

# Alternative Heritage Floor Space Allocation Scheme

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*Cover photo: Josef Nalevansky for City of Sydney*

# Alternative Heritage Floor Space Allocation Scheme

## Purpose

*Sydney Local Environmental Plan (SLEP) 2012* provides the legal framework for a scheme under which an owner of a heritage building in Central Sydney may be awarded Heritage Floor Space after completing conservation works on the building. That owner may sell that Heritage Floor Space to a developer who, as a condition of development consent for an application seeking additional floor space, is required to allocate Heritage Floor Space to its development site.

Owing to a shortage of available Heritage Floor Space on the market, developers are currently having difficulty sourcing the Heritage Floor Space required to satisfy conditions of development consents. This threatens to delay some major projects.

The Council, at a meeting on 14 September 2015, and the Central Sydney Planning Committee (CSPC), at a meeting on 10 September 2015, resolved to prepare a Planning Policy that will allow Council to enter into agreements which may lead to the allocation of Heritage Floor Space being deferred until after construction commences or, in the event that Heritage Floor Space cannot be obtained, replaced with an alternative arrangement that satisfies an *Alternative Heritage Floor Space Allocation Scheme*. The Council and CSPC resolutions established the key elements of the Scheme and delegated to the Chief Executive Officer the development of the details of the Scheme.

This document sets out the details of the *Alternative Heritage Floor Space Allocation Scheme*. It will ensure that there is a consistent approach and established procedures for allowing an alternative to Heritage Floor Space allocation under SLEP 2012.

## Scope

This scheme provides for the use of planning agreements and bank guarantees as an alternative to the allocation of Heritage Floor Space under clause 6.11 of *Sydney Local Environmental Plan 2012*.

The management of bank guarantees and other performance bonds is set out in separate documents entitled *Performance Bonds Policy* and *Performance Bonds Procedures*. It should be noted that this scheme only allows a bank guarantee and no other form of performance bond to be provided as security of the developer's obligations under the planning agreement.

**This scheme will apply to development applications lodged before 1 January ~~2019~~ 2021 and has no effect after that date.**

## Definitions

Term	Meaning
Allocation	An entry in the Heritage Floor Space register to indicate that an amount of Heritage Floor Space has been allocated for use at a particular development site.
Bank Guarantee	A documentary performance bond comprising an unconditional undertaking from a bank to make a payment upon presentation of a demand.
Heritage Conservation Fund	A fund established and maintained by the City that is comprised of payments made under this scheme to be used in accordance with this document.
Heritage Floor Space (HFS)	Transferable floor space awarded to heritage-listed buildings and recorded in the Heritage Floor Space register.
Heritage Floor Space Register	The register maintained by the Council for the purpose of clause 6.10 of <i>Sydney Local Environmental Plan 2012</i> .
Heritage Floor Space Update	A quarterly report on awards, sales and transfer of Heritage Floor Space which is prepared by the City of Sydney and published on its website.
Planning Agreement	The meaning set out in section 93F of the <i>Environmental Planning and Assessment Act 1979</i> .

## Scheme statement

This scheme establishes the circumstances under which the Council will accept an alternative arrangement to the allocation of Heritage Floor Space under clause 6.11 of *Sydney Local Environmental Plan 2012*.

**The primary aim of this scheme is to enable projects in Central Sydney to proceed during the current lag in heritage floor space becoming available for purchase in the market. The strong preference remains for developers to obtain heritage floor space upfront, though if unsuccessful due to current market shortages, this scheme provides an alternative. Additional time and cost associated with the planning agreement are likely to be experienced by the developer if they opt to enter into this scheme. Please contact City staff to discuss the timeframes and costs involved.**

The principles of this scheme are:

1. the developer is to demonstrate to the satisfaction of Council that it has made genuine and ongoing efforts to obtain Heritage Floor Space and has been unable to do so;
2. the developer agrees to obtain the Heritage Floor Space by a specified date following the commencement of construction or, alternatively, pay a monetary amount equal to the market value of the Heritage Floor Space plus an uplift amount towards a heritage conservation fund to be established by Council;
3. the developer is to provide a bank guarantee to Council for an amount equal to the amount of Heritage Floor Space required multiplied by the currently applicable unit rate.

4. the amount of the payment required if the Heritage Floor Space has not been allocated by the specified date will be set at a level intended to discourage the use of this option and the payment is only to be made if ongoing attempts to purchase Heritage Floor Space have not been successful; and
5. any funds obtained under the scheme will be directed towards heritage conservation works.

### **Offer to enter into planning agreement in relation to Heritage Floor Space allocation**

If a developer opts to enter into a planning agreement in respect of HFS allocation, the offer to enter into a planning agreement must be in the form set out in Attachment A and attached to that offer must be the following documentation to the satisfaction of Council:

1. written evidence that the developer has submitted offers to purchase HFS to at least three separate owners of HFS within the previous three months;
2. written evidence that the amount of each offer was not less than the average sales price of HFS reported in the most recently published Heritage Floor Space Update; and
3. written evidence that the developer has not been able to purchase the amount of HFS required under the conditions of the applicable development consent.

The offer must be submitted to the City at the same time as the application to which it relates.

The unit rate to be used in calculating the bank guarantee amount is different to the average sales price of Heritage Floor Space as published in the quarterly HFS update. Please contact City staff to discuss the currently applicable rate.

### **Terms of planning agreement in relation to Heritage Floor Space allocation**

If Council accepts a developer's offer to enter into a planning agreement in relation to Heritage Floor Space allocation, the planning agreement will include the terms included in the offer accepted by Council, together with the following terms:

1. a requirement for the developer to continue to make all reasonable endeavours to procure the HFS until the specified date by which final HFS offers are to be made;
2. if the developer has not allocated the total amount of HFS required under the conditions of its consent by the date specified in the planning agreement, a right for Council to make a calculation to determine the amount payable to the Heritage Conservation Fund and make a claim on the bank guarantee amount in part or in full by reference to the amount of HFS that has been purchased by the developer; and
3. an obligation for the developer to register any subsequent allocation of HFS (including disclosing the price paid for the HFS) within 30 days of purchase of that HFS.

### **Determining the amount of any monetary payment**

If the developer has allocated the total amount of HFS required under the conditions of its consent by the date specified in the planning agreement, the Council will return the bank guarantee and no monetary payment will be required.

If at the date specified in the planning agreement the developer has allocated only part or not allocated any of the amount of Heritage Floor Space required under the conditions of their consent, the Council will calculate the amount owing by the developer to the Heritage Conservation Fund using the following formula:

$$X = W(Y - Z)$$

Where

X= the monetary amount required (in \$);

W = the unit rate of Heritage Floor Space specified in the planning agreement.

Y = the total amount of Heritage Floor Space (in square metres) required to be allocated under the conditions of consent for the development;

Z = the amount of Heritage Floor Space (in square metres) allocated to the development at the date specified in the planning agreement;

If at the date specified in the planning agreement the developer has allocated some but not all of the Heritage Floor Space required to be allocated to their development, the Council will claim a portion of the amount specified in the Bank Guarantee equivalent to the amount owing by the developer to the Heritage Conservation Fund.

### Use of Heritage Conservation Fund

The City will apply any moneys obtained under this scheme to:

- the preparation of conservation management plans for heritage buildings in Central Sydney;
- heritage conservation works undertaken by the Council in Central Sydney including, but not limited to:
  - maintenance of heritage buildings in accordance with a conservation management plan; and
  - works to conserve the heritage significance of heritage items that are not buildings eg open space and elements of the public domain; and
- the improvement of the operation of the Heritage Floor Space scheme including any associated studies.

### References

#### Laws and standards

- *Environmental Planning and Assessment Act 1979*
- *Sydney Local Environmental Plan 2012*

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- *(Draft) Planning Agreements Policy*
  - *Performance Bonds Policy*
  - *Performance Bonds Procedure*

### Approval

The Council first approved this scheme on 21 March 2016, and further amended it on 7 August 2017.

## Schedule – form of planning agreement offer

Landowner	Name  ABN  Address  Contact Person  Telephone  Email
Developer (if different from landowner)	Name  ABN  Address  Contact Person  Telephone  Email
Property address	
Title particulars	
Development Consent number and HFS condition number	
Details (including registration number) of any existing VPA affecting the Property	
Amount of HFS required (V)	[insert] square metres
Unit rate of HFS for the purpose of this agreement (W)	\$(insert agreed amount)per sq.m
Amount of bank guarantee	<b>\$(to be calculated by inserting the amount reached by multiplying the amount of HFS remaining to be allocated to the development at the date of lodgement of the application which facilitates participation in the scheme (V) by the unit rate of HFS for the purpose of the agreement (W))</b>
Date by which final HFS offers will be made	<b>[To allow for registration of any allocation, this is to be 1 month before the date from which the City can claim on the bank guarantee]</b>
Date from which City can claim on bank guarantee if the total amount	The earlier of:

of HFS required under the consent has not been allocated

- **[insert fixed date (being the anticipated date of the first occupation certificate for the development at the time the planning agreement is entered into)];** and
- the date of the first occupation certificate actually obtained for the development.