

## **Public Exhibition - Planning Proposal - Heritage Floor Space Amendment - Sydney Local Environmental Plan 2012 and 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 (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.

Amendments have been made to the scheme since it commenced in the 1970s, including changes from 2014 responding to demand for the purchase of heritage floor space being greater than the supply of heritage floor space.

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

When the heritage listing of buildings began and the transferrable heritage floor space scheme was first introduced, the scheme was designed to compensate commercial property owners of heritage protected buildings in Central Sydney, who would otherwise be able to redevelop their sites over time for capital gain. These owners also pay high rates based on the otherwise development potential of their land. This commercial situation was seen as different to churches, synagogues and the like that were not intended to redevelop, and not charged rates. To recognise these differences, two formulas were created to determine the heritage floor space available for the owners of these two different types of buildings.

Over time, the heritage floor space scheme has evolved gradually away from a commercial compensation scheme (when the idea that heritage listing was new) to more a heritage conservation scheme, to provide a financial incentive for conserving heritage buildings, and noting that the costs of conservation works are increasing.

Following a review of the formulas, this report proposes an amendment to the Sydney Development Control Plan 2012 (the DCP), so that all eligible heritage listing buildings use the same formula and introducing a cap on the maximum heritage floor space that can be awarded. This will address the sites 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.

As supply of heritage floor space is increasing, with more awards of heritage floor space being approved or in the early planning stages, as well as the intended changes included as part of this report, an amendment to SLEP 2012 to further extend the operation of the Alternative Heritage Floor Space Scheme is also proposed.

The Alternative Heritage Floor Space Scheme commenced on 15 July 2016 to address the increased demand and temporary shortage of available heritage floor space in the market. 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. Developers enter into a planning agreement with the City for the allocation of heritage floor space to be deferred or, in the event that Heritage Floor space cannot be obtained at all, replaced with the equivalent monetary amount payable to the City to be used for heritage conservation as defined by the terms of the Scheme that has a clear public benefit.

The scheme has been extended to 1 January 2023 as the heritage floor space market continued to experience an imbalance between supply and demand. Although the market is improving, with more awards being approved and registered, or in the planning pipeline, it is not certain that the new levels of supply will be available in a timely manner prior to the current expiry of the Alternate Heritage Floor Space Scheme.

The Planning Proposal at Attachment A seeks to extend the existing alternative arrangements for the allocation of heritage floor space for a further period of three years, allowing development to proceed in the event that the expected improvement in the supply of heritage floor space does not match demand within that time. This includes time for the preparation of conservation management plans, and assessment of applications for new awards of heritage floor space. The extension will provide certainty for continued development in Central Sydney and support those projects that can proceed as part of the economic recovery from the pandemic.

This report recommends approval of the Planning Proposal for Gateway Determination from the Minister for Planning and Homes and public exhibition, and that Council approves the draft DCP for 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) Council approve the Draft Sydney Development Control Plan 2012 – Heritage Floor Space Amendment, shown at Attachment C to the subject report for public authority consultation and public exhibition;
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Heritage Floor Space Amendment and Draft Sydney Development Control Plan 2012 following receipt of the Gateway Determination; and
- (F) 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.** Alternative Heritage Floor Space Allocation Scheme - as Amended
- Attachment C.** Draft Sydney Development Control Plan 2012 - 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.

## Non-rateable buildings formula

3. In the post exhibition report to Council in December 2020 on the Central Sydney Planning Framework, the City committed to exploring 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 heritage listing of 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 utilise available floor space bonuses.
6. Local, state and federal government owned buildings and non-rateable buildings were not eligible to be awarded heritage floor space prior to 11 May 1989.
7. Two different formulas were established which considered the financial circumstances of commercial property owners forgoing development potential, as opposed to 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 FSR 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

9. The 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.
10. 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 very large grounds included in the heritage listing, as these do not have the same conservation costs as maintaining buildings.

It is noted that the scheme in its current form is not intended to cover the forward cost of conservation but provides a financial incentive for the conservation of buildings. In turn, the Heritage Floor Space Scheme means that restored buildings using the scheme are capped of their development potential and no longer have the right to further increase floor space on the site.

11. 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.

### **Alternative Heritage Floor Space Scheme**

12. 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.
13. 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 an equivalent monetary amount is payable to the City.
14. 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 the Sydney LEP 2012 to provide an alternative to the allocation of heritage floor space. Further 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.
15. 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; and
    - (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.

16. Since the alternative arrangements came into force, a total of twenty-five developments have approached the City to enter into a planning agreement to defer their requirement to allocate heritage floor space. Of these, twenty-one 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, although to date, 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 of its development and have made a monetary contribution to the City.
17. 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 (LTFP) 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 LTFP. Current projects for renewal works at the Archibald Fountain, public art restoration and lighting upgrades in Hyde Park have commenced, drawing upon the Heritage Conservation Fund. These projects expended \$1.2 million of funding from the Heritage Conservation Fund in 2021/22 financial, with a further budget of \$3.5 million in 2022/23 as works progress.
18. The number of planning agreements executed under the alternative scheme peaked in 2018, with six executed, as shown in Figure 1 below.

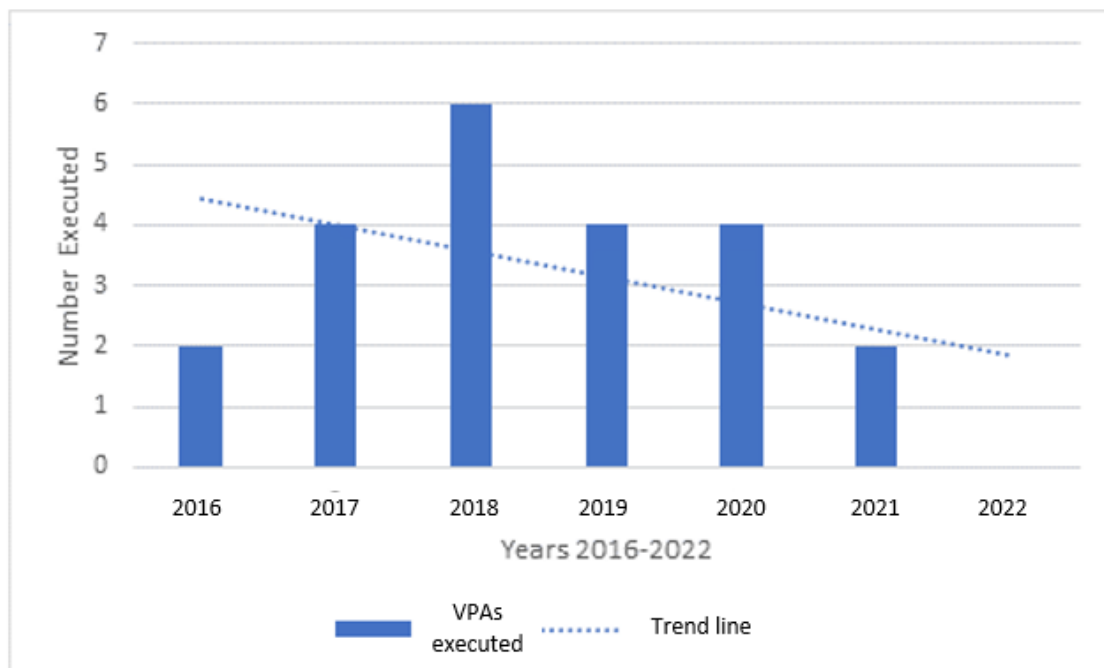


Figure 1: Number of planning agreements for the alternative heritage floor space allocation scheme

19. 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.

20. 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.
21. Since the previous amendment, there have been two further awards approved totalling 4,495 square metres, with two further registrations of earlier awards of heritage floor space under discussion. A further two new applications for heritage floor space awards are expected to be lodged shortly, based on discussions.
22. In July 2020, the City wrote to all owners of buildings which have had heritage floor space awards registered over 25 years ago, to advise them of the option of considering a new heritage floor space award. These buildings would already have conservation management plans prepared and covenants placed on title, and therefore seeking new awards for these properties would be an easier process than for those seeking heritage floor space awards for the first time, and therefore more likely to occur. Initial discussions have taken place with several owners who are considering applying for a new award of heritage floor space.
23. Enquiries for several State government-owned buildings are also ongoing, with a number of buildings currently being investigated, with significant awards of heritage floor space potentially available in the future.
24. In 2021 the City heritage listed eight central Sydney buildings from the modern movement architectural period. These buildings provide another opportunity for the award and sale of heritage floor space.
25. Allowing non-rateable buildings to adopt the rateable formula for calculating heritage floor space is also expected to encourage awards for eligible non-rateable buildings and increase supply.
26. 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.
27. This report seeks 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, State government and other public authorities including the City, and non-rateable buildings following the change to the formula, to be finalised and bring new heritage floor space to the market.



28. The Sydney LEP 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 Sydney LEP 2012 change, it is proposed that the end date referred to in that scheme is also updated to 1 January 2026.
29. 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 2030-2050 Continuing the Vision

30. 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, contribution to celebrate the character of Central Sydney.

## Financial Implications

31. 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 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

32. Environmental Planning and Assessment Act 1979.
33. Environmental Planning and Assessment Regulation 2000.

## Critical Dates / Time Frames

34. 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.

## Options

35. There is the option of not changing the non-rateable formulae and maintain the status quo and not extending the arrangements for the Alternative Heritage Floor Space Allocation Scheme. However, there is a strong case for having a single formulae approach by not relying on the distinction between whether the owner has commercial intent or not, but rather than conservation is incentivised. There is also the option of not extending the alternative scheme, but at this time it would have 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

36. Public exhibition and public authority consultation for the Planning Proposal 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. The DCP amendments will be exhibited for a minimum of 28 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.

## GRAHAM JAHN AM

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