

## Place, Design and Public Spaces

EF20/4413

### Gateway determination report

<b>LGA</b>	Sydney
<b>PPA</b>	City of Sydney Council
<b>NAME</b>	Amendment to heritage floor space provisions – extension of temporary alternative arrangements scheme – Clause 6.11A (0 homes, 0 jobs)
<b>NUMBER</b>	PP_2020_SYDNEY_008_00
<b>LEP TO BE AMENDED</b>	Sydney Local Environmental Plan 2012
<b>RECEIVED</b>	7 September 2020
<b>FILE NO.</b>	IRF20/4413
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to extend the application of the temporary alternative heritage floor space (HFS) allocation scheme for Central Sydney by amending clause 6.11A of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) to extend the time frame within which to submit a development application and seek alternative HFS arrangements from 1 January 2021 to 1 January 2023.

The alternative arrangements will continue to allow developers to enter into planning agreements with Council that can lead to HFS allocation being deferred or, if HFS cannot be obtained, replaced with a monetary contribution to Council to be used for heritage conservation.

The alternative HFS scheme was necessitated by a shortage of HFS available for purchase, which is causing difficulty for developers in sourcing the HFS required to satisfy development consents. Delays in obtaining HFS prevent developers from starting construction of their developments. This imposes a barrier to property development within Central Sydney and threatens to delay major projects.

### 1.2 Background

The HFS scheme has contributed significantly to the management and conservation of heritage in the City of Sydney LGA.

On 11 November 2015, the Department as the Minister's delegate issued a Gateway determination facilitating an amendment to the HFS scheme and implementing the temporary scheme contained in clause 6.11A of the Sydney LEP 2012.

Clause 6.11A was introduced to ensure that property development in Sydney would not be impeded by a temporary shortage of HFS available for purchase. However, it is evident that the HFS market remains in short supply and the need for alternative HFS arrangements remains. The quarterly HFS report in June 2020 identifies there is an imbalance with demand and supply. Currently there is 37 development consents that require the purchase of HFS which equates to 76,509.28 square metres. Whereas the total registered HFS available for purchase is 59,598.93 square metres.

On 22 October 2018, the Department as the Minister's delegate issued a Gateway determination to extend application of clause 6.11A for two years until 1 January 2021.

The planning proposal seeks to extend the application of clause 6.11A for two years until 1 January 2023 to ensure HFS arrangements can be satisfied while ensuring the continued conservation of the city's heritage.

### **1.3 Existing planning controls**

The HFS planning controls are outlined in Part 6, Subdivision 3 of the Sydney LEP 2012.

Clause 6.10 provides the framework for a scheme under which owners of heritage buildings in Central Sydney are incentivised to conserve and maintain their properties by enabling them to receive HFS after conservation works are undertaken and relevant covenants are applied to the site.

Clause 6.11 stipulates that a developer may only obtain approval for certain types of additional floor space if they allocate HFS to their development site. The clause prohibits development commencing unless the HFS requirements under the clause are fulfilled when a developer is issued additional floor space under the following circumstances:

- additional floor space permitted under Clause 6.4 Accommodation floor space on sites in areas 1, 2 and 3 when the development exceeds a height of 55m;
- additional floor space permitted under Clause 6.4 Accommodation floor space in area 4 when the development exceeds a height of 55m and an FSR of 8:1;
- additional floor space permitted under Clause 6.9 Opportunity Floor Space;
- additional floor space permitted under clauses 6.21(7)(b) or 6.26(7)(b) for design excellence; and
- additional floor space permitted under clause 4.6 that uses additional floor space mentioned above.

Clauses 6.10 and 6.11 establish a framework for a HFS market in which vendors and buyers negotiate with each other and Council maintains a register for this market.

Clause 6.11A allows for developers to make alternative arrangements with Council if obtaining HFS under clause 6.11 is difficult. It allows Council to defer HFS requirements until after works have commenced while the developer attempts to purchase the required HFS. If the developer is unable to secure the required HFS, Council can enter into a financial agreement with the developer

where the developer provides a monetary contribution to a heritage conservation fund managed by Council in lieu of purchasing HFS.

Funds obtained under the scheme are used for undertaking conservation works and preparing heritage conservation management plans. This clause was temporary while there was a shortage of available HFS.

A total of 22 developments have approached Council to enter into a planning agreement to defer the requirement to allocate HFS, since the alternative arrangement came into force. Since December 2019, 4 awards of HFS have been approved for Council owned heritage buildings totalling 34,475.93m<sup>2</sup> which has provided a significant supply of HFS to the market. The HFS from the heritage buildings can then be registered and sold on the market.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the planning proposal is to amend the Sydney LEP 2012 by extending the application of the temporary alternative arrangements in relation to the allocation of HFS by two years.

### **2.2 Explanation of provisions**

The planning proposal states that “the proposed outcome will be achieved by allowing clause 6.11A to apply to a development application that is made for a further 2 years”.

This statement should be updated to clearly explain the intent of the proposal prior to community consultation.

### **2.3 Mapping**

There are no changes to maps and no additional maps will be required as a result of the proposed amendment.

## **3. NEED FOR THE PLANNING PROPOSAL**

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Council states that the planning proposal is the result of monitoring of the supply and demand of HFS through its register. Council states the supply of HFS is improving as more applications are being prepared and lodged, and the extension of Clause 6.11A of the Sydney LEP 2012 will allow for the additional supply of HFS to be delivered to the market.

The alternative arrangement overcomes an identified shortage of HFS within the market, while not hindering development. According to Council, the supply of HFS is improving, following the recent approval of heritage conservation works and requests for HFS awards which has resulted in of approximately 34,000 square metres of HFS for four City-owned buildings, In addition, there is further HFS award applications for City-owned buildings being prepared and potential HFS award application for State government-owned properties.

Council’s Heritage Floor Space Update released in June 2020 (**Attachment D**) outlines that the average sale price of HFS is \$1,903.03. This has risen from \$643 per m<sup>2</sup> in June 2016.

Council advises that the recent increased activity in HFS award applications, and likely future award applications will continue due to the current high price. However, due to uncertainty in the economy and HFS market, including effects resulting from

the COVID-19 pandemic, there is a need to maintain the alternative scheme for additional time to ensure development will not be hindered by a shortage in HFS in the current market.

## 4. STRATEGIC ASSESSMENT

### 4.1 Regional / District

#### Eastern City District Plan

The Eastern City District Plan, released in March 2018, identifies 22 planning priorities and associated actions that are important to achieving a liveable, productive and sustainable future for the district, including the alignment of infrastructure with growth. The planning proposal is consistent with the key planning priorities in the District Plan as demonstrated in **Table 1**.

**Table 1:** Consistency with Eastern City District Plan

Consistency with Eastern City District Plan	
Priority	Comment
Planning priority E6: Creating and renewing great places and local places, and respecting the District's heritage	The Department considers the proposal to be consistent with this priority as it will contribute to the continued conservation of heritage buildings within Central Sydney.
Planning priority E7: Growing a stronger and more competitive Harbour CBD	The Department considers the proposal to be consistent with this priority as it will not hinder any future development within Central Sydney.
Planning priority E11: Growing investment, business opportunities and jobs in strategic centres	The Department considers the proposal to be consistent with this priority as it will enable the continued conservation of heritage buildings while not hindering future development within Central Sydney.

### 4.2 Local

#### Sustainable Sydney 2030

Council's Sustainable Sydney 2030 Community Strategic Plan is the vision for the sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City and 10 targets against which to measure progress. This planning proposal is consistent with key directions of the strategic plan as demonstrated in **Table 2**

**Table 2:** Consistency with Sustainable Sydney 2030

Consistency with Sustainable Sydney 2030	
Direction	Comment
Direction 1 – A Globally Competitive and Innovative City	The Department considers the proposal is consistent with Direction 1, as it will remove barriers and not hinder any development within Central Sydney.

#### Local Strategic Planning Statement

City of Sydney's Local Strategic Planning Statement (LSPS) was assured by the Greater Sydney Commission in March 2020. The LSPS sets out the land use planning context and 20-year vision to positively guide change towards the City's vision for a green, global and connected city. The planning priorities and actions in the LSPS are provided to achieve the vision

The Department considers that the principles of the planning proposal are generally consistent with the LSPS (**Table 3**).

**Table 3:** Consistency with Local Strategic Planning Statement

Priority	Comment	Complies
<b>Priority P2:</b> Growing a stronger, more competitive Central Sydney	The Department considers the planning proposal is consistent with the LSPS as it will remove barriers and not hinder any development within Central Sydney.	Yes

### 4.3 Section 9.1 Ministerial Directions

The proposal is consistent with the following applicable section 9.1 Ministerial Directions as identified in **Table 4**.

**Table 4:** Consistency with Ministerial Directions

Section 9.1 Direction	Consistent	Comment
<b>2. Environment and Heritage</b>		
2.3 Heritage Conservation	Yes	<p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The Department considers the planning proposal to be consistent with the objectives and requirements of this Direction as the extension of Clause 6.11A of the Sydney LEP 2012 will ensure the continued conservation of heritage buildings within Central Sydney.</p> <p>The planning proposal does not provide an assessment against the relevant Section 9.1 directions, and the Department has recommended a condition for an assessment to be conducted prior to public exhibitions.</p>

### 4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with and will not hinder the application of the relevant SEPPs.

## 5. SITE-SPECIFIC ASSESSMENT

### 5.1 Social

The Department considers the planning proposal to have no negative social impacts, as it will encourage the conservation of heritage buildings.

### 5.2 Environmental

The Department considers the planning proposal to have no environmental impacts, as it only seeks to extend an existing clause and does not propose any physical works.

### **5.3 Economic**

The planning proposal will remove any potential barrier to timely property development within Central Sydney by assisting to ease a temporary shortage of HFS available within the market.

The proposed amendment will ensure the ongoing facilitation of the required property development in the Sydney LGA outlined in the Eastern City District Plan.

### **5.4 Infrastructure**

The Department considers the planning proposal to have no infrastructure impacts, as it only seeks to extend an existing clause and does not propose any physical works. Any future Development Application (DA) would need to consider infrastructure impacts.

## **6. CONSULTATION**

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### **6.1 Community**

Council has proposed a public exhibition period of 14 days. The Department considers this to be appropriate.

Council, as the planning proposal authority, will be responsible for public consultation. Council has advised that this will include notification on Council's website and directly inviting comments from owners of Heritage Floor Space and owners of heritage buildings in Central Sydney.

### **6.2 Agencies**

Council proposes to consult with Heritage NSW and Property NSW. The Department considers this to be appropriate and recommends consultation with Heritage NSW and Property NSW be conditioned in the Gateway determination.

## **7. TIME FRAME**

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Council has included a project timeline of three months. The Department considers this to be appropriate, as the predicted finalisation will occur in December 2020 and the clause expires on 1 January 2021.

This does not preclude the planning proposal from being finalised sooner.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested authorisation to make this plan. The request is considered to be appropriate as the matter is of local significance and only seeks to extend an existing clause.

## **9. CONCLUSION**

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The Department recommends that the planning proposal proceed subject to conditions for the following reasons:

- it is generally consistent with the Eastern City District Plan and the relevant section 9.1 Ministerial Directions and State Environmental Planning Policies;
- it is consistent with Council's Local Strategic Planning Statement and Sustainable Sydney 2030;
- it contributes to the ongoing conservation of heritage items within Central Sydney; and

- it reduces the risk that developments within Central Sydney are impeded by current markets.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be revised as follows:
  - (a) update the explanation of provisions to clearly explain the intent of the planning proposal; and
  - (b) provide an assessment and justification on the consistency with section 9.1 Direction 2.3 Heritage Conservation.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following state agencies:
  - (a) Heritage NSW; and
  - (b) Property NSW.
4. The time frame for completing the LEP is to be 3 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority



25/9/2020

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02/10/2020

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