

**ATTACHMENT B**

**PLANNING PROPOSAL: HERITAGE FLOOR  
SPACE - AMENDMENTS TO SYDNEY  
LOCAL ENVIRONMENTAL PLAN 2012**

**DATED JULY 2017**



# Planning Proposal: Heritage Floor Space

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Amendments to Sydney Local Environmental Plan 2012 – **March July 2017**



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# Introduction

This planning proposal explains the intent of, and justification for, a proposed amendment to *Sydney Local Environmental Plan 2012* (the LEP).

The purpose of the planning proposal is to implement an amendment to the LEP that will improve the operation of the heritage floor space scheme in central Sydney. The proposed amendment will allow the consent authority to exempt minor alterations and additions to existing buildings from the requirement to purchase and allocate heritage floor space.

The planning proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) and the relevant Department of Planning Guidelines including 'A guide to preparing local environmental plans' and 'A guide to preparing planning proposals'.

## Background

A transferable heritage floor space scheme to encourage heritage conservation in central Sydney has been in existence in various forms since the early 1970s. It was originally conceived to enable the unrealised development potential of heritage-listed buildings to be sold and used elsewhere in central Sydney where a floor space bonus was available. The transfer is dependent on agreed conservation works being completed and a covenant or similar instrument being placed on the land title of the heritage building extinguishing its development potential. The scheme has contributed to the conservation of 76 heritage-listed buildings including one of national significance and 34 of State significance. Examples include the Strand Arcade, St Mary's Cathedral, the Great Synagogue and Sydney Boys Grammar.

The current scheme is established 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:

- 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
- to provide an incentive for the conservation and ongoing management (clause 6.10).

The supply side of the heritage floor space scheme arises from provisions in the LEP which enable 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 may then be sold to offset the cost of conserving the heritage building.

The demand side of the heritage floor space scheme arises from provisions in the LEP which generally require 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 planning controls set 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 LEP provisions are worded in such a way that any alteration or addition to an existing building requires an allocation of heritage floor space, irrespective of the amount of new gross floor area being created by the alteration or addition.

## Part 1: Objectives or intended outcomes

The objective of this planning proposal is to introduce a floor space based threshold for requiring allocations of heritage floor space in existing buildings.

## Part 2: Explanation of the provisions

To achieve the proposed objectives, the planning proposal provides for changes to clause 6.11(3) of the LEP.

Clause 6.11(3) provides that in the case of an alteration or addition to an existing building, the amount of heritage floor space required to be allocated is to be calculated based on the gross floor area of the alteration and addition only, and not any existing floor space. The allocation is to be required irrespective of the amount of new gross floor area being created.

This planning proposal seeks to amend this clause so that alterations and additions resulting in an increase in gross floor area of less than 100 square metres do not require an allocation of heritage floor space. Final drafting of the clause will be subject to approval by Parliamentary Counsel's Office, however, proposed drafting is below.

To be inserted after 6.11(3):

(4) Notwithstanding (3), if the gross floor area of the building following the alterations and additions will not be more than 100 square metres greater than the gross floor area of the existing building, no heritage floor space is required to be allocated. For the purposes of this clause, gross floor area of the existing building is to be calculated in accordance with this Plan.

## Part 3: Justification

### Section A – Need for the planning proposal

In 2016 the City assessed approximately 300 development applications for alterations and additions to existing buildings in central Sydney. The majority of these applications sought consent for works such as external alterations, internal fitouts, installation of signage and changes of use, and did not involve the creation of new gross floor area. The small number that included creation of additional gross floor area typically involved in filling internal stair voids, enclosing balconies to create wintergardens and converting basement storage to alternate uses.

Being able to undertake these types of alterations and additions is important for commercial building owners in central Sydney so they may respond to changing business needs and tenant requirements.

Under clause 6.11(3) of the LEP, all alterations and additions involving the creation of new gross floor area require an allocation of heritage floor space (provided 6.11(1) already required the allocation) irrespective of the amount of new gross floor area being created.

In May 2016 amendment 21 to the LEP came into force. The amendment sought to clarify ambiguity in the heritage floor space clause that was leading to major alterations and additions to existing buildings being approved without the requirement to allocate heritage floor space. An unintended consequence of the drafting of this amendment was that the discretion of the consent authority to waive minor alterations and additions from the requirement to allocate heritage floor space has been removed.

There is currently a shortage of heritage floor space on the market. At the end of 2016 there was a total stock of 53,053sqm remaining from awards and allocations. However, the majority of this heritage floor space is not realistically available for sale as a number of owners are banking their awards or have no interest in liquidating it at this time. Meanwhile, the amount of heritage floor space required by approved developments stands at 70,288sqm.

This shortage of supply means that developers are experiencing difficulties in purchasing heritage floor space and are opting to use the Alternative Heritage Floor Space Scheme. However, the time and cost associated with the alternative scheme, when compared to the overall project timeframe and cost, is proving a barrier for minor alterations and additions. By introducing a threshold where only alterations and additions involving the creation of over 100sqm of gross floor area require an allocation, these minor projects will be able to proceed.

The proposed amendment will reduce the number of developments requiring a heritage floor space allocation, however the overall impact on demand is likely to be minimal. The amount of heritage floor space required to be purchased in connection with development applications for alterations and additions under 100sqm is estimated at approximately 250sqm each year. In 2016, the total heritage floor space required to be purchased under development consents issued that year was 4,688sqm. However, this figure fluctuates significantly from year to year. For example in 2015 a total of approximately 36,000sqm was required to be purchased across several major development sites approved in that calendar year. Therefore, as a proportion of total heritage floor space requirements, 250sqm per year is negligible.

**Is the planning proposal a result of any strategic study or report?**

No. The planning proposal is a response to ongoing monitoring of the operation of the heritage floor space scheme.

**Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. Given that the thresholds for requiring an allocation of heritage floor space are set out in the LEP, the only way to amend them is via the preparation of a planning proposal.

## **Section B – Relationship to strategic planning framework**

**Is the planning proposal consistent with the objectives and actions of A Plan for Growing Sydney and the draft Central District Plan?**

In December 2014 the NSW Government published 'A Plan for Growing Sydney'. It outlines a vision for Sydney over the next 20 years and identifies key challenges facing Sydney. These include a population increase of 1.6 million by 2034, the need to provide 689,000 new jobs by 2031 and a requirement for 664,000 new homes.

In responding to these challenges, 'A Plan for Growing Sydney' sets out four goals:

- A competitive economy with world-class services and transport
- A city of housing choice with homes that meet our needs and lifestyles
- A great place to live with communities that are strong, healthy and well connected
- A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

To achieve these goals, the plan proposes 22 directions and associated actions. By providing for a more efficient heritage floor space scheme, and facilitating minor alterations and additions to existing buildings in central Sydney, this planning proposal is consistent with the following directions in particular:

- Direction 1.1: Grow a more internationally competitive Sydney CBD
- Direction 3.4: Promote Sydney’s heritage, arts and culture

The draft Central District Plan, on public exhibition until the end of March 2017, provides detailed planning priorities and actions for each District. By facilitating minor alterations and additions to existing buildings in central Sydney, this planning proposal supports the productivity priorities of the plan. By supporting the operation of a more efficient heritage floor space scheme, it is consistent with the liveability priorities of the plan.

**Is the planning proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?**

Sustainable Sydney 2030 outlines the City’s vision for a green, global and connected City of Sydney and sets targets, objectives and actions to achieve that vision. The vision was adopted by Council in 2008.

This planning proposal relates primarily to ‘Direction 9 – Sustainable Development, Renewal and Design’. It reflects the objective of continually improving development controls and approval processes to minimise compliance and supply side costs. The amendment arises from regular monitoring and review of the heritage floor space scheme, including the associated land use planning controls and conditions of consent. The planning proposal also relates to Direction 1 – A globally competitive and innovative City and the amendment is consistent with the objective of planning for growth and change in central Sydney.

**Is the planning proposal consistent with applicable state environmental planning policies (SEPPs)?**

This planning proposal is consistent with applicable SEPPs and deemed SEPPs (formerly known as Regional Environmental Plans (REPs)) as shown in Table 1. In this section, ‘consistent’ means that the planning proposal does not contradict or hinder the application of the relevant SEPP or REP.

**Table 1 – Consistency with SEPPs and REPs**

SEPPs with which this planning proposal is consistent	SEPP 32—Urban Consolidation (Redevelopment of Urban Land); SEPP 33—Hazardous and Offensive Development; SEPP 55—Remediation of Land; SEPP 64—Advertising and Signage; SEPP 65—Design Quality of Residential Flat Development; SEPP 70—Affordable Housing (Revised Schemes); SEPP (Building Sustainability Index: BASIX) 2004; SEPP (Housing for Seniors or People with a Disability) 2004; SEPP (Major Development) 2005; SEPP (Infrastructure) 2007; SEPP (Exempt and Complying Development Codes) 2008; SEPP (Affordable Rental Housing) 2009
SEPPs that are not applicable to this planning proposal	SEPP 1 – Development Standards; SEPP 14—Coastal Wetlands; SEPP 15—Rural Landsharing Communities; SEPP 19—Bushland in Urban Areas; SEPP 21—Caravan Parks; SEPP 26—Littoral Rainforests; SEPP 29—Western Sydney Recreation Area; SEPP 30—Intensive Agriculture; SEPP 33—Hazardous and Offensive Development; SEPP 36—Manufactured Home Estates; SEPP 39—Spit Island Bird Habitat; SEPP 44—Koala Habitat Protection; SEPP 47—Moore Park Showground; SEPP 50—Canal Estate Development; SEPP 52—Farm Dams and Other Works in Land and Water Management Plan Areas; SEPP 59—Central Western Sydney Regional Open Space and Residential; SEPP 62—Sustainable Aquaculture; SEPP 71—Coastal Protection; SEPP (Kurnell Peninsula) 1989; SEPP (Penrith Lakes Scheme) 1989; SEPP (Sydney Region Growth Centres) 2006; SEPP (Kosciuszko National Park—Alpine Resorts) 2007; SEPP (Mining, Petroleum Production and Extractive Industries) 2007; SEPP (Miscellaneous Consent Provision) 2007; SEPP (Rural Lands) 2008; SEPP (Western Sydney Employment Area) 2009; SEPP (Western Sydney Parklands) 2009; SEPP (Urban Renewal) 2010; SEPP (SEPP 53 Transitional Provisions) 2011; SEPP (State and Regional Development) 2011; SEPP (Sydney Drinking Water Catchment) 2011; SEPP (Three Ports) 2013
REPs with which this planning proposal is consistent	Sydney REP (Sydney Harbour Catchment) 2005
REPs that are not applicable to this planning proposal	Sydney REP 8—(Central Coast Plateau Areas); Sydney REP 9—Extractive Industry (No 2—1995); Sydney REP 16—Walsh Bay; Sydney REP 18—Public Transport Corridors; Sydney REP 19—Rouse Hill Development Area; Sydney REP 20—Hawkesbury- Nepean River (No 2—1997); Sydney REP 24—Homebush Bay Area; Sydney REP 26—City West; Sydney REP 30—St Marys; Sydney REP 33—Cooks Cove; Greater Metropolitan REP No 2— Georges River Catchment; Darling Harbour Development Plan No. 1; Sydney Cove Redevelopment Authority Scheme.

**Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

This planning proposal is consistent with applicable Ministerial Directions as shown in Table 2. In this section, ‘consistent’ means that the planning proposal does not contradict or hinder application of the relevant direction.

**Table 2 – Consistency with Ministerial Directions under section 117**

Ministerial Directions with which this planning proposal is consistent	1.1 Business and Industrial Zones; 2.3 Heritage Conservation; 3.1 Residential Zones; 3.3 Home occupations; 3.4 Integrating Land use and Transport; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; 6.3 Site Specific Provisions; 7.1 Implementation of A Plan for Growing Sydney
Ministerial Directions that are not applicable to this planning proposal	1.2 Rural Zones; 1.3 Mining, Petroleum Production and Extractive Industries; 1.4 Oyster Aquaculture; 1.5 Rural Lands; 2.1 Environmental Protection Zones; 2.2 Coastal Protection; 2.4 Recreation Vehicle Areas; 3.2 Caravan Parks and Manufactured Home Estates; 3.5 Development Near Licensed Aerodromes; 3.6 Shooting Ranges; 4.2 Mine subsidence and Unstable land; 4.4 Planning for Bushfire Protection; 5.1 Implementation of Regional Strategies; 5.2 Sydney Drinking Water Catchments; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.4 Commercial and Retail Development along the Pacific Highway, North Coast; 5.8 Second Sydney Airport, Badgerys Creek; 5.9 North West Rail Link Corridor Strategy; 7.2 Implementation of Greater Macarthur Land Release Investigation

## Section C – Environmental, social and economic impact

**Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

This planning proposal will not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

**Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No. The proposed amendments will not result in environmental impacts that cannot be controlled through development assessment processes.

**How has the planning proposal adequately addressed any social and economic effects?**

Any change to the heritage floor space planning controls has the potential to impact the operation of the heritage floor space market. In preparing this planning proposal the City has assessed the forecast impact on heritage floor space demand of excluding minor alterations and additions from the requirement to purchase and allocate heritage floor space. Based on historical development in central Sydney, the forecast reduction in overall demand will be minor and have a negligible impact on the market. More importantly, it will remove a barrier to genuinely minor alterations and additions in central Sydney.

## Section D – State and Commonwealth interests

**Is there adequate public infrastructure for the planning proposal?**

Yes. The proposed amendments will not give rise to additional infrastructure demand.

## What are the views of State and Commonwealth public authorities consulted in the gateway determination?

~~Appropriate consultation with State and Commonwealth public authorities will be undertaken in accordance with the Gateway Determination once issued.~~

~~In accordance with the Gateway Determination, the City consulted with the Office of Environment and Heritage. Its submission raised no objection to the planning proposal.~~

## Part 4: Mapping

This planning proposal does not include any amendments to maps.

## Part 5: Community consultation

~~This planning proposal will be publicly exhibited for a period of not less than 28 days, in accordance with section 5.2 of 'A guide to preparing LEPs', to allow for proper consultation with the community, industry stakeholders and affected landowners.~~

~~The public exhibition is proposed to be notified by:~~

- ~~• Advertisement on the City of Sydney website~~
- ~~• Advertisement in the Sydney Morning Herald~~
- ~~• Direct communication with owners of heritage floor space, owners of heritage buildings in central Sydney and key industry and community groups.~~

~~Exhibition material will be made available for viewing at the CBD One Stop Shop at Town Hall House and at the Customs House Library.~~

~~The exact requirements for community consultation will be set out in the Gateway Determination when issued.~~

~~The planning proposal was publicly exhibited in accordance with section 5.2 of 'A guide to preparing LEPs'. It was 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.~~

~~Invitations to comment on the exhibited documents were mailed to the owners of heritage buildings in central Sydney and the owners of heritage floor space.~~

~~Besides the submission from the Office of Environment and Heritage, one submission was received. The submission, and the City's response, is summarised in the below table:~~

#	Submitter	Summary of key points made in submission	Officer's response	Recommendation
1	Office of Environment and Heritage – Heritage Division	Given that the proposed changes will not adversely impact the	Noted.	No change to exhibited controls.

#	Submitter	Summary of key points made in submission	Officer's response	Recommendation
		conservation of heritage buildings, no objection is raised.		
2	Resident of a heritage building in central Sydney	The amendment will support business but will not enhance the conservation of heritage buildings.	<p>The heritage floor space scheme has been operating for over 40 years and has contributed to the successful conservation and restoration of 79 buildings in central Sydney.</p> <p>The proposed amendment to Sydney LEP 2012, to introduce a threshold for the purchase of HFS, will support businesses. The reduction in demand for heritage floor space will be negligible at approximately 3% of historic annual demand and will not reduce the incentive to conserve heritage buildings. The proposed amendments to Sydney DCP 2012 and the Alternative HFS Allocation Scheme addresses procedural and administrative aspects of the scheme.</p> <p>Together, the amendments will ensure the scheme continues to operate efficiently and effectively to drive</p>	No change to exhibited controls.

#	Submitter	Summary of key points made in submission	Officer's response	Recommendation
			heritage conservation in central Sydney.	
		The report comments on supply and demand but does not mention the price of heritage floor space which is perverse.	While the City's planning controls establish the opportunity to supply and acquire heritage floor space, the creation and purchase price is established by buyers and sellers without the City's involvement. The City monitors and reports on supply and demand and sales data in order to provide buyers and sellers with accurate and timely information.	No change to exhibited controls.
		The Central Sydney Development Contributions Plan 2013 provides for adaptive reuse of heritage buildings in central Sydney to be exempt from paying levies. It does not, however, provide for exemptions for works to heritage buildings which do not involve a change of use. This cost acts as a disincentive to conservation works.	The Central Sydney Development Contributions Plan 2013 was prepared in accordance with Section 61 of the <i>City of Sydney Act 1988</i> and adopted by Council in 2013.  A review of development exempted from the levy is outside the scope of this amendment. However, this issue may be considered as part of a future review of the Central Sydney Development Contributions Plan 2013.	No change to exhibited controls.

## Part 6: Project timeline

- Submit to DPE for Gateway Determination: End March 2017
- Planning proposal considered by Gateway Panel: April 2017
- Gateway Determination received: May 2017
- Public exhibition: May and June 2017
- Consideration of submissions: June 2017
- Post exhibition report to Council and CSPC: July and August 2017
- Draft and finalise LEP: August 2017
- LEP made (if delegated) and notified: August and September 2017