



Planning &
Environment

***MODIFICATION REQUEST:
Concept Plan for Residential Mixed
Use Development
71-79 Macquarie Street, Sydney
MP10_0237 MOD 1***

***Inclusion of new provisions relating to the
calculation of floor space ratio and heritage
floor space.***

Secretary's Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

November 2014

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1. BACKGROUND

1.1 Introduction

This report provides an assessment of a section 75W modification application lodged by AMP Capital Investors and Mirvac (the Proponent), seeking to modify the Concept Plan approval (MP10_0237) for a residential mixed use development at 71-79 Macquarie Street, Sydney. The modification (MOD 1) seeks approval for the inclusion of a new term of approval and future environmental assessment requirements relating to the calculation of Floor Space Ratio and Heritage Floor Space.

1.2 The Site

The site is located at East Circular Quay at the northern extent of the Sydney CBD, within the City of Sydney Local Government Area. The street address is 71-79 Macquarie Street, Sydney, and the site comprises Lot 1 in DP 202431, the adjoining public road to the west and the basement beneath Macquarie Street to the east. The site is bounded by Macquarie Street, the Cahill Expressway and City Circle Railway Line, Circular Quay and the Quay Grand Building. A Location Plan is provided at **Figure 1** below.

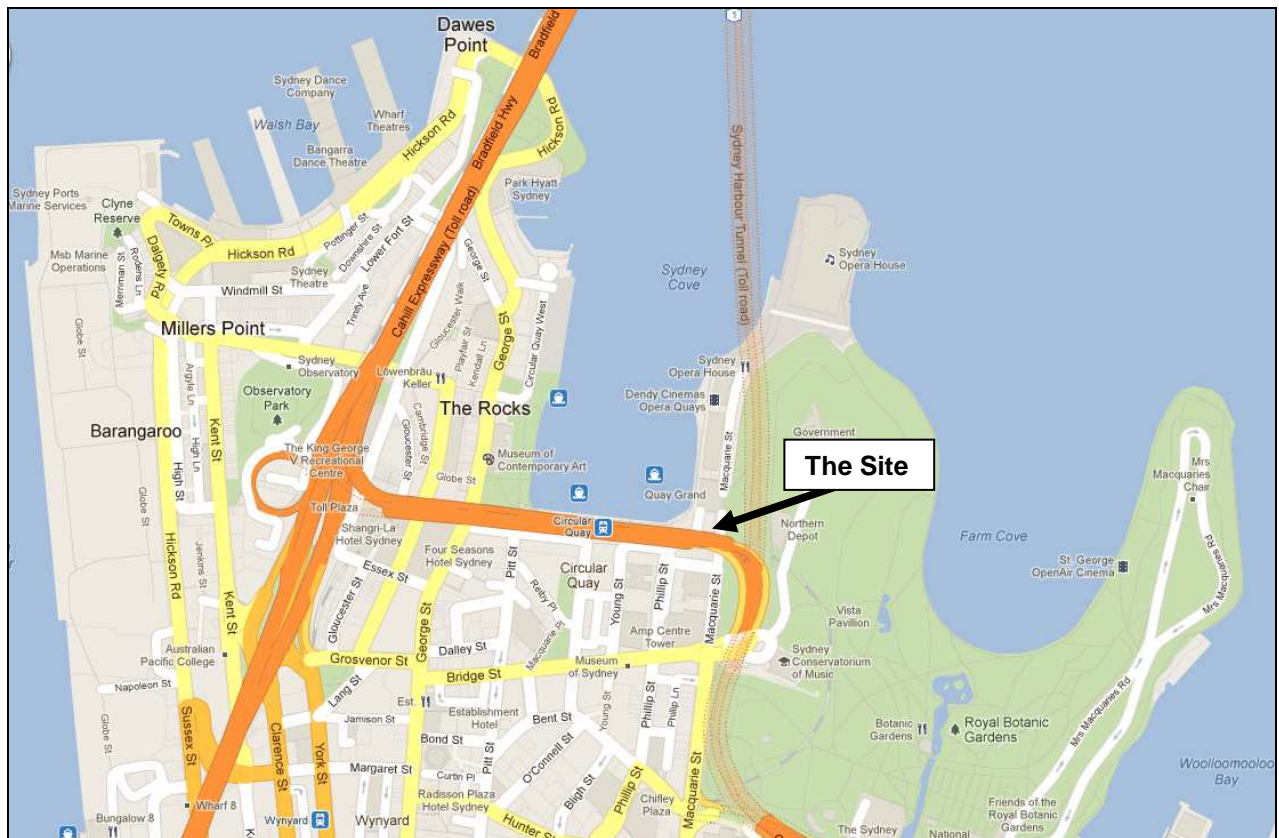


Figure 1: Location Plan

1.3 Concept Approval

On 17 October 2012, the then Deputy Director-General approved a Concept Plan for a residential mixed use development at 71-79 Macquarie Street, Sydney. The Concept Approval comprises:

- the building envelope (above and below ground);
- land uses, being a mix of permanent residential, serviced apartment and retail land uses;
- a pedestrian colonnade and through-site pedestrian link; and
- pedestrian and vehicular access arrangements.

The approved building envelope and height is shown in **Figure 2** and the site area is shown in **Figure 3**.

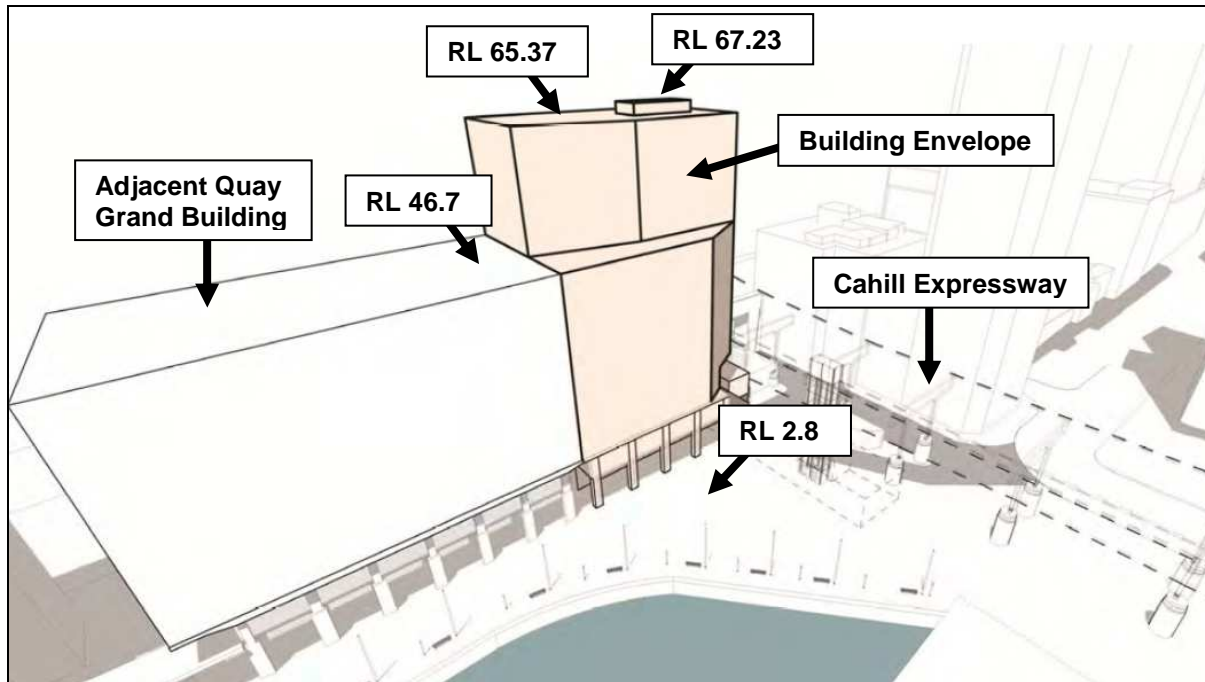


Figure 2: Approved Building Envelope and Height

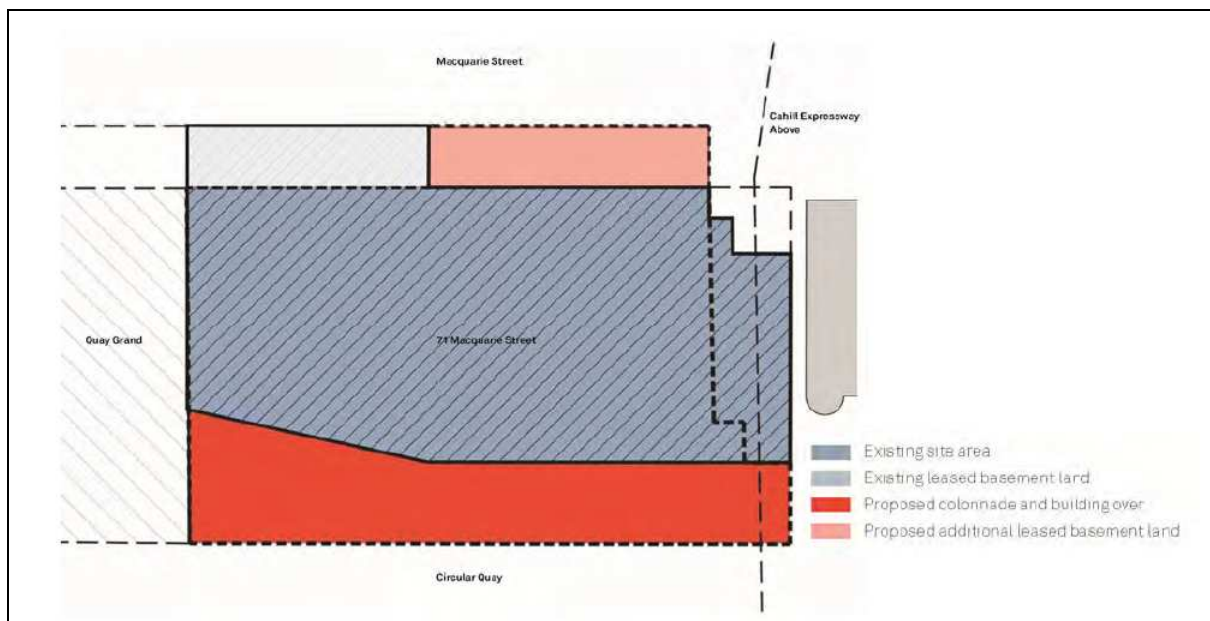


Figure 3: Site Area (western extension of the building envelope shown in Red)

2. PROPOSED MODIFICATION

2.1 Modification Description

The section 75W modification application (as amended by the Response to Submissions) seeks approval to modify the Concept Plan approval as follows:

- include a new term of approval (A6 in Schedule 2 of the approval) which identifies that Part 6 of *Sydney Local Environmental Plan 2012* (SLEP 2012) does not apply to the determination of any future development application pursuant to this Concept Plan, and that Floor Space Ratio (FSR) and Heritage Floor Space (HFS) is to be calculated in accordance with the future assessment requirements in Schedule 3 of the approval;
- include a new future environmental assessment requirement (22 in Schedule 3 of the approval) to specify that, for the purpose of calculating FSR, the site area is 1,207 m², and

that GFA is to be calculated in accordance with the SLEP 2012. The future environmental assessment requirement also specifies that GFA for the site over 9,656 m² is to be treated as additional floor space which will require the allocation of HFS (purchased and transferred) to the development (minus applicable HFS deductions); and

- include a new future environmental assessment requirement (23 in Schedule 3 of the approval) to specify that, prior to the final CC being issued, Council's written verification must be obtained that the HFS was allocated to the development in accordance with the provisions of SLEP 2012.

2.2 Justification for Modification

Council is currently assessing a Development Application (DA) for the detailed design and construction of the development.

The Concept Plan approval does not include a maximum allowable FSR or GFA for the development, and instead relies on the approved building envelope parameters to regulate the bulk and scale of the development.

Under the transitional arrangements for Part 3A Projects, the provisions of environmental planning instruments and development control plans do not have effect to the extent to which they are inconsistent with a Concept Plan. In the case of this development, as the Concept Plan is silent on FSR and GFA for the development, Council in its assessment of the DA has sought to apply the FSR controls contained in the SLEP 2012.

However, as the FSR controls in the SLEP 2012 only apply to a portion of the site area/building envelope, Council considers this presents difficulties in calculating and assessing the FSR for the development. Furthermore, as a result of the difficulties in calculating the FSR, this has flow on implications for establishing the HFS allocation for the development.

The Proponent is therefore seeking to modify the Concept Plan approval to introduce new workable provisions for calculating FSR and HFS for the development that would prevail over the SLEP 2012 and resolve the ambiguity surrounding FSR and HFS for the DA currently under assessment at Council.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Concept Plan Approvals

In accordance with clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects. Consequently, this report has been prepared in accordance with the requirements of Part 3A and the associated regulations. The Minister for Planning (or her delegate) may approve or disapprove the modification under section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a Proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval of a modification is not required if the project, as modified, would be consistent with the original approval. As the proposed modification seeks to include a new term of approval and future environmental assessment requirements in the Concept Plan approval, the modification requires the Minister's approval.

3.3 Secretary's Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides the Secretary with scope to issue Environmental Assessment Requirements (SEARs) that must be complied with before the matter will be considered by the Minister. SEARs were not issued for this modification as the Proponent has addressed the key issues related to the modification request.

3.4 Delegated Authority

The Minister for Planning delegated responsibility for the determination of section 75W modification applications to Directors and Managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposal complies with the terms of the delegation as City of Sydney Council (Council) does not object to the proposal (as amended by the Response to Submissions), a political disclosure statement has not been made in relation to the application, and no public submissions were received in the nature of objections. Accordingly, the Acting Director, Industry and Key Sites may determine the application in accordance with the Minister's delegation.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act and clause 8G of the *Environmental Planning & Assessment Regulation 2000*, the Secretary is required to make modification requests publicly available. On 20 October 2014 the modification application was placed on the Department's website. The Department also notified Council of the modification application.

4.2 Public Authority Submissions

The Department received one submission from Council which raised no objection to the proposed modifications relating to the calculation of the FSR and HFS. However, Council objected to the inclusion of a deduction to the HFS for 'Design Excellence'. However, Council subsequently withdrew its objection after the Proponent amended the modification application to remove reference to the deduction to HFS for 'Design Excellence' (see section 4.4 and 5.2 of this report).

4.3 Public Submissions

No public submissions were received.

4.4 Response to Submissions

The Proponent submitted a Response to Submissions (RTS) which amended the section 75W modification application to remove the proposed reference to the deduction to the HFS for 'Design Excellence' and included a new future environmental assessment requirement (23 in Schedule 3 of the approval) to replace the proposed modification to the Statement of Commitments.

5. ASSESSMENT

The Department considers that the key issue related to the proposed modification are floor space ratio and heritage floor space.

5.1 Floor Space Ratio

The Concept Plan approval does not include a maximum allowable FSR or GFA for the development, and the FSR controls in SLEP 2012 only apply to a portion of the site area/building envelope under the Concept Plan as shown in **Figure 4**.

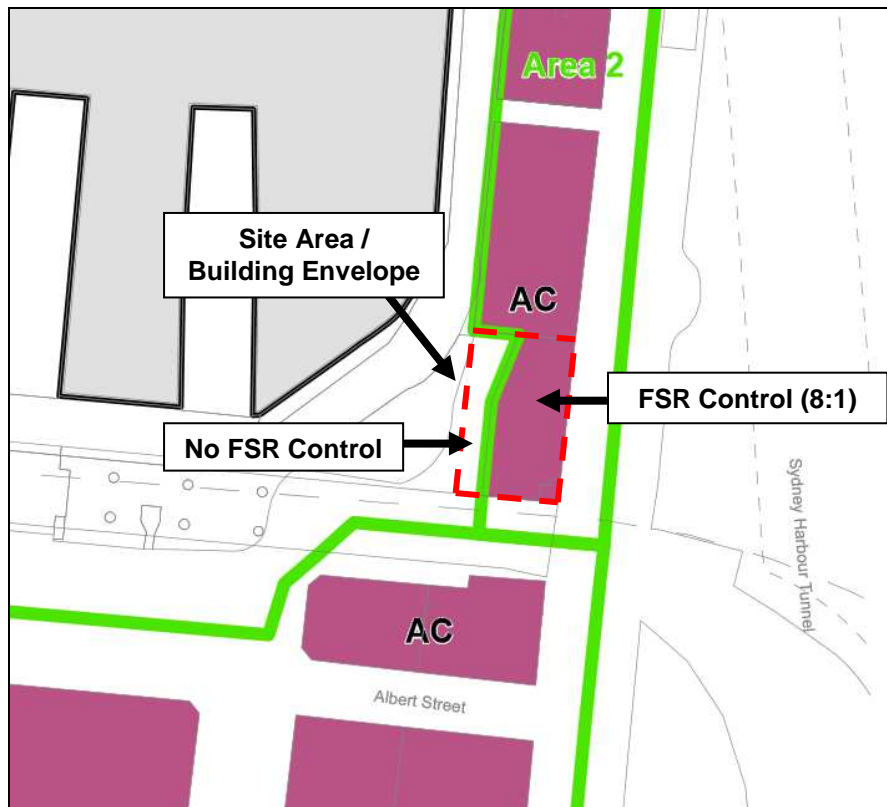


Figure 4: SLEP 2012 FSR Map – (Ratio 8:1)

Consequently, as the FSR only applies to a portion of the site area/building envelope, the remaining part of the site area/building envelope not subject to the FSR control is excluded from consideration against the control. Moreover, the provisions within SLEP 2012 do not contemplate that a building may be constructed across the boundary of a lot and on land that is not subject to an FSR control. In particular, the definition of GFA does not provide for the calculation of a portion of the floor space of a building envelope, and the definition of site area does not provide for the calculation of a portion of the site area.

Council considers this presents difficulties in calculating and assessing the FSR for the development and, as a result, establishing the applicable HFS allocation for the development (which is discussed further in section 5.2 of this report).

To resolve this issue, the Proponent is seeking to modify the Concept Plan approval to include new workable provisions for calculating FSR and HFS for the development that would prevail over the SLEP 2012. Specifically, the modification seeks to specify the site area (1,207 m²) which comprises both the eastern and western portions of the building envelope, and effectively apply an FSR control (8:1) to this whole area. GFA would then be calculated in accordance with the definition in SLEP 2012 (as it would include the entire GFA of the development).

Council raised no objection to the proposed calculation of FSR.

Whilst the Department is of the view that the approved building envelope set by the Concept Plan approval may provide a sufficient framework for the assessment of any DA pursuant to the Concept Plan, it acknowledges the need for completeness to remove any ambiguity in the DA assessment process. Further, the unique circumstances of the development warrant modification of the Concept Plan approval to provide clarification of the site area for the purpose of calculating the FSR for the development. On that basis, the Department concludes the proposed modification to be acceptable, and is satisfied the modification would resolve the ambiguity

surrounding the calculation and assessment of FSR, and will assist Council in its assessment of the DA currently under consideration.

5.2 Heritage Floor Space

When applying the new FSR to the entire site area, this would allow a maximum of 9,656 m² of floor space for the development. It is noted that the approved building envelope under the Concept Plan is capable of containing more than 9,656 m² of floor space (approximately 12,800 m² of GFA). The development is eligible for additional floor space under the 'accommodation floor space' and HFS provisions in SLEP 2012, and the proposed modification proposes that any floor space over and above 9,656 m² be treated as 'additional floor space' requiring the allocation HFS purchased and transferred to the development. The process for allocating the HFS is to be undertaken in accordance with SLEP 2012.

Council's submission raised no objection the provisions for calculating the 'additional floor space' or the allocation of HFS. However, as stated previously in section 4.2 of this report, Council raised objection to the inclusion of a deduction to the HFS for 'Design Excellence'. The Proponent responded to Council's objection by removing the proposed deduction to the heritage floor space for 'Design Excellence'. Council subsequently advised it no longer has any objection to the proposed modification.

As outlined in section 5.1 of this report, the Department is of the view that the unique circumstances for the development warrant modification of the Concept Plan approval to provide a means of facilitating the additional floor space eligible to the development and facilitating the allocation of HFS under the DA currently under assessment at Council. The Department is satisfied that the proposed modifications relating to the calculation of FSR in conjunction with the proposed modifications relating to HFS would provide certainty in the quantum of HFS to be allocated to the development. The Department also agrees with the removal of the deduction to the HFS for 'Design Excellence', given the development is not eligible for this deduction.

6. CONCLUSION

The Department has assessed the modification application and considered the submission from Council.

The proposed modification is administrative in nature and has merit as it would resolve the ambiguity surrounding the calculation of FSR and HFS for the DA currently under assessment at Council for the detailed design of the development. The proposed modification would not result in any change to the existing approved building envelope or intensity of development at the site under the Concept Plan.

The Department therefore recommends that the modification request be approved, and relevant terms of approval and future assessment requirements of the Concept Plan approval be amended accordingly.

7. RECOMMENDATION

It is recommended that the Acting Director, Industry and Key Sites:

- a) **Consider** the findings and recommendations of this report;
- b) **Approve** the modifications to MP 10_0237 MOD 1, under section 75W of the *Environmental Planning and Assessment Act 1979*; and
- c) **Sign** the attached Instrument of Modification (**Tag A**).

Prepared by: Ben Eveleigh

Endorsed by:



12/11/14

Cameron Sargent
Team Leader
Key Sites

Approved by:



Ben Lusher
Acting Director
Industry and Key Sites

APPENDIX 1 MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6753

APPENDIX 2 SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6753

APPENDIX 3 RESPONSE TO SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6753

APPENDIX 4 RECOMMENDED MODIFYING INSTRUMENT
