

Section 75W Modification Application Environmental Assessment Report



71 Macquarie Street, Sydney

Modification to Approved Concept Plan MP10_0237 (MOD 1)

Submitted to Department of Planning and Environment
On Behalf of Mirvac C/- AMP Life Pty Ltd

October 2014 ■ 13143

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Note: Report has been prepared for client review

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	<i>Department of Planning and Environment</i>
B	Architectural Plans
	<i>Tzannes and Associates</i>

1.0 Introduction

This Environmental Assessment Report (EAR) is submitted to the Department of Planning and Environment in support of an amendment to Concept Plan Approval MP10_0273 pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). MP10_0273 is a Concept Plan Approval relating to the site at 71 Macquarie Street, Sydney which was granted for:

- The building envelope (above and below ground);
- Land uses, being a mix of permanent residential, service apartments and retail land uses;
- A pedestrian colonnade and through-site pedestrian link; and
- Pedestrian and vehicle access arrangements.

A copy of the Concept Plan approval is provided at **Appendix A**.

The proposed modification seeks an amendment to Concept Plan to specify how the floor space ratio (FSR) of the development is to be determined and to outline how an appropriate allocation of heritage floor space (HFS) is to be made for the development. These changes are required in order to address difficulties that have arisen in the assessment of the detailed Development Application (DA) currently being considered by City of Sydney Council DA 2014/301.

This report has been prepared by JBA on behalf of Mirvac C/- AMP Life Pty Ltd. It describes the site, its environs and provides an assessment of the proposal in the context of the approved Concept Plan.

The report is based on the Architectural Plans prepared by Tzannes and Associates (see **Appendix B**) and other supporting technical information appended to the report (see Table of Contents).

1.1 Concept Plan Approval

The proposal for the Concept Plan was determined to be a 'major project' under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act), because of its location within a mapped Sydney Harbour Foreshore location and having a Capital Investment Value (CIV) of more than \$5 million under clause 10(1) of Schedule 2 of State Environmental Planning Policy (Major Development) 2005. Therefore, the Minister for Planning and Infrastructure (or delegate) was the approval authority.

The Concept Plan (MP 10_0237) was approved on 17 October 2012. The Concept Plan is a transitional Part 3A project as defined by schedule 6A of the EP&A Act and its terms prevail in the event of inconsistencies with any applicable Planning Instruments.

1.2 Development Applications

Following approval of the Concept Plan, a total of three DAs have been submitted to City of Sydney Council to facilitate the redevelopment of the site and surrounding public domain. All of the applications are currently under assessment. A description of the scope for each of these DAs has been provided below. For the ease of explanation and reference, these are referred to as DA 1, DA 2 and DA 3.

DA 1 – Demolition and Early Works

DA 1 involves the early enabling works required to facilitate the redevelopment of the site. This includes demolition, site establishment and vehicular access arrangements.

DA 2 – Construction

This DA is to facilitate a new 19 storey multi-level building accommodating residential apartments suitable for serviced apartment/permanent residential use, permanent residential and retail uses consistent with the site Concept Plan approval. The works include excavation and construction of the proposed development, including the establishment of a through site link and colonnade to Circular Quay. The development also includes a six level basement car park consistent with the Parking controls conditions in the Concept Plan.

DA 3 – Public Domain

DA 3 relates to the public domain upgrade works to East Circular Quay.

1.3 The Site and Particulars

1.3.1 Site Location and Context

The proposal is positioned on the site known as 71-79 Macquarie Street, Sydney. This parcel of land is owned by AMP Life Pty Ltd and managed by AMP Capital Investors. The Council-controlled street to the west, which will also form part of the site, is legally known as Circular Quay East. The site is located at the southern end of East Circular Quay, as shown in the Location Plan and Aerial Photograph in **Figures 1 and 2**, respectively.

The site is bounded by Macquarie Street to the east, the City Circle Railway and Cahill Expressway to the south, the Circular Quay public domain (managed by SHFA) to the west and the Quay Grand mixed use development to the north. The site also includes an area of leased land from City of Sydney being basement floor space located beneath Macquarie Street that is used for parking.



Figure 1 – Site location map

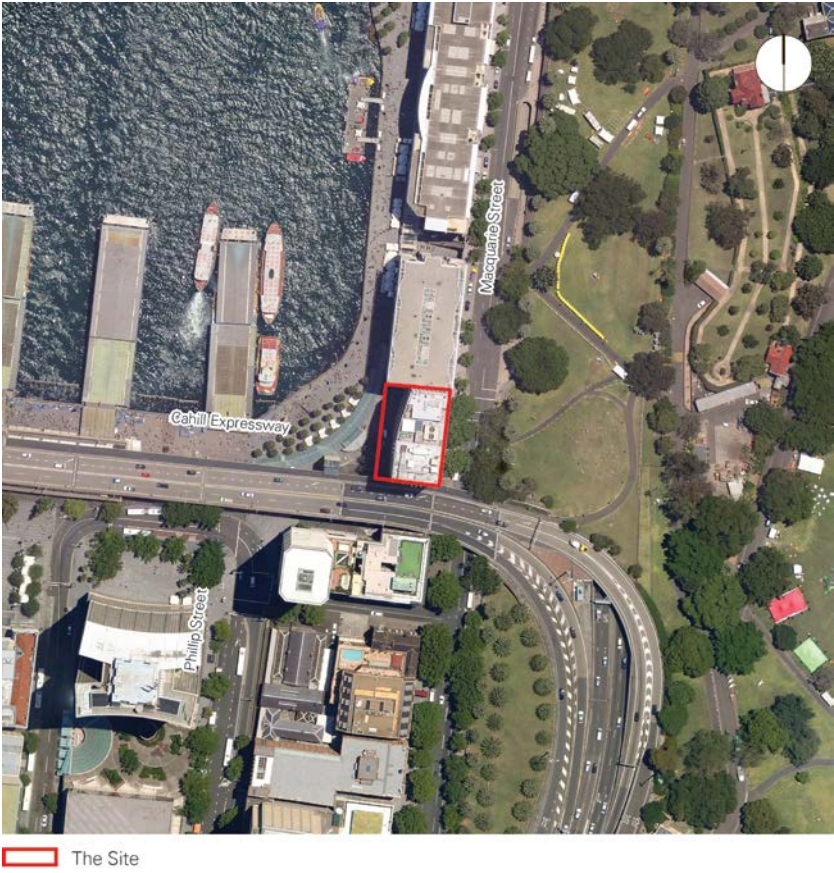


Figure 2 – Aerial Photo

1.3.2 Sydney Local Environmental Plan 2012 - GFA

Part of the site is identified as being located in area AC on Sheet 14 of the Sydney Local Environmental Plan 2014 –Floor Space Ratio Map (as shown below in **Figure 3**). This specifies a maximum floor space ratio of 8:1.

As shown in **Figure 3**, the LEP map only applies to part of the site (referred to as the Macquarie Street Lot), and does not establish a FSR for the remainder of the site (referred to as the East Circular Quay Lot).

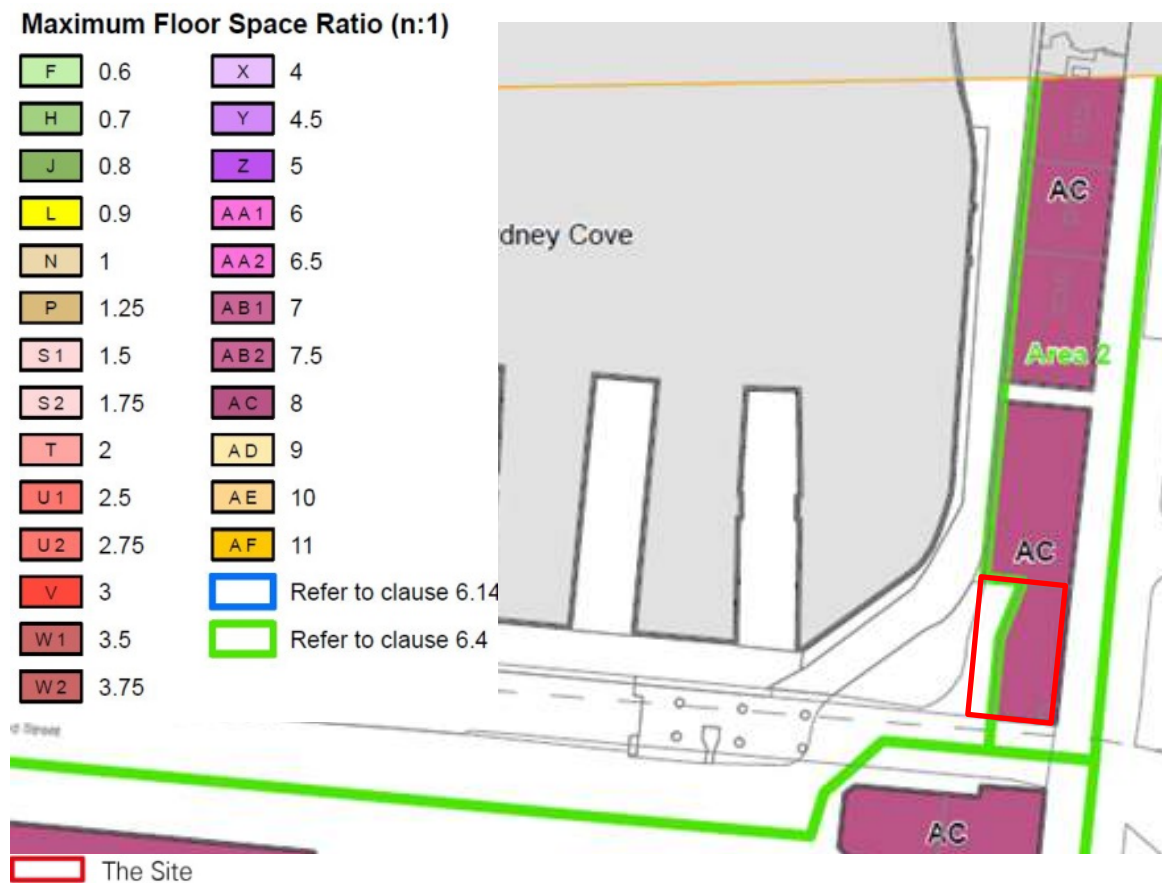


Figure 3 – Sydney LEP 2012 – FSR Plan – Sheet 14 (Site shown in red)

2.0 Description of Proposed Modification

The proposed modification seeks an amendment to specify a gross floor area (GFA) and provide details of an appropriate heritage floor space (HFS) provision.

2.1 Need for Modification

The Concept Plan for the Amatil building at East Circular Quay was approved in October 2012, subject to conditions. The terms of the approval generally relate to future building heights, an envelope below and above ground, land uses and mix of uses, access, parking, completion of the colonnade, through-site link.

The approval of a GFA or FSR was never sought at the time as the Concept Plan's objective was to provide for an envelope only (with height being the key issue) and to provide for "progressive certainty" rather than absolute certainty at concept stage, as is typically the case for concept plans.

Following approval of the Concept Plan, City of Sydney Council's Local Environmental Plan 2012 (LEP 2012) was gazetted and Part 3A was repealed as a development assessment / approvals pathways for new projects. The legal framework at the time of lodgement of the detailed application required the preparation of a Development Application, with City of Sydney Council as the Consent Authority.

Under the transitional arrangements brought into force under the Environmental Planning and Assessment Act 1979 (the Act) for Part 3A projects, see Schedule 6A, clause 3B(2)(f), *"the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan."*

This means the terms of the Concept Plan prevail over the LEP and DCP in relation to a number of provisions, including building height. However, as there is no FSR approved under the Concept Plan, Council in their assessment have indicated they believe the LEP's FSR continues to apply and Council is obliged to consider this control.

This issue was not foreseen at the time of the Concept Plan assessment and approval and, as noted above, not including an FSR was intended to not to unduly limit flexibility and design innovation within the envelope until a design could be tested and resolved.

Due to the transitional provisions under the Act, Council is presently encountering difficulties in the assessment of the subsequent DA for the building as the LEP FSR boundary for the site applies to a portion of the overall approved site and envelope. This results in a slice of the building not being subject to a FSR and further results in consequential assessment difficulties under the LEP in relation to a range of matters, not the least Heritage Floor Space calculations.

Application of the Sydney LEP 2012

The Sydney LEP 2012 definition of FSR is dependent on "site area" and "gross floor area" and it incorporates these definitions. It is not possible to calculate FSR without both a site area and a gross floor area. GFA cannot be calculated for a vertical slice of a building as the definition requires floor area between external or party walls.

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....

Council originally proposed to measure the floor area of the building up to the current property boundary between the Macquarie Street Lot only and the East Circular Quay Lot and to call this “gross floor area” for the purpose of calculating FSR.

However, as the western extent of this floor area does not end at the internal face of an external or party wall, it simply cannot meet the definition of “gross floor area”. Without gross floor area, no FSR can be determined.

Council also initially proposed to use the area of the Macquarie Street Lot as the “site area” for the basis of an FSR calculation, but clause 4.5(3) of Sydney LEP 2012 states that

*In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be:*

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or*
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

The “site area” of the development is therefore not just the Macquarie Street Lot, but the combined area of the Macquarie Street Lot and the East Circular Quay Lot.

An FSR cannot be calculated for a portion of the approved building without utilising a “gross floor area” and “site area” that are calculated in breach of the LEP definitions of these terms, and therefore the only relevant calculation is the FSR of the whole site. This subsequently creates the difficulty that the FSR control only applies to a portion of the site. As noted previously, the modification seeks to greater certainly for the delivery of the detailed DA.

These difficulties arise from the fact that the LEP does not contemplate that a building may be constructed across the boundary of the Macquarie Street Lot and onto land that is not subject to an FSR control. It is not legally possible to apply the LEP controls in relation to FSR, particularly the allocation of HFS, in these circumstances.

2.2 Direction under section 75P(2)(c1)

Even though it is not obliged, the proponent is willing to participate in the HFS scheme but it is not currently possible to determine the necessary HFS allocation for the development under the LEP, as explained above.

The intended approach would be to establish an alternative regime, outside of the LEP, that would allow a purposive approach to the allocation of HFS to be applied to the development. In order to do so, the Concept Plan should specify that the FSR provisions of the LEP do not have effect in order to allow the Concept Plan to clearly set out the manner in which FSR and HFS are to be determined for the site to ensure that the DA may be assessed appropriately. To that end, to be clear, this modification is not seeking any change to the Concept Plan envelope or the intensity of development on the site, but rather seeks to

permit the Concept Plan to prevail over the LEP and remove the unforeseen inconsistencies relating to floor space.

A modification is sought to the Minister's determination under Division 3 of the former Part 3A of the Act. It is requested that, by inclusion of the proposed condition, the Minister explicitly direct that the Sydney LEP FSR provisions do not have effect, as permitted by section 75P(2)(c1); given the difficulties encountered in applying the LEP FSR provisions may unduly restrict the carrying out of the development. The proposed wording of this condition (in Schedule 3 of the Concept Plan) is set out below in Section 2.4.

2.3 Inclusion of Heritage Floor Space Requirement

This modification also proposes to require the allocation of HFS for the development as a condition of the Concept Plan.

2.3.1 Modification of Schedule 3

It is proposed to modify the Further Environmental Assessment Requirements set out in Schedule 3 to address the calculation of FSR for the development, and the allocation of an appropriate quantum of HFS.

2.3.2 Statement of Commitments

It is proposed to include an additional commitment (as part of the Statement of Commitments) to established the HFS requirement for the proposed development. This is required as a result of the ambiguity in the ability to establish GFA for the site in accordance with Sydney LEP 2012, and subsequent difficulties in calculating the quantum of HFS that is required to be allocated. The GFA ambiguities are discussed further in Section 2.3 below. The formula to establish HFS is set in Section 2.4

A direction in accordance with Section 75P(2)(a1) of the Act should be added to the Concept Plan to require future development consents to address the allocation of HFS (where relevant). The inclusion of the proposed condition set out below in Section 2.4 would clearly establish the framework by which Heritage Floor Space (as would otherwise be required by the Sydney LEP) is to be allocated to future development applications – including D/2014/301 currently under consideration by Council.

2.4 Modifications to Conditions of Consent

The above modifications necessitate the following modification to the conditions of consent. Deletions are shown in ~~bold strike-through~~ and insertions are shown in ***bold italics***.

Schedule 2, Condition A2 – Development in Accordance with the Plans and Documentation

The approval shall be generally in accordance with:

- *the Environmental Assessment, prepared by JBA Urban Planning dated December 2011;*
- *the Response to Submissions prepared by JBA Urban Planning dated May 2012;*
- *the Revised Statement of Commitments dated 17 September 2012;*
- ***S75W Environmental Assessment Report, prepared by JBA, dated October 2014***

- the Design Report dated 16 November 2011, prepared by HASSELL;
- and
- the following drawings:...

Schedule 2, (Additional Condition)

Condition A6 – FSR and HFS

Part 6 of Sydney LEP 2012 does not apply to the determination of any future application pursuant to this Concept Plan, and FSR and HFS are instead to be calculated in accordance with Schedule 3.

Any future application that will require the allocation of HFS in accordance with Schedule 3 will be subject to an appropriate condition of consent to ensure that the allocation occurs, in accordance with the revised Statement of Commitments dated 15 October 2014.

Schedule 3 – (Additional Condition)

22 - Gross Floor Area and Heritage Floor Space

For the purpose of calculating the Floor Space Ratio, the site area is 1,207m².

Gross Floor Area (GFA) is to be calculated in accordance with Sydney Local Environmental Plan 2012 definitions (with the exception that all car parking in accordance with Sydney Local Environmental Plan 2005 is to be deducted from GFA).

Any GFA for the site over and above 9,656m² (FSR of 8:1) is to be treated as additional floor space (being 'accommodation floor space') and will require the allocation of Heritage Floor Space (HFS) (purchased and transferred) to the development. The allocation of HFS is to be undertaken with regard to the provisions of the Sydney Local Environmental Plan 2012, as set out below.

The formula to be used when calculating the applicable HFS for this development is:

*Site Area: 1,207 m²
Base FSR = 8:1*

$$HFS = \frac{(gross\ floor\ area - 9,656m^2)}{2}$$

Less HFS Deductions

HFS Deductions:

- *Design Excellence Deduction - (1,000sqm or 50% of HFS, whichever is the lesser)*
- *Through Site Link Deduction - (250sqm or 50% of HFS, whichever is the lesser)*

2.5 Modification to Statement of Commitments

And additional commitment is proposed to be included regarding Heritage Floor Space, as would otherwise be required by City of Sydney Council (as detailed in Sydney LEP 2012). The additional commitment to be inserted is set out below.

1.13 Heritage Floor Space

Prior to the final Construction Certificate being issued, Council's written verification must be obtained, confirming that heritage floor space (as calculated in accordance with condition 22 of Schedule 3) was allocated (purchased and transferred) to the development. The process of allocation is to be undertaken in accordance with the provisions of the Sydney Local Environmental Plan 2012.

3.0 Environmental Assessment

This section of the report assesses and responds to the environmental impacts of the proposed Modification Application.

3.1 Compliance with Relevant Environmental Planning Instruments

The proposal does not alter the approved concept plan's compliance with the relevant planning instruments including State Environmental Planning Policies and Environmental Planning Instruments. The proposed modification does not alter the Concept Plans' consistent with the objectives of the Act, or the achievement Ecologically Sustainable Development

3.2 Compliance with the Approved Concept Plan

The proposed modifications are generally administrative and do not involve any variation to the approved concept plan envelope.

3.3 Benefit of Modification

The proposal to include a GFA, reflective of the detailed development application being considered concurrently by Council, seeks to remove an ambiguity, or uncertainty in the application of the Sydney Local Environmental Plan 2012.

The benefit of the modification is to provide certainty as to the GFA, as well as the appropriate quantum of HFS to be allocated (even though not required). This will provide suitable comfort and clarity to the consent authority in determining future DA's, particularly DA 2 for construction.

4.0 Conclusion

The inclusion of a GFA that is consistent with the Concept Plan envelope approval and a quantum of HFS, in the terms of approval and statement of commitments respectively, seek to provide clarity and certainty in the assessment and determination of the detailed Development Applications currently being assessed by the City of Sydney Council.

These modifications will remove any ambiguity, ensure the detailed design is consistent with the Concept Approval, and allow the orderly assessment of the development application. Importantly, although not required it will ensure that Heritage Floor Space is appropriately allocated.

Given the merits described above it is requested that the application be supported.