

## Post Exhibition - Planning Proposal - Heritage Floor Space 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. 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 relatively 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 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.

In August 2020, Council and the Central Sydney Planning Committee (CSPC) resolved to seek gateway determination to publicly exhibit the planning proposal and amended alternative scheme.

The Department of Planning, Industry and Environment issued a Gateway Determination on 2 October 2020 and delegated authority to Council to liaise directly with Parliamentary Counsel to amend the local environmental plan to give effect to the planning proposal. The Gateway determination is at Attachment D.

The planning proposal and amended alternative scheme were referred to public agencies and publicly exhibited for 14 days from 28 October to 10 November 2020. A total of five submissions were received, including one agency submission from Heritage NSW supporting the proposal. Two submissions were requests for further information about the proposal, and a further two submissions raised concerns more broadly about the heritage floor space scheme in relation to the protection of heritage items, or costs for the development industry.

Issues raised in submissions received have been considered, and are addressed in this report and provided in Attachment E. No changes to the proposal are proposed in response to the submissions received.

This report follows the public exhibition and recommends Council approve the planning proposal. It also recommends approval of the amended Alternative Heritage Floor Space Allocation Scheme.

If approved by Council, the City will request Parliamentary Counsel to commence the preparation of the local environmental plan amendment. The local environmental plan will come into effect when it is published on the NSW Legislation website.

## **Recommendation**

It is resolved that:

- (A) Council note the submissions made in response to the public exhibition of Planning Proposal: Heritage Floor Space Amendment, as shown at Attachment E to the subject report;
- (B) Council approve Planning Proposal: Heritage Floor Space Amendment, as shown at Attachment A to the subject report, and request the relevant local plan making authority make as a local environmental plan under Section 3.36 of the Environmental Planning and Assessment Act 1979;
- (C) authority be delegated to the Chief Executive Officer to make minor amendments to the Planning Proposal: Heritage Floor Space amendment to correct any minor errors or omissions prior to publication; and
- (D) Council approve the amendment to the Alternative Heritage Floor Space Allocation Scheme, shown at Attachment B to the subject report.

## **Attachments**

- Attachment A.** Planning Proposal - Heritage Floor Space Amendment
- Attachment B.** Alternative Heritage Floor Space Allocation Scheme, as amended
- Attachment C.** Resolution of Council of 24 August 2020 and Resolution of the Central Sydney Planning Committee of 20 August 2020
- Attachment D.** Gateway Determination of 2 October 2020
- Attachment E.** Summary of Submissions

## Background

1. 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.
2. 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 is being created
3. The alternative arrangements are contained in the Alternative Heritage Floor Space Allocation Scheme adopted by Council in March 2016. This alternative scheme allows for developers to enter into an agreement with Council to defer the purchase of heritage floor space. This permits the development to proceed until such time that the required amount of heritage floor space can be secured or a monetary contribution is made to Council.
4. This planning proposal seeks to extend the Alternative Heritage Floor Space Allocation Scheme arrangements for a period of a further two years to 1 January 2023 as shown at Attachment B. No other changes to the alternative scheme are recommended at this time.
5. Council and the Central Sydney Planning Committee (CSPC) approved the planning proposal and alternative scheme for public exhibition on 24 August 2020 and 20 August 2020 respectively. The resolutions are provided at Attachment C.
6. The Department of Planning, Industry and Environment (the Department) issued a Gateway determination for the planning proposal, setting out the requirements for the public exhibition, delegating authority to Council to liaise with Parliamentary Counsel to legally draft and make the local environmental plan. The Gateway determination is at Attachment D to this report.
7. The Gateway determination was issued by the Department on 2 October 2020 and requires that the amendment to the Sydney LEP is completed by 1 January 2021. In order to meet this deadline, the City engaged with Heritage NSW and Property NSW on 27 October 2020 to meet the public authority consultation requirements in the Gateway determination.
8. The planning proposal and alternative scheme were referred to public agencies and publicly exhibited for 14 days in accordance with the Gateway determination from 28 October 2020 to 10 November 2020.
9. The City sent around 3,000 letters to owners of heritage buildings eligible for heritage floor space advising them of the public exhibition of the planning proposal and providing the opportunity to make a submission.
10. A public agency submission was received from Heritage NSW supporting the proposal as it was considered to have an overall positive heritage outcome.
11. Four additional submissions were received in response to the public exhibition, with none of these objecting to the proposal for the extension of the operation of the alternative heritage floor space scheme.

12. Two submissions requested further information about the proposal, with both residents contacted to respond to their enquiries. One responded and information provided satisfactorily addressed their queries about the proposed changes. The second resident did not respond to this offer by the deadline for the completion of this report.
13. One submission raised concerns about the scheme leading to a loss of heritage items, and heritage values. The proposal is limited to extending the operation of the alternative scheme and does not propose any other changes to the HFS Scheme.
14. The Property Council of NSW made a submission which acknowledges HFS as a good mechanism to support the conservation of built heritage in central Sydney. They also recognised the need for the proposal as the alternative scheme provides relief to allow development to proceed, however this increases development costs. The submission notes core challenges with the HFS scheme including an on-going lack of HFS to purchase, increase in trading value of HFS and unwillingness of many owners to sell. A holistic review is suggested.
15. The City has 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. These changes will create additional supply of heritage floor space. The City continues to monitor and will review the HFS Scheme as needed to ensure it remains an incentive for conservation without resulting in onerous costs for development.
16. Issues raised in submissions received have been considered, and are provided in Attachment E. No changes to the proposal are proposed in response to the submissions received.
17. This report recommends Council's approval of Planning Proposal: Heritage Floor Space Amendment, at Attachment A, following public exhibition and the review of submissions. The planning proposal seeks to extend the current alternative heritage floor space provisions that apply in Central Sydney under the Sydney local Environmental Plan 2012 for an additional two years.
18. This report also seeks Council's approval of the amended Alternative Heritage Floor Space Allocation Scheme at Attachment B. The document has been updated to reflect the extension of the alternative scheme for an additional two years.

## Key Implications

### Strategic Alignment - Sustainable Sydney 2030

19. 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 - This planning proposal supports the above key objectives and priorities as it will enable conservation of heritage buildings and remove a potential barrier to efficient delivery of new development.

### Financial Implications

20. Should developers who make use of the alternative allocation scheme be 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 which is held as a cash restriction in the City's balance sheet until utilised.
21. Council's Alternative Heritage Floor Space Allocation Scheme identifies that the money can only be spent on heritage works which have a public benefit.

### Relevant Legislation

22. Environmental Planning and Assessment Act 1979.
23. Environmental Planning and Assessment Regulation 2000.
24. City of Sydney Act 1988.

### Critical Dates / Time Frames

25. The Gateway Determination requires that the amendment to the Sydney LEP is completed by 1 January 2021.
26. The Gateway Determination authorises Council to exercise this deletion and liaise directly with Parliamentary Counsel to make the amendment to the local environmental plan. If the planning proposal is approved by Council and the CSPC, the City will commence this process. Once this process is complete and the plan is made, the amendment to the Sydney LEP 2012 will come into effect when published on the NSW Legislation website.
27. The City has engaged with Parliamentary Counsel to undertake preliminary discussions on the forthcoming planning proposal, subject to approval, to ensure the drafting process is expedited in order to meet the drafting deadline set by the Gateway determination.
28. If approved by Council, the amended Alternative Heritage Floor Space Allocation Scheme will come into effect the same day as the amendment to the LEP.

### Public Consultation

29. The planning proposal and amended alternative scheme were referred to public agencies and publicly exhibited for 14 days from 28 October 2020 to 10 November 2020.
30. The City sent around 3,000 letters to owners of heritage buildings eligible for heritage floor space advising them of the public exhibition of the planning proposal and providing the opportunity to make a submission.
31. One submission was received, from Heritage NSW. This submission supported the proposal as it would have an overall positive heritage outcome in Central Sydney.

32. Four additional submissions were received in response to the public exhibition, with none of these objecting to the proposal for the extension of the operation of the alternative heritage floor space scheme.
33. Issues raised in submissions received have been considered, and are addressed in this report and provided in Attachment E. No changes to the proposal are proposed in response to the submissions received.

**ANDREW THOMAS**

Acting Director City Planning, Development and Transport

Michelle Cramsie, Specialist Planner