

Item 3.

Heritage Floor Space - Award to 44 Martin Place, Sydney and Review of Council Delegation for Awards

File No: S116090

Summary

Sydney Local Environmental Plan 2012 sets the legal framework for a scheme under which owners of heritage buildings in Central Sydney may be awarded heritage floor space after completing conservation works on the building. The heritage floor space can then be sold to developers who, as a condition of development consent, are required to allocate heritage floor space to their development site.

Applications for the award of heritage floor space are most commonly associated with a development application for conservation works to the heritage item. Recent changes to the Environmental Planning and Assessment Act 1979 have removed Council's role in assessing development applications; however, Sydney Local Environmental Plan 2012 authorises only the Council to award heritage floor space. As a consequence, duplicate reports are presently required - one to the consent authority to assess the development application, and one to Council to award heritage floor space. In most circumstances, this duplication is unnecessary and leads to extra work for Council officers and delays for applicants. In instances where the applicant is Council or a government agency the duplicate report for the award of heritage floor space affords the highest level of transparency and is desirable.

This report recommends that to streamline the process for heritage floor space awards, Council delegate its authority to award heritage floor space to the Chief Executive Officer except where the applicant is Council or a government agency.

Development application D/2017/524 for 44 Martin Place, Sydney, was approved under delegation on 21 August 2018 and included conservation works, an updated Conservation Management Plan, and a request for an award of 4730sqm of heritage floor space. The heritage floor space award was applied via a deferred condition of consent subject to Council's endorsement. This report recommends that Council endorse the award of 4,730sqm of heritage floorspace for 44 Martin Place, Sydney, assessed as part of development application D/2017/254.

Recommendation

It is resolved that:

- (A) Council endorse the award of 4,730sqm of heritage floor space for 44 Martin Place, Sydney, as recommended in the officer's assessment report for D/2017/254 and attached to this report; and
- (B) Council amend the register of delegations from the Council to the Chief Executive Officer to delegate its authority for the award of heritage floor space to the Chief Executive Officer, except where the applicant is the Council or a government agency.

Attachments

Attachment A. Development Application Assessment Report D/2017/524 - 44 Martin Place, Sydney

Background

1. A transferrable heritage floor space scheme has existed in Central Sydney for more than 40 years, and has supported the on-going conservation of more than 75 heritage buildings. The current scheme is established under clauses 6.10 and 6.11 of Sydney Local Environmental Plan 2012 (Sydney LEP). 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 they have applied the relevant covenants. 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. Together, these provisions establish a framework for a heritage floor space market in which vendors and purchasers negotiate directly with one another and Council maintains the heritage floor space register.
2. Applications for the award of heritage floor space are most commonly considered as part of a development application involving conservation and other works to the heritage item. Recent changes to the Environmental Planning and Assessment Act 1979 mean that Council no longer exercises the consent authority function with respect of any development applications, which are determined either under delegation to staff, by the local planning panel, or by the Central Sydney Planning Committee. State Significant Development applications have an additional planning pathway and additional consent authority options.
3. Clause 6.10 of Sydney LEP identifies that the Council is responsible for the award of heritage floor space. This responsibility cannot be exercised by a consent authority such as the local planning panel or the Central Sydney Planning Committee, and Council has not delegated its authority to staff. As a result, for development applications that include an application for heritage floor space, separate officer reports are required to the consent authority for the development application, and to the Council to endorse any award of heritage floor space.
4. It is desirable to streamline the award process to remove the need for duplicate reports. The preferred approach would be to maintain the Sydney LEP requirement that only the Council can award heritage floor space, and have that authority delegated from Council to the Chief Executive Officer. Endorsing an award once it has been recommended in an officer's assessment report could then be dealt with as an administrative matter rather than through an additional report to the Council.
5. The exception would be where the party applying for heritage floor space is either the Council or a government entity. In those instances, to ensure the highest level of transparency in decisions, Council should retain the authority for awards and a report to Council would be required.
6. Development application D/2017/524 was approved under delegation on 21 August 2018 and included conservation works and an updated Conservation Management Plan for 44 Martin Place, Sydney, and a request for an award of 4730sqm of heritage floor space. 44 Martin Place, Sydney, comprises two elements - the former MLC building at 42-46 Martin Place which is listed on the State Heritage Register, and a newer addition at 38-40 Martin Place, Sydney. Both are listed as heritage items in Sydney LEP.

7. The building previously received an award of heritage floor space in 1991, but as more than 25 years has elapsed is now eligible for another award. Proposed works in D/2017/524 are subject to the Conservation Management Plan endorsed by the NSW Heritage Council and include maintenance of the sandstone facades and removal of intrusive elements to the Hosking Place elevation. A proposed two-storey addition to the rooftop has been assessed by Council's heritage specialist and is considered to appropriately conserve the significance of the former MLC building. Further details are included in the officer's assessment attached to this report.
8. The development application was approved by staff under delegation, with the heritage floor space award applied via a deferred condition of consent and subject to Council's endorsement. The development consent does not become operative until Council have endorsed the award of heritage floor space which creates a delay for the applicant in commencing the works. The applicant needs to satisfy a number of detailed heritage conditions and be subject to inspections and verification of completed works by the City's heritage specialists before the award can be finally granted and registered.
9. This report recommends that Council endorse the award of 4,730sqm of heritage floorspace for 44 Martin Place, Sydney. It also recommends that to streamline the process for heritage floor space awards, Council delegate its authority to award heritage floor space to the Chief Executive Officer.

Key Implications

Strategic Alignment - Sustainable Sydney 2030 Vision

10. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
 - (a) Direction 10 - Implementation through Effective Governance and Partnerships - The proposal will improve and streamline governance of the heritage floor space scheme.

Organisational Impact

11. If adopted, this proposal would reduce the number of officer reports required to award heritage floor space. It also means there will be no unnecessary delays to implementing development consents for the undertaking of heritage conservation works in these circumstances.

Relevant Legislation

12. Local Government Act 1993.
13. Environmental Planning and Assessment Act 1979.

Options

14. An alternative approach to streamline the process would be to amend Sydney LEP to allow heritage floor space to be awarded by the consent authority, rather than the Council. The identity of the consent authority can vary depending on the particular application, and could be the local planning panel, the Minister or a nominated delegate, the Secretary of the Department of Planning and Environment or a nominated delegate, the Independent Planning Commission, City staff through delegated authority, or the Central Sydney Planning Committee.
15. In addition to the award of heritage floor space, Council is also responsible for maintaining the heritage floor space register. Timely and accurate receipt and publication of information on awards, transactions and other market activity is essential for the integrity of the heritage floor space register. Council is also the authority for restrictive and positive covenants applying to the heritage item to allow the award of the heritage floor space. For these reasons it is preferable to limit the number of potential authorities to award heritage floor space. Amending the Sydney LEP to allow a range of potential consent authorities to award heritage floor space is not supported.
16. Council could choose not to delegate its authority and require a duplicate report from officers to endorse all awards. This approach is not supported as it would require additional work for heritage floor space awards, and it would create unnecessary delays for related development consents.

Public Consultation

17. The development application D/2017/524 was placed on public exhibition for a period of 30 days. No submissions were received.

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