

**ITEM 5. POST EXHIBITION - MINOR AMENDMENTS TO HERITAGE FLOOR SPACE SCHEME****FILE NO: X008656****SUMMARY**

The heritage floor space scheme is an important feature of the planning controls for central Sydney and has been operating since the early 1970s. It provides a source of funding to undertake approved conservation and restoration works and compensates owners of heritage buildings for unrealisable development potential by allowing for the award of heritage floor space. This heritage floor space may then be sold to developers who, as a condition of opting to use additional floor space, are required to allocate an amount of heritage floor space to their development site. The scheme has contributed to the conservation and restoration of 79 buildings.

This report informs the Central Sydney Planning Committee of the outcomes of the public exhibition of minor changes to the heritage floor space scheme and recommends approval of the final controls. The changes will allow alterations and additions of less than 100 square metres to existing buildings to proceed without the requirement to purchase heritage floor space. The changes also address minor procedural and administrative issues. Together they will support business in central Sydney and promote more efficient operation of the scheme. The proposed changes are to *Sydney Local Environmental Plan 2012*, *Sydney Development Control Plan 2012* and the Alternative Heritage Floor Space Allocation Scheme.

In April 2017, following Council and Central Sydney Planning Committee resolutions, the Greater Sydney Commission issued a Gateway determination allowing public exhibition and delegating power to amend the Local Environmental Plan to the City. The draft controls were publicly exhibited from 16 May 2017 to 13 June 2017. Invitations to comment on the exhibited documents were sent to the Office of Environment and Heritage, the owners of heritage buildings in central Sydney and the owners of heritage floor space. Two submissions were received during the exhibition period. Notably, the Office of Environment and Heritage raised no objection to the proposed amendments. The submissions and the City's response are discussed in the body of this report and summarised at Attachment A. This report does not recommend any changes to the exhibited controls as a result of the submissions.

If approved by Council and the Central Sydney Planning Committee, the City will request Parliamentary Counsel commence the preparation of the local environmental plan amendment and will finalise the amendments to the development control plan and the Alternative Heritage Floor Space 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, Draft Sydney Development Control Plan 2012 – Heritage Floor Space Amendments* and the amended *Alternative Heritage Floor Space Allocation Scheme*, as shown at Attachment A to the subject report;

- (B) the Central Sydney Planning Committee approve *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 31 July 2017 that Council approve *Draft Sydney Development Control Plan 2012 – Heritage Floor Space Amendments*, as shown at Attachment C to the subject report;
- (D) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 31 July 2017 that Council approve the amended *Alternative Heritage Floor Space Allocation Scheme*, as shown at Attachment D to the subject report; and
- (E) authority be delegated to the Chief Executive Officer to amend the planning proposal, to correct any minor errors or omissions prior to the making of the amendment to *Sydney Local Environmental Plan 2012* being made, and note the recommendation to Council's Planning and Development Committee on 31 July 2017 that the Chief Executive Officer be delegated authority to amend the development control plan and amended alternative heritage floor space allocation scheme to correct any minor errors or omissions during this period.

## ATTACHMENTS

**Attachment A:** Summary of submissions

**Attachment B:** Planning Proposal: Heritage Floor Space – Amendments to Sydney Local Environmental Plan 2012. Dated July 2017.

**Attachment C:** Draft Sydney Development Control Plan 2012 – Heritage Floor Space Amendments. Dated July 2017.

**Attachment D:** Amended Alternative Heritage Floor Space Allocation Scheme. Dated July 2017.

**BACKGROUND**

1. This report seeks approval of a planning proposal to amend the heritage floor space controls in *Sydney Local Environmental Plan 2012* (Sydney LEP 2012). It recommends that the Central Sydney Planning Committee note supporting amendments to *Sydney Development Control Plan 2012* (Sydney DCP 2012) and the Alternative Heritage Floor Space Allocation Scheme.
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 Sydney LEP 2012. Clause 6.10 offers an incentive for owners of heritage buildings to conserve and maintain their property by enabling them to be awarded heritage floor space after conservation works on the building are undertaken and relevant covenants registered on title. 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 with the City acting as the administrator of the scheme.
3. As at 31 March 2017, the amount of heritage floor space required by approved developments was 65,425 square metres and the total stock of heritage floor space was 48,034 square metres. It is estimated that over half 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. These figures confirm an ongoing shortfall between supply and demand.
4. The Alternative Heritage Floor Space Allocation Scheme was approved by Council and the Central Sydney Planning Committee in response to developers experiencing difficulty in purchasing heritage floor space and the risk of major development projects being delayed as a result. It came into effect in July 2016. The scheme allows developers to enter into a voluntary planning agreement which can provide for the heritage floor space allocation to occur at a specified date after works have commenced or, where the developer can demonstrate that genuine attempts to purchase the required heritage floor space have not been successful, a monetary amount to be payable to Council to be used for heritage conservation. To date, eight separate developers have opted to use the alternative scheme.

**The exhibited controls**

5. In March 2017, Council and the Central Sydney Planning Committee approved for public exhibition a planning proposal to amend Sydney LEP 2012 and amendments to Sydney DCP 2012 and the Alternative Heritage Floor Space Scheme.
6. The planning proposal, at Attachment B, seeks to introduce a clause which provides for an exemption from the requirement to allocate heritage floor space. The exemption would apply in the case of minor alterations or additions to an existing building where less than 100 square metres of gross floor area is created.

7. This scale of development typically has a short development timeframe and small budget. Developers are reporting difficulties in purchasing heritage floor space and are seeking to utilise the Alternative Heritage Floor Space Allocation scheme. However, the additional time and costs associated with entering into the alternative scheme are significant enough to discourage this type of minor development. Anecdotal information suggests some projects may be stopped due to the additional time and cost.
8. Previous iterations of Sydney LEP 2012 allowed the consent authority to waive the requirements for heritage floor space allocations created through alterations and additions to existing buildings. However, the ambiguity of the clause created the opportunity for significant allocations to be waived, contrary to the objective of the scheme. A previous amendment to address this ambiguity resulted in the unintended consequence of all alterations and additions attracting an allocation, irrespective of size. The proposed amendment addresses this issue.
9. The planning proposal will facilitate minor development in central Sydney, while not unduly affecting the heritage floor space market. The ability to progress these minor alterations and additions in a timely manner is important for building owners in central Sydney to respond to changes to business needs and tenant requirements.
10. The amendment to Sydney DCP 2012, at Attachment C, clarifies that the total sum paid in exchange for an amount of heritage floor space is to be disclosed to the City. Full disclosure of prices allows the City to publish an accurate average sales price in its quarterly heritage floor space. The amendment will provide clarity and support efficient and effective operation of the market.
11. The amendment to the Alternative Heritage Floor Space Scheme, at Attachment D, removes a drafting error and provides clarity that entering into an arrangement involves additional cost and time to be borne by the proponent.

### **Public exhibition**

12. Following receipt of a Gateway determination, the draft controls were exhibited on the Sydney Your Say website and at the One Stop Shop and Customs House Library from 16 May 2017 to 13 June 2017. Public notification of the exhibition appeared in The Sydney Morning Herald on 16 May 2017 and the Central Sydney Magazine on 17 May 2017.
13. Invitations to comment on the exhibited documents were mailed to the Office of Environment and Heritage, the owners of heritage buildings in central Sydney and the owners of heritage floor space.
14. Two submissions were received during the exhibition period from the Office of Environment and Heritage and a resident of a heritage building in central Sydney. Attachment A provides a summary of the submissions and the City's response.
15. The Office of Environment and Heritage raised no objection to the proposed amendments.
16. The heritage building resident submits that, while the proposed amendments will support business in central Sydney, they will not enhance the conservation of heritage buildings.

17. The proposed amendments respond to the City's ongoing monitoring of the scheme and its operation. Since its inception, the heritage floor space scheme has contributed to the conservation of 79 heritage buildings. As such, the proposed amendments will ensure the continued effective and efficient operation of the scheme and its contribution to heritage conservation in central Sydney.
18. This report recommends that the exhibited controls be adopted without any changes.

### **Review of heritage floor space scheme**

19. To address imbalances between supply and demand, the City has progressed other amendments to the heritage floor space controls in the last two years. These include allowing Government owned buildings to apply for an award, allowing buildings to apply for a second award after 25 years, and excluding buildings under 55 metres in height from the requirement for an allocation.
20. In light of continued imbalance between supply and demand, the draft Central Sydney Strategy, approved by Council and the Central Sydney Planning Committee in July 2016, includes actions to review the heritage floor space scheme and consider other means of encouraging heritage conservation. The City will commence this review shortly.
21. The amendments discussed in this report are intended to improve the efficiency of the scheme, are minor only and are to be progressed prior to the broader review.

### **KEY IMPLICATIONS**

#### **Strategic Alignment - Sustainable Sydney 2030 Vision**

22. *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 proposed amendments are aligned with the following SS2030 strategic directions and objectives:
  - (a) Direction 1 - A Globally Competitive and Innovative City – The proposed amendments are consistent with the objective of planning for growth and change in central Sydney.
  - (b) Direction 9 - Sustainable Development, Renewal and Design – The proposed amendments reflect the objective of continually improving development controls and approval processes to minimise compliance and supply side costs. They arise from regular monitoring and review of the heritage floor space scheme, including the associated land use planning controls and conditions of consent.

### **Economic**

23. The proposed amendments are likely to have minimal impact on the heritage floor space market. The reduction in demand for heritage floor space is estimated at approximately 250 square metres per year. As a proportion of overall new demand, which has averaged 8,300 square metres per year since 1990, the reduction is negligible. More significantly, the amendments will remove a potential barrier to property development in central Sydney and improve the operation and transparency of the scheme.

**RELEVANT LEGISLATION**

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

**CRITICAL DATES / TIME FRAMES**

25. The Gateway determination of 24 April 2017 sets a maximum timeframe for completing the local environmental plan at nine months. It also gives Council delegation to make the local environmental plan amendment.
26. Following Council and Central Sydney Planning Committee approval, the City will liaise with Parliamentary Counsel to ensure timely drafting and finalisation of the amendment.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(Tim Aldham, Senior Planner)