

Public Exhibition - Planning Proposal - Heritage Floor Space Amendment - Sydney Local Environmental Plan 2012

File No: X122035

Summary

The Heritage Floor Space Scheme was established by the City of Sydney (the City) and provides an incentive for the conservation and ongoing maintenance of heritage listed buildings within 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 approved 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.

The Alternative Heritage Floor Space Allocation Scheme commenced on 15 July 2016 to address the 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 a monetary amount 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 has been extended in 2018, 2020 and 2022 as the heritage floor space market continued to experience an imbalance between supply and demand. Although the market has improved since 2021, with more awards being approved and registered, it is not certain that the supply of heritage floor space will continue to meet demand following the 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 5 more years to ensure development can proceed even if there are instances where the supply of heritage floor space does not meet demand. This can be a result of variations in the economic cycle, or other circumstances where the pace of development outstrips the supply of heritage floor space. In addition to extending the scheme, a minor amendment is proposed to the policy. This will require more detailed reporting to demonstrate that genuine attempts to purchase heritage floor space in the market have been made.

This report recommends Council approve the Planning Proposal for Gateway Determination from the Minister for Planning and Public Spaces and 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) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal - Heritage Floor Space Amendment following receipt of the Gateway Determination; and
- (E) 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

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. These provisions establish a framework for a 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.

The Alternative Heritage Floor Space Allocation Scheme has operated since 2016 to respond to insufficient supply of heritage floor space awards

3. Around 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. In addition, some of the remaining heritage floor space had been held as a long-term asset, such as to fund future conservation works, or held by developers for future projects not genuinely available for purchase.
4. In response, the City made a number of changes to support the operation of the Heritage Floor Space Scheme, including the Alternative Heritage Floor Space Allocation Scheme, first adopted by Council March 2016, which allows developers to enter into a voluntary planning agreement (VPA) 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 a monetary amount is payable to the City.
5. 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, for example open space and elements of the public domain
 - (iii) the improvement of the operation of the Heritage Floor Space Scheme including any associated studies

6. To date the City has received \$79.17 million in funding through the Alternative Heritage Floor Space Scheme. This funding has been allocated to the conservation of heritage items in the public domain and heritage listed open spaces. Projects funded from the scheme include the restoration of the heritage-listed Archibald Fountain and the heritage-listed Chinatown Gates as well as the current work on lighting upgrades in heritage-listed Hyde Park.
7. 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, 2020 and 2022.

Supply of heritage floor space has been improving

8. To improve the operation of the Heritage Floor Space Scheme and support the functioning of the heritage floor space market, the City has made a number of changes to the scheme over time. These changes and improvements have included:
 - 2012: Sydney LEP 2012 commenced including the heritage floor space provisions aligning with the previous Central Sydney LEP.
 - 2015: the heritage floor space scheme was expanded to include government buildings that were not subject to a 50+ year lease. Changes were also made to provide clarity on retrospective awards where conservation works to heritage buildings had already been completed and a development application was not required for approval of a heritage floor space award.
 - 2016: the Alternative Heritage Floor Space Allocation Scheme was first introduced. Changes were also introduced for buildings to be awarded heritage floor space 25 years after their first award registration. Plus, developments under 55m in height no longer required heritage floor space to be allocated to the development.
 - 2017: amendments provided an exemption for allocations to developments which added less than 50 square metres to a building.
 - 2018: the first award heritage floor space to a State government owned building, at Hyde Park Barracks, was approved, plus the Alternative Heritage Floor Space Scheme was extended for the first time.
 - 2019: the first award for a local government building was approved for Former Haymarket Library building followed by awards approved for QVB, Capitol Theatre, and Corporation Building, which has delivered approximately 34,300 sqm of heritage floor space and increased the supply of HFS to the market.
 - 2020: the Alternative Heritage Floor Space Scheme was extended to provide more time for the changes made to the Heritage Floor Space Scheme to take effect.
 - 2022: the Alternative Heritage Floor Space Scheme was further extended to provide more time for supply of new awards to increase. Amendments were also made removing the non-rateable formula for calculating heritage floor space awards. This created greater opportunity for heritage listed churches or other places of public worship.

- 2023: as part of the LEP/DCP housekeeping amendments, changes were proposed to provide some limited flexibility for additional building floor space for award sites where there are restrictive covenants preventing any additional floor space. An example is Qantas House looking to change car parking in the basement to provide end of journey facilities which can't currently be considered. This should provide more flexibility for those who have been looking to enter into the Heritage Floor Space Scheme.
 - 2024: a new staff member to work with heritage owners, explaining heritage floor space and guiding applicants regarding the Scheme.
9. Since the alternative arrangements came into force, a total of 25 developments entered into a planning agreement with the City, with the total heritage floor space sought through the alternative arrangements at around 63,000sqm. Of those, 18 developments were unable to purchase all the heritage floor space needed prior to the finalisation of their development and entered the alternative scheme.
 10. As a result of the changes that have been made to improve the operation of the scheme, the number of planning agreements executed under the alternative scheme has reduced since the peak in 2018, when 6 were executed that year, as shown in Figure 1 below:

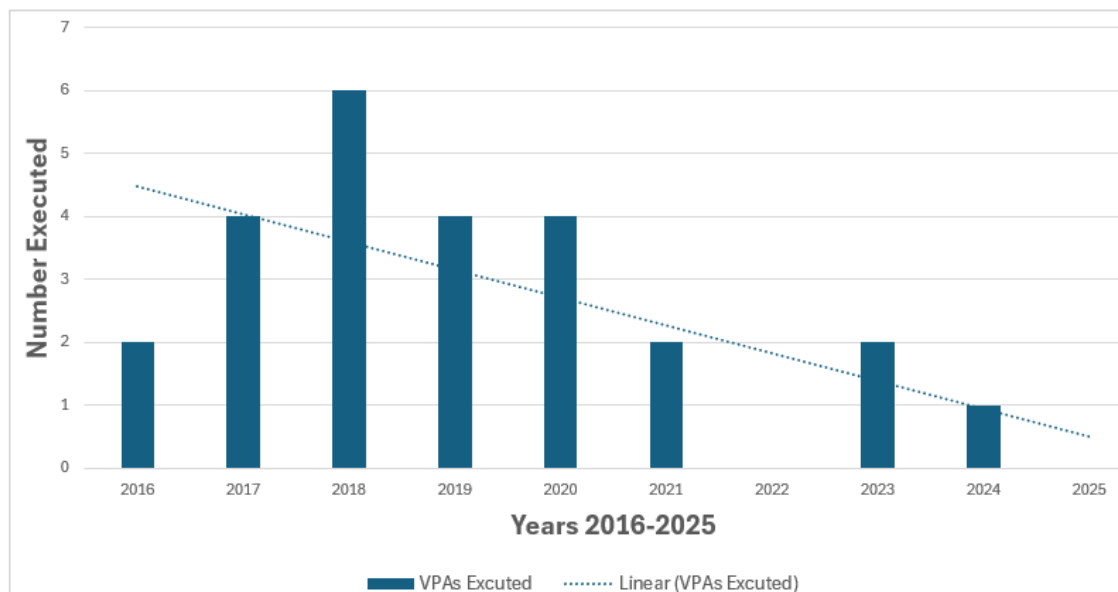


Figure 1: Number of planning agreements for the Alternative Heritage Floor Space Allocation scheme

11. Further evidence that the changes to the scheme have been increasing the supply of heritage floor space is that the 3 developments which have entered into a planning agreement since 2022 have either been able to purchase their required heritage floor space or are in negotiations to purchase the required heritage floor space, before the call date in their VPAs.
12. Current supply of heritage floor space, including registered awards with contact details available, or interim awards that have been approved but not yet registered, is currently around 49,000sqm.

13. Current demand for heritage floor space by developments is currently around 41,000sqm, based on development applications approved but not yet commenced, or they have entered into the Alternative Scheme but can still purchase heritage floor space in the market.
14. We forecast another potential 130,000sqm of supply to 2030 as applications for new awards are lodged based on current discussions with owners and re-award opportunities arising after 25 years. After 2030, we are forecasting on average around 15,000sqm a year based on long term averages.
15. Additional demand to 2030 is forecast to be around 100,000sqm based on planning proposals and development applications in the pipeline. After 2030, we are forecasting an average of around 15,000sqm per year based on long term averages.
16. Although the forecasts for supply exceed those for demand and suggest the market can function as intended, economic fluctuations over time can be unpredictable. Keeping the Alternative Scheme active for some additional time has merit, in case the market does not reflect the forecasts.
17. During the 5-year period we will assess whether the arrangements should be made permanent. The aim is to ensure projects are able to progress and will not be hindered by any shortage of heritage floor space that may occur in the market at a particular time.

Extending the alternative Heritage Floor Space allocation scheme for another 5 years will ensure it is available if necessary for developments to proceed

18. This report seeks to extend the alternative heritage floor space allocation arrangements for a further 5 years until 1 January 2031. This extension will ensure this scheme is available should the supply of heritage floor space awards not continue to meet demand for heritage floor space by developments.
19. 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 2025.
20. To retain a focus on the market as the primary source of heritage floor space and ensure the alternative scheme is only used, when necessary, the following amendments are proposed to the alternative heritage floor space allocation policy:
 - (a) require a proponent to contact at least 50% or 6 owners of heritage floor space with an offer to purchase at genuine market rates. For example, this would be 6 owners based on there being 15 owners listed in the March 2025 Heritage Floor Space Update
 - (b) require proponents to provide a 6-monthly report of new offers being made where new heritage floor space is available for sale since the VPA process commences
21. The date change to the Alternative Heritage Floor Space Scheme is provided in Attachment A and the other changes to the Policy are at Attachment B.

Key Implications

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 policy 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 celebrating the character of Central Sydney

Risks

23. City staff have undertaken a thorough assessment of the planning proposal and found that it demonstrates strategic merit in accordance with NSW Government guidelines.
24. Progressing the planning proposal is within the City's risk tolerance and appetite.
25. The proposal will be capable of complying with relevant environmental and planning laws and regulations and is within the City's minimal appetite for non-compliance with environmental laws, regulations and industry standards.
26. Proceeding with the proposal will meet the City's minimal appetite for disruption to our regulatory functions as decisions will be within the timeframes set in the NSW Government's State of Expectations Order 2024.

Financial Implications

27. 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 fund. Council's Alternative Heritage Floor Space Allocation Scheme identifies how the fund 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

28. Environmental Planning and Assessment Act 1979.
29. Environmental Planning and Assessment Regulation 2000.

Critical Dates / Time Frames

30. The existing Alternative Heritage Floor Space Allocation Scheme arrangements expire on 1 January 2026. The timeframe for a simple amendment to the LEP to extend the scheme can be progressed within this time.

Options

31. There is the option of not extending the arrangements for the Alternative Heritage Floor Space Allocation Scheme. Without an extension of the Scheme this has the potential to impede development in Central Sydney and affect construction activity. This approach is not supported at this time. During the 5-year period, the City will assess whether the alternative scheme should be made permanent or not renewed.

Public Consultation

32. Public exhibition and public authority consultation for the Planning Proposal will be undertaken in accordance with any Gateway Determination issued by the Department of Planning Housing and Infrastructure. Due to the minor nature of the proposal, it is proposed that public exhibition should be for a minimum of 14 days. Public exhibition will be in accordance with the City's Community Participation Plan.

GRAHAM JAHN AM

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