

18 February 2016

Chief Executive Officer
City of Sydney
GPO Box 1591
Sydney NSW 2001

Dear Ms Barone

RE Planning Proposal – Heritage Floor Space Amendments to Sydney Local Environmental Plan (Sydney LEP) 2012

Thank you for the opportunity to comment on the proposed Heritage Floor Space (HFS) amendments to the Sydney LEP 2012.

Our members have a long-term interest in the economic health and vibrancy of the Sydney CBD; Australia's pre-eminent commercial centre and a global financial hub and are the major owners, investors, financiers, managers and developers of CBD office, retail, tourism and residential space.

Our letter to the City of Sydney dated June 2015 confirmed our support for the changes proposed to the Sydney Development Control Plan 2012 (section 5.1.9) that would unlock more HFS awards, including the release of HFS awarded for the upgrade of Government-owned heritage buildings.

Whilst those changes did open up some additional HFS supply, the changes did not open up the quantum of supply necessary to meet current demand. In fact, as it stands, demand for HFS is far outstripping supply.

Further, owing to a rise in development activity in Central Sydney under positive economic conditions, there will be increased demand for HFS over the next decade from developments already approved and in the pipeline for approval.

As a result, we recommend a review of the operation of the HFS scheme, its ability to service the market without obstructing major projects within Central Sydney (including those already in the pipeline for approval) and its ability to meet the development potential projected for the City of Sydney.

In the interim, we support the intent of the proposed amendments to the Sydney LEP 2012, but make some recommendations for your consideration.

Areas of support

We support in principle the measures the City proposes to address the undersupply of HFS and are confident the amendments have the potential to achieve the following:

- align the Sydney LEP 2012 with Sydney's long standing practice of not requiring HFS allocation until after consent is issued but prior to construction.

- allow council to enter into agreements which may lead to the allocation of HFS being deferred or in the event that HFS cannot be obtained, replaced with an alternative arrangement that satisfies the proposed Alternative Heritage Floor Space Allocation Scheme.
- provide an option for a project to progress without delay when the developer has made a legitimate attempt to secure HFS but is unable to obtain the required amount due to the undersupply on the market.

Recommendations

While we support the intent of the changes to the scheme, we make the following recommendations.

1. Enable reapplication for buildings after 10-15 years

Schedule 5 of Sydney LEP 2012 identifies about 300 heritage buildings in Central Sydney. Of these 300 buildings, 77 (more than a quarter) have been awarded HFS and cannot receive a further award under current controls.

The City proposes the reapplication of HFS to buildings after 25 years, and states that this will encourage the owners of heritage buildings to continue to reinvest in the maintenance and conservation of buildings. This is an excellent proposal and will bring additional supply to the market, whilst simultaneously encouraging owners of heritage buildings to continue to invest in conservation of heritage buildings.

However, the 25 year time frame is insufficient to deliver the supply needed in the market, therefore the Property Council encourages the City to extend the potential of this proposal further and consider shorter time frames and reapplication of HFS after 10 to 15 years.

2. Expand eligibility to buildings on the city fringe

Heritage Floor Space can be awarded in the B8 Metropolitan Centre Zone only. Its allocation is restricted to sites within Central Sydney where development exceeds specified Floor Space Ratios. The controls and requirements in respect to HFS are outlined in Sydney LEP 2012 (in particular Clauses 6.10 and 6.11) and Sydney Development Control Plan 2012 – Section 5.1.8.

Expansion of the rateable HFS to include a broader catchment area, (such as, for example, the fringes of the commercial core) would increase supply significantly.

3. Create better incentives for non-rateable buildings

Under the Sydney LEP 2012, the maximum amount of floor space to be awarded as HFS is calculated differently for rateable and non-rateable buildings.

Rateable buildings (privately-owned and Government-owned buildings) attract a significantly higher rate of HFS compared to non-rateable buildings under the HFS scheme.

This means that non-rateable buildings have a reduced incentive to liquidate the HFS value in the building. We believe a thorough examination of factors which are negatively impacting on supply would result in the City of Sydney using a standard formula to calculate applicable HFS value in both rateable and non-rateable buildings.

4. Consolidate fragmented HFS holdings

Although it is acknowledged that the Council is a third party administrator of the Heritage Floor Space scheme, there remain some administrative functions which the City could take on in order to facilitate a low cost, and timely transfer of HFS.

Currently, there are number of smaller HFS holdings on the register. On the request of the developer seeking HFS allocation, the City of Sydney could internally consolidate smaller HFS holdings and present a final, totalled amount of HFS available for the developer to access.

This will alleviate two problems that exist in the current market: (a) the task of collecting small allocations of HFS from multiple vendors can be significantly costly for very little return, and therefore act as an impediment to effective transfer of HFS from vendor to purchaser; (b) small amounts of HFS recorded on the register can artificially inflate the total available HFS.

5. Provide more detail on the operation of the Bank Guarantee

Bank Guarantee – methodology

As part of the proposed Draft Alternate Heritage Floor Space Allocation Scheme, if a developer is unable to obtain HFS – despite genuine and ongoing attempts – the developer may then provide a bank guarantee to Council for an amount equal to the market value of the HFS, plus a premium.

Before the Property Council is able to support the Draft Alternate Heritage Floor Space Allocation Scheme, we would need to see more modelling behind the methodology that will underpin the bank guarantee and the calculation of the HFS value on which the guarantee is contingent.

Currently, the purchase price of any HFS is determined between the owner and the prospective buyer and depends on quantum and market conditions.

Whilst the average purchase price of HFS award last year was \$615 per square metre, this rate is a variable year on year. When this scheme is in operation in 2016, will the HFS rate be calculated as an average sale price for HFS over the preceding twelve months? We request further detail from the City on this matter.

Premium Pricing

The introduction of a premium will likely impact on the marketplace where HFS is being traded.

It is possible that the premium pricing model will have the unintended effect of lifting the market value of HFS and, as a result, encouraging building owners to land bank –i.e. developers would not liquidate the HFS value of their property because it is likely to be valued at a premium if there is less available in the general pool. This will create issues of affordability and project viability. The escalating costs of procuring HFS can be significant.

In March 2015, the City estimated that only 36% (18,000m²) of total HFS on the register is genuinely available for sale as a number of HFS owners are banking their HFS for use in their future developments, or until prices increase. A further 32,000m² of HFS has been approved but has not yet

been registered.¹ It is difficult to predict when this additional HFS supply will come on to the market. Further, to enter into a planning agreement with the City - as an alternative to securing HFS - the developer must demonstrate three genuine attempts to obtain HFS.

Given the state of the market, and the underlying factors driving market conditions, outside of the developers' control, if the City is to proceed with a premium, we recommend that it is capped (for example, at a rate of 10%) to minimise negative impact on the market.

It is also stated that if the City converts the guarantee, it will claim for the HFS award and an additional premium. Yet, no transparency is provided on how the premium will be calculated and also at what stage of the process the council would convert the bank guarantee and declare the developer unsuccessful in obtaining the award.

6. A long-term strategy is needed beyond 2018

The Property Council once again commends the goal of this proposal to increase HFS supply. However, this scheme is presented as a short term solution applying only to DAs lodged before 31 December 2018.

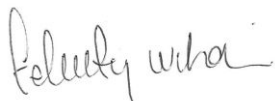
The timeframe is intended to overcome the identified temporary shortage of HFS at this current stage of the development cycle. Yet, there is no data or economic modelling provided by the City to demonstrate how much HFS will be released as a result of the proposed changes; and whether the release will be sufficient to meet current and expected demand.

If the City could provide an identified and disclosed quantum of short term HFS supply to be made available as a result of the Sydney LEP 2012 amendments it would give confidence to developers and investors that their vision and development initiatives can be achieved.

Alternatively, if the current demand and supply conditions persist there will be significant delays for a number of major projects within Central Sydney, some already in the pipeline for approval.

The Property Council would welcome any opportunity to initiate discussions with the City regarding the content of this submission. Please do not hesitate to contact Senior Policy Adviser Kamani Krishnan on (02) 9033 1951.

Yours sincerely,



Felicity Wilson
Acting NSW Executive Director
Property Council of Australia

¹ <https://www.jbaurban.com.au/article/looming-demands-heritage-floor-space-city-sydney>