

Attachment A

**Independent Assessment Report by External
Heritage Consultant (TKD Architects)**

Capitol Theatre – Heritage Floor Space Application Assessment

Background

1. The City of Sydney's heritage floor space scheme provides an incentive for the conservation and maintenance of heritage buildings within Central Sydney. Heritage floor space is awarded on the basis of completed conservation work that is in accordance with a Conservation Management Plan (CMP) and placing covenants on title, which prevent development that increases the gross floor area any buildings on the site or increases the height of the heritage building. Once awarded, this floor space may be transferred to other approved developments within Central Sydney. These awards may be made once every 25 years for each item.
2. A heritage item owner can seek an award of heritage floor space for proposed conservation works or for previously completed conservation works. Once conservation works are completed, covenants registered on title and an award granted, the owner can sell the heritage floor space to developers who require it under conditions of consent for approved development.
3. The proposed application is for an award of heritage floor space on the basis of the conservation works completed at the Capitol Theatre between 1993 and 1995 (under D/92/00157), and the ongoing, and future maintenance of the heritage fabric of the building as outlined in the CMP prepared by Urbis Pty Ltd as part of the application.

Subject site

4. The subject site of the building known as the Capitol Theatre, is located at 3-21 Campbell Street, Haymarket and is legally described as Lot 20 of Deposited Plan (DP) 1014952.
5. The Capitol Theatre is situated in the centre of the block bound by Campbell Street to the north, Pitt Street to the east, Hay Street to the south and George Street to the west. The building has two frontages, to the north on Campbell Street and to the south on Hay Street (refer Figure 1).
6. The building directly abuts the Manning Building to the east and Capitol Square to the west. In proximity to the site is the Corporation Building (to the south), the Palace Hotel (to the west) and three storey terrace buildings and commercial towers on the north side of Campbell Street. The light rail line runs directly to the south of the Capitol Theatre along Hay Street. The City Circle railway line runs directly underneath the site.
7. The Capitol Theatre is listed on the State Heritage Register. The 'Capitol Theatre and Interiors' is also an item of local heritage significance listed in Schedule 5 of the Sydney Local Environment Plan 2012 (Sydney LEP 2012). The boundaries of the site and listing are shown on the extract from the Sydney LEP 2012 Heritage Map, below.



Figure 1 Sydney LEP 2012 Heritage Map excerpt.

8. The site is owned by the City of Sydney.

History

9. The subject site occupies the land of the Gadigal people of the Eora Nation. Little research has been conducted into the Aboriginal history and heritage of the site or its immediate vicinity (Urbis, CMP, 52).
10. During the early days of the colony, the subject site occupied the low swampy land at the southern foot of Brickfield Hill. As the terrain was swampy and unsuitable for other development, it became a *de facto* marshalling yard for livestock travelling to Sydney markets. By June 1829 the area was officially operating as a “New Cattle Market”, and the Sydney City Corporation assumed control in 1845 by deed of grant (Urbis, CMP, 59).
11. In 1868, the Council commenced construction of a general wholesale market on the site of the former cattle yard. Council designated the vacant space of ground between George Street, Campbell Street, Pitt Street and Hay Street (including the subject site) as the Hay, Corn and Cattle Market. The three long sheds of the Belmore Markets, as they were called, were constructed on eastern side of Pitt Street, and by 1872, the Belmore Markets had become the main Sydney outlet for fruit and vegetables. (Urbis, CMP, 59).

12. During the 1860s and 1880s, the vacant ground adjoining the Belmore Markets was known as the Haymarket Reserve or Haymarket Square, and was the site of open-air markets or a 'poor man's fair – Paddy's Market - which operated from temporary stalls, tents and soapboxes every Saturday night. By the 1870s, the ground was leased to a succession of international and Australian circuses, the most well-known of which was the Wirth's family circus (Urbis, CMP, 62).
13. By the mid-1880s, the old Belmore Markets were congested and wholesale traders were expressing dissatisfaction with the prevailing conditions. Following the rejection of an overly elaborate scheme and the 1890s depression, the New Belmore Markets opened in July 1893 on the former Haymarket Reserve site. The New Belmore Markets building was designed by George McRae, City Architect, and provided the largest unbroken enclosed space in Australia. Natural light came from the partially glazed lantern ranges and the thirty-six large arches of the brick and terracotta façade (Urbis, CMP, 66).
14. By the early twentieth century the Council were seeking a new market site with rail and water access as the New Belmore Market was not a success. By 1911, new markets had been built elsewhere and the Old and New Belmore Markets were made redundant. The New Belmore Market was temporarily converted to a venue for Wirth's Circus, who then entered into a long term lease for the western section of a completely remodelled building, to be known as the Hippodrome. (Urbis, CMP, 70)
15. The design of the remodelled building was by Robert Hargreave Brodrick, City Architect, and comprised one section converted into a hippodrome for Wirth Bros, and the remainder turned into shops and factory rooms (the Manning Building). The façade of the former market building was re-erected above a new ground storey which was mounted on the old footings. The Hippodrome was opened in April 1916. (Urbis, CMP, 71)
16. Despite the Hippodrome's versatility, it was not a commercial success and by 1926, Wirths had decided to remodel the building as a picture palace. In February 1927, Henry White, in association with John Ebersson, an American architect who designed atmospheric theatres, prepared plans for the conversion of the Hippodrome for "Capitol Theatre Sydney Limited". Atmospheric theatres sought to create the illusion that the patron was sitting in an exotic and romantic courtyard or amphitheatre under a brilliant night sky, and were intended for screening of silent movies and the live performance of sound (the Capitol was fitted to screen talkies within a year of opening). (Urbis, CMP, 94)
17. The Capitol Theatre opened in 1928, the lease having been transferred from Wirth's to Union Theatres Ltd in 1927. By 1931-32 Greater Union was in financial difficulties with the depression and in November 1932, the Capitol closed its doors. It re-opened in April 1933 screening second-rate movies, but never recovered its former glory. Maintenance economies gradually put machinery and lighting out of action and in 1945 all 'unwanted' decoration including banners, tapestries and artificial foliage was stripped from the interiors. (Urbis, CMP, 103)

18. In 1972 the theatre lease was removed from Greater Union Theatres and awarded to Harry M. Miller for the production of Jesus Christ Superstar. At that time the remaining atmospheric and ornamental fabric was removed. (Urbis, CMP, 105)
19. Following protracted and difficult negotiations, the developer signed a contract with the City of Sydney in March 1992 to redevelop the site. From 1993-1995, the Capitol Theatre underwent a detailed restoration and reconstruction to recover the original 1928 experience, including the restoration of the exterior and interior with an extended stage, new stalls and fly tower, and back of house facilities to accommodate modern theatre requirements.

Significance

20. According to its listing in the State Heritage Inventory, the Capitol Theatre is significant at a state level because of its historical, aesthetic, and rarity values.
21. The significance of the heritage building has been assessed in the CMP prepared by Urbis Pty Ltd, which concludes that the building has significance at state level for its historic, associative, aesthetic and representative values, and for its rarity. It has significance at a local level for its social values, and potentially at a state level.

Relevant development applications

22. In 1992, Ipoh Garden Developments (Aust) Pty Ltd lodged a building application, B/157/92, to carry out substantial restoration and reconstruction works for the restoration of the theatre including extension of stage, foyers & backstage. That application was approved and the subsequent works are the basis for this application for heritage floor space.
23. A summary of other Development Consents and Construction Certificates is provided in Table 1 below (Urbis Planning Study, 5).

Application No.	Date	Description	Status
708/92	21 Dec 1992	IF/W "Capitol" & 1 advert. Panel: Parker St; illuminated /UA & 1 illuminated. vert/prov on both Campbell & Hay Streets Ipoh Garden Developments (Aust) Pty Ltd	Approved
1065/92	26 Oct 1992	Reconstruction, extensions theatre \$23 million Ipoh Gardens	Approved
1164/92	16 Nov 1992	Temporary amenities, hoardings \$200,000	Approved

Table 1 - Development Consents and Construction Certificates

24. In 2013, Heritage Works Without Consent / S57 (2) exemptions for the Manning Lobby alterations were confirmed by City of Sydney and the Heritage Branch of NSW (respectively). The works included an updated box office fitout, new glazed front doors and new lobby carpets.

Previous Award of Transferable (Heritage) Floor Space

25. In 1991, the Central Sydney Planning Committee amended Council's transferable floor space policy to 'acknowledge the unique circumstances in the award of transferable floor space' for 'historic theatres for the performing arts'. The revised calculation for Transferable Floor Space (TFS) provided that the maximum floor space permissible on the site covered by the existing historic theatre under the Floor Space Ratio Code [in force at the time] minus the total floor space of non-theatre uses on the site covered by the historic theatre.

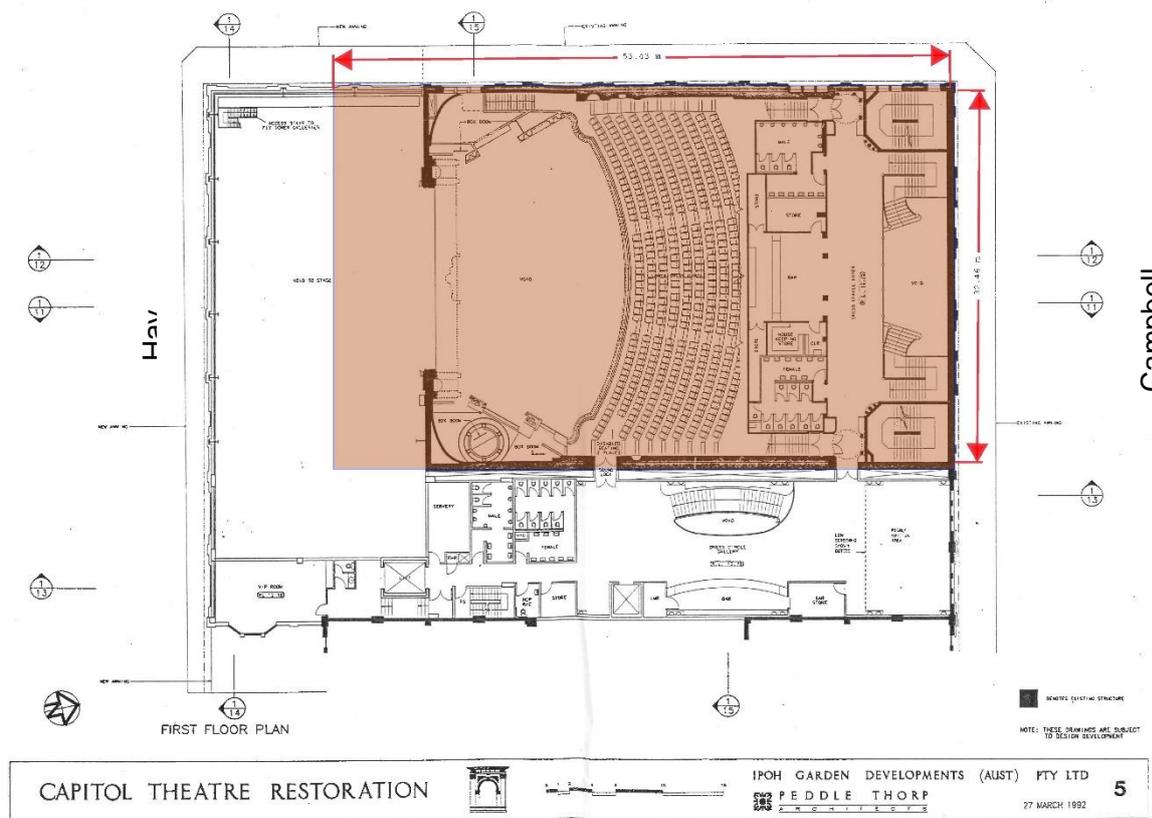


Figure 1 Notification of 1992 TFS Award and amendment of policy plan overlay. Historic theatre site boundary and area used for calculation of TFS Award is shaded in red. (City of Sydney, TKD Architects overlay)

Criteria	Original Grant of Transferrable Floor Space (1992)
Site area of historic theatre	1,745sqm
Total floor space of non-theatre uses	Nil
Floor space ratio	FSR 12.8:1 (Sydney DCP 1971)
Calculation of HFS	1,745 x 12.8 = 22,336sqm

Table 2 - Relevant Criteria for Calculation of TFS (1992)

26. Based on this calculation, on 26 March 1992 a Transferable Floor Space award was made in respect of the Capitol Theatre, for conservation works undertaken under DA D/92/00157.

27. Council also determined that 'In accordance with Council's policy in relation to the registration of transferable floor space prior to the restoration of the subject building, all moneys realised by the sale of any or all of the transferable floor space shall be held in trust by the Council and released only upon the practical completion of the restoration project'.

Conservation works and management plan

28. The conservation works completed in 1993 - 1995 faithfully restored and conserved almost all aspects of the building. They were carried out to a generally high standard of crafts and were accurate to the available documentary evidence. Accordingly they can be said to have been in line with the principles of the *Burra Charter* that guide the conservation of heritage places in Australia. An assessment of the 1993 - 1995 conservation works and current building condition as part of this application by Urbis and Mott MacDonald has confirmed that the conservation works were carried out as documented, and that the building has been generally maintained to a high standard.

29. The Mott MacDonald Building Condition Report (included as Attachment F) makes recommendations for building works, repairs and structural investigations that are required to address potential structural deficiencies and other issues in the building and these are outlined in paragraph 31 of this report.

30. A CMP was prepared by Urbis Pty Ltd in 2020 as part of this application (refer Attachment E). All conservation work was therefore completed before the CMP was written. The conservation works are in accordance with the policies set out in the CMP. The CMP has been independently assessed, and is generally of an acceptable standard. The Conservation Management Plan Assessment Checklist, prepared by the independent assessor, for the Capitol Theatre CMP is included as Attachment B to this report.

31. As part of the formulation of the CMP, a Building Condition Report was commissioned from Mott MacDonald. The CMP includes policies in Section 8.6 to carry out the recommended actions arising from the Building Condition Report. This independent assessment confirms these recommendations and that they be completed as part of the ongoing, and future maintenance of the heritage fabric of the building as outlined in the CMP prepared by Urbis Pty Ltd. The recommendations include:

- further structural assessments and investigations,
- installation of inspection/access hatches to the Dress Circle,
- periodic monitoring of significant fabric (internal and external), and
- rectification of faulty access structures.

Key Implications

Eligibility for a heritage floor space award

32. Clause 6.10(2) of Sydney Local Environmental Plan 2012 (Sydney LEP 2012) provides that Council may record an amount of heritage floor space in the Heritage Floor Space Register, subject to the eligibility criteria shown in Table 3.

Sydney LEP 2012, clause 6.10(2)	Independent Assessment
(a) the person is the owner or the nominee of the owner of a building that is a heritage item shown marked "*" in Schedule 5 (a heritage building)	Complies – The City is the owner. The item is a heritage building.
(b) the heritage building is on land in Zone B8 Metropolitan Centre	Complies
(c) conservation works have been carried out on the heritage building and have been completed in accordance with a heritage conservation management plan approved for the building by the consent authority	Complies in principle – A CMP is submitted with the application for endorsement that outlines the completed 1993-1995 conservation works and the ongoing maintenance of the heritage fabric of the building subsequent to these works. The CMP has been independently assessed, and is generally of an acceptable standard. Certification of the condition of the building and that the conservation works have been completed in accordance with development consents has been provided by Urbis, and confirmed by an independent assessor.
(d) a covenant is registered that prevents development that increases the total gross floor area of all buildings on the site on which the heritage building is located or that increases the height of the heritage building	Capable of compliance – Council officers are responsible for finalising the covenants on title. These covenants are required to be registered prior to the registration of heritage floor space.
(e) an amount of heritage floor space has not been recorded in the previous 25 years (under this clause or under a similar scheme in force before the commencement of this Plan) in respect of the heritage building	Complies
(f) no other building has utilised floor space that was available to it only because, at the time the floor space was utilised, the building was on a site that included the heritage building or that included part of the site occupied by the heritage building	Complies – No other development has used the floor space contained on this site.

Table 3 – Compliance with Sydney LEP 2012

33. Provisions 5.1.9.1 and 5.1.9.2 of Sydney Development Control Plan 2012 (Sydney DCP 2012) provide additional eligibility criteria and prerequisites for the award of heritage floor space as shown in Table 4 below.

Sydney DCP 2012, Provisions 5.1.9.1 and 5.1.9.2	Independent Assessment
5.1.9.1 (1)(a) building is located in the Central Sydney area	Complies – The building is within the bounds of the area of Central Sydney, as identified by the Sydney DCP 2012.
(b) subject to conservation works in accordance with an approved Conservation Management Plan	Complies in principle – Conservation works have been carried out. A CMP was prepared by Urbis Pty Ltd in 2020 as part of this application. All conservation work was therefore completed before the CMP was written. The conservation works are in accordance with the policies set out in the CMP and the works are in accordance with its recommendations and with the principles of the <i>Burra Charter</i> . The CMP has been independently assessed, and is generally of an acceptable standard. It is recommended that Council approve the Conservation Management Plan, to satisfy this condition. The Mott MacDonald Building Condition Report makes recommendations for building works, repairs and structural investigations that are required to address potential structural deficiencies and other issues in the building (as outlined in paragraph 31 of this report). This independent assessment confirms these recommendations and that they be completed as part of the ongoing, and future maintenance of the heritage fabric of the building as outlined in the CMP prepared by Urbis Pty Ltd.
(c) not subject to works that would increase the external envelope and floor space of the building, other than a minor increase to facilitate the adaptive reuse of the heritage building	Complies

Sydney DCP 2012, Provisions 5.1.9.1 and 5.1.9.2	Independent Assessment
5.1.9.2 (1) Prior to registration of the HFS the applicant must complete the conservation works in accordance with the CMP and enter into legal agreements and grant covenants on the land which (a) limit any future redevelopment of the site to the total gross floor area and height of the conserved heritage building	Capable of compliance – The recommendations of the Mott MacDonald Building Condition Report works outlined in paragraph 31 of this report should be completed as part of the ongoing, and future maintenance of the heritage fabric of the building as outlined in the CMP prepared by Urbis Pty Ltd. Council officers are responsible for finalising the covenants on title. These covenants are to be registered prior to the registration of heritage floor space.
(b) ensure the ongoing conservation of the building by regular maintenance including the provision of adequate insurance and a maintenance fund.	Capable of compliance – Council officers are responsible for finalising the covenants on title. These covenants will be registered prior to the registration of heritage floor space.
(2) A Conservation Management Plan for the heritage item is to be approved by the consultant authority and is to generally include:	Complies in principle - The CMP has been independently assessed, and is generally of an acceptable standard. It is recommended that Council approve the Conservation Management Plan, to satisfy this condition.
(a) works to conserve the existing fabric of the building	Complies in principle - The CMP has been independently assessed, and is generally of an acceptable standard.
(b) removal of elements that detract from the significance of the building	Complies in principle - The Conservation Management Plan is of a suitable standard, and accords with the principles of the <i>Burra Charter</i> . It generally addresses the ongoing maintenance and conservation of the building.
(c) the schedule of maintenance works	
(d) reinstatement of original fabric based on documentary evidence where appropriate	
(e) other works compatible with significance of the building.	

Table 4 – Compliance with Sydney DCP 2012

34. The objective of the heritage floor space scheme is “to provide an incentive for the conservation and on-going maintenance of heritage buildings within Central Sydney” (Sydney LEP 2012, s.6.10(1)). The outstanding investigation and repair works on the Capitol Theatre identified by Mott MacDonald are listed in paragraph 31 of this report, and these works must be completed as part of the ongoing, and future maintenance of the heritage fabric of the building as outlined in the CMP prepared by Urbis Pty Ltd.

Calculations for heritage floor space award and covenants

35. Section 5.1.9.3 of the Sydney DCP 2012 provides a formula, Formula 1, for the calculation of heritage floor space for a government-owned building. The formula is:

$$\text{HFSH} = 0.5\text{AS} \times \text{FSRH}$$

Where HFSH is the maximum amount of heritage floor space that may be awarded, AS is the site area in square metres occupied by the heritage building, and FSRH is the maximum FSR of the site of the heritage building.

36. According to the survey plan prepared by Craig & Rhodes for Urbis Pty Ltd, the area of the site is 2,899 sqm. The FSR for the site is 7.5:1, as per the Sydney LEP 2012. This means that the HFSH can be calculated as follows:

$$\text{HFSH} = 0.5(2,899) \times 7.5 = 10,871.38 \text{ sqm}$$

37. A deed is to be prepared, and required covenants placed on title, in order for the award to be finalised and registered.

Reductions to the Maximum Award of HFS

38. Sydney DCP 2012 Section 5.1.9.3(2) provides for the reduction of the maximum amount of HFS that may be awarded to prevent HFS being awarded to areas of the subject site that are not of heritage significance.
39. The whole site is identified as being of heritage significance (as the 'Capitol Theatre and Interiors') in the heritage listing in Schedule 5 of the Sydney LEP 2012. The provisions of Sydney DCP 2012 Section 5.1.9.3(2) do not apply to the subject site.

Strategic Alignment - Sustainable Sydney 2030

40. 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 application is aligned with the following strategic directions and objectives:
- (a) Direction 7 - A Cultural and Creative City – Strategic direction 7 acknowledges that the City's culture extends beyond the arts to lifestyle, heritage and the natural environment. The ongoing conservation of the Capitol Theatre, which is enabled in part by the sale of heritage floor space, ensures its continued positive contribution to the cultural fabric of Sydney.

Relevant Legislation

41. Environmental Planning and Assessment Act 1979.
42. Environmental Planning and Assessment Regulation 2000.

Public Consultation

43. This application was exhibited for public comment for 28 days from 2 October 2019 to 30 October 2019. There were four submissions received. All submissions were supportive of the proposal. A precis of the responses is provided in below.

- (1) yes [sic] go ahead and make it a heritage item
- (2) I am in support of the proposal
- (3) I agree to award the Capitol Theatre with Heritage Floor Space.
- (4) I fully support the proposed grant of Heritage floor space to the City of Sydney Council for the heritage work on the Capitol Theatre. it is a great pleasure to be able to visit this old theatre in its restored state and to understand so well how it was as an historic building of its period. The City has lost far too many of its early theatres and so the restoration and conservation of this one is very important and more than that it is an excellent piece of work. And the proof of the pudding is that it is highly successful and heavily booked for just the type of shows that it was built to accommodate. The use of the device of award of heritage floorspace is to be encouraged - to ensure ongoing funds for future repairs and restoration and to encourage other heritage owners to make the same commitment. I am not a resident of the City but I work there and have done so for many years and I also go to the theatre very often - so heartiest congratulations for this idea to claim retrospective heritage floor space. I TOTALLY AGREE WITH THE URBIS PROPOSAL.

PREPARED BY TANNER KIBBLE DENTON ARCHITECTS, EXTERNAL CONSULTANT.