

## **Post Exhibition - Planning Proposal - Heritage Floor Space Amendment - Sydney Local Environmental Plan 2012 Amendment**

**File No: X091559**

### **Summary**

The Heritage Floor Space Scheme was established by the City of Sydney and provides an incentive for the conservation and ongoing maintenance of heritage buildings in Central Sydney.

Sydney Local Environmental Plan 2012 (the LEP) 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 their 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 acquire and allocate heritage floor space to their development.

Amendments have been made to the scheme since it commenced in the 1970s, including changes from 2014 to put in place the Alternative Heritage floor Space Allocation Scheme. The scheme responds to the demand for the purchase of heritage floor space exceeding the supply and ensures development important to the economic function of Central Sydney can continue until supply becomes available.

A planning proposal has been prepared to amend the LEP to allow time for the additional supply of heritage floor space to be delivered to market by extending the operation of the Alternative Heritage Floor Space Allocation Scheme.

In September 2022, Council and the Central Sydney Planning Committee resolved to seek a Gateway Determination to publicly exhibit the planning proposal and amended the alternative scheme.

The Department of Planning and Environment issued a Gateway Determination on 6 October 2022 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 C.

This report details the outcomes of the public consultation of the planning proposal. The documents were exhibited from 21 October 2022 to 3 November 2022.

Two submissions were received. Heritage NSW supported the extension of the alternative heritage floor space scheme. One submission was received from the community also supporting the proposal. The summary of submissions is at Attachment E.

This report recommends Council and the Central Sydney Planning Committee approve the planning proposal. It also recommends approval of the amended Alternative Heritage Floor Space Allocation Scheme.

If approved by Council and the Central Sydney Planning Committee, 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 matters raised in response to the public exhibition of Planning Proposal - Heritage Floor Space Amendment, as shown in Attachment E to the subject report;
- (B) Council approve Planning Proposal - Heritage Floor Space Amendment, as amended, following the Gateway Determination and as shown at Attachment A to the subject report, and request the relevant local plan making authority make the amendment 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 any minor amendments to the Planning Proposal – Heritage Floor Space Amendment to correct any minor errors or omissions prior to finalisation; and
- (D) Council approve the amendment to the Alternative Heritage Floor Space Allocation Scheme, shown at Attachment B.

## Attachments

- Attachment A.** Planning Proposal - Heritage Floor Space Amendment
- Attachment B.** Alternative Heritage Floor Space Allocation Scheme - as Amended
- Attachment C.** Gateway Determination
- Attachment D.** Resolutions of Council and the Central Sydney Planning Committee (September 2022)
- Attachment E.** Summary of Submissions - Heritage Floor Space Amendment

## Background

1. The Heritage Floor Space Scheme has existed in Central Sydney for more than 40 years and has supported the on-going conservation of more than 85 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 the heritage floor space market in which vendors and purchasers negotiate directly with one another, while the City maintains the heritage floor space register to track awards, transactions and allocations.
3. From 2014 on, 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 is being created.
4. The Alternative Heritage Floor Space Allocation Scheme, adopted by Council in March 2016, allows 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 an equivalent monetary amount is payable to the City.
5. The Alternative Heritage Floor Space Allocation Scheme allows time for the additional supply of heritage floor space to be delivered to market. Since March 2016, extensions were also approved in 2018 and 2020. 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.
6. The Alternative Heritage Floor Space Allocation Scheme 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;
    - (ii) works to conserve the heritage significance of heritage items that are not buildings e.g., 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, proponents of 25 developments have approached the City to enter into a planning agreement to defer their requirement to allocate heritage floor space. Of these, 21 have entered into a planning agreement with the City, and three planning agreements are under consideration. The total heritage floor space sought through the alternative arrangements is 63,210.6 square metres. Currently, six developments, with a total of 13,163.3 square metres, still have the option to purchase heritage floor space through the market. Eighteen developments were unable to purchase prior to the finalisation and have made a monetary contribution to the City.
  8. To date, \$75.2 million has been received in the Heritage Conservation Fund through the Alternative Heritage Floor Space Scheme. The capital works program within the City’s Long Term Financial Plan (LFTP) incorporates eligible projects on heritage assets, including parks, civic spaces and public art, that will utilise the balance of the Heritage Conservation Fund over the life of the Long Term Financial Plan. Current projects for renewal works include the Archibald Fountain, public art restoration and lighting upgrades in Hyde Park that can draw upon the Heritage Conservation Fund. These projects expended \$1.2 million of funding from the Heritage Conservation Fund in 2021/22 financial year, with a further budget of \$3.5 million in 2022/23 as works progress.
  9. The number of planning agreements executed under the alternative scheme peaked in 2018, with six executed, as shown in Figure 1 below. In 2022 no agreements have been executed.

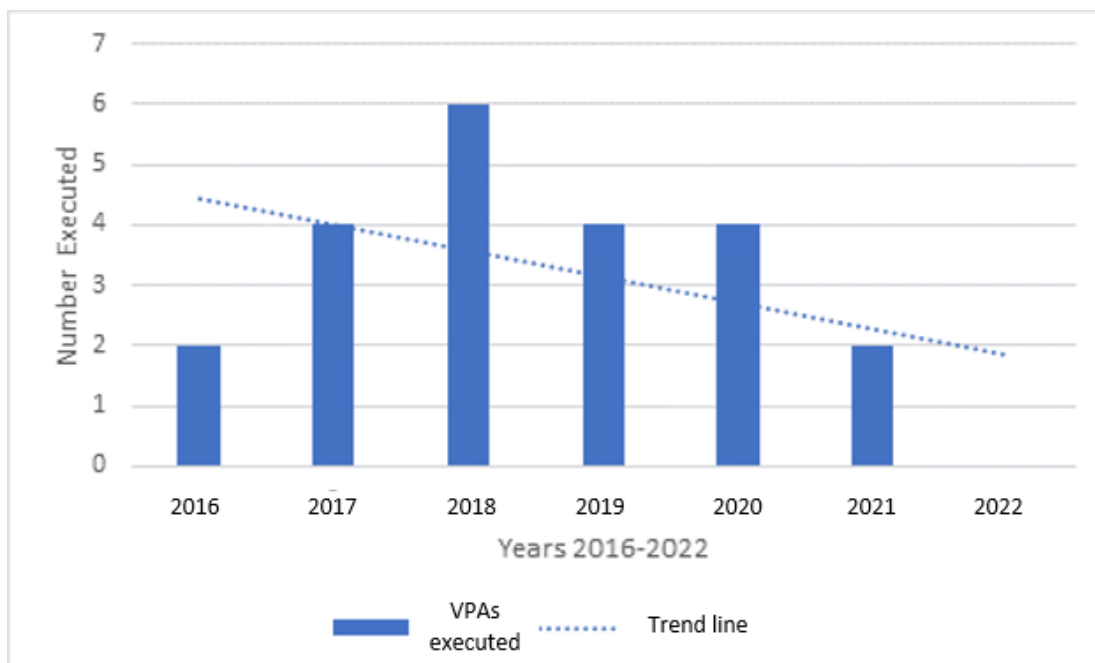


Figure 1: Number of planning agreements for the alternative heritage floor space allocation scheme

10. Heritage floor space has increased in value on the market since the introduction of the alternative arrangements, rising from an average transfer price of \$643 per square metres in June 2016 to \$2,171.61 at June 2022. 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.
11. Awards sought for City-owned heritage buildings have progressed since the previous amendment was made, with four awards of heritage floor space approved since December 2019 totalling 34,476.93 square metres. To date 19,531 square metres of heritage floor space have been sold, with the remaining 14,945 square metres in the process of being sold, which represents a significant increase in supply of heritage floor space to the market. Awards for additional City buildings are expected to be lodged soon or are currently being prepared for lodgement.
12. Since the previous amendment, two awards have been registered and a further two awards have been approved but not yet registered. A further three applications for awards are currently under assessment.
13. In recent years, the City has undertaken a range of actions to encourage the delivery of additional heritage floor space to the market including:
  - (a) writing to owners of buildings with awards registered over 25 years ago to advise that a new award for these buildings could be considered;
  - (b) discussions about several NSW Government owned buildings for potential awards;
  - (c) the listing of eight Central Sydney buildings from the modern movement architectural period as heritage items that could be considered for awards; and
  - (d) a proposal under consideration to allow non-rateable buildings to adopt the same formula for calculating heritage floor space as rateable buildings.
14. It is anticipated that the recent increased activity in heritage floor space award applications and expected future award applications will continue due to the current high price. However due to the uncertainty in the economy and heritage floor space 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 that are able to progress will not be hindered by a shortage of heritage floor space in the current market.

### **Planning Proposal - amendments to the LEP**

15. In September 2022 the Central Sydney Planning Committee and Council approved the planning proposal to extend the operation of the alternative heritage floor space allocation scheme to be submitted for a Gateway Determination, and for public exhibition. The Gateway Determination was issued by the Department of Planning and Environment on 6 October 2022.

16. At the same September meetings, the Central Sydney Planning Committee and Council also approved the proposal to publicly exhibit an amendment the Sydney Development Control Plan 2012 to allow non-rateable buildings to adopt the rateable formula for calculating heritage floor space. This is expected to encourage awards for eligible non-rateable buildings and increase heritage floor space supply. This proposal will be considered in early 2023 due to the longer public consultation period required under the Environmental Planning and Assessment Act 1979, compared to the 10 working-day consultation period for the planning proposal under the Gateway Determination.
17. The planning proposal at Attachment A proposes to amend the LEP to extend the alternative heritage floor space allocation arrangements for a period of a further three years to 1 January 2026. This extension will allow applications for awards of heritage floor space by private heritage owners, NSW Government and other public authorities including the City.
18. The LEP 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 LEP change, it is proposed that the end date referred to in that scheme is also updated to 1 January 2026.
19. The date change to the Alternative Heritage Floor Space Allocation Scheme is provided in Attachment B. No other changes to the Scheme are recommended at this time.

## **Key Implications**

### **Outcomes of public exhibition and public authority consultation**

20. The planning proposal was exhibited from 21 October 2022 to 3 November 2022, for 10 working days, with public agencies notified for 14 working days. This was in accordance with the Gateway Determination.
21. The City sent approximately 3,720 letters to owners of heritage items in Central Sydney and to the Property Council of Australia to notify them of the public exhibition and provided information on how to view the supporting documentation, which was featured on the City's Sydney Your Say website.
22. Public agency consultation was carried out in accordance with the Gateway Determination. Heritage NSW and Property NSW (now known as Property and Development NSW) were consulted. Heritage NSW provided a submission supporting the proposed amendments. Property and Development NSW did not make a formal submission but did advise that they had no comments to raise regarding the proposal.
23. One submission was received from the community in response to the public exhibition, supporting the proposal.

**Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision**

24. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This proposal is aligned with the following strategic directions and objectives:
- (a) Direction 4 - Design excellence and sustainable development - by supporting the operation of the heritage floor space scheme to conserve important heritage buildings and contribution to celebrate the character of Central Sydney.

**Financial Implications**

25. If developers who make use of the Alternative Heritage Floor Space Allocation Scheme are unable to purchase heritage floor space within the required timeframe, then a monetary contribution is paid to the City. Council's Alternative Heritage Floor Space Allocation Scheme identifies how the money can be spent. City officers 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**

26. Environmental Planning and Assessment Act 1979.
27. Environmental Planning and Assessment Regulation 2021.

**Critical Dates / Time Frames**

28. The existing Alternative Heritage Floor Space Scheme arrangements are presently scheduled to expire on 1 January 2023 and need to be renewed prior to that time. The Planning Proposal includes a draft timetable to meet this deadline.

**GRAHAM JAHN AM**

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