

ITEM 10. POST EXHIBITION - HERITAGE FLOOR SPACE AMENDMENTS TO SYDNEY LOCAL ENVIRONMENTAL PLAN 2012**FILE NO: X001004****SUMMARY**

This is a report on the outcomes of the public exhibition of Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012 and the Draft Alternative Heritage Floor Space Allocation Scheme (the Draft Scheme). These documents have been prepared in the wake of changes to Sydney Development Control Plan 2012 that enable public buildings not subject to long-term leases to be eligible for an award of heritage floor space. Like the changes to the development control plan, the current proposals are primarily a response to a critical shortage of heritage floor space that threatens to stall major development projects in Central Sydney.

The Planning Proposal sets out various amendments to the heritage floor space controls, including a new clause that for a temporary period will enable the Council to enter into agreements with developers for the allocation of heritage floor space to be deferred or replaced with an alternative arrangement to Council's satisfaction. The Draft Scheme establishes the alternative arrangement referred to in this clause.

The Planning Proposal and Draft Scheme were publicly exhibited from 8 January to 11 February 2016. This report discusses and responds to the issues raised in submissions, including the timeframe for applying the alternative arrangements, the ability to reapply for an award of heritage floor space, the operation of the Draft Scheme, impacts on the heritage floor space market, and the use of funds obtained under the Draft Scheme. It proposes that a number of matters raised by submitters be considered as part of a broader review of the heritage floor space scheme in the context of the Central Sydney Planning Review.

Under the *Environmental Planning and Assessment Act 1979*, the approval of Council and the Central Sydney Planning Committee are required for the Planning Proposal to be finalised as a local environmental plan. The Council's approval is required to finalise the Alternative Heritage Floor Space Allocation Scheme.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee note the matters raised in response to the public exhibition of Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012 and the Draft Alternative Heritage Floor Space Allocation Scheme, as shown at **Attachment A** to the subject report;
- (B) the Central Sydney Planning Committee approve the Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012, as shown at **Attachment B** to the subject report, to be made as a local environmental plan under section 59 of the Environmental Planning and Assessment Act 1979;

- (C) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 15 March 2016 that Council adopt the Alternative Heritage Floor Space Allocation Scheme, as shown at **Attachment C** to the subject report, to guide the preparation of planning agreements in respect of heritage floor space allocation; and
- (D) authority be delegated to the Chief Executive Officer to make any minor changes to Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012 to correct drafting errors prior to finalisation of the local environmental plan.

ATTACHMENTS

Attachment A: Summary of Submissions

Attachment B: Planning Proposal

Attachment C: *Draft Alternative Heritage Floor Space Allocation Scheme*

BACKGROUND

1. This report seeks approval of a Planning Proposal to amend the heritage floor space controls in Sydney Local Environmental Plan 2012 (SLEP 2012). It also seeks approval of an associated scheme that provides for the use of planning agreements and bank guarantees as an alternative to heritage floor space allocation under SLEP 2012 for an interim period.
2. A transferable heritage floor space scheme has operated in Central Sydney in various forms for over 40 years. The current scheme is established under clauses 6.10 and 6.11 of SLEP 2012. Clause 6.10 offers an incentive for owners of heritage buildings to conserve and maintain their property by enabling them to receive an award of heritage floor space after conservation works on the building are undertaken and relevant covenants apply to the site. Clause 6.11 provides that a developer may only utilise certain types of additional floor space if it allocates an amount of heritage floor space to its development site. Together these provisions establish a framework for a heritage floor space market in which vendors and purchasers negotiate directly with one another and the City maintains the heritage floor space register.
3. As at 31 December 2015, the amount of heritage floor space required by approved developments was 67,762m² and the total stock of heritage floor space was 52,416m². It is estimated that over 40,000m² of the existing stock is held by unwilling sellers. While some of these are developers with approved developments for which heritage floor space is yet to be allocated, the quantity of existing stock earmarked for specific development sites is not certain. Following representations from the City, an amount of 8,541m² of heritage floor space owned by the Fire Brigades is imminently to be released to the market. Another 9,869m² is potentially available in the short term when the owner completes the registration process. These figures confirm a shortfall between supply and demand.
4. The *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012* is primarily a response to the shortage of available heritage floor space in the market and the consequent threat of Central Sydney development projects being delayed. These matters were discussed in a report proposing amendments to heritage floor space controls in Sydney Development Control Plan (DCP) 2012 which was considered by Council's Planning and Development Committee on 24 March 2015. The DCP amendments, which enabled the award of heritage floor space to public buildings not subject to long-term leases, came into effect on 14 July 2015.
5. The Council, on 14 September 2015, and the Central Sydney Planning Committee, on 10 September 2015, resolved to approve the *Planning Proposal: Heritage Floor Space amendments to Sydney Local Environmental Plan 2012* for public exhibition. The planning proposal is intended to:
 - (a) correct an error in clause 6.11 *Utilisation of certain additional floor space requires allocation of heritage floor space*, by reverting to Council's long-standing practice of requiring heritage floor space allocation after a development consent, but before works begin;

- (b) 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 to the satisfaction of Council. This is to be a temporary measure applying only to development applications lodged before 31 December 2018;
 - (c) increase the long-term supply of heritage floor space by reopening applications for heritage floor space awards to owners of buildings awarded heritage floor space more than 25 years ago; and
 - (d) exclude buildings that are not more than 55m in height from the requirement to allocate heritage floor space when accommodation floor space is used.
6. The resolution of Council of 14 September 2015 also authorised the preparation of an Alternative Heritage Floor Space Allocation Scheme which will outline the circumstances when the City may accept a planning agreement as an alternative to heritage floor space allocation. The resolution of Council established the following principles for the scheme:
- (a) the developer is to demonstrate 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 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;
 - (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.
7. On 19 November 2015, the Minister issued a Gateway Determination for the Planning Proposal. The key conditions were:
- (a) that the Planning Proposal be updated to provide a prose-form explanation of the intended effect of the proposed changes to each clause in SLEP 2012; and
 - (b) consultation with Government Property NSW and the Office of Environment and Heritage.
8. The exhibited Planning Proposal at **Attachment B** includes the required additional explanation as an attachment. The Planning Proposal was exhibited with the Draft Alternative Heritage Floor Space Allocation Scheme (Draft Scheme) at **Attachment C** from 11 January to 8 February 2016. Consultation with the nominated public authorities occurred during the exhibition period.

KEY IMPLICATIONS

9. A total of 17 submissions were received, including submissions from the Property Council of Australia, six developers with consents requiring heritage floor space allocation, and at least six owners of heritage buildings. Most submitters support the proposals, but seek additional clarification or make additional suggestions for improving the operation of the heritage floor space scheme. **Attachment A** is a summary of all the submissions received, together with responses to the issues raised.
10. The overriding concern of submitters is the shortage of available heritage floor space supply. Most urge the Council to take immediate steps to address this issue, particularly the developers who outline recent failed attempts to source heritage floor space. Some submitters suggest that Council should realise heritage floor space from its own buildings, which is a matter the City is separately considering. Others request Council to allow negotiations for delayed allocation to occur immediately based on the intent to introduce the alternative arrangements.
11. None of the submitters object to the proposed amendments to:
 - (a) allow heritage floor space allocation requirements to be met after a development consent, but before works begin; and
 - (b) ensure that a developer using the 'accommodation floor space' clause only needs to obtain heritage floor space for allocation if the building height is greater than 55 metres.
12. The submitters' key concerns are discussed below.

Planning proposalTimeframe for alternate arrangements

13. Several submitters question the rationale for the proposed 31 December 2018 timeframe for enabling developers to enter into alternative arrangements consistent with the Draft Scheme. Some are concerned that it is too long and will impact demand for heritage floor space in the open market. Others are concerned that the timeframe may not be long enough, given the time lags involved in both amending local environmental plans and creating heritage floor space. Several request evidence that the timeframe will allow for the delivery of sufficient heritage floor space supply to meet the demand from upcoming developments.
14. The City is concerned not to subvert the operation of the heritage floor space market which is why the alternative arrangements will apply only for an interim period. The 31 December 2018 deadline takes account of the estimated time it will take to realise a reasonable supply of additional heritage floor space from public buildings. To this end, the City has been liaising closely with Government Property NSW, the agency responsible for coordinating a program to apply for heritage floor space for eligible State-owned buildings. The City is also in the process of resolving issues relating to potential awards to its own buildings in anticipation of the need to realise heritage floor space from them to boost the available short-term supply.

15. The alternative arrangements are only proposed to address the immediate supply constraints. The City is confident it can deliver sufficient heritage floor space from Government buildings within the next three years to overcome the current shortfall of supply. In any case, the 31 December 2018 deadline relates to the date of the application rather than the time by which all developers participating in the scheme must obtain their heritage floor space. Ongoing monitoring and further review of the heritage floor space scheme will be required to ensure it is sustainable beyond 2018. This is discussed below in the context of the Central Sydney Planning Review.

Ability to reapply for an award

16. Rather than allowing reapplications for heritage floor space awards after 25 years, a shorter timeframe is recommended by the Property Council of Australia (10 to 15 years) and a developer (15 to 20 years). The Property Council submits that the 25 year timeframe is insufficient to deliver the supply needed in the market. The developer notes that not every owner is likely to be motivated to pursue the re-award process. A resident of a heritage building submits that granting awards to buildings previously awarded heritage floor space is inequitable to heritage buildings that have not yet secured an award, particularly in light of the current 'real' value of heritage floor space. All question the rationale for the 25 year timeframe.
17. Allowing recipients of heritage floor space to rejoin the pool of eligible buildings after a reasonable timeframe will allow for incremental replenishment of the potential supply. It is not expected to deliver large amounts of additional supply in the short term, nor will it reduce the eligibility of other buildings to receive an award. The opportunity to apply for an award of heritage floor space has been, and will continue to be, equally available to all eligible buildings. However, an award is not intended to fund ongoing maintenance, as may be the inference of a shorter timeframe for reapplication. The heritage floor space scheme is intended to assist with major conservation works and 25 years is considered to represent the typical life cycle of major building works.
18. Having regard to the above matters, this report recommends that the exhibited planning proposal be adopted without any changes as the basis for the drafting of a local environmental plan to amend SLEP 2012.

Draft Alternative Heritage Floor Space Scheme

19. The Draft Scheme enables a developer to enter into a voluntary planning agreement in respect of heritage floor space allocation if it demonstrates it has been unsuccessful in obtaining heritage floor space in the market. The planning agreement will require the developer to lodge a bank guarantee with Council for an agreed amount which may be claimed by the Council in whole or part if, at an agreed date, the developer has not obtained heritage floor space on the open market for allocation to its development.
20. Most submitters seek additional detail around the operation of the Draft Scheme. The City has elected not to disclose how the amount of the bank guarantee is to be calculated. Instead, the Draft Scheme provides that the rate to be applied under the planning agreement (\$/m² of heritage floor space) will be established when the public benefit offer is accepted. This rate will be publicised when the planning agreement is exhibited. The Draft Scheme states that the rate will be based on the market value of heritage floor space (which is subject to change) plus an uplift amount.

21. Most submitters seek clarification as to how the 'market value' and the 'uplift amount' will be calculated. Some note that the rates published by the City in its quarterly Heritage Floor Space Updates do not necessarily reflect market rate because of factors such as the period of time over which the sales occurred and transfers of heritage floor space between interrelated entities. Submitters' suggestions for the appropriate amount of the uplift are:
- (a) nil – proposed by several developers;
 - (b) 10% - proposed by the Property Council and a real estate agent; and
 - (c) 50% - proposed by Government Property NSW.
22. Exhibition of the Draft Scheme has provided the opportunity for the City to canvas opinions on the methodology for calculating market value and the uplift amount. These comments will be taken into consideration by the City in arriving at an appropriate methodology before accepting any public benefit offer under the Draft Scheme.

Impact of alternative arrangements on the heritage floor space market

23. Several submitters, including Government Property NSW, raise concerns about the impact of the proposed alternative arrangements on the operation of the heritage floor space market. Government Property NSW and a resident of a heritage building are concerned that the alternative arrangements under the Draft Scheme will cap the price at which heritage floor space can trade in the market. A real estate agent submits that the price of heritage floor space has already increased to just below the level of uplift vendors anticipate the City will adopt in planning agreements.
24. The Draft Scheme attempts to balance the needs of developers and the needs of vendors of heritage floor space by requiring participating developers to make real and ongoing efforts to purchase heritage floor space in the market. Evidence of these attempts must be demonstrated prior to the final acceptance by Council of a monetary contribution to the Heritage Conservation Fund. It is inevitable that any change to the heritage floor space controls impacts on the heritage floor space market. However, this must be balanced against the broader and urgent need for the City to facilitate orderly development in Central Sydney.

Use of Heritage Conservation Fund

25. The Draft Scheme establishes that any moneys obtained under the scheme will be used for the preparation of conservation management plans, heritage conservation works undertaken by the City, or the improvement of the operation of the heritage floor space scheme. Several submitters raise concerns about the Council's use of the funds and the potential for a conflict of interest in administering the scheme. Others request that the funds be made available for conservation works undertaken by parties other than Council.

26. It is the City's preference that no money is obtained under the Draft Scheme because over time sufficient heritage floor space supply will be made available in the market. In the event that money is collected, it may only be used for a public purpose consistent with the requirements for planning agreements set out in section 93F of the *Environmental Planning and Assessment Act 1979*. The actual use of the Heritage Conservation Fund will depend on whether and when any funds are actually obtained, given that payments under the scheme may not fall due for some years after the date of the relevant planning agreement. In the meantime, the Draft Scheme establishes a nexus between the City's potential use of the funds and heritage conservation objectives in Central Sydney. It is considered that the Draft Scheme and the planning agreement process provide a sound basis for dealing with any perceived conflicts of interest.
27. Having regard to the above matters, this report recommends that the exhibited Draft Scheme be adopted by Council without change as its Alternative Heritage Floor Space Allocation Scheme.

Changes not currently contemplated

Amount of heritage floor space award for non-rateable buildings

28. Three church groups raise concerns about the formula for determining the amount of heritage floor space that may be awarded to non-rateable buildings, as it results in a lesser amount of heritage floor space than the formula applying to rateable buildings or public buildings. The Property Council believes that a thorough examination of factors which are negatively impacting on supply would result in the City using a standard formula to calculate applicable heritage floor space award value in both rateable and non-rateable buildings.
29. The relevant formulae are in Sydney Development Control Plan 2012 which is not the subject of the current amendments. While the issue warrants further consideration, it is outside the scope of the current proposals because a different process would need to be commenced to amend the DCP if changes to the formulae were supported.

Other suggested changes

30. Submitters also raise a number of other issues that either relate to the DCP or are significant changes that, if supported, would require a new gateway determination and re-exhibition of the planning proposal. They include:
- (a) measures to address 'banking' of heritage floor space;
 - (b) expanding the area to which heritage floor space awards apply;
 - (c) measures to address fragmentation of available heritage floor space; and
 - (d) the pre-requisites and process for receiving an award of heritage floor space.
31. While these issues are worthy of further consideration, they do not warrant delaying the current planning proposal, given the urgent need to prevent development in Central Sydney from stalling.

Broader review of Heritage Floor Space scheme

32. The Property Council and others share the City's opinion that a broader review of the heritage floor space scheme is necessary to ensure it is sustainable beyond 2018. Calculation of the award for non-rateable buildings and the other suggested changes above could be considered as part of this review.
33. The City has been reviewing the planning controls for Central Sydney to inform the Central Sydney Planning Strategy that will provide the framework for changes to the planning controls to serve Global Sydney. Heritage floor space is a key planning mechanism in Central Sydney and has been considered in the review. As the heritage floor space controls are coupled with floor space ratio and other controls applying in Central Sydney, the implications of broader changes to the controls and changes to the heritage floor space scheme need to be considered together.
34. The Strategy acknowledges the importance of the heritage floor space scheme in delivering heritage conservation within Central Sydney, as well as recent challenges with securing heritage floor space for allocation. Many of the suggestions made in submissions to this planning proposal are being considered as part of the Central Sydney Planning Strategy. The Strategy will be reported to Council in the coming months. There will be an opportunity for further feedback and comments on the controls as part of the process to modify the planning controls.

Strategic Alignment - Sustainable Sydney 2030 Vision

35. *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. The planning proposal and Draft Scheme are 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.

Organisational Impact

36. The Draft Scheme incorporates a template public benefit offer to support a standardised planning agreement and, in turn, minimise resource impacts on the organisation.

Economic

37. As noted above, any change to the heritage floor space planning controls impacts on the heritage floor space market. More significantly, the proposed changes to the heritage floor space controls will remove a potential barrier to property development in Central Sydney.
38. If monies are received under the Draft Scheme, they will be applied to heritage conservation activities that will enhance Global Sydney and, in turn, benefit all property owners. They may also be used to improve the operation of the heritage floor space scheme, including the efficacy of the market.

RELEVANT LEGISLATION

39. *Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 and City of Sydney Act 1988.*

CRITICAL DATES / TIME FRAMES

40. The Gateway Determination of 19 November 2015 set the timeframe for completing the local environmental plan at 12 months. It also established that the Council is not authorised to exercise delegation to make the local environmental plan because the proposal involves a significant number of public buildings.
41. Given the urgent need to implement the alternative arrangements, the City intends to liaise closely with the Department of Environment and Planning and the Greater Sydney Planning Commission to facilitate their efficient consideration of the Planning Proposal and timely drafting of the local environmental plan.

PUBLIC CONSULTATION

42. The Planning Proposal and Draft Scheme were exhibited on the City's consultation website, Sydney Your Say, and at the One Stop Shop and Customs House Library from 8 January to 11 February 2016. Public notification of the exhibition appeared in The Sydney Morning Herald on 11 January 2016 and the Central Sydney Magazine on 13 January 2016.
43. Invitations to comment on the exhibited documents were mailed to:
 - (a) the owners of heritage buildings in Central Sydney; and
 - (b) the owners of heritage floor space.
44. Invitations to comment were also sent by email to:
 - (a) Government Property NSW and the Office of Environment and Heritage;
 - (b) the Property Council of Australia and the Urban Taskforce;
 - (c) Haymarket and Sydney Chambers of Commerce;
 - (d) ResNet; and
 - (e) individuals known to have an interest in the heritage floor space scheme.

45. In response to the exhibition, 17 submissions were received, including a submission each from Government Property NSW and the Office of Environment and Heritage. Both public authorities express support for the proposed amendments. Government Property NSW raises a concern about the potential impact of the alternative arrangements on the heritage floor space market (discussed above). They also suggest future consideration be given to:
- (a) streamlining the assessment process for receiving an award of heritage floor space;
 - (b) issuing part awards for partial completion of conservation works (Staged awards are already permitted under SDCP 2012);
 - (c) enabling heritage floor space awards to Central Sydney buildings with no FSR control, such as the Art Gallery of NSW;
 - (d) broadening the Central Sydney area boundary to enable the heritage floor space scheme to apply in The Rocks, Millers Point and Walsh Bay; and
 - (e) funds from the proposed Conservation Management Fund being made available to heritage building owners for preparing conservation management plans and undertaking conservation works (discussed above).
46. Following consideration of the matters raised in all the submissions, this report recommends that both the exhibited Planning Proposal and the exhibited Draft Alternative Heritage Floor Space Allocation Scheme be adopted without change.

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Director City Planning, Development and Transport

(Glenda Goldberg, Senior Planner)