



# Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme

---

December 2021

Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme



# Contents

Purpose.....	1
Scope.....	2
Definitions .....	2
Scheme Statement.....	3
The offer must be submitted to the DPIE at the same time as the application it relates to .....	4
Terms of planning agreement in relation to Heritage Floor Space allocation .....	4
Determining the amount of any monetary payment .....	5
Use of the money .....	5
City of Sydney Heritage Conservation Fund.....	5
NSW Government allocation of monetary amounts obtained .....	5
Effect of Planning Agreement entered into pursuant to this scheme .....	6
References.....	6
Approval.....	6

## Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme

---

### Purpose

Heritage Floor Space (HFS) is provided for in clauses [6.10](#), [6.11](#) and 6.11A of the *Sydney Local Environmental Plan 2012* (SLEP).

The SLEP outlines the objective of and provides the legal framework for a scheme under which an owner (or the nominee of the owner) of a heritage building in Central Sydney may be awarded HFS (have an entry recorded on the HFS Register) after completing conservation works on the building (and certain other requirements have been met). The owner may sell that HFS to a developer who, as a condition of development consent for an application seeking additional floor space, is required to allocate HFS to its development site.

Due to a lack of HFS available on the HFS Register with a willing seller in Central Sydney, developers can face difficulties satisfying conditions of development consents that require the allocation of HFS to their development. This threatens to delay major projects.

Clause 6.11A(2) of the SLEP provides that, if a consent authority is satisfied that the requisite amount of HFS cannot be acquired for allocation to a site on reasonable terms and within a reasonable period, the consent authority may dispense with or reduce the amount of HFS required to be allocated. In order to apply this clause, the consent authority must have first adopted and published a policy that makes alternative heritage arrangements to the allocation of HFS for the purposes of the HFS subdivision of the SLEP and be satisfied that the relevant alternative heritage arrangement for the allocation of HFS in relation to the development has been made.

The City of Sydney has adopted and published an Alternative HFS Allocation Scheme. Under this scheme, if the applicant has demonstrated to the City of Sydney that they have made genuine and ongoing efforts to obtain HFS but nonetheless been unable to satisfy the requirements of the relevant condition of consent, they may enter into a planning agreement to financially offset the HFS requirements by paying a monetary amount equal to the market value of the HFS plus an uplift amount into the City of Sydney's Conservation Fund.

There is no adopted and published policy that makes alternative heritage arrangements when the Minister for Planning and Public Spaces (or his or her delegate) is the consent authority.

In September 2021, the Minister resolved to adopt and publish a policy allowing for an alternative heritage arrangement to be entered into between a developer and the Minister in the event that HFS cannot reasonably be obtained.

This document sets out the details of the Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme. The City of Sydney's scheme is generally accepted by industry. Given this, and to provide consistency and certainty, the Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme largely mirrors the existing City of Sydney scheme.

## Scope

This scheme provides for the use of Planning Agreements and Bank Guarantees as an alternative to the allocation of HFS under clause 6.11 of SLEP.

The management of Bank Guarantees provided pursuant to this scheme is to be in accordance with Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented, or substituted from time to time.

This scheme will apply to development in respect of a building on a site in Central Sydney that utilises additional floor space referred to in clause 6.11 of SLEP and for which development consent cannot be granted unless heritage floor space will be allocated to the site in accordance with that clause.

This scheme will only apply to a development application made before 1 January 2023.

## Definitions

Term	Meaning
Allocation	An entry in the HFS Register to indicate that an amount of HFS 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 demand.
Central Sydney	The land identified as 'Central Sydney' on the <i>Sydney Local Environmental Plan 2012 Locality and Site Identification Map</i> .
Heritage Conservation Fund	A fund established and maintained by the City of Sydney that includes 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 HFS Register.
HFS Register	The register maintained by the City of Sydney for the purpose of clause 6.10 of the <i>Sydney Local Environmental Plan 2012</i> .
HFS Update	A quarterly report on awards, sales and transfers of HFS which is prepared by the City of Sydney and published on its website.
Memorandum of understanding (MOU)	An MOU is an expression of agreement to proceed. It indicates that the parties have reached an understanding and are moving forward based on the terms of that understanding.
Planning Agreement	The meaning set out in section 7.1 of the <i>Environmental Planning and Assessment Act 1979</i> .

## Scheme Statement

This scheme establishes the circumstances under which the Minister for Planning and Public Spaces, or his or her delegate (as the relevant consent authority for a development within Central Sydney), will accept an alternative heritage arrangement to the allocation of HFS under clause 6.11 of *Sydney Local Environmental Plan 2012* (SLEP).

The primary aim of this scheme is enable projects for which the Minister for Planning and Public Spaces is the consent authority to proceed in circumstances where there is a lack of HFS available to purchase in the market in satisfaction of conditions of development consent requiring allocation of HFS.

The principles of this scheme are:

1. The developer is to demonstrate that it has made genuine and ongoing efforts to obtain HFS and has been unable to do so;
2. The developer agrees to obtain the HFS by a specified date following the commencement of construction or, alternatively, pay a monetary amount equal to the market value of the HFS plus an uplift amount (the formula for this amount is set out on P.6) to the NSW Government who will distribute the amount paid in accordance with principle 6 below;
3. The developer is to provide a Bank Guarantee to the NSW Government for an amount equal to the amount of HFS required multiplied by the currently applicable unit rate;
  - a. Where the developer is a NSW Government agency, an MOU notified with the Planning Agreement may replace the Bank Guarantee;
4. The amount of the payment required if the HFS 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 HFS have not been successful;
5. The price for HFS will be set from the City of Sydney HFS Update; and
6. Any amount paid under this scheme will be directed towards heritage conservation works in Central Sydney. Specifically, one half of the amount paid under this scheme is to be provided to the NSW Government for allocation to State-owned heritage items in Central Sydney and one half of the monetary amount is to be allocated to the City of Sydney's Heritage Conservation Fund.

## The offer must be submitted to the DPIE at the same time as the application it relates to

If a developer needs to enter into an alternative heritage arrangement pursuant to this scheme, the offer to enter into a Planning Agreement must be made on the NSW Planning Portal and attached to that offer must be the following documentation to the satisfaction of the Minister:

1. documentary evidence that the developer has submitted offers to purchase HFS to at least three separate owners of HFS within three months immediately preceding the date of application and such offers have not been accepted;
2. documentary evidence that the amount of any offer to purchase HFS was not less than the average sales price per square metre of HFS reported in the most recently published City of Sydney HFS Update; and
3. documentary evidence that the developer has not been able to purchase the amount of HFS required under the conditions of the applicable development consent.

---

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

If the Minister accepts a developer's offer to enter into a Planning Agreement pursuant to this scheme, the Planning Agreement will include the terms included in the offer accepted by the Minister, 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 the Minister to make a calculation to determine the amount payable to the NSW Government (to be divided between the NSW Government and City of Sydney) and make a claim on the Bank Guarantee in part or in full with regard to any amount of HFS that has been purchased by the developer;
3. an obligation for the developer to register any allocation of HFS (including disclosing the price paid for the HFS) within 30 days of purchase of that HFS and before the date specified in the Planning Agreement (whichever occurs first); and
4. any other term deemed necessary in the circumstances by the Minister.

---

## Determining the amount of any monetary payment

The amount the developer is required to pay as an alternative heritage arrangement to the allocation of HFS required by the conditions of consent will be calculated with the following formula.

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

Where

X = the monetary amount required (in \$)

W = the unit rate of HFS specified in the planning agreement

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

Z = the amount of HFS (in square metres) allocated to the development at the date specified in the planning agreement

---

## Use of the money

The NSW Government will divide any amount obtained under this scheme into equal parts and allocate one part to the City of Sydney's Heritage Conservation Fund and one part to DPIE to apply to State-owned heritage items in Central Sydney.

### City of Sydney Heritage Conservation Fund

The City of Sydney will apply any amount obtained from its part of the funds provided by a developer under this scheme to:

- the preparation of conservation management plans for heritage buildings in Central Sydney
- Heritage conservation works undertaken by the City of Sydney 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 e.g., open space and elements of the public domain; and,
- the improvement of the operation of its Alternative Heritage Floor Space Allocation Scheme including any associated studies.

### NSW Government allocation of monetary amounts obtained

The NSW Government will apply any amount obtained from its part of the funds provided by a developer under this scheme to:

- be used for the purposes of the conservation and ongoing management of State-owned Heritage items within Central Sydney<sup>1</sup>; and/or
- the operation of this Alternative Heritage Arrangements Scheme including any associated studies.

---

<sup>1</sup> Found in schedule 5 of the *Sydney Local Environmental Plan 2012*

---

## Effect of Planning Agreement entered into pursuant to this scheme

Once a Planning Agreement has been entered into pursuant to this scheme, the Minister may rely on that Planning Agreement to be satisfied that an alternative heritage arrangement has been made in relation to the relevant development pursuant to clause 6.11A(2)(b) of the SLEP. The Minister may therefore rely on such Planning Agreement to be satisfied that a condition of consent requiring the allocation of HFS has effectively been complied with.

---

## References

### Laws and standards

- *Environmental Planning and Assessment Act 1979*
  - *Sydney Local Environmental Plan 2012*
  - City of Sydney's Alternative HFS Allocation Scheme
  - Treasury Circular NSW TC14/01
  - State Voluntary Planning Agreement - <https://www.planning.nsw.gov.au/Plans-for-your-area/Infrastructure-funding/State-Voluntary-Planning-Agreements>
- 

## Approval

### **The Hon Rob. Stokes MP**

Minister for Planning and Public Spaces