

RELEVANT INFORMATION FOR THE CENTRAL SYDNEY PLANNING COMMITTEE

FILE: D/2015/929 and D/2015/930 **DATE:** 19 November 2015
TO: Members of the Central Sydney Planning Committee
FROM: Graham Jahn, Director City Planning, Development and Transport
SUBJECT: Information Relevant To Item 4 - 50 Bridge Street, Sydney and Item 5 -
Young and Loftus Street Block - New Buildings - 2-10 Loftus Street and
16-20 Loftus Street and 9-17 Young Street, Sydney - at Central Sydney
Planning Committee - 19 November 2015

Alternative Recommendation - Development Application No. D/2015/929 (50 Bridge Street, Sydney) - Item 4

It is resolved that consideration of Development Application No. D/2015/929 be deferred to the meeting of the Central Sydney Planning Committee on 10 December 2015, to allow for:

- (A) additional time to consider the methodology for calculating Heritage Floor Space; and
- (B) the Director City Planning, Development and Transport to amend if necessary in the relevant Report, the amount of Heritage Floor Space to be allocated to the development.

Alternative Recommendation - Development Application No. D/2015/930 (Young and Loftus Street Block - New Buildings - 2-10 Loftus Street and 16-20 Loftus Street and 9-17 Young Street, Sydney) - Item 5

It is resolved that consideration of Development Application No. D/2015/930 be deferred to the meeting of the Central Sydney Planning Committee on 10 December 2015, to allow for:

- (A) additional time to consider the methodology for calculating Heritage Floor Space; and
- (B) the Director City Planning, Development and Transport to amend if necessary in the relevant Report, the amount of Heritage Floor Space to be allocated to the development.

Background

The Heritage Floor Space scheme has been in successful operation for over 30 years. It enables conserved heritage buildings to offer for sale a prescribed amount of (unrealised) Heritage Floor Space which can be purchased by qualifying developments with floor space ratios above 8:1.

The definition of the 'site' for the purposes of realising the AMP twin block proposal is unique to the AMP land LEP amendment.

Clause 6.11 of SLEP 2012 states that development consent must not be granted to development in respect of a building on land in Central Sydney that utilises any amount of additional floor space, unless an amount of heritage floor space (HFS) is allocated to the building in accordance with the relevant paragraphs of the clause.

The combined Quay Quarter Sydney development (D/2015/929 and D/2015/930) seeks additional floor space, above the base FSR of 8:1. Draft Condition (5)(f) of D/2015/929 calculates and requires allocation of HFS.

In correspondence dated 16 November 2015, the applicant queried the amount of HFS required under draft Condition (5)(f). In correspondence dated 18 November 2015 (attached) the applicant provided advice from King Wood Mallesons relating to the calculation methodology of HFS, and formally requested that D/2015/929 and D/2015/930 be deferred to the December CSPC meeting, to allow time for this advice to be properly considered.

In light of this, alternative recommendations for Development Application Nos. D/2015/929 and D/2015/930 are provided above in order to allow for the Central Sydney Planning Committee to complete discussions and to determine the appropriate amount of HFS required to be allocated to the development.

Graham Jahn, Director City Planning, Transport and Development

Prepared by: Natasha Miller, Senior Planner

TRIM Document Number: 2015/606935

Attachments

2015/606935-01 Attachment A - Applicant request to defer D/2015/929 and D/2015/930 to the December CSPC meeting

Approved



**Graham Jahn, Director City Planning,
Transport and Development**

ATTACHMENT A

APPLICANT REQUEST TO DEFER
D/2015/929 AND D/2015/930 TO THE
DECEMBER CSPC MEETING

MEMO WITHDRAWN

Christine Kesler

From: Tim Blythe <TBlythe@urbis.com.au>
Sent: Wednesday, 18 November 2015 12:19
To: Natasha Ridler; Christopher Corradi; Graham Jahn
Cc: Townsend, Debra (AU) (Debra.Townsend@au.kwm.com); Frank Ianni; Murray Middleton (Murray.Middleton@ampcapital.com)
Subject: TRIM: AMP QQS DA's
Attachments: 24532430_1 QQS - HFS Advice.pdf; Working Example of HFS Assessment_Urbis.pdf

Importance: High

Dear Graham, Natasha and Chris

Thank you for your time yesterday to work through the HFS calculation for the QQS project.

As requested, we attach advice from King Wood Mallesons to assist you to understand and appreciate our recommended approach to the assessment of the HFS requirements that is consistent with the terms of the SLEP 2012.

While we remain keen for the DA's to be determined by the CSPC as soon as possible, the discrepancy in the HFS calculation is a very significant issue for AMPC that requires resolution prior to determination being made on the DA's.

Accordingly, on the understanding that there is no reasonable prospect of this issue being resolved to the satisfaction of both parties prior to tomorrow evening, this AMPC preference is that the DA's for 50B and Y+L to be deferred from consideration tomorrow but then listed on the agenda to be further considered at the **10th December CSPC meeting**.

We wish to continue to discuss and work towards the resolution of this complex matter as a priority to ensure that we reach an acceptable and timely outcome.

If you have any questions please do not hesitate to contact myself or AMPC directly.

Regards

Tim Blythe
REGIONAL DIRECTOR



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AMP Quay Quarter Sydney Development Calculation of Heritage Floor Space requirements

18 November 2015

To Sydney City Council, AMP Capital
From Debra Townsend, King & Wood Mallesons

How should the quantum of heritage floor space be calculated for the Quay Quarter Sydney development?

Background

Discussions have taken place in an attempt to reach an agreement about the manner of calculating the quantum of heritage floor space ("HFS") under the Sydney LEP 2012 ("LEP"). I have been asked to prepare this note setting out AMP's position on the correct application of the LEP provisions in respect to the stage 2 approvals for the Quay Quarter Sydney development.

Answer

The HFS for the Quay Quarter Sydney development should be calculated using the following principles:

- 1 calculation of the maximum floor space ratio ("FSR") for the QQS development is done in accordance with clause 6.26 of the LEP;
- 2 only accommodation floor space attracts the operation of clause 6.11 of the LEP requiring allocation of HFS;
- 3 as clause 6.26 of the LEP is silent on the application of the calculation of accommodation floor space, it must be calculated in accordance with clause 6.4 of the LEP;
- 4 accommodation floor space is dependent entirely on the use of particular buildings on land. As such, accommodation floor space must be determined across on a building by building basis;
- 5 HFS must be allocated to the building which utilises any additional accommodation floor space.

The use of the above principles is the correct approach under the LEP because it:

- best accords with the written requirements of the LEP; and
- does so in a way which meets the intention of the LEP provisions and ensures an outcome which does not disadvantage the development when compared to other developments in Central Sydney in the application of the LEP HFS requirements.

Comments

The starting point is maximum floor space ratio ("FSR") allowed for land in central Sydney, which includes the QQS land. Clause 4.4(2) sets the maximum FSR by reference to a map. The relevant map indicates 8:1 for the QQS land. If development proposed does not exceed 8:1 no further enquiry is necessary and no HFS is required to be obtained.

The required method for calculation of FSR is set out in clause 4.5 of the LEP. It requires the amount of gross floor area relative to the site area to be determined. Where the development is on a single lot, the site area for the purpose of the calculation is that lot by operation of clause 4.5(3)(a)

of the LEP. Where development is on more than one lot, the site area is determined by reference to clause 4.5(3)(b) which allows the site area to be calculated over more than one lot provided those lots are contiguous.

In the case of the calculation of FSR for the QQS development, clause 6.26 (3) indicates that:

In determining the site area for the purposes of applying a floor space ratio to development on land to which this clause applies, block A, block B and block C are, despite clause 4.5 (3) (b), taken to be a single site area.

The first step is implemented for the Quay Quarter Development by taking the area of all land in Blocks A, B and C referred to in clause 6.26 and multiplying that area by 8 to create the base FSR for the development of 8:1.

Clause 6.26(5) then operates to allow any “additional floor space” to which buildings on Block C might be entitled to utilise, to be instead utilised on Block A. This means that any part of the base FSR not used on Block C can be utilised on Block A. It also means that any accommodation floor space, lanes development floor space and incentive floor space generated by Block C can also be utilised on Block A. It is only accommodation floor space that attracts the operation of clause 6.11 requiring allocation of HFS.

In determining what additional accommodation floor space to which buildings on Block C might be entitled, it is necessary to go to clause 6.4 which allows “additional floor space” in the form of accommodation floor space.

Accommodation floor space is available for buildings which are “used for a purpose specified in relation to the Area” in the various sub-paragraphs in clause 6.4. The focus in this clause shifts from a consideration of “development” on a “site” to buildings or parts of buildings being used for a nominated purpose. Where the whole of a building is used for one of the nominated purposes, the additional floor space is generated based on that building. Where part only of a building is used for a nominated purpose, a lesser amount is generated based on that part of the building which is used for a nominated purpose. The clause requires that the amount of additional floor space which a building is eligible for is determined by “applying to the building the floor space ratio specified by the relevant paragraph”.

Given that “accommodation floor space” is dependent entirely on the use of particular buildings on land and that the terms of clause 6.4 allow a **building** to be eligible for additional floor space rather than a “site” or “development” being eligible for it, the focus is on the individual buildings used for a nominated purpose being able to generate the accommodation floor space. This requirement to focus on the “building” rather than “development” means that the calculation of the additional floor space needs to be undertaken by reference to clause 4.5(3)(a) because the “proposed development” here is the building being used for the nominated purpose. Each building is on its own lot and the “development” in question (ie the use of land) occurs on a lot by lot basis. It is therefore inappropriate to use the clause 4.5(3)(b) determination of site area because the development is not being carried out on 2 or more lots. Each building exists and is used on its own lot. There is therefore no requirement to aggregate the QQS site area as a single site and clause 6.5(3) does not operate.

It is only when additional floor area is allowed under clause 6.4, that the need to acquire HFS is triggered by clause 6.11. That clause provides that where accommodation floor space is “utilised” in respect of a building on land in Central Sydney, an amount of HFS must be allocated “to the building” in accordance with the principles of clause 6.11. In the case of the QQS development, the only building which “utilises” additional accommodation floor space is 50 Bridge Street. This is because all of the buildings in the Young and Loftus block are below the base maximum 8:1 FSR and therefore are not “utilising” any accommodation floor space. In the case of 33 Alfred Street, no change is proposed to that building’s floor space so it cannot be said to be “utilising” any accommodation floor space.

50 Bridge Street is also utilising the unused balance of the 8:1 base FSR generated by Block C. This is also permitted by clause 6.26(5). However, that unused balance is not accommodation floor space within the meaning of clause 6.11 and does not trigger the requirement for HFS.

The amount of HFS required under clause 6.11 must then be calculated by reference to clause 6.11(2) which permits the consent authority to reduce the amount of HFS required by reference to:

- the successful completion of a design competition;
- the provision of a through site link; and
- in the case of alterations and additions to a building in existence at the commencement of the LEP, the amount of any existing floor space in that building.

In the case of 50 Bridge Street, the development is eligible for deductions under each of these heads and it is clear from the assessment report that the full reduction is warranted for this development.

We enclose an example prepared by Urbis which shows in practice how the HFS requirement should be calculated for the 50 Bridge Street DA. We understand this example was also provided to Council yesterday.

If Council does not agree with our interpretation of the relevant LEP requirements and presses that the Council's suggested method of calculation is correct, it would result in an HFS requirement of 25,001 square metres for the additions to 50 Bridge Street building. The QQS development proposes an addition to that building of 39,386 square metres. A requirement for HFS at 25,001 square metres suggests that accommodation floor space totalling 50,002 square metres is being added to 50 Bridge Street (given that HFS is required at a rate of 50% of accommodation floor space developed). This cannot be the intended result of a correct calculation under the terms of the Sydney LEP. If the Council's suggested requirement is viewed through the lens of the 50 Bridge Street additions, it would require 64% of the total additional floor space to be met by the allocation of HFS, whereas all other developments in Central Sydney require no more than 50% of the accommodation floor space component of those buildings. When regard is also had to the fact that the buildings in the Young and Lons Black are all below the base FSR, it is clear that this result would be unfair and unintended by the controls, thus providing further support for the method of calculation previously agreed between the Council and AMP Capital.



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Working Example of HFS Assessment:

We have outlined how in practice (based on the KWM advice) we consider the HFS requirement should be calculated for the **50 Bridge Street DA**:

- The only building that is utilising accommodation floor space is 50 Bridge Street eligible under Clause 6.11 of the SLEP.
- The total GFA of new addition to 50 Bridge Street = **39,386sqm**
- Deduct 1,731 sqm being incentive floor space (car parking floor space) which is excluded from the operation of Clause 6.11)
- Deduct 5,263 sqm being floor space harvested from the Y+L site which is not "accommodation floor space". (proposed FSR for Y&L is 6.2:1)
- **TOTAL ACCOMMODATION FLOOR SPACE AND DESIGN EXCELLENCE FLOOR SPACE ELIGIBLE FOR HFS ALLOCATION UNDER CLAUSE 6.11 = 32,392sqm**

- To calculate HFS required:

$$32,392/2 = 16,196\text{sqm}$$

minus 1000sqm for design excellence

minus 250sqm for through site links

$$= \mathbf{14,946\text{sqm}}$$

MEMO WITHDRAWN