

**ITEM 13. PLANNING PROPOSAL: HERITAGE FLOOR SPACE AMENDMENTS TO SYDNEY LOCAL ENVIRONMENTAL PLAN 2012****FILE NO: X001004****SUMMARY**

This report recommends amendments to the Heritage Floor Space controls in *Sydney Local Environmental Plan 2012* (the LEP). These controls are the legal framework for a scheme under which owners of heritage buildings in Central Sydney may be awarded Heritage Floor Space after completing conservation works on the building and may sell that Heritage Floor Space to developers who, as a condition of using additional floor space, are required to allocate Heritage Floor Space to their development site.

The Planning Proposal at Attachment A is a response to the current shortage of available Heritage Floor Space in the market and the need to increase long-term supply. It comes in the wake of recent changes to *Sydney Development Control Plan 2012* to encourage the conservation of publicly-owned heritage buildings and, in turn, the creation of additional Heritage Floor Space supply in the future.

The Planning Proposal seeks to correct an error in the legal drafting of clause 6.11 of the LEP to align it with the City's long-standing practice of not requiring Heritage Floor Space allocation until after consent is issued but prior to construction. It also seeks to allow Council to enter into agreements which may lead to the allocation of Heritage Floor Space being deferred or, in the event that Heritage Floor space cannot be obtained, replaced with an alternative arrangement that satisfies a proposed *Alternative Heritage Floor Space Allocation Scheme* consistent with the principles recommended in this report. It is proposed to exhibit a draft scheme at the same time as the Planning Proposal.

Owing to increased demand for Heritage Floor Space, the Planning Proposal seeks to reinstate the 55m height condition that applied to allocation of Heritage Floor Space under *Sydney Local Environmental Plan 2005* when a development used the equivalent of accommodation floor space. It also seeks to increase the long-term supply of Heritage Floor Space by making buildings that received an award of Heritage Floor Space over 25 years ago eligible to receive another award having regard to appropriate conservation works and maintenance.

This report recommends Council approve the Planning Proposal for Gateway Determination from the Minister for Planning and subsequent public exhibition with the *Draft Alternative Heritage Floor Space Allocation Scheme*.

**RECOMMENDATION**

It is resolved that:

- (A) the Central Sydney Planning Committee approve *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012*, shown at Attachment A to the subject report, for submission to the Minister for Planning with a request for a Gateway Determination;

- (B) the Central Sydney Planning Committee approve *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012*, shown at Attachment A, for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 8 September 2015 that authority be delegated to the Chief Executive Officer to develop an *Alternative Heritage Floor Space Allocation Scheme* in accordance with the following principles:
- (i) the developer is to demonstrate that they have made genuine efforts to obtain Heritage Floor Space and have been unable to do so;
  - (ii) the developer agrees to obtain the Heritage Floor Space by a specified date following the commencement of construction or, alternatively, pay a monetary contribution equal to the market value of the Heritage Floor Space, plus an uplift amount towards a heritage conservation fund to be established by Council;
  - (iii) the developer is to provide a bank guarantee to Council for an amount equal to the current market value of the Heritage Floor Space required plus an uplift amount;
  - (iv) the amount of the payment required if the Heritage Floor Space has not been allocated by the specified date will be set at a level intended to discourage the use of this option, rather than allocation of Heritage Floor Space; and
  - (v) any funds obtained under the scheme will be directed towards heritage conservation works;
- (D) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 8 September 2015 that authority be delegated to the Chief Executive Officer to exhibit a *Draft Alternative Heritage Floor Space Allocation Scheme* at the same time as the Planning Proposal;
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012*, following the receipt of the Gateway Determination; and
- (F) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 8 September 2015 to seek authority from the Secretary of the Department of Planning and Environment to exercise delegation of the Minister for Planning of all the functions under section 59 of the *Environmental Planning and Assessment Act 1979* to make the local environmental plan to put into effect *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012*.

## ATTACHMENTS

**Attachment A:** *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012*

## BACKGROUND

1. On 29 June 2015, Council resolved to adopt draft *Sydney Development Control Plan 2012 – Award of Heritage Floor Space to Government Buildings*. At that time, it was proposed to make further changes to the Heritage Floor Space scheme in the context of the Central Sydney Planning Review to be considered by Council and the Central Sydney Planning Committee later this year. It has since become evident that there is a need to bring forward proposed changes to the Heritage Floor Space controls in *Sydney Local Environmental Plan 2012* which are the subject of this report.

### Heritage Floor Space scheme

2. The City's Heritage Floor Space scheme is set out in *Sydney Local Environmental Plan 2012* (the LEP) and *Sydney Development Control Plan 2012* (the DCP). The objectives of the scheme are included in Part 6 of the LEP, namely:
  - (a) to establish a framework for the transfer of development potential from the site of a heritage building to another site in Central Sydney (clause 6.1); and
  - (b) to provide an incentive for the conservation and ongoing maintenance of heritage buildings in Central Sydney (clause 6.10).
3. The supply side of the Heritage Floor Space scheme arises from clause 6.10 of the LEP, which enables the land owner of a heritage-listed building in Central Sydney to be awarded Heritage Floor Space provided they undertake conservation works in accordance with an approved conservation management plan. Following satisfactory completion of the works and registration of relevant covenants, the award is entered in the City's Heritage Floor Space register. The awarded Heritage Floor Space can then be sold.
4. The demand side of the Heritage Floor Space scheme arises from clause 6.11 of the LEP which generally requires Heritage Floor Space to be allocated to a development that exceeds a floor space ratio of 8:1. To maximise the development potential of a site in Central Sydney, a developer generally needs to purchase Heritage Floor Space for allocation to their site. The relevant standard condition of consent requires the Heritage Floor Space to be allocated before the issue of a construction certificate.
5. Clauses 6.10 and 6.11 of the LEP set up a framework for a Heritage Floor Space market in which buyers and sellers negotiate the purchase price of Heritage Floor Space between themselves and the City acts as the scheme administrator. The City records details of awards, transfers of ownership and allocation in its Heritage Floor Space register, as required by clause 6.10. The City also summarises this information in quarterly Heritage Floor Space Updates that are published on its website and provide vendors' contact details for prospective purchasers.

**Timing of HFS allocation**

6. Translation of the Heritage Floor Space controls that previously existed in Sydney LEP 2005 into the Standard Instrument approach in Sydney LEP 2012 has had some unintended consequences. The recently exhibited planning proposal *Sydney LEP 2012 – Minor Policy & Housekeeping Amendments 2014* is proposing to clarify the applicable discount on Heritage Floor Space allocation for existing buildings. A further change to Sydney LEP 2012 is required to reflect the City's long-standing practice of only requiring Heritage Floor Space allocation after development consent has been issued.
7. It is proposed to amend clause 6.11 of the LEP to provide that consent must not be granted unless the consent authority is satisfied that appropriate arrangements have been made for allocation of the relevant amount of Heritage Floor Space. This will align the clause with the Council's long-standing practice and ensure that Heritage Floor Space allocation is not unnecessarily onerous.

**Alternative to Heritage Floor Space allocation**

8. On 24 March 2015, the Planning and Development Committee considered a report proposing the exhibition of *draft Sydney Development Control Plan 2012 – Award of Heritage Floor Space to Government Buildings*. That report included an analysis of the supply of, and demand for, Heritage Floor Space at the end of 2014 and considered the potential for conserving buildings and creating additional Heritage Floor Space supply. It noted that a record amount of development was approved in Central Sydney during 2014 and that demand for Heritage Floor Space from approved developments would likely absorb the estimated stock of Heritage Floor Space on the market, as well as Heritage Floor Space awards approved but not yet registered. By expanding the eligibility criteria for Heritage Floor Space awards to Government buildings, the draft DCP was intended to not only encourage the conservation of public buildings, but also create an additional source of future Heritage Floor Space supply.
9. It has since become evident that the amount of Heritage Floor Space genuinely on the market is significantly less than the amount registered. Recent advice from prospective purchasers suggests that some owners of Heritage Floor Space have no interest in liquidating this asset. Developers are having difficulty sourcing the Heritage Floor Space required by conditions of their development consents and this threatens to delay some major development projects.
10. An alternative to Heritage Floor Space allocation is required for a temporary period to provide time for the recent DCP amendment to deliver more Heritage Floor Space. It is therefore proposed to amend the LEP to allow Council to enter into agreements which may lead to the allocation of Heritage Floor Space being deferred to a specified date or, in the event that Heritage Floor Space cannot be obtained, replaced with an alternative arrangement. This would be a temporary measure applying only to development applications lodged before 31 December 2018. The timeframe is intended to overcome the identified temporary shortage of Heritage Floor Space at this current stage of the development cycle.

11. The new or revised clause is proposed to be supported by an *Alternative Heritage Floor Space Allocation Scheme* to be developed and adopted by Council. The scheme would allow a developer to enter into a voluntary planning agreement providing for Heritage Floor Space allocation to occur at a specified date after works have commenced or, alternatively, a monetary amount to be payable to Council to be used for heritage conservation. It is important that this scheme does not undermine the operation of the existing Heritage Floor Space market. Accordingly, the following are recommended principles for the scheme:
  - (a) the developer is to demonstrate to the satisfaction of Council that they have made genuine efforts to obtain Heritage Floor Space and have been unable to do so;
  - (b) the developer agrees to obtain the Heritage Floor Space by a specified date following the commencement of construction or, alternatively, pay a monetary amount equal to the market value of the Heritage Floor Space plus an uplift amount towards a heritage conservation fund to be established by Council;
  - (c) the developer is to provide a bank guarantee to Council for an amount equal to the current market value of the Heritage Floor Space required plus an uplift amount;
  - (d) the amount of the payment required if the Heritage Floor Space has not been allocated by the specified date will be set at a level intended to discourage the use of this option rather than allocation of Heritage Floor Space; and
  - (e) any funds obtained under the scheme will be directed towards heritage conservation works.
12. It is proposed to exhibit a draft *Alternative Heritage Floor Space Allocation Scheme* for public comment at the same time as the exhibition of the Planning Proposal.

### **Height threshold for Heritage Floor Space allocation**

13. Between 2000 and 2012 the City's planning controls required the allocation of HFS for development in Central Sydney that had an FSR greater than 8:1 and a building height greater than 55m. The height threshold was removed in Sydney LEP 2012 to bring about a modest increase in demand for Heritage Floor Space and, in turn, assist in rectifying an imbalance in the operation of the Heritage Floor Space market in the preceding years. Analysis of development applications approved under Sydney LEP 2012 with a requirement for Heritage Floor Space allocation indicates that removing the height threshold increased demand for Heritage Floor Space by about 3%.
14. Given that the market conditions for Heritage Floor Space have changed and there is now a shortage of available stock, it is no longer necessary to stimulate demand. It is therefore proposed to reinstate the 55m height threshold that applied to Heritage Floor Space allocation under Sydney LEP 2005. This is likely to have minimal impact on overall demand for Heritage Floor Space, but will reduce the number of developments requiring Heritage Floor Space.

**Another Heritage Floor Space award after 25 years**

15. In submissions to the exhibition of draft *Sydney Development Control Plan 2012 – Award of Heritage Floor Space to Government Buildings*, the Property Council of Australia and a private developer raised concerns about the long-term supply of Heritage Floor Space.
16. Over time, the potential sources of Heritage Floor Space supply have declined. Schedule 5 of Sydney LEP 2012 identifies about 300 heritage buildings in Central Sydney. Of these, 77 have been awarded Heritage Floor Space and cannot receive a further award under the current controls. As well, an increasing number of heritage buildings are not eligible for a Heritage Floor Space award under the current controls, because their development potential has been used in the development of a consolidated site.
17. Heritage conservation is an ongoing process. A number of heritage buildings where conservation works were undertaken over 25 years ago are due for further major works. Conservation management plans also need to be updated from time to time. It is therefore reasonable that, after some time has elapsed, heritage buildings that have been awarded Heritage Floor Space should be eligible for financial assistance to undertake further conservation works.
18. It is now proposed to allow a further award of Heritage Floor Space to heritage buildings that received an award of Heritage Floor Space more than 25 years ago if further works to conserve the building are undertaken. If they receive the same amount of Heritage Floor Space that they were previously awarded, this would initially add about 50,000m<sup>2</sup> of potential Heritage Floor Space supply from heritage buildings that received Heritage Floor Space awards before 1990. It would also allow for incremental replenishment of the long-term Heritage Floor Space supply over time when buildings previously awarded Heritage Floor Space become eligible for a further award and undertake further conservation works.

**Planning Proposal**

19. The Planning Proposal at Attachment A is a response to the current shortage of available Heritage Floor Space and the need to increase the long-term supply. It is also intended to correct an error in the legal drafting of the LEP controls.
20. The proposed changes to *Sydney Local Environmental Plan 2012* are to:
  - (a) enable heritage buildings granted an award of Heritage Floor Space more than 25 years ago to be eligible for a further award;
  - (b) enable the requirement to allocate Heritage Floor Space to be satisfied after development consent but prior to construction works;
  - (c) at the election of the landowner and for a temporary period, allow Council to enter into agreements which may lead to the allocation of Heritage Floor Space being deferred to a specified time or, in the event that Heritage Floor Space cannot be obtained, replaced with an alternative arrangement; and
  - (d) ensure that the requirement to allocate Heritage Floor Space in respect of accommodation floor space applies only to development that has a building height greater than 55m.

## KEY IMPLICATIONS

### Strategic Alignment - Sustainable Sydney 2030 Vision

21. *Sustainable Sydney 2030* is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This Planning Proposal is aligned with the following SS2030 strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City - the proposed controls are consistent with the objective of planning for growth and change in the city centre;
  - (b) Direction 8 - Housing for a Diverse Population - the proposed controls are consistent with the objective of addressing unnecessary barriers to residential development by the private market; and
  - (c) Direction 9 - Sustainable Development, Renewal and Design – the Planning Proposal reflects the objective of continually improving development controls and approval processes to minimise compliance and supply side costs. The draft controls arise from regular monitoring and review of the Heritage Floor Space scheme, including the associated land use planning controls and conditions of consent.

### Economic

22. While any change to the Heritage Floor Space planning controls impacts on the Heritage Floor Space market, the proposed changes are likely to have minimal impacts. More significantly, they will remove a potential barrier to property development in Central Sydney.

## RELEVANT LEGISLATION

23. *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*

## PUBLIC CONSULTATION

24. The Planning Proposal has been discussed with representatives of the Department of Planning and Environment. They have indicated in principle support for the Planning Proposal.
25. The public exhibition process will be informed by the Gateway Determination made by the Minister for Planning under section 56 of the *Environmental Planning and Assessment Act 1979*. This would most likely mean that the public exhibition would be a minimum of 28 days with notification:
- (a) on the City of Sydney website;
  - (b) in newspapers that circulate widely in the City of Sydney Local Government Area; and
  - (c) in writing to the owners of Heritage Floor Space, affected landowners and relevant community groups and stakeholders.

26. A full package of exhibition material will be made available for viewing on the City of Sydney website, at the One Stop Shop at Town Hall House, and at Customs House Library.

**GRAHAM JAHN, AM**

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