

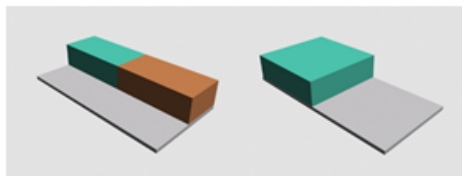
Introduction to FSR

Floor Space Ratio (FSR) is the ratio of a buildings overall floor area to the size of its site. The FSR control helps Council limit the scale of developments. These controls are in the *Leichhardt Local Environmental Plan 2013* (LLEP 2013).

Example 1 & Example 2 – 0.5:1 FSR

One storey building - 50% of site

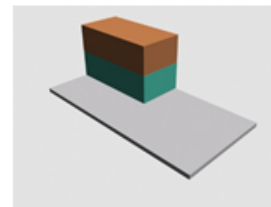
If site area = 1000sqm then floor area = 500sqm



Example 3 – 0.5:1 FSR

Two storey building - 25% of site

If the site area = 1000sqm then; floor area still = 500sqm (shared between two storeys/ 250sqm per storey)



What are Council's Current FSR Controls?

In LLEP 2013, provisions are contained within clauses 4.4, 4.4A and 4.5 and the FSR maps. Residential areas have the following controls;

- Leichhardt (including Lilyfield and Rozelle West) – 0.5:1
- Annandale – 0.6:1
- Balmain (including Rozelle East, Balmain East and Birchgrove) – 0.7:1

The LLEP 2013 introduced a new method of calculating FSR. This method is being standardised across all councils in NSW. Refer to Appendix 2 for explanation of the difference between the old LLEP 2000 method of calculating FSR and the new method under the LLEP 2013.

How does Leichhardt Council use FSR?

Council relies on a suite of built form controls in deciding the best outcome for residential developments. There is also no rule that says that if the development application (DA) fails on any particular factor, consent must be denied.

For Leichhardt Council, FSR is one of a number of development standards and built form controls in the LEP and Development Control Plan (DCP) that are relied upon when assessing and determining DAs. DCP controls include:

- Building envelope controls in relation to the street generally
- Setbacks from the street and neighbouring properties
- Building location in relation to adjoining properties
- Façade treatments / design details
- Privacy, view loss, amenity and solar access for neighbours

The DCP Suburb Profiles also inform both the general approach and specific design details, and the Building Location Zone is effective in minimising issues with neighbouring properties and achieving streetscape objectives.

The DCP controls are 'contextual', applied precisely in relation to adjoining development and directly related to physical outcomes. Compared to the FSR, the DCP controls are the most effective tools for minimising impacts and ensuring the compatibility and overall design quality of new development.

As a result, approved DAs will meet the requirements of the DCP controls more often than the FSR and landscaped area controls of the LEP. Despite this inconsistency, it is generally accepted by Council staff and Councillors that compliance with the DCP built form controls, but not the LEP controls is still producing appropriate residential development. Because of this, there are frequent uses of clause 4.6 'objections to seek variations to the FSR' (previously SEPP 1) and landscaped area controls to grant consent to developments worthy of approval.

What are the Benefits of FSR?

A benefit of low FSR controls are that they provide a strong negotiating tool with developers to ensure the suite of DCP controls is adhered to. It has also been argued by Council's Legal Team that a further consequence of the FSR controls is that appeals have been significantly reduced since their inception. In 2000, Leichhardt Council had around 90 appeals, while in recent years the average number of appeals has been less than 30 per year. A consequence of this is that Council (and the Assessment staff) are determining the future development of the area, not the Court. Further, there has been significant cost saving to Council.

What are the Weaknesses of FSR?

As a density and development control, FSR is considered a poor measure. Whilst it controls the total floor space in relation to site size, it does not directly control the bulk or scale of buildings by itself. The size of the FSR itself does not determine impacts on neighbours nor 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 building bulk in proportion to lot size. It is particularly problematic when dealing with small scale development and minor differences in a FSR control, such as in the Leichhardt LGA where FSR controls 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 such as the City of Sydney, North Sydney and Chatswood.

Variations to Development Standards

SEPP 1 and Clause 4.6

Since 1980, there have been two means by which Council has been able to approve developments that exceed FSR controls. These policies allow a degree of flexibility in the application of numeric development standards in current and past Local Environmental Plans.

- 1980-2014 - *State Environmental Planning Policy No. 1* (SEPP 1)
- 2014> - Clause 4.6 of LLEP 2013 'Variations to Development Standards' (clause 4.6)

When the NSW State Government introduced Standard Instrument Local Environmental Plans it incorporated the provisions of SEPP 1 into a compulsory clause (clause 4.6). Therefore, when LLEP 2013 came into effect, clause 4.6 replaced SEPP 1.

Under clause 4.6, if a proposal does not meet a numeric development standard contained within an LEP then an objection may be prepared by the applicant or their representative in which justification for 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 objection is not required for variation of controls contained within DCPs.

Guidelines on the use of clause 4.6

A variation to the development standards via the use of clause 4.6 should only be considered by councils in exceptional 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 provision and councils must consider a range of factors before consent can be granted. 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 objection is well founded then it can grant consent to the development, with the concurrence of the Secretary of the Department of Planning and Environment.

Reporting Variations to Development Standards

The Department of Planning and Environment requires all councils to keep accurate records of the use of clause 4.6. 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 the manner in which 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.

Impact of ICAC investigation into Wollongong Council

A circular was issued by the Department of Planning and Environment in November 2008 reminding councils of their responsibility to complete quarterly returns on variations to development standards under SEPP 1 (now clause 4.6). 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 (now Clause 4.6);
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.

The implementation of the second of the Department's new measures, requiring the full council to determine DAs with a variation to a development standard greater than 10%, presented Leichhardt Council with a significant challenge. Refer to Appendix 1 for a timeline of the events leading up to and the process of the FSR Review undertaken at Leichhardt Council.

Impact of SEPP 1 measures on Leichhardt Council

Since gazettal of LLEP 2000, Council used SEPP 1 (now clause 4.6) 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 Environment that over 30% of development applications determined by Council seek a variation to a development standard by more than 10%. This 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 by Council Staff.

Leichhardt Council's Temporary Exemption from Statewide Requirement

In February 2009 the Department of Planning and Environment 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.”

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 Environment’s concerns that the FSR controls were restricting the reasonable redevelopment of existing dwellings and resulting in excessive use of SEPP 1.

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 Environment 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 complete the FSR Review or provide the Department with the data informing the Review.

Request from State Government to Amend FSR Controls

In December 2013 Council received correspondence from the Department of Planning and Environment in relation to variations under SEPP 1. It was confirmed that upon gazettal of the Leichhardt Local Environmental Plan 2013 that SEPP 1 would no longer apply but that Council can assume the concurrence of the Secretary under clause 4.6 *‘Variations to Development Standards’*.

On 24 December 2013 Council was informed by the Department of Planning and Environment that the *Leichhardt Local Environmental Plan 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 Environment, by the end of March 2014 to update and amend the Floor Space Ratios in the LEP.

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

In 2009 the Department of Planning and Environment released a report on the use of SEPP 1 by councils for the three months in the June quarter. 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 (now clause 4.6) (all types of DAs – business, industrial, residential)
Leichhardt	68
Mosman	23
Sutherland	19
Penrith	16
Randwick	15

SEPP 1 Statistics: Top 5 Councils in NSW (June 2009 quarter)

Source: NSW Department of Planning and Environment

Leichhardt Council use of Variations to Development Standards for Residential DAs

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 mainly due to low FSR controls in LLEP 2013 that do not substantially reflect existing or desired residential development. In fact the reliance on clause 4.6 to overcome the constraints imposed by the Council’s FSR controls is exemplified by the creation of a clause 4.6 pro forma that is readily available to applicants.

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

Using the 2009/10 data, staff analysed the impact of removing the Leichhardt Councils’ specific exemption from clause 4.6 that requires all development applications, where there has been a variation greater than 10% in standards under clause 4.6, to be determined by full council (i.e. Leichhardt Council concurrence becomes the same as other NSW councils). The impact was estimated to be, on average, an additional 11 DAs reported to Council each month for determination. This would mean Councillors would be determining, on average, a total of 22 Development Applications at each monthly Building and Development meeting (based on 2009/10 data).

Appendix 1: Background/ History

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

"The Commission is also of the opinion that 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."

March 2008: ICAC released recommendations to prevent corruption including:

- 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.
- that 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 and Environment issued a Planning Circular requiring Council to complete quarterly returns on variations to development standards where concurrence is assumed.

November 2008: The Department of Planning and Environment 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 Environment 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 too restrictive and unreasonable
- As an interim measure (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 exceed 60% of the FSR standard and 40% of the landscaped area standard
- Council to update the FSR & landscaped area controls

April 2009: An FSR review 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

November 2009: Councillor Workshop #1 held on FSR Review by Strategic Planning Team

April 2010: Further analysis undertaken – 230 refused and appealed DAs

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

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

October 2010: Councillor Briefing #3 held on 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 been 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, where the Committee recommended:

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 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

A Councillor Briefing was 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 Environment that the "full suite of data and reports be forwarded to the Depart for its consideration and review."

9 December 2013 : Council received correspondence from the Department of Planning and Environment in relation to variations of Development Standards. It confirmed that upon gazettal of the Leichhardt Local Environmental Plan 2013 that Council can assume the concurrence of the Director General under cl 4.6 *Exceptions to Development Standards* of the LEP. The concurrence under clause 4.6 will have the same effect as the application of SEPP 1.

February 2014: Leichhardt Local Environmental Plan 2013 gazetted, retaining existing FSR controls, but adopting the 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 Environment to update and amend the Floor Space Ratios in the LEP.

Appendix 2 - Standard Instrument Definition of FSR vs Old Leichhardt Council Definition of FSR

Leichhardt Council is required to use the Standard Instrument definition for FSR in its Local Environmental Plan 2013 which is different to the FSR definition used for the Leichhardt Local Environmental Plan 2000. The Standard Instrument definition for FSR excludes many more things 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 this in more detail.

Elements of building included in FSR calculation	Old Definition for FSR (Leichhardt LEP 2000 Definition)	Current LEP Standard Template Definition for FSR (LLEP2013)
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 & stairs	N	N
Basement storage	Y	N
Basement car parking	N	N
Voids	N	N


Differences in FSR Definitions

The FSR of residential development using the current Standard Instrument definition is up to 15% lower than under the old LEP 2000 definition. As mentioned above, this is because fewer parts of a development are included in the FSR calculation under the Standard Instrument definition. The diagrams below help to visualise the implications of the transition from the old calculation of FSR to the new standard definition calculation of FSR.

The use of the standard instrument definition of FSR has resulted in a marginal increase in permissible floor space when compared to the old LEP 2000 definition. The resultant increase in floor space has been factored in when developing the options for the Floor Space Ratio Review to maintain the relevance of the review.

Calculation of FSR under old formula (LLEP 2000)

	Definition	FSR Calculation
<p>Leichhardt LEP</p>	<ul style="list-style-type: none"> • Measured from outer edges of the outside walls • Includes internal car parking spaces, garages, lofts and studios. • Excludes voids, basements used for car parking, projections outside the external walls 	<p>0.75:1</p>



Calculation of FSR under the Standard Template (LLEP 2013)

<p>Standard template</p>	<ul style="list-style-type: none"> • Measured from internal face of external walls • Includes habitable rooms in basement or attic • Excludes lifts, stairs, basement storage, vehicular access, car parking, services, voids 	<p>0.57:1</p>
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