

## 8.2 Planning Proposal - Amendment of Clause 4.4 'Floor Space Ratio' - Campbelltown Local Environmental Plan 2015

### Reporting Officer

Executive Manager Urban Centres  
City Planning and Environment

### Community Strategic Plan

Objective	Strategy
4 Economic Prosperity	4.2.1 Support the growth, productivity and diversity of the local economy

### Delivery Program

Principal Activity
2.1.1.3 Deliver effective land use planning to ensure community needs are met

### Officer's Recommendation

1. That Council endorses and forwards the Planning Proposal at attachment 1 to the Department of Planning and Environment for a Gateway Determination.
2. That should the Minister or their delegate determine that the Planning Proposal may proceed, public exhibition be undertaken in accordance with the Gateway Determination.
3. That following the public exhibition either:
  - a) where objection(s) are received to the Planning Proposal a further report be presented to Council on those objection(s), or
  - b) where no objection(s) are received during the public exhibition period, the Planning Proposal be finalised.

### Executive Summary

- Clause 4.4 of Campbelltown Local Environment Plan 2015 (CLEP 2015) applies to the majority of land within the Campbelltown Local Government Area (LGA) and provides the relevant development standards relating to the control of the floor space ratio (FSR) of buildings.
- At the commencement of CLEP 2015, Clause 4.4 comprised only of subclauses 4.4(1) - (2A) in their current form. Sub clause 4.4(1) provides the objectives of clause 4.4, subclause 4.4(2) prescribes the maximum floor space ratio for buildings as per the Floor Space Ratio

Map of CLEP 2015, and sub clause 4.4(2A) is a local provision prescribing additional FSR controls for specified developments separate to the Floor Space Ratio Map.

- Clause 4.4 was amended by Council on 29 April 2022 with the insertion of additional sub clauses 4.4(2B) and 4.4(2C), made under separate planning proposals for the Gilead Urban Release Area and Menangle Park Urban Release Area.
- A number of issues have been identified with the effective operation of clause 4.4 (as amended), generally relating to unintended floor space ratio outcomes being permitted in certain instances as a result of the interplay of the sub clauses. This is creating the potential for buildings of excessive bulk and scale that are incompatible with the desired character of their locality.
- The amendment of clause 4.4 is recommended to streamline the operation of the clause in accordance with the clause objectives, and remove the opportunity for unintended FSR outcomes resulting from the interpretation and interplay of the sub clauses. The recommended amendments to Clause 4.4 require a separate planning proposal to be prepared and endorsed by Council to amend CLEP 2015.

## Purpose

The purpose of this report is to assist Council in its decision whether to support the progression of the subject planning proposal for a Gateway Determination in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## Report

### Introduction

This report considers and recommends improvements to the operation of Clause 4.4 of (CLEP 2015), relating to the provision of floor space ratio controls for development in the LGA.

The recommended amendments to Clause 4.4 CLEP 2015 require a separate planning proposal to be considered and endorsed by Council.

### Clause 4.4 Floor Space Ratio

Clause 4.4 of the CLEP 2015 prescribes maximum floor space ratio (FSR) requirements for buildings as follows:

#### 4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
  - (a) to provide effective control over the bulk and scale of future development,
  - (b) to nominate a range of floor space ratio controls that will provide a transition in built form and land use intensity across all zones,
  - (c) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,
  - (d) to ensure that the bulk and scale of buildings contribute to the intended architectural outcomes for development appropriate to the locality and reflect their proximity to the business centres and transport facilities,

- (e) to provide for built form that is compatible with the hierarchy and role of centres,
  - (f) to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and the public domain is addressed,
  - (g) to minimise the adverse impacts of development on heritage conservation areas, heritage items and the public domain.
- (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 building used for a purpose specified in the table to this subclause on land in a zone specified in the table is the floor space ratio listed beside the use and the zone in the table plus the floor space ratio shown for the land on the Floor Space Ratio Map.

<b>Column 1</b>	<b>Column 2</b>
<b>Use and zone</b>	<b>Floor space ratio</b>
Dwelling houses in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone R5 Large Lot Residential	0.55:1
Dual occupancies in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone R5 Large Lot Residential	0.45:1
Multi dwelling housing in Zone R3 Medium Density Residential	0.75:1
Centre-based child care facilities in a residential zone	0.55:1
Attached dwellings in Zone R2 Low Density Residential	0.45:1
Attached dwellings in Zone R3 Medium Density Residential	0.75:1

- (2B) Subclause (2A) does not apply to land identified as "Mount Gilead Urban Release Area" on the Urban Release Area Map.
- (2C) To avoid doubt, subclause (2A) does not apply to land for which a floor space ratio is not shown on the Floor Space Ratio Map.

#### **Clause 4.4 – As made**

CLEP 2015 commenced operation on 11 March 2016 and provides development controls and standards for the majority of land in the LGA. Clause 4.4 of CLEP 2015 is a Standard Instrument LEP clause providing FSR objectives and floor area controls for buildings in the majority of the LGA.

At the commencement of CLEP 2015, Clause 4.4 comprised only of subclauses 4.4(1) - (2A) in their current form. Subclause 4.4(1) provides the objectives of clause 4.4 and subclause 4.4(2) prescribes the maximum floor space ratio for buildings as per the Floor Space Ratio Map of CLEP 2015.

Subclause 4.4(2A) is a local provision prescribing additional FSR controls for specified developments separate to the Floor Space Ratio Map. This subclause provides FSR requirements for different development types in different zones, including specified development types in the R2 and R3 residential zones. Subclause (2A) operates to control floor space instead of the Floor Space Ratio Map given the difficulties in providing a single LEP map

layer for different development scenarios. In this regard, the Floor Space Ratio Map under CLEP 2015 does not generally provide FSR controls for the R2 and R3 residential zones.

#### **Clause 4.4 – Amendments to Date**

Clause 4.4 has been amended by Council on two occasions with the insertion of subclauses 4.4(2B) and 4.4 (2C). These subclauses were inserted by Council under separate planning proposals which came into effect the same day, 29 April 2022.

Relevant details regarding the making and effect of subclauses 4.4(2B) and 4.4 (2C) on the operation of Clause 4.4 are provided below.

- **Subclause 4.4 (2B)**

Clause 4.4 (2B) came into effect as a result of the making of the Planning Proposal for the Mount Gilead Urban Release Area (Amendment 27), endorsed by Council at its meeting of 2 November 2021. The Planning Proposal (page 19) provided the following rationale for the insertion of the subclause:

“Currently, Clause 4.4(2A) is drafted such that the defined floor space controls are in addition to the Floor Space Ratio Map.

Under the current CLEP 2015, this would result in future dwellings having a permissible floor space ratio of 0.55 (map) + 0.55 (Clause 4.4(2A)) being 1.1:1 which is excessive.

This outcome would be an unintended consequence arising from the translation of Council's LEP into the standard format in 2015 and gazettal of the Mt Gilead Precinct in 2017. Therefore, it is recommended that Clause 4.4(2A) be amended to exclude its application for areas shown on the Urban Release Area Map.”

The making of the Planning Proposal (Amendment 27) on 29 April 2022 resulted in the insertion of subclause (2B) as follows:

(2B) Subclause (2A) does not apply to land identified as “Mount Gilead Urban Release Area” on the Urban Release Area Map.

The effect of subclause (2B) is that land identified as “Mount Gilead Urban Release Area” on the Urban Release Area Map (URA Map) is excluded from the application of subclause (2A), meaning that FSR would only be prescribed for that land under the Floor Space Ratio Map. This subclause therefore removed the opportunity for an additional FSR ‘bonus’ to be granted within the Mount Gilead URA for those development types listed under Clause 4.4(2A).

- **Subclause Clause 4.4(2C)**

Clause 4.4 (2C) came into effect as a result of the making of the PP for the Menangle Park URA (Amendment 27), endorsed by Council at its meeting of 8 March 2022. The Planning Proposal (pages 2 and 3) provided the following reasoning for the insertion of clause 2(C):

“Currently, Clause 4.4(2A) is drafted such that the defined floor space controls are in addition to the Floor Space Ratio Map. Under the current CLEP 2015, this would result in future dwellings having a permissible floor space ratio of 0.55 (map) + 0.55 (Clause 4.4(2A)) being 1.1:1 which is excessive.

This outcome would be an unintended consequence arising from the translation of Council's LEP into the standard format in 2015 and gazettal of the MPUA in 2017. Therefore, it is recommended that Clause 4.4(2A) be amended to exclude its application for areas shown on the Urban Release Area Map.”

The Planning Proposal for the Menangle Park URA was made on 29 April 2022 and resulted in a different amendment to that contemplated by Council, with the insertion of subclause (2C) as follows:

2(C) To avoid doubt, subclause (2A) does not apply to land for which a floor space ratio is not shown on the Floor Space Ratio Map.

The insertion of subclause 2(C) by DPE in lieu of the proposed amendment to subclause (2A) put forward by Council had the effect of removing the FSR provision under Clause (2A) for the vast majority of residential zoned land in the CLEP 2015 area.

### Key Issues

A number of key issues have been identified that are impacting the effective operation of the floor space ratio provisions of clause 4.4 CLEP 2015 having regard to the objectives of the clause. A summary of these issues is provided below.

- **Unintended FSR 'bonus'** - Clause 4.4(2A) is drafted such that it provides a bonus floor space allowance to that shown on the Floor Space Ratio Map, which was never intended and is contrary to the objectives of the clause to promote compatibility in the bulk and scale of buildings. Under the current CLEP 2015, this would potentially result in future dwellings having a permissible floor space ratio of 0.55 (map) + 0.55 (Clause 4.4(2A)) being 1.1:1 which is excessive.
- **Role of subclause 2(C)** - The insertion of subclause (2C) was made under CLEP 2015 (Amendment 26) and was intended to remove the opportunity of a FSR bonus for land nominated on the Floor Space Ratio Map within the Menangle Park URA. It is apparent that the effect of the subclause is not aligning with its intent, given that subclause applies to all land under CLEP 2015 and effectively removes the FSR provision under subclause (2A) for the vast majority of residential zoned land in the Campbelltown LGA.
- **Land exclusions under subclause (2B)** - The effect of subclause (2B) is that land identified within the Mount Gilead URA is excluded from the application of subclause (2A), removing the opportunity for an additional and unintended FSR 'bonus' for land identified on the Floor Space Ratio Map. The rationale to exclude the Mount Gilead URA land from subclause (2A) would also apply to all other land proposed to be included on the Floor Space Ratio Map of CLEP 2015. These areas include the Menangle Park URA and any other land placed on the Floor Space Ratio Map of CLEP 2015.
- **Complexity and uncertainty** - The interplay of subclauses (2A), (2B) and (2C) to determine the applicable FSR for any particular land parcel or prescribed land use is creating additional complexity and uncertainty for development assessment under CLEP 2015. This complexity and uncertainty is undermining the consistent and uniform application of FSR controls for new buildings under Clause 4.4 in accordance with the objectives of the clause.

### Recommended Amendments to Clause 4.4

The proposed amendments to Clause 4.4 to address the key issues raised in this report are discussed below.

**Subclause 4.4(1):**

<b>Existing subclause</b>	<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> <li>a) to provide effective control over the bulk and scale of future development,</li> <li>b) to nominate a range of floor space ratio controls that will provide a transition in built form and land use intensity across all zones,</li> <li>c) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</li> <li>d) to ensure that the bulk and scale of buildings contribute to the intended architectural outcomes for development appropriate to the locality and reflect their proximity to the business centres and transport facilities,</li> <li>e) to provide for built form that is compatible with the hierarchy and role of centres,</li> <li>f) to assist in the minimisation of opportunities for undesirable visual impact, disruption to views, loss of privacy and loss of solar access to existing and future development and the public domain is addressed,</li> <li>g) to minimise the adverse impacts of development on heritage conservation areas, heritage items and the public domain.</li> </ul>
<b>Proposed amended subclause</b>	No amendments proposed.
<b>Reason</b>	Objectives for the FSR standards are appropriate to the operation of the clause, and no issues identified to warrant amendment.

**Subclause 4.4(2):**

<b>Existing subclause</b>	(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.
<b>Proposed amended subclause</b>	No amendments proposed.
<b>Reason</b>	Standard wording under the Standard Instrument LEP.

**Subclause 4.4(2A):**

<b>Existing subclause</b>	(2A) Despite subclause(2), the floor space ratio for a building used for a purpose specified in the table to this subclause on land in a zone specified in the table is the floor space ratio listed beside the use and the zone in the table plus the floor space ratio shown for the land on the Floor Space Ratio Map.
<b>Proposed amended subclause</b>	<p>(2A) Despite subclause(2), where a floor space ratio is not shown on the floor space ratio map, the maximum floor space ratio for a building used for a purpose specified in the table to this subclause on land in a zone specified in the table is the floor space ratio listed beside the use and the zone in the table.</p> <p>(no changes to the table to subclause (2A) are proposed)</p>
<b>Reason</b>	The rewording of this subclause is to align with Council's original intent to provide local FSR provisions by development type and zone, only where land is not included on the Floor Space Ratio Map. The amended wording also clarifies that the prescribed FSR is a maximum, and removes the opportunity for a bonus FSR to be provided through the 'doubling up' of FSR provisions through the interplay of subclauses (2) and (2A).

**Subclause 4.4(2B):**

<b>Existing subclause</b>	(2B) Subclause (2A) does not apply to land identified as "Mount Gilead Urban Release Area" on the Urban Release Area Map.
<b>Proposed amended subclause</b>	Delete
<b>Reason</b>	Subclause (2B) is no longer required given that the proposed rewording of subclause (2A) would by default exclude the "Mount Gilead Urban Release Area" as this land is included on the Floor Space Ratio Map.

**Subclause 4.4(2C):**

<b>Existing subclause</b>	(2C) To avoid doubt, subclause (2A) does not apply to land for which a floor space ratio is not shown on the Floor Space Ratio Map.
<b>Proposed amended subclause</b>	Delete
<b>Reason</b>	<p>The insertion of subclause (2C) was made under CLEP 2015 (Amendment 26) and was intended to remove the opportunity of a FSR bonus for land nominated on the Floor Space Ratio Map within the Menangle Park URA. The proposed rewording of subclause (2A) would by default exclude the Menangle Park URA as this land is included on the Floor Space Ratio Map.</p> <p>Further, the deletion of this subclause will address the unintended effect of removing the FSR provision under subclause (2A) for the vast majority of residential zoned land in the Campbelltown LGA, not presently included on the Floor Space Ratio Map.</p>

**Campbelltown City Local Planning Panel**

The draft Planning Proposal was considered by the Panel, at its meeting on 24 May 2023 who provided the following advice in accordance with Section 2.19 of the EP&A Act and the Direction No.2 of the Local Planning Panels Direction – Planning Proposals:

The Panel notes the report regarding clause 4.4 of CLEP 2015 relating to the provision of development standards for the control of the floor space ratio of buildings.

The Panel recognises the deficiencies in the current operation of clause 4.4 generally resulting from the unintended interplay of the subclauses providing the opportunity for buildings of excessive floor space, bulk and scale.

The Panel considers the proposed amendment of the wording of clause 4.4 to have strategic merit and supports Council seeking a Gateway Determination to have clause 4.4 amended as outlined in attachment 1.

The Panel is of the view that the Planning Proposal should state that as the intention of the clause has always been clear there should be no saving provisions applied to this amendment in the CLEP 2015.

### **Consultation with the Department of Planning and Environment**

Council staff have consulted with the Department of Planning and Environment (DPE) regarding those issues outlined above impacting the effective and consistent application of FSR standards for new developments considered under Clause 4.4 of CLEP 2015.

DPE has acknowledged the issues raised by Council and has confirmed that a new planning proposal would be required to appropriately amend the provisions of Clause 4.4.

The recommended amendment of Clause 4.4 through a new planning proposal is consistent with the advice received from DPE on the matter.

### **Public Participation**

If the proposed amendments to clause 4.4 of CLEP 2015 are supported by Council and a Gateway Determination is obtained from DPE, then the PP to make the proposed amendments would be publically exhibited in accordance with the requirements of the Gateway Determination.

### **Conclusion**

Clause 4.4 of Campbelltown Local Environment Plan 2015 applies to the majority of land within the Campbelltown LGA and provides the relevant development standards relating to the control of the floor space ratio (FSR) of buildings.

A number of issues have been identified with the operation of clause 4.4, generally relating to unintended FSR outcomes being permitted in certain instances as a result of the interplay of the sub clauses. This is creating the potential for buildings of excessive bulk and scale that are incompatible with the desired character of their locality.

The amendment of clause 4.4 is recommended to streamline the operation of the clause in accordance with the clause objectives, and to remove the opportunity for unintended FSR outcomes resulting from the interpretation and interplay of the sub clauses.

The recommended amendments to clause 4.4 Campbelltown Local Environment Plan 2015 are consistent with advice received from the Department of Planning and Environment and are supported by the Local Planning Panel.

Accordingly, it is requested that Council endorse and support the submission of the Planning Proposal at attachment 1 for a Gateway Determination in accordance with the recommendations of this report.

### **Attachments**

8.2.1 Draft Planning Proposal - Clause 4.4 Floor Space Ratio (contained within this report) [↓](#)