FSR variations). The less informed can be discouraged from purchasing property or existing residents may sell and move instead of extending their homes. This amendment would help to reduce the confusion surrounding application of the FSR controls in this LGA. • A planning process where the FSR controls align with patterns of development approval in the LGA will help to make planning easier for the community, as it will be easier for people to understand and use.
<i>Sustainable Service and Assets</i>	
• Transparent, consistent, efficient and effective participative processes are delivered.	

Q5. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal is consistent with the applicable State Environmental Planning Policies see table below.

Consideration of State Environmental Planning Policies (SEPPs)

SEPP Title	Applicable	Consistent
1. Development Standards	No	N/A
14. Coastal Wetlands	No	N/A
15. Rural Landsharing Communities	No	N/A
19. Bushland in Urban Areas	No	N/A
21. Caravan Parks	No	N/A
26. Littoral Rainforests	No	N/A
29. Western Sydney Recreation Area	No	N/A
30. Intensive Agriculture	No	N/A
32. Urban Consolidation (Redevelopment of Urban Land)	No	N/A
33. Hazardous and Offensive Development	No	N/A
36. Manufactured Home Estates	No	N/A
39. Spit Island Bird Habitat	No	N/A
44. Koala Habitat Protection	No	N/A
47. Moore Park Showground	No	N/A
50. Canal Estate Development	No	N/A
52. Farm Dams and Other Works in Land and Water Management Plan Areas	No	N/A
53. SEPP 53 Transitional Provisions	No	N/A
55. Remediation of Land	No	N/A
59. Central Western Sydney Regional Open Space and Residential	No	N/A
62. Sustainable Aquaculture	No	N/A
64. Advertising and Signage	No	N/A
65. Design Quality of Residential Flat Development	No	N/A
70. Affordable Housing (Revised Schemes)	No	N/A
71. Coastal Protection	No	N/A
SEPP Affordable Rental Housing 2009	No	N/A
SEPP Building Sustainability Index: BASIX 2004	No	N/A
Exempt and Complying Development Codes 2008	No	N/A
Housing for Seniors or People with a Disability 2004	No	N/A
SEPP Infrastructure 2007	No	N/A
SEPP Kosciuszko National Park – Alpine Resorts 2007	No	N/A
SEPP Major Development 2005	No	N/A
SEPP Mining, Petroleum Production and Extractive Industries 2007	No	N/A
SEPP(Miscellaneous Consent Provisions) 2007	No	N/A
SEPP Penrith Lakes Scheme 1989	No	N/A
SEPP Rural Lands 2008	No	N/A
SEPP Sydney Region Growth Centres 2006	No	N/A
SEPP Temporary Structures 2007	No	N/A
SEPP Urban Renewal 2010	No	N/A
SEPP Western Sydney Employment Area 2009	No	N/A
SEPP Western Sydney Parklands 2009	No	N/A
SEPP Kurnell Peninsula 1989	No	N/A
SEPP (State and Regional Development) 2011	No	N/A
SEPP (Sydney Drinking Water Catchment) 2011	No	N/A

SEPP Title	Applicable	Consistent
SEPP (Three Ports) 2013	No	N/A

Consideration of deemed State Environmental Planning Policies (SEPPs) (former Regional Environmental Plans (REPs))

REP Title	Applicable	Consistent
8. Central Coast Plateau Areas	No	N/A
9. Extractive Industry (No 2—1995)	No	N/A
16. Walsh Bay	No	N/A
18. Public Transport Corridors	No	N/A
19. Rouse Hill Development Area	No	N/A
20. Hawkesbury-Nepean River (No 2—1997)	No	N/A
24. Homebush Bay Area	No	N/A
26. City West	No	N/A
30. St Marys	No	N/A
33. Cooks Cove	No	N/A
SREP Sydney Harbour Catchment 2005	No	N/A

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 Directions)?

The planning proposal is consistent with the applicable Ministerial Directions (s.117 Directions) see table below.

s.117 Direction Title	Applicable	Consistent	Comments
1. Employment & Resources			
1.1 Business and Industrial Zones	No	N/A	The planning proposal only applies to land zoned R1 General Residential
1.2 Rural Zones	No	N/A	
1.3 Mining, Petroleum Production and Extractive Industries	No	N/A	
1.4 Oyster Aquaculture	No	N/A	
1.5. Rural lands	No	N/A	
2. Environment & Heritage			
2.1 Environment Protection Zones	Yes	N/A	The planning proposal does not affect land within an environmental protection zone
2.2 Coastal protection	No	N/A	
2.3 Heritage Conservation	Yes	Yes	There is no change to existing policy.
2.4 Recreation Vehicle Areas	Yes	No	The planning proposal does not facilitate the development of land for the purpose of vehicle recreation areas.
3. Housing Infrastructure & Urban Development			
3.1 Residential Zones	Yes	No	While there is a small proportion of lots that will have

s.117 Direction Title	Applicable	Consistent	Comments
			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
3.2 Caravan Parks and Manufactured Home Estates	Yes	N/A	The planning proposal does not impact on the permissibility of caravan parks and manufactured home estates.
3.3 Home Occupations	Yes	N/A	The planning proposal does not impact on the permissibility of carrying out low-impact small businesses in dwelling houses.
3.4 Integrating Land Use & Transport	Yes	Yes	
3.5 Development near licensed aerodromes	Yes	Yes	
3.6 Shooting Ranges	No	N/A	
4. Hazard & Risk			
4.1 Acid Sulphate Soils	Yes	No	As stated earlier, the current FSR controls do not align with the FSR of what is approved in this LGA. Therefore while the numerical FSR controls may increase for many R1 zoned lots in the LGA, this will not result in an increase in the pattern of density across the LGA.
4.2 Mine Subsidence and Unstable land	No	N/A	
4.3 Flood Prone Land	Yes	No	As stated earlier, the current FSR controls do not

s.117 Direction Title	Applicable	Consistent	Comments
			align with the FSR of what is approved in this LGA. Therefore while the numerical FSR controls may increase for many R1 zoned lots in the LGA, this will not result in an increase in the pattern of density across the LGA.
4.4 Planning for Bush Fire Protection	No	N/A	
5. Regional Planning			
5.1 Implementation of Regional Strategies	No	N/A	
5.2 Sydney Drinking Water Catchments	No	N/A	
5.3 Farmland of State and Regional Significant on the NSW Far North Coast	No	N/A	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A	
5.8 Second Sydney Airport: Badgerys Creek	No	N/A	
5.9 North West Rail Link Corridor Strategy	No	N/A	
6. Local Plan Making			
6.1 Approval and Referral Requirements	Yes	Yes	Consistent with the terms of this direction.
6.2 Reserving Land for Public Purposes	No	N/A	
6.3 Site Specific Provisions	Yes	Yes	It is considered that there is no change to existing policy.
7. Metropolitan Planning			
Implementation of A Plan for Growing Sydney	Yes	Yes	Consistent with the terms of this direction see Q3.

Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposal does not apply to land that has been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats. Should it be discovered through community consultation, or by another means, that species, populations, communities or habitats may be adversely affected, this will be taken into consideration and the planning proposal will be modified if necessary.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Given the nature of the proposal (amendment of Floor Space Ratio controls to reflect existing patterns of development approval for residentially zoned land in the LGA) it is not anticipated that there will be any adverse environmental effects.

Q9. How has the planning proposal adequately addressed any social and economic effects?

It is not anticipated that the Planning Proposal will have any adverse social or economic effects. An increase in FSR for R1 zoned land will improve the operation of the LEP and provide positive social and economic outcomes for the community.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Given the nature of the proposal (amendment of Floor Space Ratio controls to reflect existing patterns of development approval for R1 zoned land in the LGA) the above question is not considered relevant.

Proposed FSR controls will reflect the pattern of approved development in the LGA and the intention of these changes is not to increase patterns of density in the LGA above what currently exists.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Consultation with appropriate State & Commonwealth public authorities has not yet been undertaken. Council will engage with relevant public authorities in accordance with the Gateway Determination.

Part 4 – Mapping

Table 1: The proposed changes to Clause 4.3A within Draft Leichhardt Local Environmental Plan (LEP) 2012

Clause	LEP 2013	Proposed Change																														
4.4	Floor space ratio (1) The objectives of this clause are as follows: (a) to ensure that residential accommodation: (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and (ii) provides a suitable balance between landscaped areas and the built form, and (iii) minimises the impact of the bulk and scale of buildings, (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale. (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. (2A) Despite subclause (2), the floor space ratio for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1. (2B) Despite subclause (2), development for the purpose of residential accommodation on land shown edged black on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. (2C) Despite subclause (2), development for the purpose of residential accommodation on land shown edged red on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. (2D) Despite subclause (2), development for the purpose of residential accommodation on land shown edged green on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. (2E) Despite subclause (2), development for the purpose of residential accommodation on land	(1) The objectives of this clause are as follows: (a) to ensure that residential accommodation: (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and (ii) provides a suitable balance between landscaped areas and the built form, and (iii) minimises the impact of the bulk and scale of buildings, (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale. (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. (2A) Despite subclause (2), the floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential is not to exceed 1:1. (2B) Despite subclause (2), development for the purpose of residential accommodation on land shown edged black on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>0.8:1</td><td>0.7:1</td><td>0.6:1</td><td>0.6:1</td></tr></table> (2C) Despite subclause (2), development for the purpose of residential accommodation on land shown edged red on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>0.9:1</td><td>0.7:1</td><td>0.7:1</td><td>0.5:1</td></tr></table> (2D) Despite subclause (2), development for the purpose of residential accommodation on land shown edged green on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>1.0:1</td><td>0.8:1</td><td>0.6:1</td><td>0.6:1</td></tr></table> (2E) Despite subclause (2), development for the purpose of residential accommodation on land	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	0.8:1	0.7:1	0.6:1	0.6:1	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	0.9:1	0.7:1	0.7:1	0.5:1	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	1.0:1	0.8:1	0.6:1	0.6:1
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Clause	LEP 2013	Proposed Change																														
		shown edged brown on the <u>Floor Space Ratio Map</u> is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>0.7:1</td><td>0.6:1</td><td>0.5:1</td><td>0.5:1</td></tr></table> (2F) Despite subclause (2), development for the purpose of residential accommodation on land shown edged pink on the <u>Floor Space Ratio Map</u> is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>0.9:1</td><td>0.6:1</td><td>0.5:1</td><td>0.5:1</td></tr></table> (2G) Despite subclause (2), development for the purpose of residential accommodation on land shown edged yellow on the <u>Floor Space Ratio Map</u> is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause. <table><tr><td>Lot Size (sqm)</td><td>0-149.9</td><td>150-299.9</td><td>300-449.9</td><td>450+</td></tr><tr><td>Floor Space Ratio</td><td>0.8:1</td><td>0.6:1</td><td>0.6:1</td><td>0.5:1</td></tr></table>	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	0.7:1	0.6:1	0.5:1	0.5:1	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	0.9:1	0.6:1	0.5:1	0.5:1	Lot Size (sqm)	0-149.9	150-299.9	300-449.9	450+	Floor Space Ratio	0.8:1	0.6:1	0.6:1	0.5:1
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Floor Space Ratio	0.8:1	0.6:1	0.6:1	0.5:1																												

Part 5 – Community Consultation

This planning proposal is considered to be low impact, in that:

- it is consistent with the pattern of surrounding land uses,
- it is consistent with the strategic planning framework,
- presents no issues with regards to infrastructure servicing,
- is not a principal Local Environmental Plan, and
- does not reclassify public land.

Under the terms of “*A guide to preparing local environmental plans*” community consultation for a low impact planning proposal is usually 14 days. However, it is Council's preference that the planning proposal be exhibited for a minimum of 28 days.

Part 6 – Project Timeline

Anticipated Project Timeline	Proposed Date (s)
Commencement date (date of Gateway determination)	December 2015 (estimate)
Timeframe for the completion of required technical information	Not required
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	To be determined
Commencement and completion dates for public exhibition period	Minimum 28 Days - 1 February to 29 February 2016
Dates for public hearing (if required)	To be determined post exhibition
Timeframe for consideration of submissions	March 2016
Post exhibition report to Council	May 2016
Submission to Parliamentary Counsel	Late May 2016

APPENDIX A

Floor Space Ratio Review Report to Council + Resolution June 2015

[Agenda Report2563801](#)

User Instructions

To view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item - Council Meeting 09 June 2015

Action is required for ITEM 3.6 as per the Council Resolution outlined below.

FLOOR SPACE RATIO REVIEW: FEEDBACK FROM CO-CHAIRS OF LEICHHARDT PLANNING PANEL

C263/15P RESOLVED BYRNE/ PORTEOUS

That Council:

1. Receive and note this report
2. Adopt the recommendations of Option 2 FSR Controls (Minimal change)
3. Prepare and submit a Planning Proposal to the Department of Planning and Environment to amend the Leichhardt Local Environmental Plan (LLEP) 2013 to introduce changes to the Floor Space Ratio that are consistent with the recommendations of Option 2 FSR controls (Minimal change) for a Gateway Determination
4. That the Department of Planning and Environment be requested to delegate the related plan making functions to Council

The vote for and against the above RESOLUTION is shown below for the record;

FOR VOTE - Cr Rochelle Porteous, Cr Craig Channells, Cr Daniel Kogoy, Cr Darcy Byrne, Cr Simon Emsley, Cr Linda Kelly, Cr Frank Breen

AGAINST VOTE - Cr John Stamolis, Cr John Jobling, Cr Tony Costantino

ABSENT. DID NOT VOTE - Cr Michele McKenzie, Cr Vera-Ann Hannaford

PRESENT. DID NOT VOTE - Nil

During consideration of this Item an Amendment was moved by Crs Porteous and Kogoy. The Amendment was lost when put to the vote, but is shown below for the record.

PORTEOUS/ KOGOY

That a report be brought back to the November Policy Council Meeting on the proposal of introducing height control into the LEP for the LGA.

The vote for and against the above LOST AMENDMENT is shown below for the record;

FOR VOTE - Cr Rochelle Porteous, Cr Craig Channells, Cr Daniel Kogoy

AGAINST VOTE - Cr John Stamolis, Cr John Jobling, Cr Tony Costantino, Cr Darcy Byrne, Cr Simon Emsley, Cr Linda Kelly, Cr Frank Breen

ABSENT. DID NOT VOTE - Cr Michele McKenzie, Cr Vera-Ann Hannaford

PRESENT. DID NOT VOTE - Nil

During consideration of this Item, a Foreshadowed Motion was moved by Crs Jobling and Costantino. As the Primary Motion (from Crs Byrne and Porteous) was adopted when put to the vote, the Foreshadowed Motion was not voted on but is shown below for the record;

JOBLING / COSTANTINO

That Council:

- 1. Receive and note this report*
- 2. Adopt the recommendations of Option 3 FSR Controls (Modest change)*
- 3. Prepare and submit a Planning Proposal to the Department of Planning and Environment to amend the Leichhardt Local Environmental Plan (LLEP) 2013 to introduce changes to the Floor Space Ratio that are consistent with the recommendations of Option 3 FSR controls (Modest change) for a Gateway Determination*
- 4. That the Department of Planning and Environment be requested to delegate the related plan making functions to Council*

ITEM 3.6 FLOOR SPACE RATIO REVIEW

Division	Environment and Community Management
Author	Manager Environment and Urban Planning Team Leader Strategic Planning Student Strategic Planner
Meeting date	9 June 2015 Policy meeting
Strategic Plan Key Service Area	Community well-being Place where we live and work A sustainable environment Sustainable services and assets

SUMMARY AND ORGANISATIONAL IMPLICATIONS

Purpose of Report	The purpose of this report is to: - 1) Report back on the meeting between Council officers and the co-chairs of the Leichhardt Planning Panel in relation to the Officer's recommendations in the April 2015 Floor Space Ratio Review Report, a sliding scale for calculation of FSR and the variations in FSR across various suburbs. 2) Obtain endorsement to submit a Planning Proposal to amend the Floor Space Ratio controls in Leichhardt Local Environmental Plan 2013 to the Minister for Planning for Gateway Determination
Background	Council initiated a Floor Space Ratio Review in 2009 and was provided with funding under the NSW Government Planning Reform Funding Program. At its meeting of 14 April 2015, Council considered a report in relation to the Community Consultation outcomes and resolved to defer consideration pending further advice from the co-chairs of the Leichhardt Planning Panel.
Current Status	April 2015 policy council meeting deferred consideration of decision on FSR for consultation with Leichhardt Planning Panel co-chairs
Relationship to existing policy	The Floor Space Ratio Review responds to a Council resolution to carry out studies to inform the Review
Financial and Resources Implications	Nil
Recommendation	That Council: - 1. Receive and note this report 2. Adopt the recommendations of Option 3 FSR Controls (Modest change) 3. Prepare and submit a Planning Proposal to

	the Department of Planning and Environment to amend the Leichhardt Local Environmental Plan (LLEP) 2013 to introduce changes to the Floor Space Ratio that are consistent with the recommendations of Option 3 FSR controls (Modest change) for a Gateway Determination 4. That the Department of Planning and Environment be requested to delegate the related plan making functions to Council
Notifications	Nil at this stage. May require exhibition of a Planning Proposal to amend Leichhardt LEP 2013
Attachments	Attachment 1: Leichhardt Planning Panel Co-Chairs Advice Attachment 2: Floor Space Ratio Motion May 2015 Council Meeting

Purpose of Report

The purpose of this report is to: -

- 1) Report back on the meeting between Council officers and the co-chairs of the Leichhardt Planning Panel in relation to the Officer's recommendations in the April 2015 Floor Space Ratio Review Report, a sliding scale for calculation of FSR and the variations in FSR across various suburbs.
- 2) Obtain endorsement to submit a Planning Proposal to amend the Floor Space Ratio controls in Leichhardt Local Environmental Plan 2013 to the Minister for Planning for Gateway Determination

Recommendation

That Council: -

1. Receive and note this report
2. Adopt the recommendations of Option 3 FSR Controls (Modest change)
3. Prepare and submit a Planning Proposal to the Department of Planning and Environment to amend the Leichhardt Local Environmental Plan (LLEP) 2013 to introduce changes to the Floor Space Ratio that are consistent with the recommendations of Option 3 FSR controls (Modest change) for a Gateway Determination
4. That the Department of Planning and Environment be requested to delegate the related plan making functions to Council

Background

Council initiated a Floor Space Ratio Review in 2009 and was provided with funding under the NSW Government Planning Reform Funding Program. At its meeting of 14 April 2015, Council considered a report in relation to the Community Consultation outcomes and resolved to defer consideration pending further advice from the co-chairs of the Leichhardt Planning Panel.

Report

1. Introduction

1.1 Context

The review of Council's Floor Space Ratio (FSR) controls was initiated in response to the then NSW Department of Planning and Infrastructure's concern that Leichhardt Council was making excessive use of State Environmental Planning Policy No. 1 (SEPP 1). SEPP1 was used to vary Local Environmental Plan (LEP) development standards such as Floor Space Ratio (FSR) in particular.

At the time Leichhardt Council was the most frequent user of SEPP1 variations in NSW. This was at a level three times higher than the second most frequent user.

On average over 40% of approved residential development applications in the Leichhardt Local Government Area (LGA) were exceeding FSR controls by more than 10%.

When the NSW State Government introduced Standard Instrument Local Environmental Plans it incorporated the provisions of SEPP 1 into a compulsory clause known as clause 4.6 'Variations to Development Standards'. Therefore, when Leichhardt LEP 2013 came into effect, clause 4.6 replaced SEPP 1. This report deals with both pre- and post-Standard Instrument circumstances and therefore both the SEPP 1 and clause 4.6 terms are used in different parts of the report.

The review collected data and developed four options:-

Option 1 No change – No change to FSR controls other than the change in definition pursuant to Standard Instrument

Option 2 Minimal change – FSR controls which reflect what is, on average, being approved by Council;

Option 3 Modest change – FSR controls which would reduce Council's reliance on clause 4.6 variations, whilst minimising the risk of unintended consequences that might occur as a result of the new controls; and

Option 4 Substantial change – FSR controls which would be high enough to significantly reduce reliance on clause 4.6.

The previous officer report (April 2015) recommended Option 3 (Modest Change).

These four options and the previous report have now been reviewed by the co-chairs of the Leichhardt Planning Panel.

1.2 Timeline

The chronology of this review is summarised below:

February/March 2008: the Independent Commission Against Corruption (ICAC) released its findings of an investigation into planning decisions at Wollongong City Council. ICAC's report stated;

"that the NSW Planning Department could have played a stronger role in regard to the Council's application of State Environmental Planning Policy (SEPP) No. 1, through applying its entitlement to withhold concurrence for SEPP 1 dispensations and by obliging the Council to record and report its SEPP 1 decisions."

ICAC recommended that: -

"the Director General of the Department of Planning actively uses the power to revoke or modify his or her assumed concurrence to prevent abuse of SEPP 1 (or its equivalent) by all consent authorities."

"the NSW Department of Planning monitor and enforce the requirements for all consent authorities to keep records of their assessment of all development applications which seek a variation to development standards."

May 2008: The Department of Planning issued a Planning Circular requiring Councils to complete quarterly returns on variations to development standards where concurrence is assumed.

November 2008: The Department of Planning issued a Circular requiring that any Development Application seeking a variation to a development standard greater than 10% must be reported to a Council meeting for determination.

December 2008: Leichhardt Council staff met with the NSW Department of Planning and advised that approximately 30% of development applications seek a variation to a development standard by more than 10% and this would result in an increase in processing times.

February 2009: The Department of Planning wrote to Council and advised that:

- LEP 2000 FSR & landscaped area controls were too restrictive and unreasonable
- As an interim measure (initially for 6 months), Council could assume concurrence subject to DAs being referred to a Council meeting if the variation in the case of alterations and additions to dwellings exceeded 60% of the FSR standard and 40% of the landscaped area standard
- Council had to update the FSR & landscaped area controls

April 2009: An FSR review was commenced by the Strategic Planning Team

September 2009: The NSW Department of Planning confirmed it would contribute \$30,000 toward an FSR Review via Planning Reform Funding Round 6

14 October 2009: Councillor Workshop #1 held on the FSR Review by Strategic Planning Team

April 2010: During analysis and discussion of the initial Review findings, queries were raised by both Councillors and Council's legal advisers about the role the current low FSR controls played in improving development outcomes and reducing appeals. As a consequence further analysis of a sample of 225 refused and appealed DAs was completed.

May and August 2010: Progress reports provided to NSW Department of Planning

August 2010: Councillor Briefing #2 held on the FSR Review by Strategic Planning Team

October 2010: Councillor Briefing #3 held on the FSR Review by Strategic Planning Team

December 2010: A report to Council on FSR Review was prepared by Manager of Legal Services. Council did not consider the report at the December 2010 Ordinary

Council meeting. At the Mayor's request the Report was listed on the Planning Committee Agenda for discussion prior to it being considered at the February 2011 Ordinary Council Meeting.

February 2011: The FSR Review report prepared by Manager of Legal Services was tabled at the February 2011 Planning Committee and the Committee recommended (PC06/11):

1. That Council not consider the FSR report.
2. That Council prepare a thorough, balanced, equitable report on the issue of FSR that:
 - is prepared by Council's Strategic Planning Unit (not Council's Legal Officer);
 - include the studies already undertaken on actual approved FSR's in the various areas of the LGA;
 - include reference to other similar inner city areas as a comparison;
 - include a study of "actual" FSR's on the ground,
 - include a comparative study of allowable FSR's under the new implemented State wide Exempt Development Housing Codes, including small lots;
 - include a study on the claim that FSR's will be lowered by 10-15% when measured under the new definitions;
 - include a study on the various ranges in FSR's for the most numerous housing topologies such as terrace houses, semi-detached houses and free standing levels;
 - reference other relevant studies carried out by the Strategic Planning Unit over the last 10 years, including the report some time ago from independent planners commissioned by Council that recommended FSR for individual houses be dumped entirely;
 - critically examine all options available to control bulk and scale of development;
 - examine why LMC includes garages in FSR's when other Council's do not;
 - respond to the various issues raised in Inner West Architects Network's (IWAN's) recent submission;
 - examine the suggestion in the current report that changes be "phased in"; and review FSR controls for the Glebe area adopted in City of Sydney's draft city plan currently on exhibition.
3. That Council prepare FSR report based on recommendations made above.

February 2011: Council considered a report on the FSR Review as prepared by Manager of Legal Services. Council resolved;

"That the matter be deferred for a Councillor briefing taking into consideration the recommendation of the Planning Committee from their meeting on 10 February 2011 (on this Business Paper) and options for including this review as part of the DCP and LEP review." (Refer Resolution C16/11)

August 2013: Councillor Briefing #4 held to provide new Councillors with information about the Floor Space Ratio Review and to provide all Councillors with information about the status of the FSR Review.

24 October 2013: Council received a request from the Department of Planning and Infrastructure that the "full suite of data and reports be forwarded to the Department for its consideration and review."

9 December 2013: Council received correspondence from the Department of Planning and Infrastructure in relation to variations of LEP development standards. It confirmed that on publication of the *Leichhardt Local Environmental Plan (LLEP) 2013* Council could assume the concurrence of the Director General under cl 4.6 Exceptions to Development Standards of the LEP. The concurrence under clause 4.6 has the same effect as the application of SEPP 1.

24 December 2013: Council was informed by the Department of Planning and Infrastructure that the *Leichhardt Local Environmental Plan (LLEP) 2013* would be gazetted on 4 February 2014. The Department reiterated its request that Council provide the final FSR review data and that Council lodge a planning proposal with the Department of Planning and Infrastructure, by the end of March 2014 to update and amend the Floor Space Ratios in the LEP.

4 February 2014: *Leichhardt Local Environmental Plan (LLEP) 2013* published with the exhibited FSR controls and Standard Instrument definition for FSR.

The Department reiterated its request that Council provide the final FSR review data and that Council lodge a planning proposal with the Department of Planning and Infrastructure to update and amend the Floor Space Ratios in the LEP.

April 2014: Council considered a report on the FSR Review as prepared by Strategic Planning Team. The purpose of this report was to provide Council with:

- background information about the Floor Space Ratio Review,
- an overview of the data and analysis carried out,
- the findings of the Floor Space Ratio review,
- details of recent correspondence from the Department of Planning and Environment and,
- options available to it in relation to Floor Space Ratio.

Council resolved (C96/14) to;

1. Receive and note the background information, data, analysis and options in relation to the Floor Space Ratio Review,

2. That further consideration of Council' Floor Space Ratio policy be deferred pending:

- a) *a further report to Council containing an analysis of the net value of uplift across the various proposed planning areas and lot sizes within indicated in the report's options*
- b) *a Councillor briefing session including an analysis of the projected value uplifts;*

- c) *Community consultation following the Council Community Engagement Framework on the options proposed in the tabled report, and any further options which may be derived by staff through further analysis.*

June 2014: Councillor Briefing #5 held to cover the analysis of value uplift required by Council resolution C96/14. (Additional information on value uplift is provided in Section 4 of this report.)

August/September 2014: Floor Space Ratio Review documents were placed on public exhibition and extensive community consultation undertaken between 14th August and 15th September 2014.

September 2014: Councillor Briefing #6 held to cover the preliminary feedback from the community consultation.

14 April 2015: Council considered a report on the FSR Review as prepared by Strategic Planning Team. The purpose of this report was to:

- 1) *Advise Council of the outcomes of community consultation on the Floor Space Ratio Review*
- 2) *Advise Council of additional analysis of the net value of uplift of potential increases in Floor Space Ratio controls*
- 3) *Obtain endorsement to submit a Planning Proposal to amend the Floor Space Ratio controls in Leichhardt Local Environmental Plan 2013 to the Minister for Planning for Gateway Determination*

The public exhibition/community consultation process and its outcomes are summarised below:

In accordance with Council resolution (C96/14) of 19 April 2014, the Floor Space Ratio Review documents were exhibited from Thursday 14th August to Monday 15th September 2014. The associated consultation was undertaken in accordance with Council's Community Engagement Framework.

The notifications included:

- 35,667 letters sent to residents, occupiers, businesses and property owners within the Local Government Area
- Advertisement in the Inner West Courier
- Placement in the agenda of Planning and Heritage Committees
- Advertisement in the Mayoral Column of the Inner West Courier
- Prominent advertising on the Council website throughout the consultation period including placement in 'What's On' calendar

Between 70 and 90 people attended the meetings and information sessions during the exhibition period. These meetings included:

- A Planning Committee meeting
- Internal Assessment Staff meeting
- Inner West Architects Network meeting
- An Information Session meeting by invitation only and a public information session

In response to this community notification process Council received 39 written submissions, approximately 50 phone calls and drop-in session visits. There were 489 visitors to the Floor Space Ratio Review Page on Council's website.

Most submissions (62%) expressed support for Option 3 or 4. 15% of submissions wanted no change, 13% wanted further analysis and 10% of submissions made general planning comments that did not specify a view on the four options.

The most frequently mentioned issue involved the relationship between FSR and merit based assessment of development applications. Other topics frequently mentioned in submissions and/or meetings included:

- New controls should meet the requirement of State Government with regards to variations to development standards
- New controls should differ between lot sizes
- Unintended consequences and negative amenity impacts
- Benefits of allowing increased density

Council Resolved (Refer C126/15P):

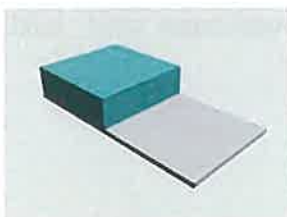
1. *That Council defer further consideration of this Item and seek advice from the co-chairs of the Leichhardt Planning Panel about the recommendations in the report and request a response to come back to the June 2015 Policy Meeting (including Points 3 & 4 below).*
2. *That Council forward all relevant data acquired through the Floor Space Ratio Review to the Department of Planning.*
3. *That Council consider moving to a sliding scale for calculation of FSR*
4. *That Council consider the large variations in Floor Space across various suburbs in the municipality and review these and that in particular look at small blocks of 150 sq. m or less in regard to perceived inequities.*

April/May 2015: Council officers met with the co-chairs of the Leichhardt Planning Panel to seek advice on the recommendations of the April 2015 report, the concept of a sliding scale for calculation of FSR and variations in FSR across various suburbs, particularly those with lot sizes of less than 150sqm.

26 May 2015: Council resolved at the May Ordinary Council Meeting to receive and note the Notice of Motion provided by Councillor Stamolis (C230/15)

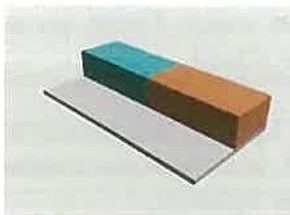
1.3 What is Floor Space Ratio?

FSR controls the amount of floor space within a building in relation to its site size. To explain the concept visually, each of the examples in Figure 1 below could generate a floor space ratio of 0.5:1.



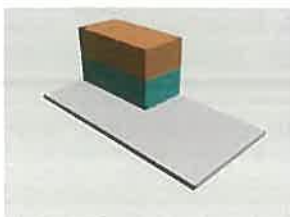
Example 1 – 0.5:1 FSR

One storey building covering half the site
If the site area was 1000sqm then the floor area equals 500sqm



Example 2 – 0.5:1 FSR

One storey building covering half the site.
If the site area was 1000sqm then the floor area equals 500sqm



Example 3 – 0.5:1 FSR

Two storey building covering a quarter of the site.

If the site area was 1000sqm then the floor area still equals 500sqm but is shared between two storeys (250sqm per storey)

Figure 1: Alternate Built Forms with an FSR of 0.5:1

1.4 What are Council's Current Floor Space Ratio Controls?

In *Leichhardt Local Environmental Plan (LLEP) 2013*, the general FSR controls are listed under clauses 4.4, 4.4A and 4.5 and the FSR maps. LEP 2013 is a translation of the numerical figures for FSR contained in LEP 2000, apart from the change of definition of FSR necessitated by the Standard Instrument which is explained in Section 1.3 of this report.

Historically, FSR controls for residential developments in the Leichhardt LGA were listed under Clause 19.2 and the Residential Density Map of LEP 2000. Leichhardt's FSR controls for residential development were divided into three main density areas – Leichhardt, Annandale and Balmain.

Density Area	Maximum Floor Space Ratio
Leichhardt (including Lilyfield and Rozelle West)	0.5:1
Annandale	0.6:1
Balmain (including Rozelle East, Balmain East and Birchgrove)	0.7:1

Table 1: FSR Controls – Leichhardt LEP 2000

The Manager of Legal Services report to Council 'FSR Development standard for DLEP 2011' in December 2010 explained the history of FSR standards in Leichhardt as follows, "These FSR controls were set in the 1990s to discourage major changes in the character of the area and to reverse the consequences of the outdated controls of LEP 20 which had resulted in poor quality townhouse and infill development across the municipality."

1.5 How Does Leichhardt Council use FSR?

Council now relies on a suite of built form controls in deciding the best outcome for residential development applications. The *Environmental Planning and Assessment Act 1979* does not indicate what weight must be given to each factor, so long as all the relevant matters are considered. There is also no rule that says that if the development proposal fails on any particular factor, consent must be denied.

DCP controls are 'contextual' in how they are applied precisely in relation to adjoining development and they are directly related to the physical outcomes of development consents. Compared to the FSR, the DCP controls are often the most effective tool for minimising potential negative impacts to ensure the compatibility and overall design quality of new development.

For Leichhardt Council, FSR is one of a number of development and built form controls in the LEP and DCP that are relied on when assessing and determining the outcomes of DAs. Assessment of development proposals involves the following controls:

- DCP Suburb Profiles inform the overall approach to assessment of a DA and specific design considerations in particular
- The Building Location Zone addresses issues with neighbouring properties and achieving streetscape objectives.
- Building envelope controls in relation to the street generally
- Setbacks from the street and neighbouring properties
- Building location in relation to adjoining property
- Facade treatments / design details
- Privacy, view loss, amenity and solar access for neighbours

As a result, approved DAs will meet the requirements of the DCP controls more often than they meet LEP FSR and landscaped area controls. Despite this inconsistency it is generally accepted that compliance with the DCP built form controls, and not necessarily the LEP controls produce good residential development.

SEPP1/Clause 4.6 variations to FSR and landscaped area controls are frequently sought to facilitate development consents that deliver higher quality outcomes than those that could be achieved with strict adherence to the existing FSR controls.

1.6 What are the Weaknesses of FSR?

FSR is an inadequate method of controlling density and development because although it can help determine total built floor space in relation to site size, it does not directly limit the bulk or scale of buildings by itself. The level of the FSR does not determine impacts on neighbours nor the internal amenity of a building. FSR controls only achieve positive planning outcomes in partnership with other built form controls such as building height envelope, building alignments, setbacks, privacy distances, roof forms or landscaped areas.

Overall FSR is a very coarse control of a building bulk in proportion to lot size. It is particularly impractical when dealing with small scale developments and minor

differences in FSR controls, which are common in the Leichhardt LGA where FSR controls primarily vary from only 0.5:1 to 0.7:1. FSR works better on larger sites and is more relevant where precincts have a much larger range in building scale, such as CBDs in the City of Sydney, North Sydney and Chatswood.

1.7 Impact of New Standard Instrument definition of FSR

Leichhardt Council is required to use the Standard Instrument definition for FSR in *Leichhardt Local Environmental Plan (LLEP) 2013* which is different to the FSR definition used for the *Leichhardt Local Environmental Plan 2000*.

Under the Leichhardt LEP 2000 Floor Space Ratio (FSR) was defined as *"the ratio of the gross floor area of a building to the site area of the land on which the building is erected."*

Under LEP 2013 FSR has a similar definition to LEP 2000: *"the floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area"*.

LEP 2000 defined gross floor area as: *"the total area of a building's floorplates, measured between the outer edges of the outside walls or the centre line of any party wall, and includes mezzanines, attics, internal car parking spaces, garages, lofts and studios. It does not include projections outside the external walls of the building, paved areas, voids or basements used for car parking, where the car parking area does not protrude more than 1 metre above ground level."*

The Standard Instrument Leichhardt LEP 2013 defines gross floor area as:-
"gross floor area means 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".

As can be seen from the above definitions, the Standard Instrument definition for the calculation of FSR excludes more elements of a building than the LEP 2000

definition. For example, in some cases, internal car parking spaces, lifts, stairs and basement storage. This difference means that under the Standard Instrument definition less parts of a dwelling count toward a FSR calculation and FSR will in turn be marginally lower than if calculated using LEP 2000 definition. The following table illustrates these differences.

Elements of building included in FSR calculation	Old Definition for FSR (LLEP 2000)	Current (standard template) definition for FSR (LLEP 2013)
Gross floor area building	Measured between the <u>outer edges</u> of the outside walls	Measured from the <u>internal face</u> of external walls
Habitable rooms	Y	Y
Mezzanines, attics, lofts, studios	Y	Y
Internal car parking spaces	Y	Y
Lifts and stairs	N	N
Basement Storage	Y	N
Basement car parking	N	N
Voids	N	N

Table 2: Differences in FSR Definition between LLEP 2000 and LLEP 2013

The adoption of the Standard Instrument definition of gross floor area has therefore resulted in an increase in the permissible FSR of approved residential development applications (DAs) compared to the previous LEP 2000 definition.

2. History

2.1 Explanation of Variations to Development Standards

On 17 October 1980 the NSW State government gazetted State Environmental Planning Policy No. 1 (SEPP 1). It was introduced to provide greater flexibility in planning instruments such as *Leichhardt Local Environmental Plan 2000*. The policy was used to allow a degree of flexibility in the application of numeric development standards in LEP 2000 such as FSR and landscaped area.

When the NSW government introduced Standard Instrument Local Environmental Plans it incorporated the provisions of SEPP 1 into a compulsory clause (clause 4.6 Variations to Development Standards) in all Councils LEPs. Therefore, when the Leichhardt LEP 2013 came into effect clause 4.6 replaced SEPP1. Council received confirmation from the Department of Planning and Environment that Council could apply the same provisions regarding variations to development standards as those applied under LEP 2000.

Under clause 4.6, if a proposal does not meet a numeric development standard contained within a LEP then an application may be prepared by the applicant or their representative in which justification for a variation of the relevant development standard is provided. For some development proposals the development standards

required by the LEP may not be necessary or reasonable. A clause 4.6 application is not required for variation of controls contained within development control plans.

A variation to the development standards via the use of clause 4.6 should only be considered by councils in special circumstances. The use of clause 4.6 should therefore be the exception and not the norm.

A strong case must be made when using this policy and a council must consider a range of factors before it grants consent to an application to vary the development standard. These factors include:

- Is the control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of clause 4.6?
- Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?
- Is the objection well founded?
- Is the objection consistent with state, regional and local planning objectives.
- Public benefit of maintaining the planning controls.

If the council is satisfied that the application is well founded then it can grant consent to the development, with the concurrence of the Director-General of the Department of Planning and Environment.

2.2 Reporting Variations to Development Standards (now Clause 4.6)

The Department of Planning and Environment requires all Councils to keep accurate records of the use of clause 4.6 (formerly SEPP 1). Monitoring of variations to development standards is considered important in that it enables the Department of Planning and Environment and councils to obtain an overview of how the established development standards are being varied and whether the assumed concurrence is being used as intended. This enables councils and the Department to determine whether development standards are appropriate, or whether changes are required.

2.3 Impact of ICAC investigation into Wollongong Council

A circular was issued by the Department of Planning and Infrastructure in November 2008 reminding councils of their responsibility to complete quarterly returns on variations to development standards under delegations using SEPP 1. The circular also announced that in response to the findings of the ICAC investigation into corruption allegations affecting Wollongong City Council (where SEPP 1 was abused), councils were required to adopt the following four measures:-

1. Establish a register of development applications determined with variations in standards under SEPP 1;
2. Require all development applications where there has been a variation greater than 10% in standards under SEPP 1 to be determined by full council (rather than general manager or nominated staff member);

3. Provide a report to each council meeting on the development applications determined where there had been a variation in standards under SEPP 1; and
4. Make the register of development applications determined with variations in standards under SEPP 1 available to the public on the council's website.

Implementation of the second measure above, requiring the full council to determine DAs with a variation to a development standard greater than 10%, presented Leichhardt Council with a significant challenge.

2.4 Impact of SEPP 1 Measures on Leichhardt Council

After gazettal of LEP 2000 Leichhardt Council used SEPP 1 extensively to permit variations to development standards, primarily FSR, and grant consent to appropriate development proposals. In December 2008 Council advised the Department of Planning and Infrastructure that over 30% of development applications determined by Leichhardt Council sought a variation to a development standard by more than 10%. The new measures introduced by the Department of Planning and Infrastructure in November 2008 would therefore result in an unacceptable increase in DA processing times as DAs determined by the full Council generally take longer to be processed than those determined under delegation to Council staff.

2.5 Leichhardt Council's Temporary Exemption from Statewide Requirement

In February 2009 the Department of Planning and Infrastructure wrote to Council advising that:-

"The current planning controls contain development standards that restrict the reasonable redevelopment of existing dwellings to carry out modest additions and alterations such as an additional bedroom or increased living area."

Appreciating Council's concerns about the impact of the new measure on Development Application processing times the Department stated in the same correspondence that:

"As an interim measure (6 months), Leichhardt Council may assume concurrence subject to development applications being referred to a Council meeting if the variation in the case of alterations and additions to dwellings exceed 60% of the FSR standard and 40% of the landscaped area standard."

However the Department viewed this exemption as temporary only, providing additional time for Council to:-

"...update the development standards to provide reasonable development potential under its controls throughout the Leichhardt Local Government Area."

2.6 Leichhardt Council's Response

In April 2009, Council commenced an internal review of the FSR and other controls contained in LEP 2000, in response to the Department of Planning and Infrastructure's concerns that the current FSR controls were restricting the reasonable redevelopment of existing dwellings and resulting in excessive use of SEPP 1.

2.7 Funding from State Government for FSR Review

In September 2009 Council was informed it would receive \$30,000 toward the Review from the Department of Planning and Infrastructure under Round 6 of the Planning Reform Funding Program. Council accepted the funding and entered a Memorandum of Understanding (MoU) with the Department agreeing to undertake and complete the FSR Review within the agreed timeframes. The MoU also required that Council provide all data used to inform the FSR Review. Whilst Council has received the funding it has yet to provide the Department with the data that informed the Review.

In December 2013 Council received correspondence from the Department of Planning and Infrastructure in relation to variations under State Environmental Planning Policy 1 – Development Standards (SEPP 1). It was confirmed that upon gazettal of the *Leichhardt Local Environmental Plan (LLEP) 2013* that SEPP 1 would no longer apply but that Council could assume the concurrence of the Director General under Clause 4.6 Exceptions to Development Standards of the LEP.

On 24 December 2013 Council was informed by the Department of Planning and Infrastructure that the *Leichhardt Local Environmental Plan (LLEP) 2013* would be gazetted on February 2014. The Department reiterated its request that Council provide the final FSR review data and that Council lodge a planning proposal with the Department of Planning and Infrastructure, by the end of March 2014 to update and amend the Floor Space Ratios in the LEP.

2.8 Statistics on Leichhardt Council's Use of SEPP 1 Compared to Other Councils

In 2009 the Department of Planning and Infrastructure released a report on the use of SEPP 1 by councils for the June quarter of that year. The report found that of the 152 councils in NSW:-

- 61% made no use of SEPP 1 when determining DAs;
- 29% of councils had used SEPP1 between 1 to 5 times when determining DAs; and
- 3% used SEPP 1 more than 30 times when determining DAs.

The same report identified that Leichhardt Council was the most common user of SEPP 1 in NSW. The following table shows Leichhardt Council used SEPP 1 nearly three times more often than the next most common user of SEPP 1 (Mosman Council).

Council	Number of DAs determined using SEPP1 during June Quarter 2009 (all types of DAs – business, industrial and residential)
Leichhardt	68
Mosman	23
Sutherland	19
Penrith	16
Randwick	15

Table 3: Use of SEPP1, Top Five Councils in NSW (June 2009 quarter) Source: NSW Department of Planning and Infrastructure

2.9 Clause 4.6 – Variations to Development Standards for Residential Development Applications (formerly SEPP 1)

Further analysis by Leichhardt Council staff in relation to the 417 residential DAs determined by Council in the 2009/10 financial year found that:-

- 169 or 41% of residential DAs were determined using clause 4.6 (formerly SEPP 1);
- 154 or 37% of approved residential DAs exceed the FSR standard by 10%; and
- 42 or 10% of approved residential DAs exceed the FSR standard by 60%.

As previously discussed the use of clause 4.6 is intended for exceptional circumstances. The data suggests that for Leichhardt Council the use of clause 4.6 tends to be the norm rather than the exception. This is primarily because of Council's low FSR controls, which do not accurately reflect existing development or desired future residential development in the context of the other controls used to assess and determine the appropriate level of development. Council's reliance on clause 4.6 to overcome the constraints imposed by Council's FSR Development Standard is perhaps best demonstrated by Council's creation of a clause 4.6 variation *pro forma*, that is readily available to applicants.

2.10 What if Leichhardt had Variations to Development Standards Concurrence like other Councils?

On the basis of 2009/10 data, if Council did not have its current unique exemption from State-wide requirements for referrals of Clause 4.6 applications to Council. It is estimated that an additional 11 DAs would be determined by Council or the Leichhardt Planning Panel each month. On average, this is a total of 22 Development Applications each month

3 FSR Review

3.1 Aim of FSR Review

The review of Council's FSR controls was initiated in 2009 in response to the Department of Planning and Infrastructure's concerns that the FSR controls in LEP 2000 were restricting the reasonable redevelopment of existing dwellings and resulting in excessive use of the variation to development standards provisions. As such, the aim of the FSR Review was to:-

- understand if Council's FSR controls were resulting in excessive use of clause 4.6 (formerly SEPP 1); and
- identify alternate FSR controls that would better reflect the nature of desired residential development in the LGA.

3.2 Methodology

FSR controls involve sensitive issues for the Leichhardt community and the Review adopted a comprehensive evidence-based approach to ensure its findings were representative and reliable.

Sample Size and Selection

A large amount of data related to FSR and the use of clause 4.6 (then SEPP 1) was collected via the sampling of 1,080 approved DAs and 225 refused residential DAs – evenly distributed over different suburbs and the period of 2000 to 2008. Both samples (approved and rejected) are of sufficient size to give confidence that the pattern of all past DAs matches that of the sample DAs. Samples were randomly selected from a summary list with no consideration given to specific dwelling types, location or owners.

Advice provided by a consultant statistician confirmed the sample size and selection method applied during the FSR Review was of “sufficient size to give confidence that the pattern of all past DAs matches that of the sample DAs”. The consultant presented the rationale behind this statement to Councillors at a briefing on 14 October 2010. The following table illustrates the means by which the sample of approved residential DAs were distributed across time and suburbs.

Planning Area	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Annandale	20	20	20	20	20	20	20	20	20	180
Balmain	20	20	20	20	20	20	20	20	20	180
Birchgrove	20	20	20	20	20	20	20	20	20	180
Leichhardt	20	20	20	20	20	20	20	20	20	180
Lilyfield	20	20	20	20	20	20	20	20	20	180
Rozelle	20	20	20	20	20	20	20	20	20	180
Total	120	120	120	120	120	120	120	120	120	1080

Table 4: Distribution of sampled approved DAs

This selection method shown in the table equates to:-

- 20 DAs being sampled each year in each planning area for 9 years – those planning areas comprising Annandale, Balmain, Birchgrove, Leichhardt, Lilyfield and Rozelle (East & West).
- 120 DAs in total being sampled from each of the years 2000 to 2008.
- 180 DAs in total being sampled from each of the 6 planning areas for the period 2000 to 2008.

Data collected from each of the approved and refused DAs was as follows:

- Development Application Number
- Street address and suburb
- Description of Development
- Estimate cost of development
- Date of approval
- Lot size
- Delegation
- SEPP 1 objections
- Number of objections
- FSR (existing, proposed and approved) – LEP 2000 definition and Standard template definition

- Landscaped area (existing, proposed and approved) – LEP 2000 definition and standard template definition
- Building height
- Building location zone
- Site coverage

There were a significant number of inaccuracies in the calculations provided by the applicants in the development applications. As a result, the calculations for FSR and landscaped area were manually re-calculated for all the development applications sampled.

3.3 Findings from FSR Review

3.3.1 FSR – Existing and Approved

Table 5, 6 and 7 provide summaries of the findings of the FSR Review analysis. The results provide a reliable guide to the average FSR of dwellings approved by Council across different suburbs and different lot (land) sizes using both the LEP 2000 definition for FSR (Table 5) and the Standard Instrument definition for FSR (Table 6).

The difference between Tables 5 and 6 further illustrate the different outcomes that would arise from the old LEP 2000 and the new standard template definition for calculating FSR. The FSR controls in LEP 2000 and draft LEP 2013 are also included to enable comparison between what the controls allow and what is actually being approved by Council (on average).

The four key findings from the review of FSR controls are:

1. **The smaller the lot size the higher the FSR of dwellings approved by Council.** For example, Table 6 shows that in Balmain the average FSR of dwellings on small lots between 0-149sqm is 0.9:1, while on larger lots that are over 450sqm the average FSR of dwellings is 0.5:1.
2. **The approved FSR of dwellings varies between planning areas, which reflects the unique character of each suburb.** For example, Table 6 shows that the average FSR of dwellings on a 150-299sqm lot in Leichhardt is 0.6:1 but in Birchgrove it is 0.8:1.
3. **The approved FSR of dwellings on lots 0-300sqm tend to be over (in breach of) the current FSR controls, which confirms that most FSR breaches occur on smaller lots.** For example Table 6 shows that in Annandale the average actual FSR of dwellings on lot sizes 0-149sqm is 0.8:1 and for dwellings on lot sizes 150-299sqm it is 0.7:1, both of which exceed the current maximum FSR control of 0.6:1.
4. **The majority of residential lots across the Leichhardt LGA are less than 300sqm in size.** Table 7 below illustrates that the majority of residential lots across the Leichhardt LGA are less than 300sqm in size. For example, 68% of all residential lots in Lilyfield are less than 300sqm while in Rozelle the proportion is 87%.

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.9	1.0	1.1	0.8	1.0	0.9
150-299.9	0.8	0.8	0.9	0.7	0.7	0.7
300-449.9	0.7	0.9	0.8	0.6	0.5	0.6
450+	0.6	0.6	0.7	0.6	0.6	0.6
Average	0.8	0.9	0.9	0.7	0.6	0.8
Controls in LEP 2000	0.6	0.7	0.7	0.5	0.5	0.5/0.7

Table 5: Average Approved FSR for Residential DAs (LEP 2000 definition)

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.8	0.9	1.0	0.7	0.9	0.8
150-299.9	0.7	0.7	0.8	0.6	0.6	0.6
300-449.9	0.6	0.7	0.6	0.5	0.5	0.6
450+	0.6	0.5	0.6	0.5	0.5	0.5
Average	0.7	0.8	0.8	0.6	0.5	0.7
Controls in LEP 2013	0.6	0.7	0.7	0.5	0.5	0.5/0.7

Table 6: Average Approved FSR for Residential DAs (Leichhardt LEP 2013 Standard Instrument definition)

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	26%	32%	38%	17%	13%	34%
150-299.9	55%	48%	41%	57%	55%	53%
300-449.9	13%	11%	12%	19%	25%	9%
450+	6%	9%	9%	7%	7%	4%
Total	100%	100%	100%	100%	100%	100%

Table 7: Residential lot size distribution across Leichhardt LGA

3.3.2 Supplementary FSR Review Analysis of Property Value Uplift

When Council considered the Floor Space Ratio Review in April 2014, prior to its public exhibition it resolved (C96/14) to undertake further “analysis of the projected value of uplift across the various planning areas and lot sizes within indicated in the reports options.” Council commissioned urban economists Hill PDA to carry out this analysis. HillPDA’s research and analysis concluded that increased FSR controls could have the following impacts:

- The market has already factored in that the FSR of new approved residential development is above current FSR controls in Leichhardt LGA;
- Higher FSR controls will lead to speculation that property owners can get more floorspace approved than is currently the case. This factor could be exacerbated by real estate agents who are likely to spruik properties as having the potential for additional floorspace;
- This speculation may lead to increased property values in the short term (potentially 5%-20%) increase
- Speculative land values would only be realised if Council started approving higher levels of FSR than it currently does.

HillPDA also advised that the potential impacts would be mitigated if Council holds the line and continues to use its existing suite of built form controls including building envelope controls in the Development Control Plan (DCP):

- DCP Suburb Profiles inform the overall approach to assessment of a DA and specific design considerations in particular
- The Building Location Zone addresses issues with neighbouring properties and achieving streetscape objectives.
- Building envelope controls in relation to the street generally
- Setbacks from the street and neighbouring properties
- Building location in relation to adjoining property
- Facade treatments / design details
- Privacy, view loss, amenity and solar access for neighbours

Speculation will diminish as owners become aware that the higher FSR controls don't result in different built form outcomes than those currently considered acceptable by Council. In other words, once land owners/applicants test the new FSR controls and find that the actual FSR in development consents have not increased then the degree of additional value attributed to speculation will drop off. Consequently, without speculation, the impact on land values from the proposed new FSR controls will be relatively minor.

3.4 Options for Action

Based on the aims and findings of the FSR Review it is recommended that any new FSR controls for residential development should meet the following principles/criteria:

1. FSR controls acknowledge the diversity of lot sizes across the LGA and differ between lot size;
2. FSR controls acknowledge the difference in lot sizes between suburbs and differ between suburb;
3. FSR controls better reflect what is being approved by Council; and
4. FSR controls reduce Council's reliance on clause 4.6 (formerly SEPP 1).

Four options for new FSR controls were assessed against the principles above and reviewed in light of the submissions received during community consultation. The four options are:-

Option 1 - No change

No change to FSR controls except definition under the Standard Instrument;

Option 2 - Minimal change

FSR controls reflect what is, on average, being approved by Council;

Option 3 - Modest change

FSR controls seeks to balance the need to reduce Council's reliance on clause 4.6 whilst minimising the risk of unintended consequences that might occur on account of the new controls; and

Option 4 - Substantial change

FSR controls high enough to significantly reduce reliance on clause 4.6

Note: As these options relate to Leichhardt LEP 2013 all analysis provided in this section of the report is based on the Standard Instrument definition for FSR. This means that in the following Option tables, the percentages of residential DAs that would have to be reported to the Leichhardt Planning Panel (previously to the Council) are estimates based on how many Clause 4.6 applications for FSR variations there would be when the LEP 2013 definition for calculating FSR is applied to the FSR Review 2000-2008 data.

3.4.1 Option 1 – No Change to FSR Controls

Option 1 would see no change to the current FSR controls in Leichhardt LEP 2013. The following table illustrates what those controls are and assesses Option 1 against the criteria identified at the beginning of Section 3.4 of this report.

Planning Area/ Suburb	FSR Controls – Leichhardt LEP 2013
Annandale	0.6
Balmain	0.7
Birchgrove	0.7
Leichhardt	0.5
Lilyfield	0.5
Rozelle (East)	0.7
Rozelle (West)	0.5
Assessment Criteria	Yes/No
Criteria 1 - Do the FSR controls differ between lot size?	N
Criteria 2 - Do the FSR controls differ between suburb?	Y
Criteria 3 - Do the FSR controls better reflect what is being approved by Council?	N
Criteria 4 – Do the FSR controls reduce Council's reliance on clause 4.6?	N

Table 8: Assessment of Option 1: FSR Controls (no change)

The following assesses Option 1 in relation to the number of DA's that would have to be determined by Council or the Leichhardt Planning Panel.

- If Leichhardt Council had the same clause 4.6 concurrence as other NSW councils approximately **44%** of the average annual number of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 10%.

- Under Council's current unique clause 4.6 concurrence approximately **8%** of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 60%.

Potential Benefits of Option 1

- The public is accustomed to the existing FSR controls

Potential Problems with Option 1

- If the Department of Planning and Environment were to revise Leichhardt Council's delegation for clause 4.6 to bring it into line with other NSW councils, then Option 1 could result in around 44% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This may result in increased processing times of development applications which in turn may lead to a perception that Leichhardt Council is underperforming.
- By having FSR controls that are too low and then using clause 4.6 objections to support applications, Council may inadvertently be "abandoning" the control. This is the fourth test in the matter of *Wehbe v Pittwater Council [2007] 156 LGERA 446*. It means that the development standard has been virtually abandoned or destroyed by a Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable.

3.4.2 Option 2 – FSR Controls Reflect the Average

Option 2 would see the FSR controls in Leichhardt LEP 2013 reflect the average being approved by Council, based on the findings of the Review. The following table illustrates what those controls would be and assesses Option 2 against the criteria identified at the beginning of Section 3.4 of this report.

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.8	0.9	1.0	0.7	0.9	0.8
150-299.9	0.7	0.7	0.8	0.6	0.6	0.6
300-449.9	0.6	0.7	0.6	0.5	0.5	0.6
450+	0.6	0.5	0.6	0.5	0.5	0.5
Current Control	0.6	0.7	0.7	0.5	0.5	0.5/0.7
Assessment Criteria						Yes/No
Criteria 1 - Do the FSR controls differ between lot size?						Y
Criteria 2 - Do the FSR controls differ between suburb?						Y
Criteria 3 - Do the FSR controls better reflect what is being approved by Council?						Y
Criteria 4 – Do the FSR controls reduce Council's reliance on clause 4.6?						Y

Table 9: Assessment of Option 2: FSR Controls (minimal change)

The following assesses Option 2 in relation to the number of DA's that would have to be determined by Council or the Leichhardt Planning Panel.

- If Leichhardt Council had the same clause 4.6 concurrence as other NSW councils approximately **29%** of the average annual number of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 10%.
- Under Council's current unique clause 4.6 concurrence approximately **2.1%** of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 60%.

Potential Benefits of Option 2

- Controls reflect the average actual FSRs being approved by Council by lot size in each suburb.
- Small reduction in reliance on clause 4.6 for FSR.
- Reduces potential risk of unintended consequences of changing FSR.

Potential Problems with Option 2

- Large number of DAs will still require use of Clause 4.6 for FSR.
- No behavioural change in use of FSR.
- If the Department of Planning and Environment were to revise Leichhardt Council's delegation for clause 4.6 to bring it into line with other NSW councils, then Option 2 could result in around 29% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This may result in increased processing times of development applications which in turn may lead to a perception that Leichhardt Council is underperforming.

3.4.3 Option 3 – Balanced Approach to FSR Controls

The FSR controls for Option 3 would reduce Council's reliance on clause 4.6 and minimise the risk of unintended consequences that might result from new controls. The following table illustrates what those controls would be and assesses Option 3 against the criteria identified at the beginning of Section 3.4 of this report

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.9	1.0	1.0	0.8	0.9	0.9
150-299.9	0.8	0.9	0.9	0.7	0.8	0.8
300-449.9	0.7	0.8	0.8	0.6	0.7	0.7
450+	0.6	0.7	0.7	0.5	0.6	0.6
Current Control	0.6	0.7	0.7	0.5	0.5	0.5/0.7

Assessment Criteria	Yes/No
Criteria 1 - Do the FSR controls differ between lot size?	Y
Criteria 2 - Do the FSR controls differ between suburb?	Y
Criteria 3 - Do the FSR controls better reflect what is being approved by Council?	Y
Criteria 4 – Do the FSR controls reduce Council's reliance on clause 4.6?	Y

Table 10: Assessment of Option 3: FSR Controls (modest change)

The following assesses Option 3 in relation to the number of DA's that would have to be determined by Council or the Leichhardt Planning Panel.

- If Leichhardt Council had the same clause 4.6 concurrence as other NSW councils approximately **10%** of the average annual number of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 10%.
- Under Council's current unique clause 4.6 concurrence approximately **0.9%** of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 60%.

Potential Benefits of Option 3

- If the Department of Planning and Environment were to revise Leichhardt Council's delegation for clause 4.6 to bring it into line with other NSW councils, then Option 3 would result in 10% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This would be a large reduction in reliance on Clause 4.6 for FSR variations
- Would be complemented by the built form controls in DCP 2013.
- Consistent with what has historically been approved by Council using Clause 4.6 and currently being approved by the Planning Panel using Clause 4.6

Potential Problems with Option 3

- Potential community perception that new controls may encourage over development.
- Minimal risk of unintended consequences from changing FSR

3.4.4 Option 4 – FSR Controls Significantly Reduce reliance on Clause 4.6

Option 4 sets the FSR controls at a level where Council's reliance on clause 4.6 would be significantly reduced. The following table illustrates what those controls would be and assesses Option 4 against the criteria identified at the beginning of Section 3.4 of this report.

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	1.0	1.1	1.1	0.9	1.0	1.0
150-299.9	0.9	1.0	1.0	0.8	0.9	0.9
300-449.9	0.8	0.9	0.9	0.7	0.8	0.8
450+	0.7	0.8	0.8	0.6	0.7	0.7
Current Control	0.6	0.7	0.7	0.5	0.5	0.5/0.7

Assessment Criteria	Yes/No
Criteria 1 - Do the FSR controls differ between lot size?	Y
Criteria 2 - Do the FSR controls differ between suburb?	Y
Criteria 3 - Do the FSR controls better reflect what is being approved by Council?	Y
Criteria 4 – Do the FSR controls reduce Council's reliance on clause 4.6?	Y

Table 11: Assessment of Option 4: FSR Controls (substantial change)

The following assesses Option 4 in relation to the number of DA's that would have to be determined by Council or the Leichhardt Planning Panel.

- If Leichhardt Council had the same clause 4.6 concurrence as other NSW councils approximately **4%** of the average annual number of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 10%.
- Under Council's current unique clause 4.6 concurrence approximately **0.8%** of residential DAs in the FSR Review period would have to be reported to the Council (now the Leichhardt Planning Panel) due to a FSR variation of more than 60%.

Potential Benefits of Option 4

- More accurately reflects the range of development that is occurring.
- Substantially fewer DAs would require clause 4.6 variations for FSR.
- Will facilitate behavioural change in use of FSR via stricter adherence to new controls.
- Would be supported by new DCP controls.
- If the Department of Planning and Environment were to revise Leichhardt Council's delegation for clause 4.6 to bring it into line with other NSW councils, then Option 4 would result in 4% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This would be a very large reduction in reliance on clause 4.6 for FSR Variations

Potential Problems with Option 4

- Higher risk of unintended consequences from changing FSR
- Potential community perception that new controls may encourage overdevelopment.

3.4.5 Summary of Options for FSR Controls by Suburb

The following table summarises four options for new FSR controls in Leichhardt LEP 2013 by suburb.

Suburb	Lot Size (sqm)	Option 1	Option 2	Option 3	Option 4	Current Control
Annandale	0-149.9	0.6	0.8	0.9	1.0	0.6
	150-299.9	0.6	0.7	0.8	0.9	
	300-449.9	0.6	0.6	0.7	0.8	
	450+	0.6	0.6	0.6	0.7	
Balmain	0-149.9	0.7	0.9	1.0	1.1	0.7
	150-299.9	0.7	0.7	0.9	1.0	
	300-449.9	0.7	0.7	0.8	0.9	
	450+	0.7	0.5	0.7	0.8	
Birchgrove	0-149.9	0.7	1.0	1.0	1.1	0.7
	150-299.9	0.7	0.8	0.9	1.0	
	300-449.9	0.7	0.6	0.8	0.9	
	450+	0.7	0.6	0.7	0.8	
Leichhardt	0-149.9	0.5	0.7	0.8	0.9	0.5
	150-299.9	0.5	0.6	0.7	0.8	
	300-449.9	0.5	0.5	0.6	0.7	
	450+	0.5	0.5	0.5	0.6	
Lilyfield	0-149.9	0.5	0.9	0.9	1.0	0.5
	150-299.9	0.5	0.6	0.8	0.9	
	300-449.9	0.5	0.5	0.7	0.8	
	450+	0.5	0.5	0.6	0.7	
Rozelle	0-149.9	0.5/0.7	0.8	0.9	1.0	0.5/0.7
	150-299.9	0.5/0.7	0.6	0.8	0.9	
	300-449.9	0.5/0.7	0.6	0.7	0.8	
	450+	0.5/0.7	0.5	0.6	0.7	

Table 12: Summary Table of FSR Controls Under Option 1/2/3/4

4. Resolution (C126/15P) from Council Policy Meeting 14 April 2015

On 14 April 2015, Council resolved to:

- *Defer further consideration of this Item and seek advice from the co-chairs of the Leichhardt Planning Panel about the recommendations in the report (refer to Section 4.1) and request a response to come back to the June 2015 Policy Meeting (including Points 3 & 4 below). (refer to Section 4.2-4.3)*
- *Consider moving to a sliding scale for calculation of FSR (refer to Section 4.2)*
- *Consider the large variations in Floor Space across various suburbs in the municipality and review these and that in particular look at small blocks of 150 sq. m or less in regard to perceived inequities (refer to Section 4.3).*

In accordance with Council resolution C126/15P, Council officers met with the Leichhardt Planning Panel co-chairs on two separate occasions. During these meetings, the FSR Review report, methodology, findings and options were explained. Staff requested that the co-chairs respond to the issues listed above.

Each co-chair provided written feedback (refer to **Attachment 1: Leichhardt Planning Panel Co-Chairs Advice**).

4.1 Evaluation of Recommendations in April 2015 Report

The Floor Space Ratio Review: Community Consultation Outcomes report to the April 2015 Policy Meeting recommended, *“that Council adopt the recommendations of Option 3 FSR Controls (Modest change).”*

Context

The FSR Review recommended Option 3 for the following reasons;

- Consistency with what has historically been approved by Council using Clause 4.6
- Approvals of DAs are based on merit assessment which include a range of built form controls such as:
 - DCP Suburb Profiles
 - Heritage and Conservation
 - Environmental considerations
 - The Building Location Zone (addresses issues with neighbouring properties and achieving streetscape objectives)
 - Building envelope controls in relation to the street generally
 - Setbacks from the street and neighbouring properties
 - Facade treatments / design details
 - Privacy & overlooking
 - View loss
 - Amenity
 - Solar access for neighbours
- If the Option 3 controls were adopted, the revised FSR control would be complemented by the built form controls in DCP 2013
- If the Department of Planning and Environment were to revise Leichhardt Council’s delegation for clause 4.6 to bring it into line with other NSW councils, then Option 3 would result in 10% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This would be a large reduction in reliance on Clause 4.6 for FSR variations and comparable with its level of use by other Councils.

Planning Panel co-chairs Advice on Recommended Option 3

In responding to this point, the Planning Panel co-chairs have indicated their support for Option 3, for a range of reasons summarised in Table 13 below. (Refer also to **Attachment 1: Leichhardt Planning Panel Co-Chairs Advice**)

Issue	Co-chair 1 (Lloyd)	Co-chair 2 (Talbot)
Option 3 Preference	✓	✓
Support rationale for Option 3 in April 2015 report	✓	✓
Consistency with FSRs approved by Council	✓	✓

Little risk of overdevelopment	✓	No specific mention
FSR only one of a suite of controls	✓	✓
Reduction in the number of DAs referred to Council	✓	✓
Community Consultation Support	✓	No specific mention

Table 13: Planning Panel Co-Chairs Advice on Recommended Option 3

Broadly the co-chair's preference for Option 3 is based on:

- *"The FSRs in Option 3 are consistent with what has historically been approved by the Council (utilising clause 4.6) and currently being approved by the members of the Leichhardt Planning Panel (also utilising clause 4.6)"*
- *"any fears that [Option 3] might lead to overdevelopment are unfounded, as the current practice has demonstrated"*
- *"FSR is but one of the controls imposed together with a range of other planning tools and instruments available to Council. By itself, an FSR does not provide an effective means of determining the impacts of development, for example on streetscape or neighbours, all of which need to be measured against a plethora of specific controls and other considerations"*
- *"Option 3 will, as the report demonstrates, be likely to result in a significant reduction in the number of applications being referred to the Council".*

Officers Comments

In the April 2015 report Officers recommended Council adopt Option 3 for the following reasons:

- *Consistency with what has historically been approved by Council*
- *Option 3 would be complemented by the built form controls in DCP 2013*
- *If the Department of Planning and Environment were to revise Leichhardt Council's delegation for clause 4.6 to bring it into line with other NSW councils, then Option 3 would result in 10% of all residential DAs being reported to the Leichhardt Planning Panel for clause 4.6 FSR variations. This would be a large reduction in reliance on Clause 4.6 for FSR variations and comparable with its level of use by other Councils.*

The position of Council Officers remains unchanged.

4.2 Evaluation of Sliding Scale Approach to Calculating FSR

Context

A view has been expressed that some land owners may be disadvantaged by FSR controls that vary between lot size categories (Figure 2) and that a sliding scale approach could address this issue. The background to this is that there are drops in Gross Floor Area (GFA) at the cross over point between the lower lot size category and the next higher lot size category. An example is illustrated in Table 14;

Property Owner 1	Lot Size = 149sqm	FSR = 0.9:1	GFA = 134sqm
Property Owner 2	Lot Size = 150sqm	FSR = 0.8:1	GFA = 120sqm

Table 14: Example of the 'GFA Gap' between the FSR Steps

In the above example, the difference in the FSR calculation between Property Owner 2 and Property Owner 1 is 14sqm.

To facilitate discussion of this point by Panel co-chairs, Council Officers developed sliding scale options as a means of addressing this issue. Table 15 shows how the sliding scale could be applied to counter the potential difference in GFA at the cross over point between different lot size categories. The step condition effect is represented by the pink shaded areas in Figure 2.

Lot Size (sqm)	Controls
0-149.9	0.9:1
150-299.9	0.8 or 135sqm GFA whichever is greater
300-449.9	0.7 or 240sqm GFA whichever is greater
450+	0.6:1 or 315sqm GFA whichever is greater

Table 15: Hypothetical Sliding Scale Controls

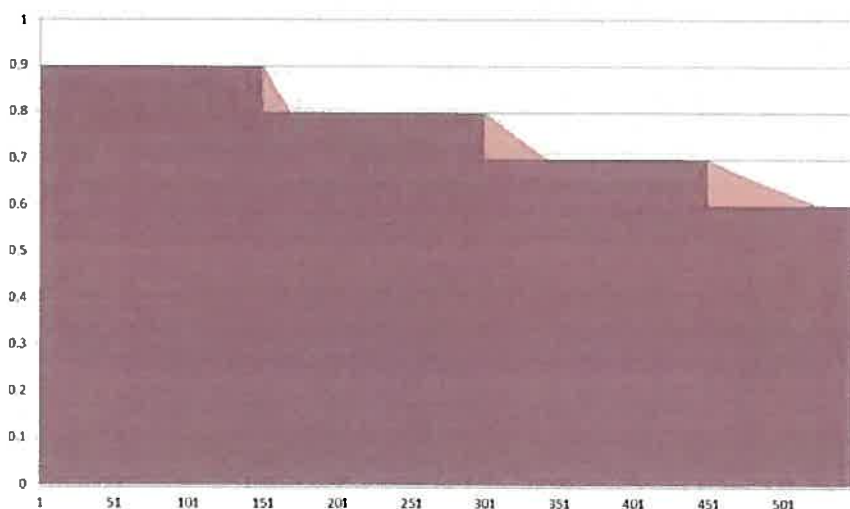


Figure 2: Difference Between Stepped Scale (Purple) & Stepped Scale with Sliding Scale Condition Applied (Purple + Pink)

This approach would smooth out the lot size category differences as follows;

Property Owner 1	Lot Size = 149sqm	FSR = 0.9:1	GFA = 134sqm
Property Owner 2	Lot Size = 150sqm	FSR = 0.9:1~ (due to condition of 135sqm GFA being applied)	GFA = 135sqm

Table 16: Closing of the 'GFA Gap' between the FSR Steps

Under the sliding scale, the GFA for Property Owner 1 would remain the same, but Property Owner 2 could receive a GFA of 135sqm through a stepped condition on the Option 3 controls. This would mean that in this case, both property owners could have either an FSR control of 0.9 or a GFA of 149sqm.

Feedback from Planning Panel Co-Chairs

The Planning Panel co-chairs do not support applying a sliding scale to Floor Space Ratio controls for the following reasons (included in **Attachment 1: Leichhardt Planning Panel Co-Chairs Advice**);

- Having precise FSR controls creates a *“false expectation that development which conforms to the formula is an entitlement”*.
- *“FSR controls are, to put it bluntly, a somewhat crude instrument. Planning consents are not solely dependent upon precise mathematical calculations.”*
- *“It would add undue complexity to the system as well as creating a perception of a level of rigidity that escalates the FSR standard to a fixed level. Such a perception would promote the FSR control into criteria beyond its measure and intent”*

Officers Comments

Council's application of Merit Based Assessment mitigates property owners at the lower end of the FSR lot size categories being disadvantaged through the strict application of FSR controls. Under Council's merit based assessment procedures, Floor Space Ratio controls are neither an absolute right nor an insurmountable impediment. As can be seen from Figure 4, FSR is only considered when all other aspects of Merit Based Assessment have been assessed and are satisfied.



Figure 4: Merit Based Assessment – the controls/hurdles' that have to be passed before Floor Space Ratio is considered

Other controls considered in Merit Based Assessment include;

- DCP Suburb Profiles
- Heritage and Conservation
- Environmental considerations
- The Building Location Zone (addresses issues with neighbouring properties and achieving streetscape objectives)
- Building envelope controls in relation to the street generally
- Setbacks from the street and neighbouring properties
- Facade treatments / design details
- Privacy & overlooking
- View loss
- Amenity
- Solar access for neighbours

Merit Based Assessment is not a 'tick the box' exercise where DAs simply pass or fail in a manner similar to exempt and complying development. If FSR controls were being considered in the context of an exempt and complying development assessment system, there would be a stronger argument for a sliding scale approach. Under Merit Based Assessment, a sliding scale would create a misleading focus on the significance of FSR as a planning control.

4.3 Evaluation of the Variation in FSR Controls between Suburbs

Context

A number of community consultation submissions referred to perceptions of possible inequities that might be created by FSR variations between suburbs. These issues included;

- Property owners in one suburb would be allowed higher FSRs compared with property owners with the same lot size in another suburb.
- The variation in built form between different suburbs in the LGA has historically been the result of wealthier property owners being able to get away with denser developments compared to poorer property owners in other suburbs.
- Significant variations in FSR between suburbs in the smallest lot size category.

These issues are encapsulated in the following example. If the FSR of the smallest lot size category in Leichhardt (0.8) and Birchgrove (1.0) under Option 3 are compared, at 149sqm, there is a difference of 30sqm in the FSR calculation.

Leichhardt	Lot Size = 149sqm FSR = 0.8	GFA. = 119.2sqm
Birchgrove	Lot Size = 149sqm FSR = 1.0	GFA = 149sqm

Table 17: GFA difference between Leichhardt and Birchgrove (Option 3) at 149sqm

Feedback from Planning Panel Co-Chairs

The Planning Panel co-chairs provided the following advice regarding concerns surrounding the variation in FSR controls between suburbs (**Attachment 1: Leichhardt Planning Panel Co-Chairs Advice**);

- *"FSR controls should be seen in a practical context as only a crude method of assessment that may be used as a measure of compliance after the other relevant criteria in respect of impact have been considered"*
- *"DCP contains suburb profiles to be read in conjunction with the specific Distinctive Neighbourhood statements. I believe this information provides an instructive analysis of the unique urban character and history of each sub-area within the whole council area and is an essential reference point for assessing development applications in each of those areas"*
- *"There is a rational reason for going down this path. It is, of course well known that the development of the various suburbs at different times has resulted in distinctive subdivision patterns, calling for controls which reflect the character of each area."*

Officers Comments

One of the key principles of the Floor Space Ratio Review is that FSR controls reflect the historical decisions made by Council. This has resulted in a variation in FSR between suburbs. As a result, all FSR Review options have variations between suburbs, to reflect their particular development histories and existing townscapes. FSR is the only control in the LEP or DCP that varies from suburb to suburb.

Unlike many more recently developed areas of the Sydney Metropolitan area the Leichhardt LGA was predominantly developed between 1830 and the early 1900s.

Regulatory building and development controls during this 1830 to early 1900s period were virtually non-existent and only started to determine development patterns in the mid-20th Century. This background has resulted in 29 distinctive neighbourhoods with 63 sub-areas overlaid with 18 Heritage Conservation areas in DCP and LEP 2013.

If uniform controls were to be applied across the LGA, the potential impacts on the existing built form and character of different suburbs would need to be considered. Furthermore, as stated previously, merit assessment helps:

- minimise negative impacts on immediate neighbours under the proposed FSR controls,
- minimise impacts on property owners in different suburbs as a consequence of the proposed variation in FSR controls

Consequently the FSR Review concluded that options for changing the FSR standard should be broken down into four lot size categories in each of the LGAs six suburbs to reflect this diversity of character, history and community.

4.4 Notice of Motion from Council Ordinary Meeting 26 May 2015

At the Ordinary Council Meeting on the 26th of May 2015, Council resolved (C230/15) to receive and note a Notice of Motion (refer to **Attachment 2: Floor Space Ratio Motion May 2015 Council Meeting**). The resolution raises a number of points and provides additional information in relation to both:

- Variation in FSR between lot sizes
- Variation in FSR between suburbs

Council officers have reviewed the material and formed the view that the sentiments and data contained in the recent Council minute, are consistent with the material presented to the panel co-chairs.

On that basis, Officers are still of the view that the currently proposed controls are the most appropriate way to proceed. As previously stated in this report:

- Having precise FSR controls creates a *"false expectation that development which conforms to the formula is an entitlement"*.
- *"FSR controls are, to put it bluntly, a somewhat crude instrument. Planning consents are not solely dependent upon precise mathematical calculations."*
- *"It would add undue complexity to the system as well as creating a perception of a level of rigidity that escalates the FSR standard to a fixed level. Such a perception would promote the FSR control into criteria beyond its measure and intent"*
- Council's application of Merit Based Assessment mitigates property owners in different suburbs and at the lower end of the FSR lot size categories being disadvantaged through the strict application of FSR controls. Under Council's merit based assessment procedures, Floor Space Ratio controls are neither an absolute right nor an insurmountable impediment. FSR is only considered when all other aspects of Merit Based Assessment have been assessed and are satisfied.

Summary and Conclusions

The FSR Review recommended Option 3 (a modest increase in FSR to reflect actual historical approvals by Council) as the best way forward. At Council's request this recommendation was reviewed by the co-chairs of the Leichhardt Planning Panel. The co-chairs of the Leichhardt Planning Panel support Option 3.

Based on the research and analysis undertaken during the FSR Review and the advice of the Leichhardt Planning Panel co-chairs, the FSR controls in Option 3 balance the need to reduce Council's reliance on clause 4.6 whilst minimising the risk of unintended consequences that might arise from new controls. Their advice is provided in **Attachment 1: Leichhardt Planning Panel Co-Chairs Advice**.

In addition to the analysis carried out following the community consultation, further analysis has now been carried out in relation to a sliding scale for FSR, and the variation in FSR between Suburbs. This report concludes that Merit Based Assessment guards against impacts on land owners as a consequence of variations in FSR controls based on either lot sizes and/or suburb location.

Attachments

Attachment 1: Leichhardt Planning Panel Co-Chairs Advice

Attachment 2: Floor Space Ratio Motion May 2015 Council Meeting

LEICHHARDT COUNCILFLOOR SPACE RATIO REVIEW

I have the benefit of a perusal of the findings in the FSR Review, already considered by Council, as well as discussion with Council officers, on the subject.

To state the obvious, FSR is but one of the controls imposed together with a range of other planning tools and instruments available to Council. By itself, an FSR does not provide an effective means of determining the impacts of development, for example on streetscape or neighbours, all of which need to be measured against a plethora of specific controls and other considerations. [See for Eg. Leichhardt DCP 2013 Part C Section 1, C1.3 Alterations and Additions and Part C Section 3, C1 BLZ and C3 Site Capacity].

At present the prescribed FSR standards in the LEP are being honoured more in the breach by the widespread use of the variation/dispensing power in Clause 4.6.

I agree with the notion that the present outcomes are, more or less, a reflection of community expectations, in the terms of a reasonable FSR and the actual development that is occurring.

However FSR controls should be seen in a practical context as only a crude method of assessment that may be used as a measure of compliance after the other relevant criteria in respect of impact have been considered. Only then can the affect from the density of the development be rationally assessed and understood. In other words, compliance with a specified FSR control should not be seen as the entry point towards an approval.

Accordingly, in my view compliance with a specified FSR does not create an entitlement to an approval. Development always must be assessed primarily against the other applicable standards and built form controls. Moreover there is always an overall objective assessment and appraisal based upon the perception of the general acceptability of the outcome.

That said, if Option 3, as presented in the report to Council, is accepted, obviously, it will have the potential to significantly reduce the number of DA's that will rely on the exercise of discretion under Clause 4.6, to an acceptable and more appropriate level. My preference is that Option 3 be adopted as representing the reality of what can be considered as reasonable, based upon experience.

Two options for introducing a sliding scale, that could be applied to lots between 150 SQM and 170 SQM on the basis that the development standard could be measured either as an FSR or GFA graduated according to the specific area of the subject allotment, have been explained to me.

I strongly disagree with such a concept as, in my opinion, compliance with an FSR standard ascertained in that way would produce such a precise outcome that it runs the risk of being regarded as an entitlement. Moreover it would add undue complexity to the system as well as creating a perception of a level of rigidity that escalates the FSR standard to a fixed level. Such a perception would promote the FSR control into criteria beyond its measure and intent.

Finally, I note that the DCP contains Suburb Profiles to be read in conjunction with the specific Distinctive Neighbour Statements. I believe this information provides an instructive analysis of the unique urban character and history of each sub-area within the whole council area and is an essential reference point for assessing development applications in each of those areas.

Hon R.N. [Angus] Talbot

14 May 2015

LEICHHARDT COUNCIL AND FSR CONTROLS**MEMORANDUM**

Having read the report to the Council Policy Meeting of 14 April 2015 and met with Council planning staff on 24 April and on 14 May, I offer the following comments.

I confirm a firm preference for the adoption of Option 3 as set out in the report, which seems to me to be a practical solution to a recurring problem.

I have come to this view generally for the reasons set out in the report, but in particular the following.

(a) The FSRs in Option 3 are consistent with what has historically been approved by the Council (utilising clause 4.6) and currently being approved by the members of the Leichhardt Planning Panel (also utilising clause 4.6).

(b) Option 3 is thus seen as being the appropriate standard.

(c) Any fears that this might lead to overdevelopment are unfounded, as the current practice has demonstrated.

(d) Moreover, FSR controls are but one of a suite of controls in both the LEP and, importantly, in the DCP (which must be the focal point in any consideration of a development application) and which are there to ensure that any development is otherwise appropriate. That is, the taking into consideration of the whole suite of controls operates as a hurdle to overdevelopment.

(e) Option 3 will, as the report demonstrates, be likely to result in a significant reduction in the number of applications being referred to the Council or Panel as a consequence of the need to otherwise resort to clause 4.6.

(f) Option 3 is strongly supported following community consultation (41% support), followed by Option 4 (21% support).

I have been asked to comment on two further matters.

Firstly, to consider the question of moving to a sliding scale for calculation of FSR. Although entirely a matter for the Council, it is not something that I am inclined to support. It suggests that development which is permissible is dependent upon compliance with a precise mathematical formula. This in turn may give rise to a false expectation that development which conforms to the formula is an entitlement.

FSR controls are, to put it bluntly, a somewhat crude instrument. Planning consents are not solely dependent upon precise mathematical calculations. As

noted above, FSR controls are but one of a suite of controls which have to be balanced against each other. Moreover, any anomalies in a stepped scale can be readily accommodated in the balancing process, utilising cl4.6 if necessary, and allowing for flexibility when the circumstances so require in order to achieve the best outcome. Any perceived disadvantages in a stepped scale are thus neutralised.

Secondly, I am asked to consider variations in floor space across the various suburbs. I accept that there is a rational reason for going down this path. It is, of course, well known that development of the various suburbs at different times has resulted in distinctive subdivision patterns, calling for controls which reflect the character of each area. A common floor space control would no doubt be both possible and simpler, but would probably lead to a greater need to utilise cl 4.6, especially where smaller allotments predominate.

The Hon David Lloyd QC
Co-Chair, Leichhardt Planning Panel.

14 May 2015

ITEM 4.6 FLOOR SPACE RATIO (PREVIOUSLY ITEM 7.2 ON APRIL AGENDA)

Division	Motions of which Due Notice has been given
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Cr Stamolis

Background

This item highlights anomalies with the proposed FSR guidelines. That is, the current FSR guidelines are not progressive, have discontinuities which may lead to unfairness in the way that FSRs are applied and show an average which is ambiguous.

The proposed system (Option 2 was proposed at the Policy Meeting April 2015) sees FSRs change at block size intervals: 150 sqm, 300 sqm, 450 sqm (see the table below).

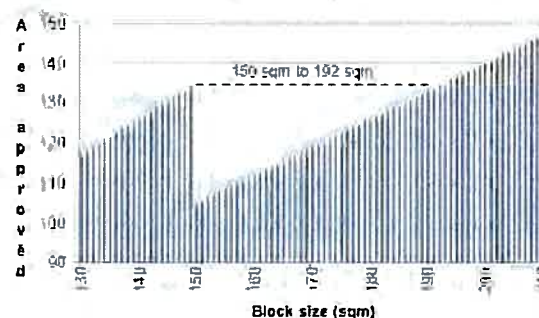
Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle
0-149.9	0.8	0.9	1.0	0.7	0.9	0.8
150-299.9	0.7	0.7	0.8	0.6	0.8	0.6
300-449.9	0.6	0.7	0.6	0.5	0.5	0.6
450+	0.6	0.5	0.6	0.5	0.5	0.5
Average	0.7	0.8	0.8	0.6	0.5	0.7

The design of Councils proposed FSR matrix has a number of problems.

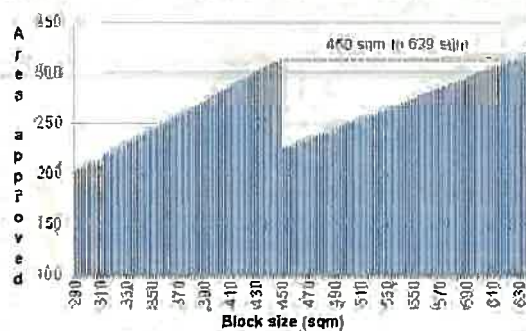
To highlight the anomalies, consider Balmain: if the block size is 149sqm the applicant will be allowed a potential development of 134 sqm (given an FSR of 0.9). If the block size increases by 1 sqm (i.e. 150 sqm) the allowed floor space will reduce by 19 sqm or 28% to 105 sqm (given an FSR of 0.7).

Applicants with a block size of 150 sqm will only be allowed the equivalent floor space of an applicant with a block size of 117 sqm.

The chart below shows that an applicant with a block size of 149 sqm block will be allowed more floor space than any applicant with block sizes right up to 192 sqm.



The discontinuity is even more pronounced for block sizes from 450 sqm. If an applicant owns a block size of 449 sqm the allowable floor space is 314 sqm but if the block is 1 sqm bigger, the applicant will lose 89 sqm of floor space or 28%. The chart shows that a block size of 449 sqm will allow more floor space than for any block size from 450 sqm all the way to 628 sqm. This is a very large discontinuity.



As a final consideration, the average FSR shown at the bottom of the matrix (above) is unclear.

A progressive model

The proposed guidelines can be improved by using a progressive system for calculation of FSR.

Using a progressive approach, the first 150 sqm will have an agreed FSR (such as 0.9). For the **next** 150 sqm another FSR will be applied and so on until a final FSR is applied to the amount of land exceeding 450 sqm.

The table below shows three *arbitrary* models which might be used for Balmain.

Lot Size and FSR	Balmain Model 1	Balmain Model 2*	Balmain Model 3
First 150 sqm	0.9	0.9	0.9
Second 150 sqm	0.7	0.7	0.6
Third 150 sqm	0.7	0.6	0.4
Amount over 450 sqm	0.5	0.5	0.3

Example of a block of land with size 600 sqm using Model 1

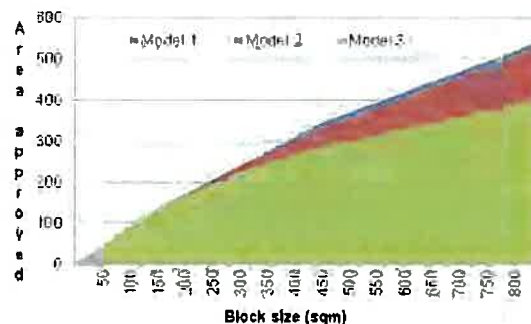
- The first 150 sqm will be allowed 0.9 = 135 sqm
- The next 150 sqm will be allowed 0.7 = 105 sqm
- The next 150 sqm will be allowed 0.7 = 105 sqm
- Finally, the remaining 150 sqm will be allowed 0.5 = 75 sqm
- Hence, the total floor space allowed for a block of 600 sqm = 135 + 105 + 105 + 75 = 420 sqm which equates to an FSR of 0.7 (420 divided by 600)

The chart below shows the allowable floor space approved (i.e. area approved) using Model 1, Model 2 and Model 3 for Balmain. These models are examples only and any numbers can be input to achieve the final outcome that Council desires.

Note that all three models produce the same result up to 150 sqm because all use FSR = 0.9.

There are no discontinuities in this approach. Unlike Councils proposed approach it is not regressive. As the block size increases, the amount of allowable floor space

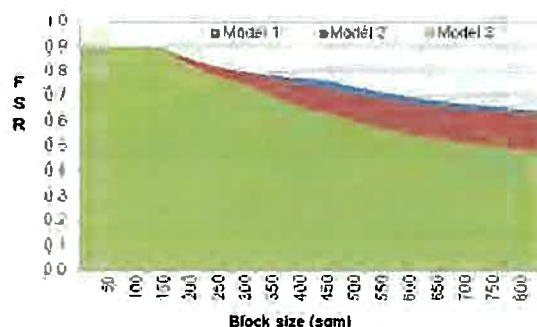
increases and this can be easily controlled by using approved FSR inputs to the model.



The above chart shows the area approved for each mode. The following chart shows what the FSR will be for each model.

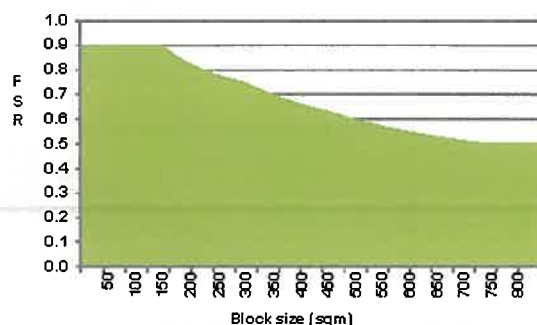
All models will have FSR of 0.9 for the first 150 sqm. Hence, the line is flat for block sizes up to 150 sqm.

For block sizes above 150 sqm, the progressive system applies and the FSR will 'scale down' to a desired result depending on the approved FSR inputs. That is, the models can be adjusted to achieve the FSR outcomes that Council wants.



Council may wish to 'top and tail' the FSRs by setting the first 150 sqm to FSR = 0.9 then, once the overall FSR falls to a level that Council is happy with (e.g. 0.5) Council may decide to leave it at that level for all higher block sizes. The chart below shows that for Model 1 the overall FSR falls to 0.5 when the block size reaches 730 sqm. After that, Council may set the FST at 0.5 for all larger block sizes.

Again, the numbers in the model are flexible and can be changed to suit Council and community objectives.



FSR equity - small lot sizes

Another issue that Council should consider is equity of the proposed FSR guidelines across suburbs, in particular, in regard to small lot sizes.

Consider a block of size 149 sqm. Under Option 2, a dwelling in Leichhardt would have 45 sqm or 30% less floor space than the same dwelling in Birchgrove and 30 sqm less floor space than a dwelling in Lilyfield or Balmain.

It should be noted that for larger lot sizes, however, Council supports greater equity between suburbs. That is, for dwellings of 450 sqm and over the FSRs are 0.5 or 0.6. Yet for small block sizes less than 150 sqm) the FSR ranges from 0.7 to 1.0 depending on suburb.

Lot Size (sqm)	Annandale	Balmain	Birchgrove	Leichhardt	Lilyfield	Rozelle	Maximum
FSR for 0-149	0.8	0.9	1.0	0.7	0.9	0.8	1.0
Area allowed for block 149 sqm	119.9	134.9	149.9	104.9	134.9	119.9	149.9
. Diff from maximum (sqm)	-30.0	-15.0	0.0	-45.0	-15.0	-30.0	
. % diff from max	-20%	-10%	0%	-30%	-10%	-20%	

Recommendation

This report be used to assist Council with determination of new FSR guidelines.

Officer's Comment

Pursuant to Council's resolution on 14 April 2015 – Refer **C126/15P**, Council Officers are currently finalising a report to the June Policy Council that:

1. Includes advice from the co-chairs of the Leichhardt Planning Panel about the recommendations in the Officers report
1. Considers moving to a sliding scale for calculation of FSR
2. Considers the variations in Floor Space between



Leichhardt Local Environmental Plan 2013

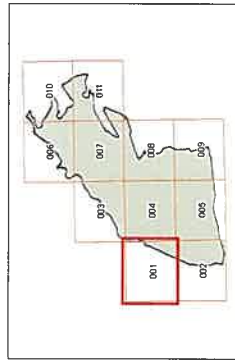
Floor Space Ratio Map - Sheet FSR_001

Maximum Floor Space Ratio (n:1)

- 0.5
- 1.0
- 1.5
- 2.15
- Refer to clause 4.4 A
- Refer to clause 4.4 B
- Refer to clause 4.4 C
- Refer to clause 4.4 D
- Refer to clause 4.4 E
- Refer to clause 4.4 F
- Refer to clause 4.4 G

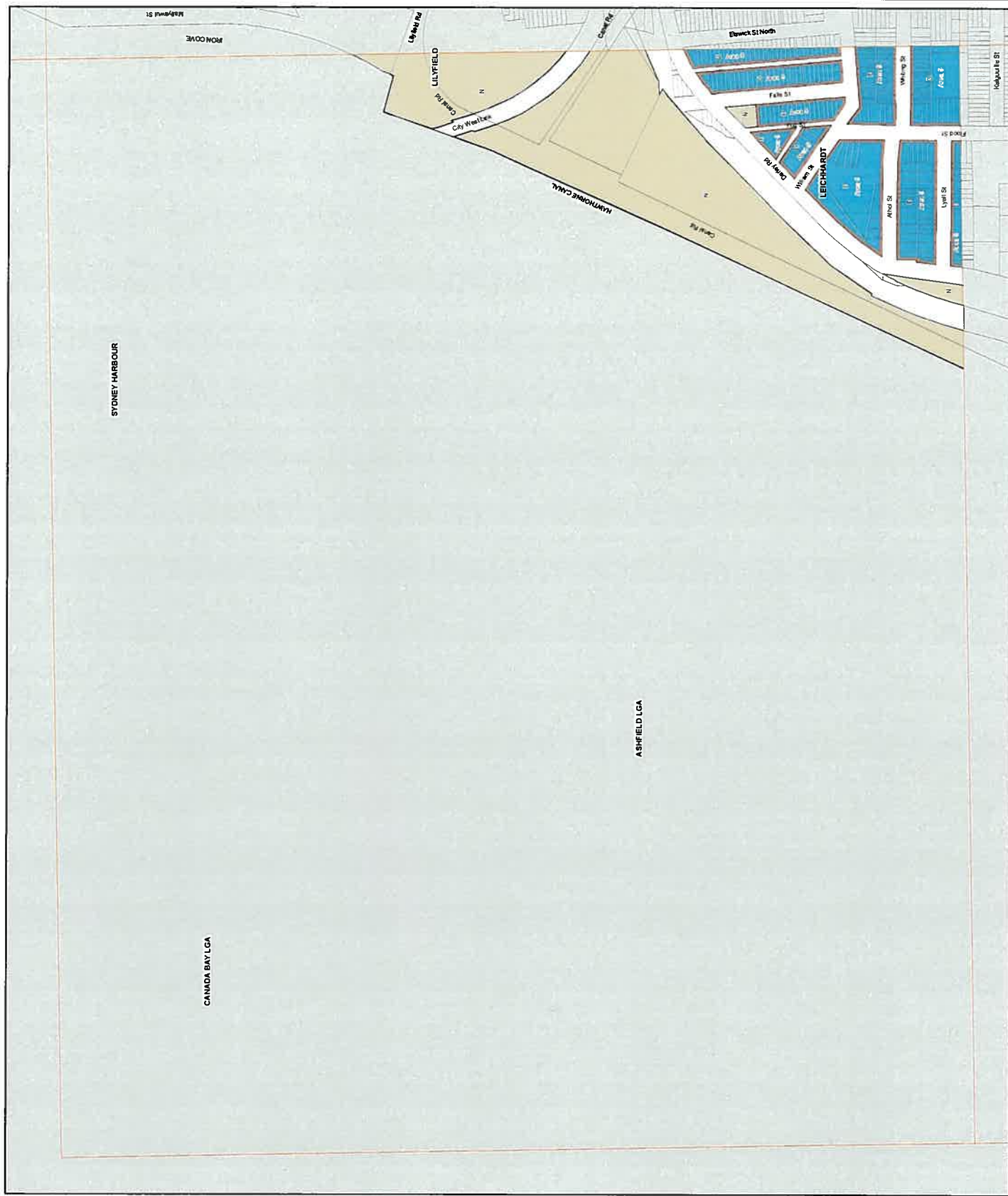
Cadastre

Base data 24/09/2015 © Land and Property Information (LPI)



Map identifier: LEP 2013, 1904

Map identifier: LEP 2013, 1904





Leichhardt Local Environmental Plan 2013

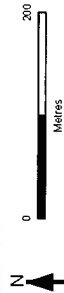
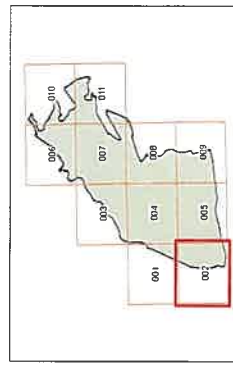
Floor Space Ratio Map - Sheet FSR_002

Maximum Floor Space Ratio (n:1)

0	0.5
N	1.0
S	1.5
T	2.15
Refer to clause 4.4 A	
Refer to clause 4.4 2B	
Refer to clause 4.4 2C	
Refer to clause 4.4 2D	
Refer to clause 4.4 2E	
Refer to clause 4.4 2F	
Refer to clause 4.4 2G	

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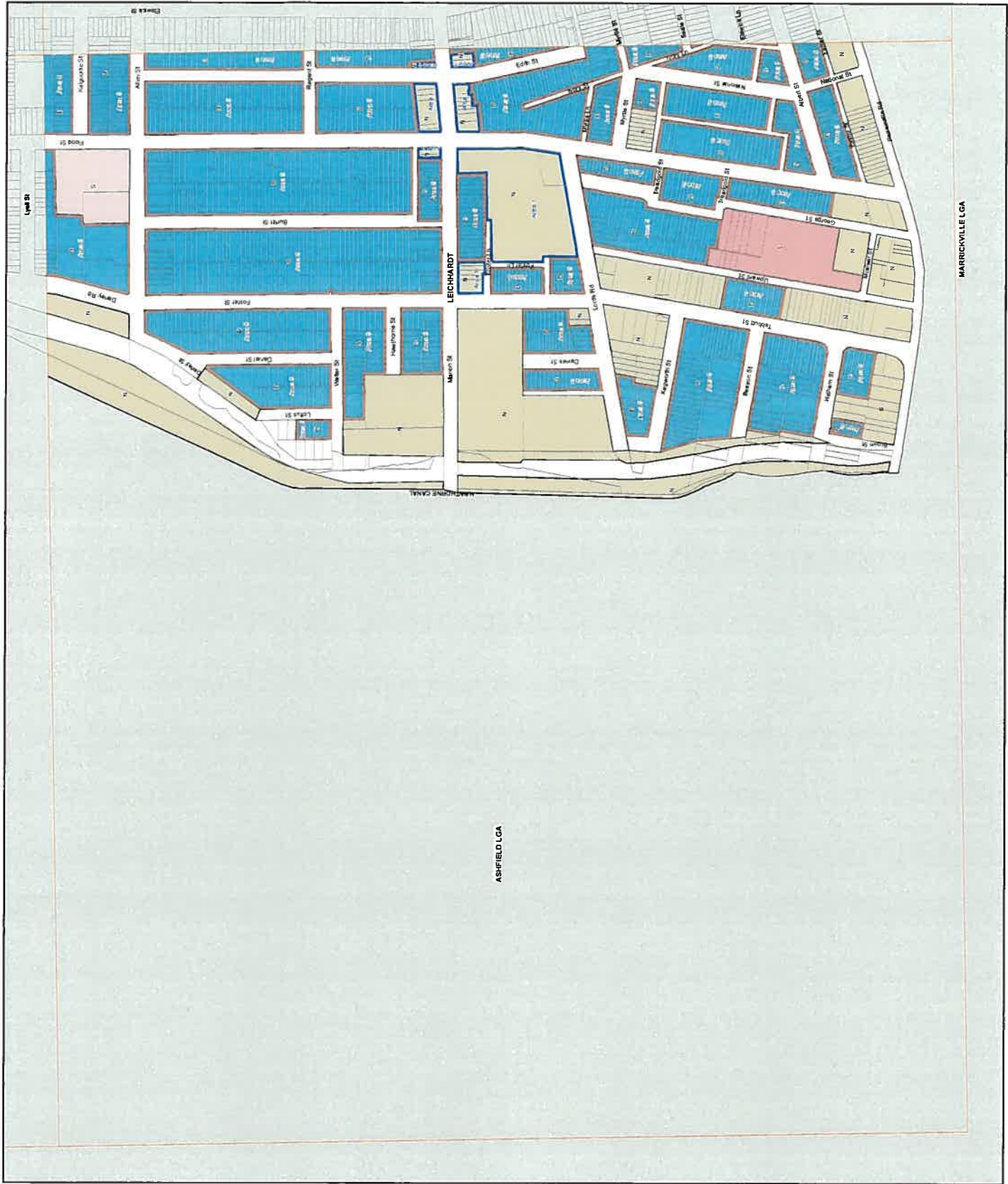
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Project No. LGA 1984

MCA Zone 95

Map sheet file name number

4800.COM_FSR_002_005_20190224





Leichhardt Local Environmental Plan 2013

Floor Space Ratio Map - Sheet FSR_003

Maximum Floor Space Ratio (m:1)

- 0.5
- 1.0
- 1.5
- 2.15
- Refer to clause 4.4 A
- Refer to clause 4.4 2B
- Refer to clause 4.4 2C
- Refer to clause 4.4 2D
- Refer to clause 4.4 2E
- Refer to clause 4.4 2F
- Refer to clause 4.4 2G

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Project LGA 1994

Map Sheet 003

Map Sheet 003

Map Sheet 003

Map Sheet 003



Leichhardt Local Environmental Plan 2013

Floor Space Ratio Map - Sheet FSR_004

Maximum Floor Space Ratio (m:1)

- 0.5
- 1.0
- 1.5
- 2.15
- Refer to clause 4.4 A
- Refer to clause 4.4 B
- Refer to clause 4.4 C
- Refer to clause 4.4 D
- Refer to clause 4.4 E
- Refer to clause 4.4 F
- Refer to clause 4.4 G

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Base data 24/09/2015 © Land and Property Information (LPI)



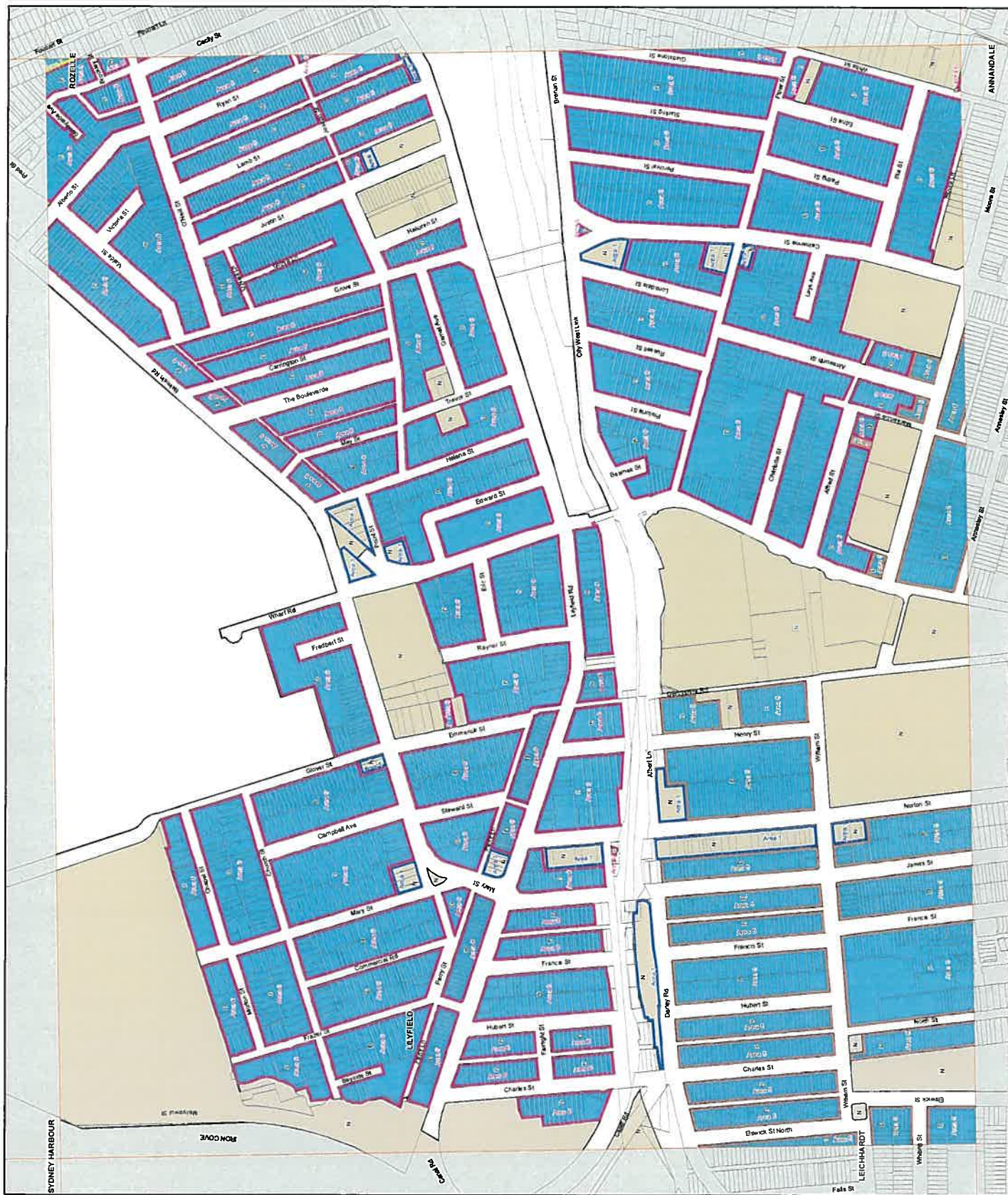
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Metres

Scale 1:5,000 @ A3

Project ID: LEP13-004

Map ID: LEP13-004

Map ID: LEP13-004





Leichhardt Local Environmental Plan 2013

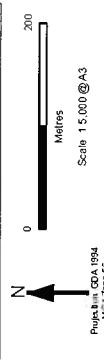
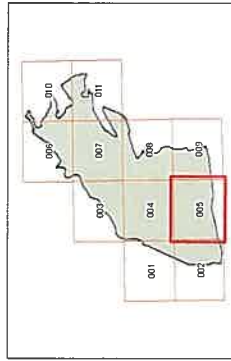
Floor Space Ratio Map - Sheet FSR_005

Maximum Floor Space Ratio (m:1)

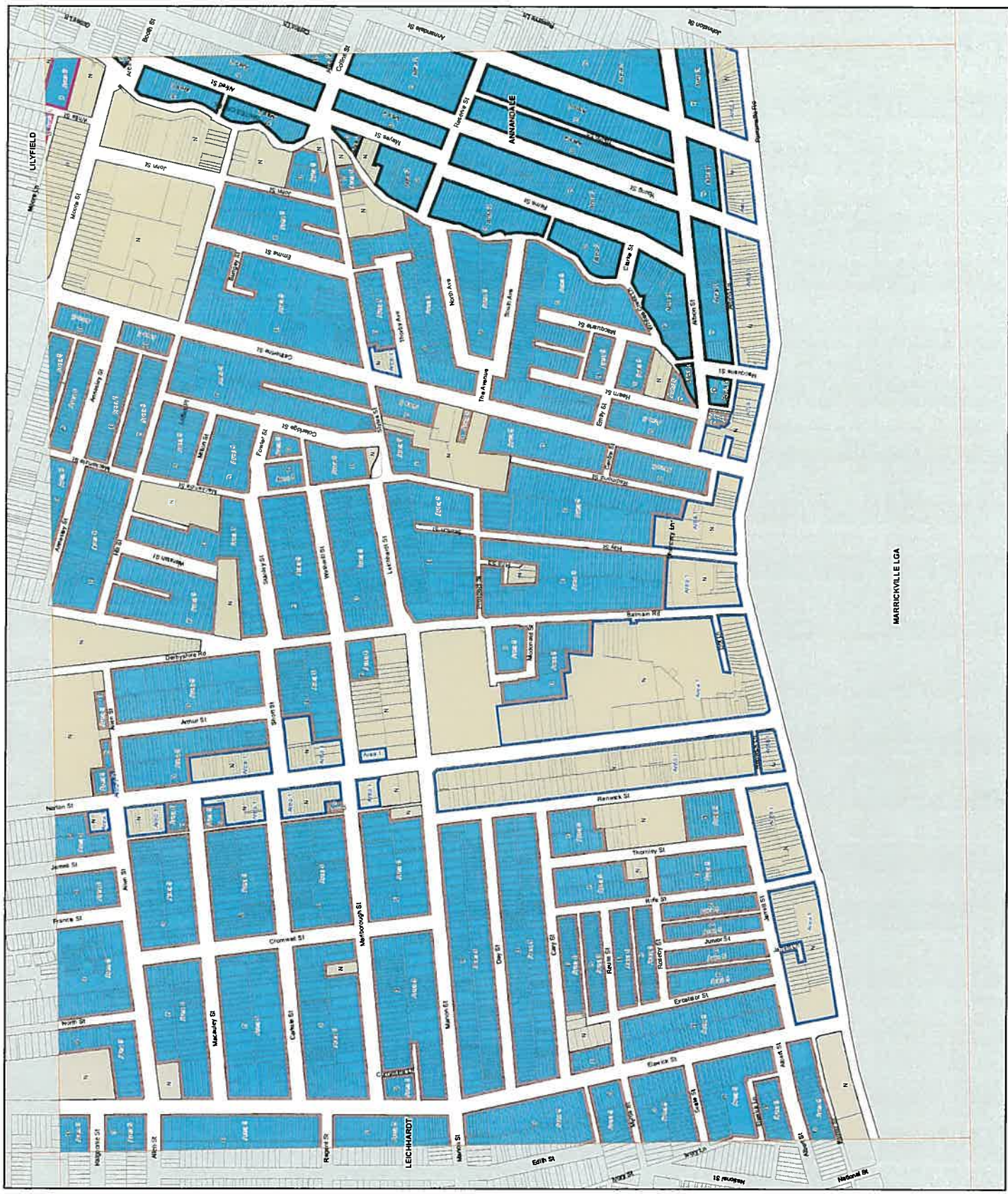
- 0.5
- 1.0
- 1.5
- 2.15
- Refer to clause 4.4 A
- Refer to clause 4.4 B
- Refer to clause 4.4 C
- Refer to clause 4.4 D
- Refer to clause 4.4 E
- Refer to clause 4.4 F
- Refer to clause 4.4 G

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Map identifier: 4800_COM_FSR_005_20190524



MARRICKVILLE LGA



Leichhardt Local Environmental Plan 2013

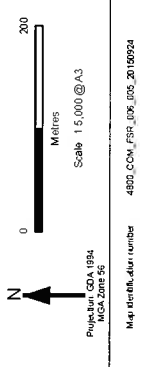
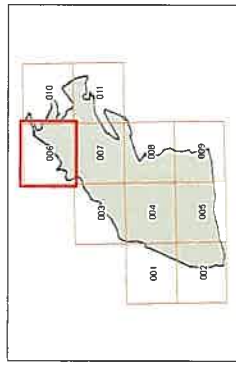
Floor Space Ratio Map - Sheet FSR_006

Maximum Floor Space Ratio (m:1)

- 0.5
- 1.0
- 1.5
- 2.15
- Refer to clause 4.4 A
- Refer to clause 4.4 B
- Refer to clause 4.4 C
- Refer to clause 4.4 D
- Refer to clause 4.4 E
- Refer to clause 4.4 F
- Refer to clause 4.4 G

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Leichhardt Local Environmental Plan 2013

Floor Space Ratio Map - Sheet FSR_007

Maximum Floor Space Ratio (m:1)

- 0.5
- 1.0
- 1.5
- 2.15

- Refer to clause 4.4 A
- Refer to clause 4.4 B
- Refer to clause 4.4 C
- Refer to clause 4.4 D
- Refer to clause 4.4 E
- Refer to clause 4.4 F
- Refer to clause 4.4 G

Cadastral

Base date 24/09/2015 © Land and Property Information (LPI)



0 200
Metres
Scale 1:5,000 @ A3

Population 2011

15,000

15,000

15,000

15,000

15,000

15,000

15,000

15,000



Leichhardt Local Environmental Plan 2013

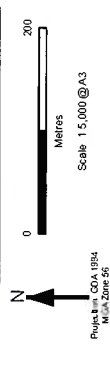
Floor Space Ratio Map - Sheet FSR_008

Maximum Floor Space Ratio (m:1)

0.5	1.0	1.5	2.15
N	S	T	
Refer to clause 4.4 A	Refer to clause 4.4 B	Refer to clause 4.4 C	Refer to clause 4.4 D
Refer to clause 4.4 E	Refer to clause 4.4 F	Refer to clause 4.4 G	

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Base data 24/09/2015 © Land and Property Information (LPI)



Map Sheet number 4801.CON_FSR_008_005_20100924



Ratio Map -

0.5

2	1.3
1	2.15

Refer to clause 4.4.2B

Refer to clause 4.4 2D

Refer to clause 4.4 2G

0107/50/57 WVB 05/09

900

003 007

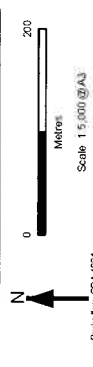
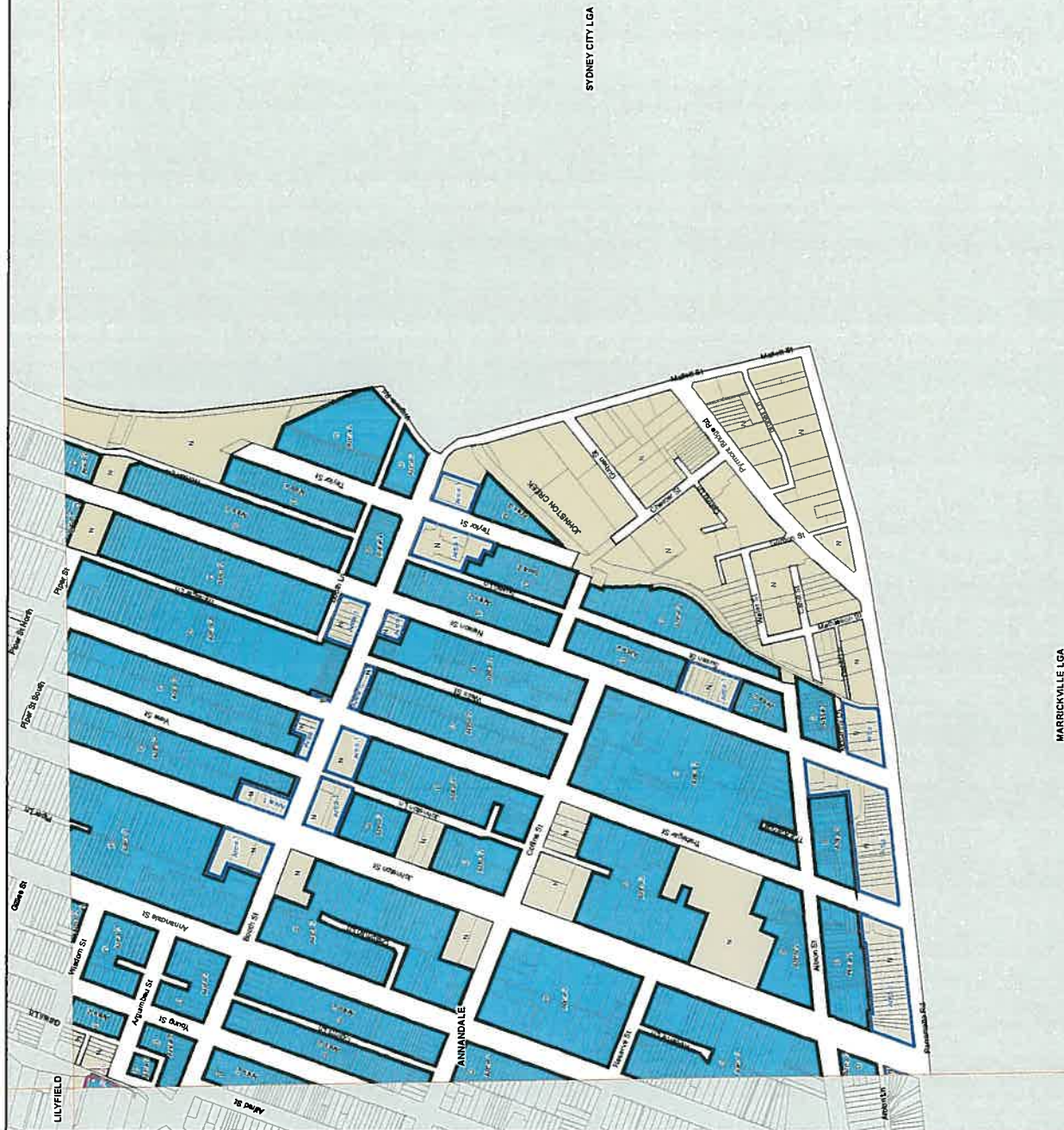
001 004 008

Year	Number of people (millions)
2002	2.5
2003	3.5
2004	3.2
2005	4.5
2006	5.5
2007	6.5
2008	7.5
2009	8.5

0

Scale 10

Map identification number 4900_COM_FSR





Leichhardt Local Environmental Plan 2013

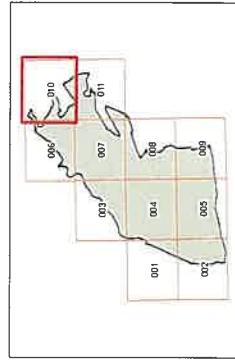
Floor Space Ratio Map - Sheet FSR_010

Maximum Floor Space Ratio (n:1)

0.5	1.0	1.5	2.15
N	S	T	
Refer to clause 4.4 A	Refer to clause 4.4 B	Refer to clause 4.4 C	Refer to clause 4.4 D
Refer to clause 4.4 E	Refer to clause 4.4 F	Refer to clause 4.4 G	Refer to clause 4.4 H

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Base data 24/09/2015 © Land and Property Information (LPI)

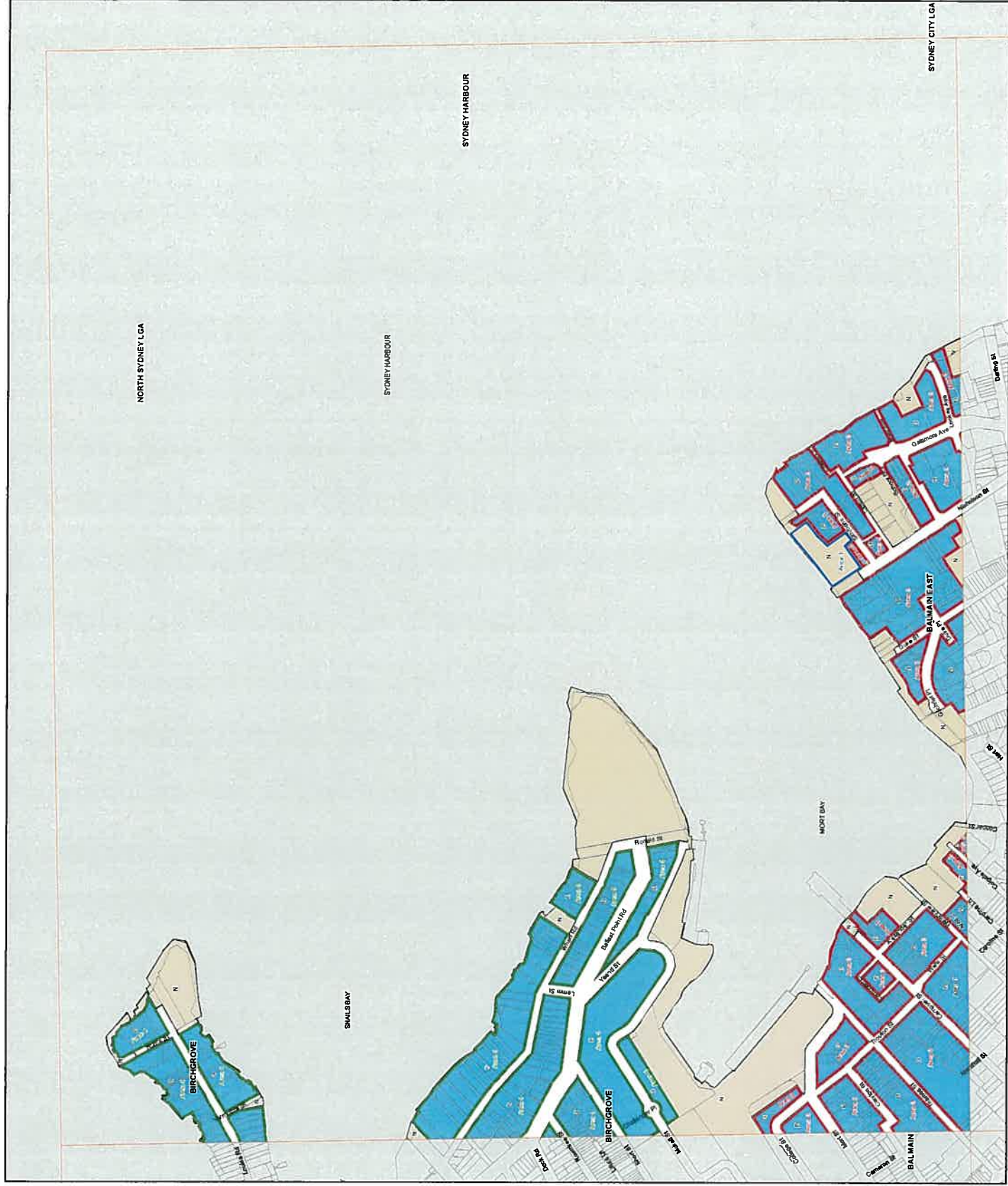


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Project No. 2014/004

Map No. 2014/004

Map sheet number 4800.COM.FSR.010.005.20160924





Leichhardt Local Environmental Plan 2013

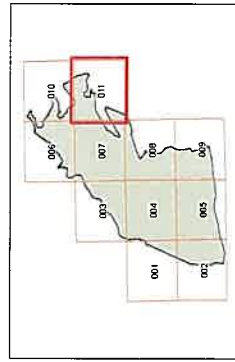
Floor Space Ratio Map - Sheet FSR_011

Maximum Floor Space Ratio (n:1)

0.5	1.0	1.5	2.15
N	S	T	
Refer to clause 4.4 A	Refer to clause 4.4 B	Refer to clause 4.4 C	Refer to clause 4.4 D
Refer to clause 4.4 E	Refer to clause 4.4 F	Refer to clause 4.4 G	

Cadastral

Base data 24/09/2016 © Land and Property Information (LPI)



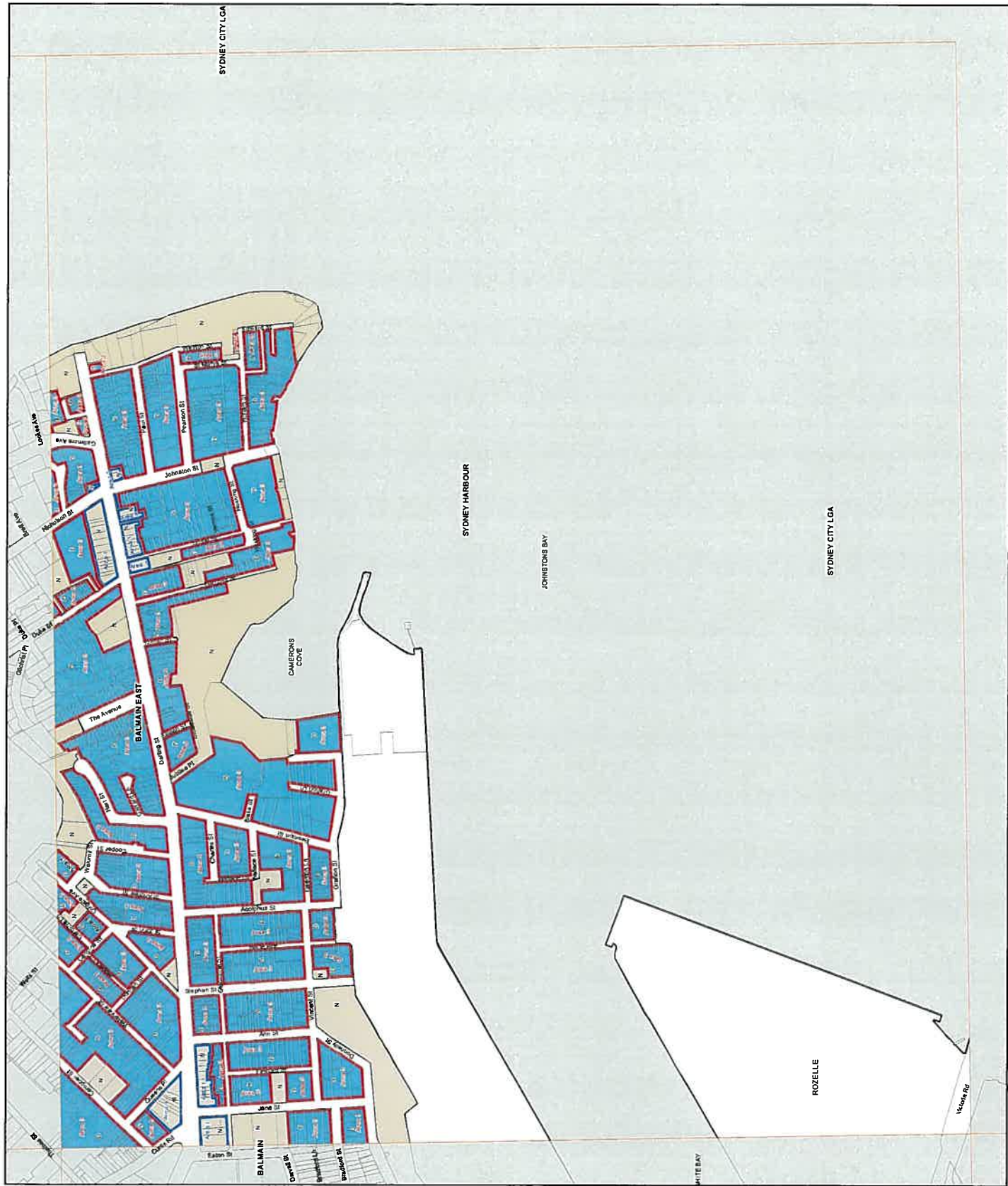
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Project ID: 1004

NCA Zone 56

Map data: 24/09/2016

4800_COW_FSR_011_005_20160924



Attachment - Delegation of Plan Making Functions to Council

Council is seeking an authorisation to make the plan for this planning proposal. The following response to the evaluation criteria is in support of this request;

(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council Response		Department Assessment	
	Y/N	Not Relevant	Agree	Not Agree
Is the planning proposal consistent with the Standard Instrument Order 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Direction?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NA		
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		NA		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NA		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NA		
Reclassifications				
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		NA		
Is the planning proposal proposed to rectify an anomaly in a classification?	N			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		NA		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?	N			
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		NA		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local</i>		NA		

<i>environmental plan and Best Practice Guidelines for LEPs and Council Land?</i>				
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		NA		
Spot Rezoning				
Will the planning proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP Format?		NA		
Matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NA		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		NA		
Does the planning proposal create an exception to a mapped development standard?	N			
Section 73A Matters				
Does the proposed instrument- a) Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b) Address matters in the principal instrument that are of a consequential, transitional machinery or other minor nature?; or c) Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	N			

