

Public Exhibition - Planning Proposal - Heritage Floor Space Amendment - Sydney Local Environmental Plan 2012 Amendment

File No: X037815

Summary

The Heritage Floor Space Scheme was introduced by the City of Sydney to provide an incentive for the conservation and ongoing maintenance of heritage items in Central Sydney.

Sydney Local Environmental Plan 2012 (SLEP 2012) sets the legal framework for the scheme where owners of heritage buildings in Central Sydney may be awarded Heritage Floor Space after completing conservation works to the building. The Heritage Floor Space can then be sold to developers who, as a condition of using bonus or accommodation floor space, are required to allocate Heritage Floor Space to their development.

Since 2014 there have been several amendments to the scheme to respond to unprecedented levels of demand for the purchase of Heritage Floor Space, along with low levels of supply. These changes have primarily focused on encouraging increased supply of heritage floor space, while other mechanisms looked at decreasing demand. The most significant mechanism to meet demand was the introduction of the Alternative Heritage Floor Space Scheme, which commenced on 15 July 2016. This scheme enables developers to defer the purchase of heritage floor space until a later stage in the development process, enabling them to proceed with approved development.

The Alternative Heritage Floor Space Scheme is a temporary scheme to address the ongoing but temporary shortage of available Heritage Floor Space in the market and allow additional time for an increase in long-term supply to become available.

The alternative arrangements allow the developer to enter into a planning agreement with the City which can lead to the allocation of Heritage Floor Space being deferred or, in the event that Heritage Floor space cannot be obtained, replaced with a monetary amount to be payable to the City to be used for heritage conservation that has a clear public benefit.

Originally scheduled to end on 1 January 2019, the scheme was extended to 1 January 2021 as the Heritage Floor Space market continued to experience an imbalance between supply and demand. Although the market is now improving, it is not certain that the new levels of supply will be sufficient or available in a timely manner prior to the expiry of the Alternate Scheme.

Supply of Heritage Floor Space is improving, following the recent approvals of approximately 34,000sqm of Heritage Floor Space for four City-owned buildings. Additionally, earlier changes to allow buildings to apply for a new award of Heritage Floor Space after 25 years after the first award was registered, is starting to take effect, with a number of applications anticipated to be lodged soon.

The Planning Proposal at Attachment A seeks to extend the existing alternative arrangements for the allocation of Heritage Floor Space to development sites in Central Sydney for a further period of two years, allowing development to proceed in the event that the expected improvement in the supply of Heritage Floor Space does not meet all demand within that time.

The corresponding change is also proposed to Council's adopted Alternative Heritage Floor Space Allocation Scheme.

This report recommends Council approve the Planning Proposal for Gateway Determination from the Minister for Planning and Public Spaces and the subsequent public exhibition.

Recommendation

It is resolved that:

- (A) Council approve the Planning Proposal - Heritage Floor Space Amendment, shown at Attachment A to the subject report, for submission to the Minister for Planning and Public Spaces with a request for a Gateway Determination;
- (B) Council approve the Planning Proposal - Heritage Floor Space Amendment for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) Council seek confirmation from the Minister for Planning and Public Spaces that it has the authority to exercise the plan-making functions of the Minister under section 3.36 of the Environmental Planning and Assessment Act 1979;
- (D) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Heritage Floor Space Amendment following receipt of the Gateway Determination; and
- (E) Council approve the draft amendments to the Alternative Heritage Floor Space Allocation Scheme, shown at Attachment B to the subject report, for public exhibition to be undertaken currently with the Planning Proposal - Heritage Floor Space amendment.

Attachments

Attachment A. Planning Proposal - Heritage Floor Space Amendment

Attachment B. Draft Amendments to the Alternative Heritage Floor Space Allocation Scheme

Background

1. The Heritage Floor Space (HFS) scheme has existed in Central Sydney for more than 40 years and has supported the on-going conservation of more than 83 heritage buildings. The current scheme is established under clauses 6.10 and 6.11 of Sydney Local Environmental Plan 2012 (Sydney LEP 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 are imposed. Clause 6.11 stipulates 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.
2. 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 maintaining the heritage floor space register to track the HFS awards, transactions and allocations.
3. From 2014 a significant level of development activity in Central Sydney absorbed a large amount of the available heritage floor space in a relatively short period of time. Much of the remaining heritage floor space is being held as a long-term asset or by developers for future projects and is not genuinely available for purchase. The City has responded to this situation with amendments which have extended the scope of the scheme to encourage the conservation of government buildings, and allowed buildings to apply for a new award of heritage floor space 25 years after the original award was registered. Through extending the scope and application of the scheme, additional supply of heritage floor space will be created.
4. To allow time for that additional supply of heritage floor space to be delivered to market, at its meeting in March 2016 Council approved an amendment to SLEP 2012 to provide an alternative to the allocation of heritage floor space for a limited period. This is because it can take some time for a building owner to identify, plan and complete the conservation works necessary for a heritage floor space award.
5. The alternative arrangements are contained in the Alternative Heritage Floor Space Allocation Scheme, adopted by Council March 2016, and allow developers to enter into a planning agreement with the City to defer the timing of the allocation of heritage floor space while they continue to make genuine efforts to purchase it on the market. If despite those genuine efforts the developer is not able to purchase heritage floor space, then a monetary amount is payable to the City as an alternative to the allocation of heritage floor space.
6. The Alternative Heritage Floor Space Allocation scheme applies to development applications lodged prior to 1 January 2021. It restricts how the City can spend any money received through the alternative arrangements to the following:
 - (a) the preparation of conservation management plans for heritage buildings in Central Sydney;

- (b) heritage conservation works undertaken by the City in Central Sydney including, but not limited to:
 - (i) maintenance of heritage buildings in accordance with a conservation management plan; and
 - (ii) works to conserve the heritage significance of heritage items that are not buildings eg open space and elements of the public domain; and
 - (iii) the improvement of the operation of the Heritage Floor Space scheme including any associated studies.
- 7. Since the alternative arrangements came into force, a total of twenty-two developments have approached the City to enter into a planning agreement to defer their requirement to allocate heritage floor space. Of these, nineteen have entered into a planning agreement with the City, and three planning agreements are under consideration. The total HFS sought through the alternative arrangements is 57,103 square metres, although to date, ten developments, with a total of 35,517.25 square metres still have the option to purchase HFS through the market. Eight developments were unable to purchase prior to the finalisation of its development and have made a monetary contribution to the City.
- 8. Heritage floor space has continued to increase in value on the market since the introduction of the alternative arrangements, rising from an average transfer price of \$643 per square metre in June 2016 to \$1,903.03 at June 2020. This reflects the continuing effect of Sydney's commercial development boom coupled with the lag time taken to bring supply of heritage floor space to the market.
- 9. Awards sought for City-owned heritage buildings have progressed since the previous amendment was made, with four awards of HFS approved since December 2019 totalling 34,476.93 square metres. This will provide a significant supply of HFS to the market. The first of these awards has been registered and is available to be sold, which is the 10,871.25 square metres award for the Capitol Theatre. The other three awards are expected to be registered over the coming months. It is expected that further applications for awards for heritage buildings owned by the City will take place within the next 12 months.
- 10. It is anticipated that several applications for awards of HFS for buildings that have had awards registered more than 25 years ago will be lodged. This is based on pre-lodgement discussions, as well as more general advice that has been provided to heritage consultants over the last few months. This month the Trust Building in King Street had conservation works approved for a re-award of heritage floor space.
- 11. The City has also written to all owners of buildings which have had HFS awards registered over 25 years ago, to advise them of the option of considering a new HFS award. As these buildings would already have conservation management plans prepared and covenants placed on title, it is expected that seeking new awards for these properties would be an easier process than for those seeking HFS awards for the first time, and therefore more likely to occur.
- 12. Enquiries for State government-owned buildings are also ongoing, with significant awards of HFS potentially available in the future.

13. It is anticipated that this recent increased activity in HFS award applications, and likely future award application will continue due to the current high price. However due to the uncertainty in the economy and HFS market due to circumstances such as the Covid-19 pandemic, there is a need to keep the alternative scheme active for some additional time in case the market does not respond quickly enough to demand for development in Central Sydney. This will ensure those projects able to progress will not be hindered by a shortage of HFS in the current market.
14. This report seeks to extend the alternative heritage floor space allocation arrangements for a period of a further two years to 1 January 2023. This extension will allow applications for awards of HFS by private heritage owners, State government and other public authorities, including the City, to be finalised and bring new heritage floor space to the market.
15. The SLEP 2012 refers to the consent authority having adopted and published a policy that makes alternative heritage arrangements to the allocation of heritage floor space. In accordance with this requirement, Council's position has been adopted and published through the Alternative Heritage Floor Space Allocation Scheme. To ensure the Scheme aligns with the SLEP 2012 change, it is proposed that the end date referred to in that Scheme is also updated to 1 January 2023.
16. The date change to the Alternative Heritage Floor Space Scheme is provided in Attachment B. No other changes to the Scheme are recommended at this time.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

17. 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 policy is aligned with the following strategic directions and objectives:
 - (a) Direction 1 - A Globally Competitive and Innovative City - the proposal is consistent with the objective of planning for growth and change in central Sydney.

Financial Implications

18. If developers who make use of the alternative allocation scheme are unable to purchase heritage floor space within the required timeframe, then this will result in a monetary contribution being paid to the City through a planning agreement. Council's Alternative Heritage Floor Space Allocation Scheme identifies how the money can be spent. City officers will identify projects that deliver a public heritage benefit that can be suitable for funding in line with the options endorsed by Council as funds become available.

Relevant Legislation

19. Environmental Planning and Assessment Act 1979.
20. Environmental Planning and Assessment Regulation 2000.
21. City of Sydney Act 1988.

Critical Dates / Time Frames

22. The existing alternative arrangements expire on 1 January 2021 and need to be renewed prior to that time. The Planning Proposal includes a draft timetable to meet this deadline.

Options

23. There is the option of not extending the arrangements. However this has the potential to impede the undertaking of development in Central Sydney and affect construction activity. This approach is not supported at this time.

Public Consultation

24. Public exhibition and public authority consultation will be undertaken in accordance with any Gateway Determination issued by the Greater Sydney Commissions. Due to the minor nature of the proposal it is proposed that public exhibition should be for a minimum of 14 days. Public exhibition will be notified:
 - (a) On the City of Sydney website.
 - (b) Through letters to owners of Heritage Floor Space and owners of heritage buildings in Central Sydney.
 - (c) Key state agencies, industry bodies and relevant community groups.

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