

Post Exhibition - Heritage Floor Space Amendment - Sydney Development Control 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) and the Sydney Development Control Plan 2012 (the DCP) set 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 if they wish to maximise their development.

Amendments have been made to the scheme since it commenced in the 1970s, including changes in the last decade responding to demand for the purchase of heritage floor space being greater than the supply of heritage floor space in the market.

In the post exhibition report to Council in December 2020 on the Central Sydney Planning Framework, the City committed to reviewing the formula in the DCP for calculating heritage floor space for non-rateable buildings, as reflected in a number of submissions. The review offers a chance to further incentivise the conservation of non-rateable buildings and increase the supply of heritage floor space.

Following a review of the formulas, this report proposes an amendment to the DCP, so that all eligible heritage listing buildings use the same formula. The proposed amendment also introduces a cap on the maximum heritage floor space that can be awarded to addresssites with large grounds and courtyards which are included in the heritage listing, but do not have the same conservation costs as buildings.

The outcome will continue to support the conservation of these important buildings and benefit supply levels of heritage floor space.

In September 2022, Council resolved to exhibit the proposal to amend the DCP. This report details the outcomes of the public consultation of the draft DCP. The documents were exhibited from 21 October 2022 to 17 November 2022. Three submissions were received: two supporting the proposal, and a third seeking information on the scheme relating to the opportunity for obtaining an award of heritage floor space for their building.

This report recommends Council approve the proposed amendment to the DCP changes following the public consultation period.

If approved by Council, the City will make the DCP and publish this on the City's website within 28 days of the decision, in accordance with the Environmental Planning and Assessment Regulation 2021 and provide a copy of the plan to the Department of Planning and Environment.

Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition of the Draft Development Control Plan – Heritage Floor Space Amendment, as shown in the Summary of Submissions at Attachment C to the subject report;
- (B) Council approve the Draft Development Control Plan - Heritage Floor Space Amendment as shown in Attachment A to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to make any minor amendments to the Draft Development Control Plan – Heritage Floor Space Amendment to correct any minor errors or omissions prior to finalisation and publication.

Attachments

- Attachment A.** Draft Development Control Plan - Heritage Floor Space Amendment
- Attachment B.** Resolutions of Council and Central Sydney Planning Committee - September 2022
- Attachment C.** Summary of Submissions - Heritage Floor Space Amendment

Background

1. A transferable Heritage Floor Space Scheme was established in Central Sydney more than 40 years ago 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 (the LEP). 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.
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.

Non-rateable buildings formula

3. In the post exhibition report to Council in December 2020 on the Central Sydney Planning Framework, submissions were made regarding the issue of the formula used for calculating heritage floor space for non-rateable buildings. Subsequently, representations were also received from key parties that had made submissions.
4. The Transferable Heritage Floor Space Scheme was initially established in the 1970s as a compensatory mechanism in response to concerns raised by the property industry about the introduction of the listing of heritage buildings in Central Sydney. The property industry was concerned that heritage listings resulted in a loss of development potential and earnings potential for property owners in Central Sydney, who would normally be able to demolish and/or redevelop their sites over time for capital gain. The rates payable on land unable to otherwise redevelop was also recognised as a financial cost.
5. Initially, if a building was heritage listed and could not be developed to the maximum floor space ratio permitted for a site, then the 'lost' floor space potential (the difference between the floor space of the listed buildings and the mapped floor space ratio for the site) became transferable. This 'transfer' became 'saleable' floor space that could be sold to owners of non-heritage listed sites to qualify for floor space bonuses.
6. No local, state and federal government owned buildings and non-rateable buildings were eligible to be awarded heritage floor space prior to 11 May 1989.
7. At that time Council established two different formulas. These reflected the financial circumstances of commercial property owners forgoing development potential differentiated from places of public worship (non-rateable) which were not expected to redevelop in the same way. The non-rateable formula also considered that many of the buildings it applies to tend to have different built forms, such as mezzanine levels, not recognised under the rateable building's formula. The formula for rateable buildings has been 50 per cent of the building footprint multiplied by the mapped maximum floor space ratio applicable to the site.
8. The two formulas for calculating the maximum amount of heritage floor space that may be awarded to a heritage building are shown in Tables 1 and 2 below:

Formula 1 applies to	rateable buildings in private ownership and Government buildings.
The formula is	$HFSH = 0.5AS \times FSRH$
Where	HFSH is the maximum amount of Heritage Floor Space which may be awarded in sqm;
	AS is the site area in sqm occupied by the heritage building; and
	FSRH is the maximum FSR for the site of the heritage building as shown on the LEP FSR Map.

Table 1: Heritage floor space award formula for rateable buildings

Formula 2 applies to	non-rateable buildings in private ownership.
The formula is	$HFSH = 0.5 \times GFAH$
Where	HFSH is the maximum amount of Heritage Floor Space which may be award in sqm; and
	GFAH is the gross floor area in sqm of the heritage buildings.

Table 2: Heritage floor space award formula for non-rateable buildings

Proposal to amend the Development Control Plan

9. In September last year, Council endorsed the proposal to publicly exhibit an amendment the DCP to allow non-rateable buildings to adopt the rateable buildings formula for calculating heritage floor space. This is expected to encourage awards for eligible non-rateable buildings and increase heritage floor space supply.
10. At the same September meetings, the Central Sydney Planning Committee and Council also 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 issued by the Department of Planning and Environment required the planning proposal to be completed by 6 January 2023. The amendment to the LEP was finalised on 23 December 2022.
11. The subject proposal is to amend the DCP by applying the rateable formula to all eligible heritage buildings for the purpose of calculating heritage floor space. This recognises that the scheme has broadly shifted from a compensation scheme to a conservation scheme and that the ongoing management of heritage buildings has similar costs. It also recognises that the costs of conservation have increased over time.

12. Consideration was given to keeping the two separate formulas but changing the factor for multiplying the gross floor area of non-rateable buildings. However, it was considered that all buildings should be treated in a similar way, as the goal is now similar. In addition, the proposed amendments introduce a cap of 30,000 square metres for an award of heritage floor space per site, to respond to sites which have exceptionally large grounds included in the heritage listing, as these do not have the same conservation costs as maintaining buildings.
13. It is noted that the scheme in its current form is not intended to cover the cost of conservation but provides a financial incentive for the conservation of buildings. In turn, the Heritage Floor Space Scheme means that conserved buildings using the scheme are capped of their development potential.
14. Other minor amendments are proposed to the DCP to clarify the operation of the heritage floor space scheme, including clarifying that retrospective awards of heritage floor space can be considered if the building has already been conserved.

Key Implications

Outcomes of public exhibition

15. The proposed amendments to the DCP were exhibited from 21 October 2022 to 17 November 2022, for 28 days, in accordance with the requirements under Schedule 1 of the Environmental Planning and Assessment Act 1979.
16. 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.
17. The exhibition of the proposed amendments to the DCP commenced concurrently with the proposed amendments to the LEP in relation to the proposal to extend the operation of the Alternative Heritage Floor Space Scheme, with a single notification letter sent advising of the two separate exhibitions.
18. Two submissions were received in response to the exhibition which supported the change to the formula. A third submission was received, however the submission was seeking clarification on the opportunity for an award of heritage floor space on their privately owned building. The summary of submissions is at Attachment C of this report.
19. A submission in support of the proposal was received from the Anglican Church Property Trust Diocese of Sydney, who advised that the proposal will enable funds to be released for works to maintain and restore heritage buildings under their care. This includes St Andrew's Cathedral, St Philips Anglican Church, St James King Street and Christ Church St Laurence.
20. The second submission in support was co-signed by the Anglican Church Property Trust Diocese of Sydney, the Great Synagogue and the Catholic Archdiocese of Sydney. The submission advised that the change to the formula would help to provide funding for the ongoing maintenance of their heritage listed buildings.
21. No changes to the DCP are proposed in response to the submissions received during the public exhibition period.

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

22. 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 contributing to celebrate the character of Central Sydney.

Financial Implications

23. This change is likely to increase supply of heritage floor space, further reducing demand for the Alternative Heritage Floor Space Allocation Scheme and the City's role in administering this alternative scheme.

Relevant Legislation

24. Environmental Planning and Assessment Act 1979.
25. Environmental Planning and Assessment Regulation 2021.

Critical Dates / Time Frames

26. If approved by Council, the City will make the DCP and publish this on the City's website within 28 days of the decision, in accordance with the Environmental Planning and Assessment Regulation 2021, and provide a copy of the plan to the Department of Planning and Environment.

GRAHAM JAHN AM

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