

23 October 2014

File No: MP10_0237 MOD 1
Our Ref: 2014/474006

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Dear Ben

RE: Section 75W Modification to Concept Plan for Residential Mixed Use Development at 71 Macquarie Street

I refer to your correspondence dated 17 October 2014, advising of the Section 75W modification application for the Concept Plan for a Residential Mixed Use Development at 71-79 Macquarie Street, 5020 Circular Quay East and 5010 Macquarie Street, Sydney.

It is understood that the proposed modifications include amending the concept approval to include new provisions relating to the calculation of gross floor area (**GFA**) and heritage floor space (**HFS**).

DA Background

The City is currently assessing a development application for site excavation and construction of 19 storey mixed use development including a through site link from East Circular Quay to Macquarie Street and a colonnade to East Circular Quay (DA D/2014/301).

In the assessment of the DA, the City recognised that the concept approval did not establish a maximum floor space ratio (**FSR**) for the development and identified that clause 4.4 Floor Space Ratio and 6.11 Utilisation of certain additional floor space requires allocation of heritage floor space of Sydney LEP 2012 (**SLEP 2012**) applies to the development.

The SLEP 2012 FSR map identifies that an FSR constraint only applies to 71-79 Macquarie Street (**the Macquarie Street lot**), refer to **Figure 1**. There is no FSR constraint over 5020 Circular Quay East (currently road) and 5010 Macquarie Street.

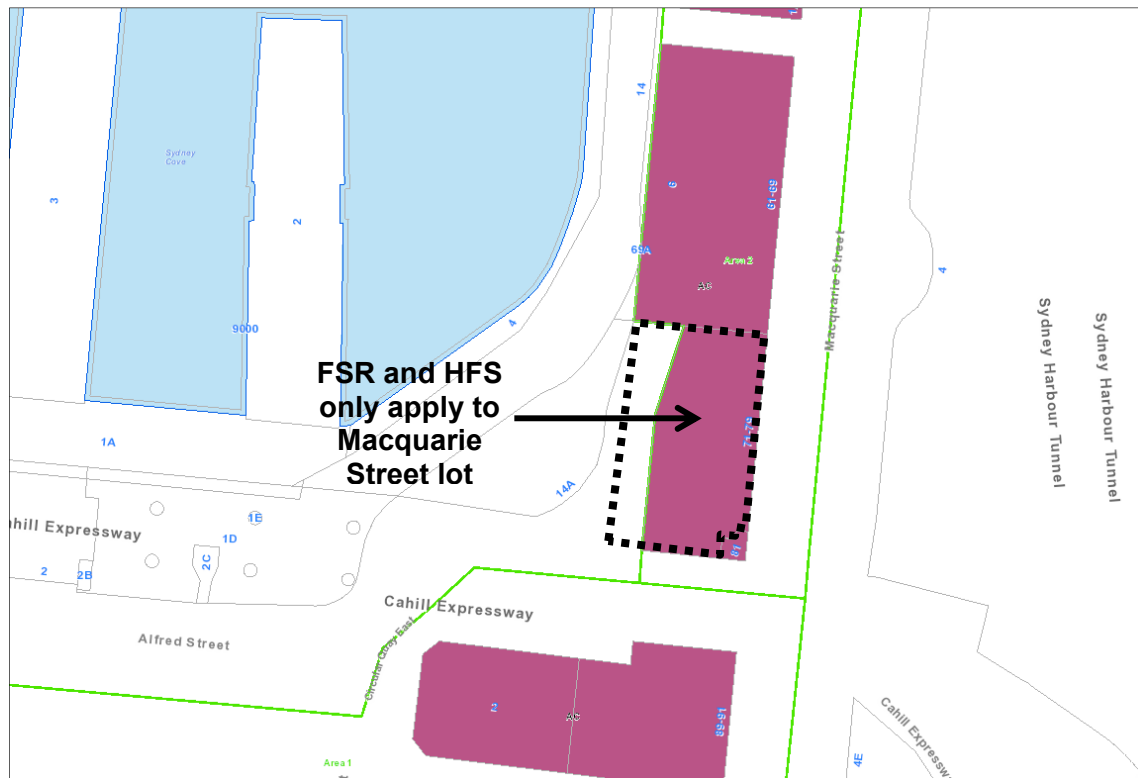


Figure 1: Excerpt from SLEP 2012 Floor Space Ratio Map illustrating the portion of the site where FSR and HFS apply (on the Macquarie Street lot).

For the purposes of calculating FSR and subsequently HFS allocation under SLEP 2012, the City requested that the GFA on the Macquarie Street lot be calculated. In response to the City's request, the applicant indicated that an FSR calculation is not possible because the 'site area' and 'gross floor area' cannot not be established for the reasons outlined in the Section 75W application.

The City maintains that the GFA and site area can be established for the Macquarie Street lot using the relevant SLEP 2012 definitions, and subsequently FSR calculated in accordance with SLEP 2012.

Proposed Amendments to Concept Approval

The applicant proposes to amend the Concept Approval to:

(1) Add Condition A6 to Schedule 2 to state:

- (a) *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.*

(2) Add Condition 22 to Schedule 3 to state:

- (a) *For the purpose of calculating the Floor Space Ratio, the site area is 1,207sqm.*
- (b) *The 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).

- (c) *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 = (gross floor area – 9,656m²) / 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)*

- (3) Add commitment to Statement of Commitments to state:

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.

The City raises no objection to amendments (1), (2)(a) and (2)(b) as they seek to provide clarification of the "site area" the concept approval related to and establishes a reasonable approach to calculating FSR and HFS across that site area.

With regard to amendment 2(c), the City agrees with the methodology applied in calculating HFS, however, does not agree with the inclusion of a deduction for Design Excellence.

Being guided by the relevant HFS provision in SLEP 2012 (clause 6.11(2)(1)), the consent authority may reduce the amount of HFS that is required to be allocated to a building, *if the proposed development is the winner of an architectural design competition carried out in accordance with the City of Sydney Competitive Design Policy.*

In February 2013, a Competitive Design Competition for the site took place where five invited Architectural firms designed schemes for the redevelopment of the site and was judged by a 6 person jury. The decision in the Jury Report prepared by JBA

dated 28 May 2013 states that no one preferred winning scheme was selected and it was decided not to select a winning scheme (refer to excerpt from Jury report in **Figure 2**).

5.0 DECISION

The Jury has not selected one preferred winning scheme from this formal design competition.

The preference of the Jury members was evenly split, with three members preferring Durbach Block Jaggers scheme and the other three members preferring Tzannes Associates scheme. However, this deadlock could not be broken and hence it was decided not to select a winning scheme. The Design Excellence Competition has now concluded and the Jury has dissolved.

Figure 2: Excerpt from Jury Report prepared by JBA dated 28 May 2013.

One of the preferred options was the Tzannes and Associates scheme and is the scheme that is the subject of the current DA being considered by the City.

Given that the scheme is not the '*winner of an architectural design competition*' the City maintains that the proposal does not qualify for a HFS deduction in this circumstance and objects to its inclusion as a deduction.

The City thanks you for the opportunity to provide comment on the application and would appreciate being provided a copy of any modified conditions as a result of this determination.

Should you wish to speak with a Council officer about the above, please contact Amy Allen, Senior Planner, on 9265 9333 or at aallen@cityofsydney.nsw.gov.au

Yours sincerely,



Graham Jahn AM
Director
City Planning | Development | Transport