



IRF 23/1693

# Gateway determination report – PP 2023-1224

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34 Flood Street Bondi, Local Heritage Listing

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 - Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal – June 2023
Heritage Assessment – June 2023
Waverley Local Planning Panel Minutes – 6 June 2023
Waverley Council Meeting Agenda – 6 June 2023
Waverley Council Meeting Minutes – 7 June 2023
Letter from Landowner dated 20 July 2023

# 1 Planning proposal

## 1.1 Overview

**Table 2 - Planning proposal details**

<b>LGA</b>	Waverley Local Government Area
<b>PPA</b>	Waverley Council
<b>NAME</b>	34 Flood Street Bondi - Local Heritage Listing
<b>NUMBER</b>	PP-2023-1224
<b>LEP TO BE AMENDED</b>	Waverley Local Environmental Plan 2012 (Waverley LEP 2012)
<b>ADDRESS</b>	34 Flood Street Bondi
<b>DESCRIPTION</b>	Lot 1, DP 1094020
<b>RECEIVED</b>	8/06/2023
<b>FILE NO.</b>	IRF23/1693
<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

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to provide statutory protection to a site of heritage significance (34 Flood Street) by amending Schedule 5 of the WLEP 2012 and associated Heritage Map to show the site as a local Heritage Item.

The proposal is based on the findings of the Heritage Study, dated 7 June 2023 prepared by Hector Abrahams Architects on behalf of Waverley Council. The report concludes that the site possesses heritage significance as per the Heritage Office manual, *Assessing Heritage Significance*, 2001. The proposed heritage listing seeks to recognise the significance of the site and provide statutory protection.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Waverley LEP 2012 to:

- Insert a local heritage listing for 34 Flood Street, Bondi (Lot 1 DP 1094020) into Part 1 of Schedule 5 for 34 Flood Street Bondi, and
- Amend the Heritage Map to identify the site at 34 Flood Street, Bondi (Lot 1 DP 1094020) as a heritage item (**Figure 7**)

The planning proposal describes the property as of 'Harry Seidler designed Synagogue building, interiors and exteriors' (p. 6). If it is resolved to make the LEP, the wording of the LEP amendment will be determined by Parliamentary Counsel at the finalisation stage.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The subject site is located at 34 Flood Street, Bondi, legally known as Lot 1 DP 1094020 (**Figures 1 and 2**). It has a site area of approximately 1,319.03m<sup>2</sup> with a primary frontage to Flood Street and a secondary frontage to Anglesea Street.

The subject site contains a building being used as a synagogue at the Flood Street Frontage and an ancillary building at the Anglesea Street frontage (Figure 3). The synagogue has been identified by Council and its heritage study of the building to have local (and State) heritage status. Only the synagogue building is proposed to be listed as the significance of the ancillary building is undetermined as reported in the planning proposal.

The synagogue is understood to be designed by Harry Seidler, a prominent Jewish architect, and structurally engineered by Alan Milston of PO Miller, Milston and Ferris. The building was built between 1959 and 1961 (**Figures 3 and 4**).

The building is modernist with a simple rectangular form, windows that repeat across the same panes of the northern façade and a distinctive repetitive curved roof form.

The site immediately adjacent to the south (currently used as Yeshiva College) at 36A Flood Street, Bondi, legally known as Lot A DP 340445, is structurally connected to the synagogue, but is not part of the planning proposal to become a local heritage listing in the Waverley LEP 2012 (**Figure 3**). The site immediately adjacent to the north shares a driveway and is a multi-dwelling 'retirement community' that presents as a four-storey apartment block.

The neighbourhood is characterised by three and four storey walk up residential flat buildings with vehicular crossing to Flood Street and large detached residential dwellings.



Figure 1: Subject site aerial (source: Nearmap 2023)

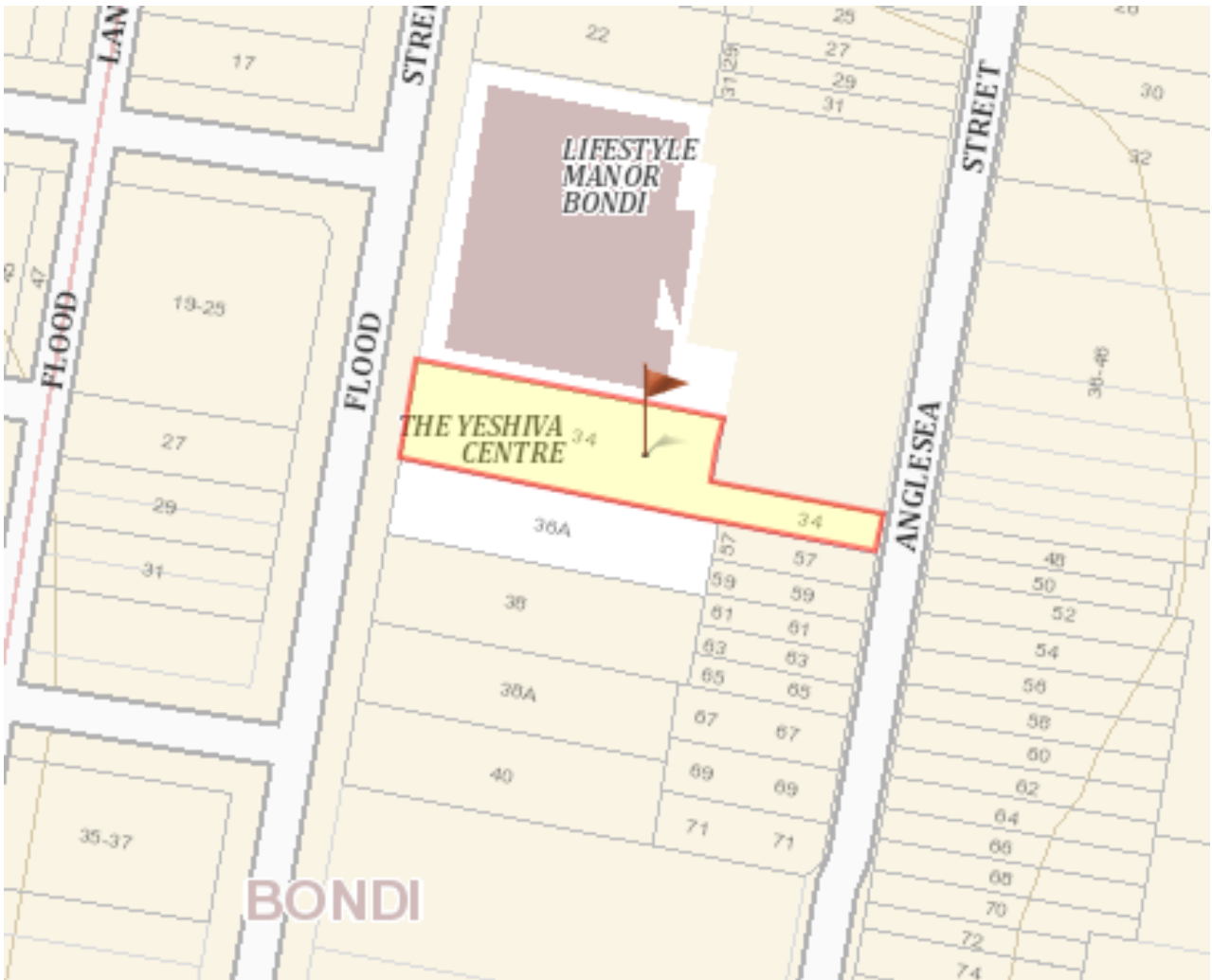


Figure 2: Subject site (source: Nearmap 2023)



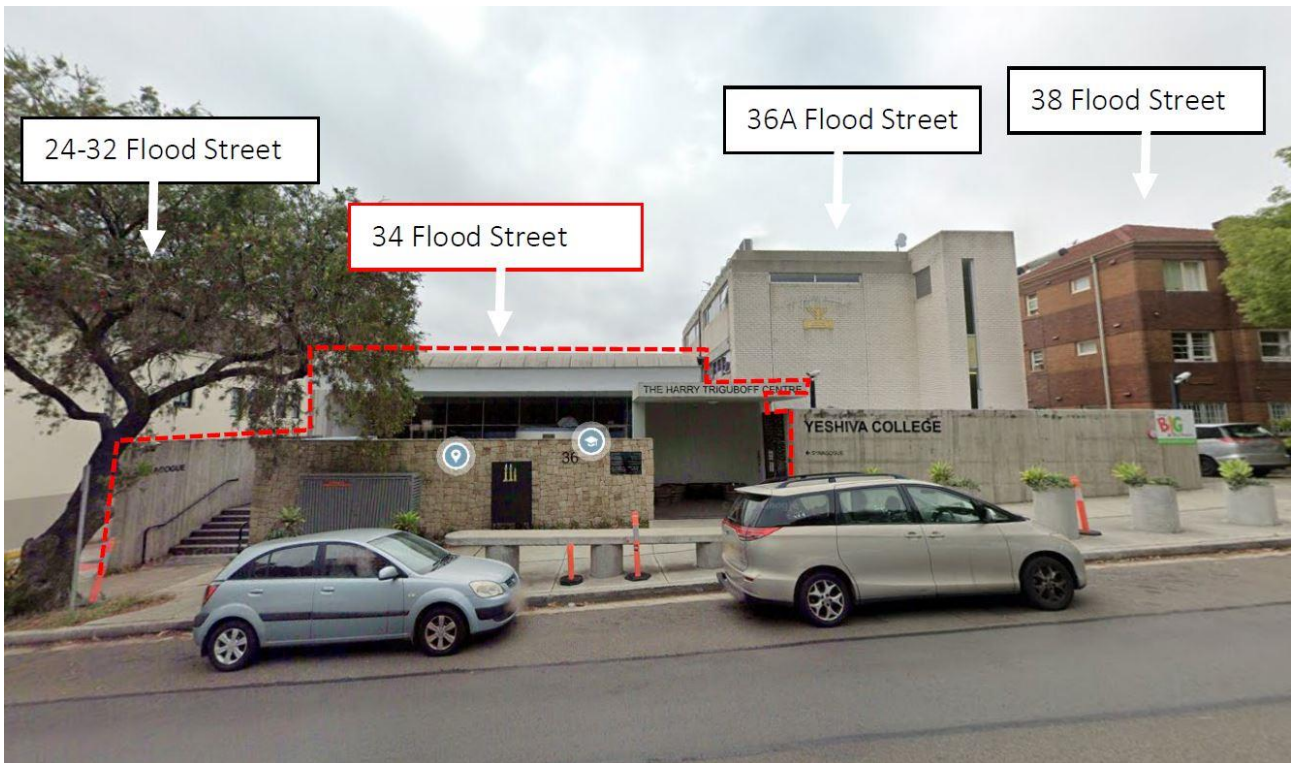


Figure 3: Site Context (source: Planning Proposal)

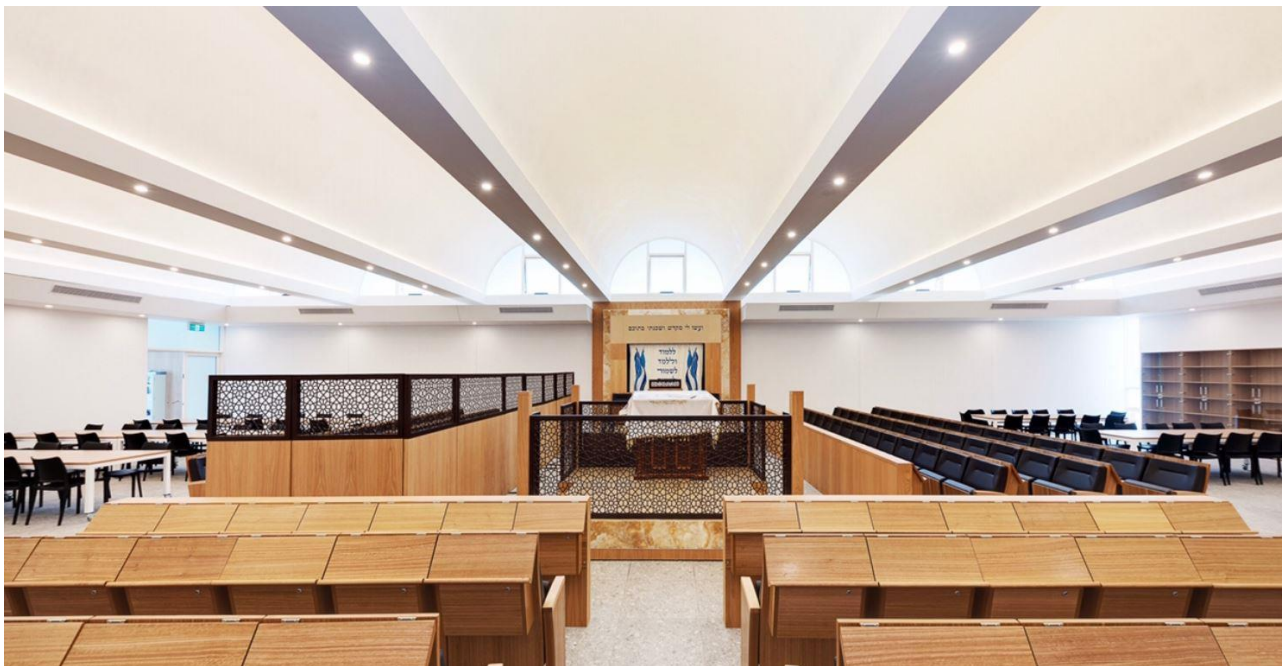


Figure 4: Vaulted concrete roof as viewed internally (source: Google 2023)



## 1.5 Mapping

The planning proposal includes mapping (**Figure 6**) showing the proposed changes to the Heritage maps, which are suitable for community consultation.



Figure 5: Current Heritage map (Sheet HER\_004A)

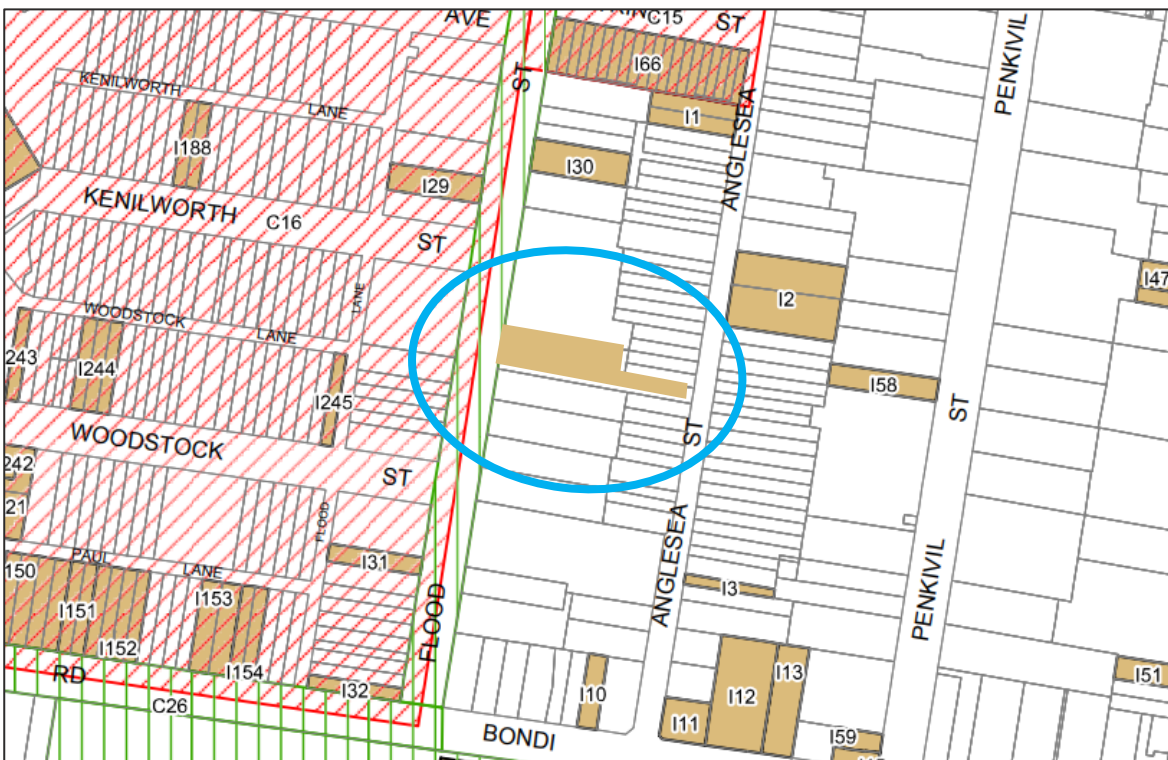


Figure 6: Proposed Heritage Map (New item circled in blue)

## 1.6 Background

The site has been subject of two recent planning proposals including the subject planning proposal to locally heritage list the site.

The first planning proposal PP-2022-676 sought to rezone the subject site from SP2 Infrastructure (Educational Establishment) to R3 Medium Density Residential. The proposal was the result of a rezoning review, for which the Sydney Eastern City Planning Panel determined that the rezoning proposal should proceed to Gateway and appointed itself as the Planning Proposal Authority since Council had resolved not to support the proposal. On 28 July 2023, the LEP amendment to rezone the site to R3 was notified and planning proposal was finalised.

On 10 February 2023, Waverley Council lodged an interim heritage order (IHO) on the site with Heritage NSW for 12 months. Subsequently, the planning proposal to heritage list 34 Flood Street, Bondi as a local heritage item was reported to the Waverley Local Planning Panel (LPP) for advice. At its meeting on 24 May 2023, WLPP supported the Council officer's recommendation for the planning proposal seeking the local heritage listing of 34 Flood Street proceed to Gateway. Council resolved on 6 June 2023 to submit the planning proposal for Gateway assessment.

It is noted that an appeal was lodged with the Land and Environment Court on 8 March 2023 by the landowners Karimbla Properties Pty Ltd (Meriton Group) requesting the IHO be revoked.

## 2 Need for the planning proposal

The planning proposal is the result of findings and recommendations of the Hector Abrahams Heritage Assessment (dated 30 May 2023). The assessment of heritage significance concludes that the synagogue at 34 Flood Street, Bondi, meets the criteria for heritage listing at a local and State level.

The objective of the planning proposal is to recognise the heritage significance the site and provide it statutory heritage protection. The best means of achieving this objective is through an amendment to Waverley LEP 2012 to list the site as a local heritage item.

Other options, such as adding site-specific objectives and controls to Waverley Development Control Plan (DCP) 2012 or including heritage conservation conditions to a potential development consent, will not provide the same level of heritage protection and recognition.

### 2.1 Assessment of heritage significance

The heritage significance of the site has been assessed in accordance with the *Assessing Heritage Significance* manual published by NSW Heritage Office in 2001. The site have been assessed by Hector Abrahams Architects against the seven listing criteria in the manual, being (a) historic significance, (b) historic association significance, (c) aesthetic significance, (d) social significance, (e) research potential, (f) rarity, and (g) representativeness.

If an item meets one of the seven criteria at a local level, it can be considered to have local heritage significance.

The assessment of the site by Hector Abrahams Architects is summarised in **Table 3** - which indicates that the site meets all criteria, thus meeting the threshold for local heritage listing.

**Table 3 - Heritage Assessment**

Site	(a) historic	(b) association	(c) aesthetic	(d) social	(e) research potential	(f) rarity	(g) representativeness
'Sydney Talmudical College and Synagogue building and interiors' 34 Flood Street Bondi (Lot 1 DP 1094020)	✔	✔	✔	✔	✔	✔	✔

The following summarises the assessment by Hector Abrahams Architects:

#### Criterion (a) Historic Significance

Regarding 'historic significance', the site is found to satisfy the criterion on account of:

- It is evidence of part of a distinct period of synagogue construction in NSW (c.1957-60)
- It is associated with the post-war period of associated with a phase of enlargement of the Jewish faith and culture within NSW
- The synagogue is part of a historical pattern demonstrating the arrival of Jewish architects to NSW.

#### Criterion (b) Historic Association

Regarding 'associative' significance, the site is found to satisfy the criterion on account of:

- The synagogue is evidence of the ongoing use of the place as a religious and civic site
- It reflects the broadening of institutions available to the Jewish faith community in NSW and Waverley LGA
- It is primarily associated with eminent modern architect Garry Seidler as the original design is his only religious building (although he did design other Jewish sites)
- The Synagogue (and adjacent school) is associated with Abraham Rabinovitch. Rabinovitch, a businessman and philanthropist, who was instrumental in the Jewish day school movement, which initiated the construction of similar Jewish institutions such as the North Bondi Hebrew School and Kindergarten (c1942-43) and Moriah College (c1952) in Sydney.

#### Criterion (c) Aesthetic Significance

Regarding 'aesthetic significance', the site is found to satisfy the criterion on account of:

- It is an important work of eminent architect Harry Seidler who the historian Jennifer Taylor regards as "one of the major talents of Australian Architectural History", as it is probably his first civic building, incorporating a civic external plaza space
- It has a distinctive roof form which is significant as an architectural sculptural form, along with the curved stair, both of which are identified as indicative of the mastery of Harry Seidler by the eminent historian of Australian Modernism Philip Goad

- shells are a technical innovation, in collaboration with structural engineer Peter Owen Miller (Miller, Milston, and Ferris).
- the geometric configuration of the roof form is important in demonstrating Seidler's Bauhaus-inspired Modernist design
- Despite later alteration to finishes, and noting a fine complementary addition, the place retains the original form and characteristics of its pure spatial and structural concept

#### Criterion (d) Social Significance

Regarding 'social significance', the site is found to satisfy the criterion on account of:

- The synagogue has strong and special associations with the Jewish faith community in Bondi for its ongoing use as a civic and religious building

#### Criterion (e) Research Potential

Regarding 'research potential', the site is found to satisfy the criterion on account of:

- possible that the vaulted roof system was the largest in NSW from the same period and has the potential to yield information regarding its construction and the performance of thin shell concrete over time
- the thin shell concrete vaulted roof form is an important benchmark for technical and creative achievements

#### Criterion (f) Rarity

Regarding 'rarity', the site is found to satisfy the criterion on account of:

- the building is uncommon for the period due to its large thin shell concrete vaulted roof form.
- It has rarity value as the only religious building by Seidler and as a surviving intact example of a post-war Modernist synagogue, which were once common across NSW particularly Eastern Sydney but are now smaller in number

#### Criterion (g) Representativeness

Regarding 'representativeness', the site is found to satisfy the criterion on account of:

- demonstrates the principal characteristics of its class as a post-war Modernist synagogue designed by a migrant architect
- It is part of a small but important group of distinctive Modernist-style synagogues designed by migrant architects who established practice in NSW
- is a relatively intact and surviving example of a post-war Modernist synagogue which is rare for its class

#### DPE Comment

The heritage report and inventory sheets have included discussions and assessment of the significant aspects and elements of the site, with reference to the interiors and exteriors. A statement of significance for the site is provided in the planning proposal.

The heritage report and planning proposal demonstrate that the subject site meets all criteria in the NSW Heritage Office *Assessing Heritage Significance* manual 2001 for local heritage listing.

### 2.1.1 Landowner Submission

On 20 July 2023, Meriton Group wrote to the Department requesting that the Department issue a Gateway Determination for the planning proposal to not proceed. It was accompanied by a letter from Extent Heritage Consultants, letters between the Meriton Group and Waverley Council and supporting documents.

Meriton Group opposes the heritage listing because although it does not intend to demolish building subject to the proposed heritage listing, it has the potential to reduce development opportunities. It also states that interest in the heritage of the building has arisen from a separate planning proposal which seeks to rezone the site from SP2 – Infrastructure (Educational Establishment) to R3 Medium Density Residential.

Extent Heritage Consultants raised the following matters in the letter provide by Meriton Group:

- The building was designed by Seidler’s office, however there is no information regarding his level of involvement in its design, construction or subsequent modification
- Significant alterations have been undertaken at 34 Flood Street which have substantially altered key elements of the architectural design, which lessen the heritage significance
- A review of at least 22 sources on Seidler and Australian Modernist architecture by Extent Heritage did not identify significant references to the synagogue
- Waverley LGA is well served by Jewish synagogues and there was little community interest in its future
- The use of concrete arched structures was commonplace in Australia
- The fact that it may be the only religious building designed by Seidler does not make it inherently significant, particularly as Seidler’s long career did not include any further religious buildings.

#### DPE Comment

Documentation provided by Council in support of the planning proposal addresses the criteria in the manual and is supported by a heritage report.

The proposed listing does not preclude any future development of the site, such as a change of use, renovation, alterations, additions or adaptation. The listing will ensure that the effect of any proposed development on the heritage significance will be considered prior to a development consent being granted.

As part of the development application process, the consent authority may require a heritage management document (e.g. heritage conservation management plan or heritage impact statement) to be prepared to assess the effect of the development and to enable informed decisions to be made. As such, the proposed heritage listing is not considered to unreasonably restrict future development of the site. It will ensure due process will be undertaken that considers the potential impacts on the heritage significance.

Despite this there is clear contrary views from Meriton’s heritage consultant that challenges the heritage significance of the site and the building and raised contrary views and considerations.

In this regard Council should consult with the landowner during public exhibition and consider any information provided carefully in its post exhibition assessment and reporting. A Gateway condition is recommended in this regard.



## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the *Greater Sydney Region Plan: A Metropolis of Three Cities*.

**Table 4 - Regional Plan assessment**

Regional Plan Objectives	Justification
13: Environmental heritage is identified, conserved, and enhanced	<p>The Region Plan emphasises the need to conserve items of heritage significance. Objective 13 notes that environmental heritage should be protected for its social, aesthetic, economic, historic and environmental values.</p> <p>The heritage study and inventory sheets prepared by Council have provided an assessment of significance indicating that the sites have reached the threshold for listing at a local level. However, a counter view from another heritage consultant challenges</p> <p>The proposal is consistent with the objectives of the Region Plan, as it seeks to recognise the heritage significance of the sites and facilitate their ongoing protection.</p>

### 3.2 District Plan

The site is within the Eastern City District and the former Greater Sydney Commission (now the Greater Cities Commission) released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for liveability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. **Table 7** below provides an assessment of the planning proposal against relevant directions and actions.

**Table 6 District Plan assessment**

District Plan Priorities	Justification
<p>E6: Creating and renewing great places and local centres, and respecting the District's heritage</p> <p>Action 20: Environmental heritage is identified, conserved, and enhanced.</p>	<p>This priority seeks to identify, conserve, interpret and celebrate Greater Sydney's heritage values.</p> <p>The proposal contributes to the protection of the district's heritage through listing of the subject site in the Waverley LGA, which has been found to have heritage significance in a study. The listing will recognise the significance and facilitate the on-going conservation of the Harry Seidler designed synagogue and former Talmudical School.</p> <p>The proposal is considered to be consistent with the District Plan.</p>



### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 7 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	<p><u>Planning Priority 7</u></p> <p><i>Recognise and celebrate Waverley’s unique place in the Australian contemporary cultural landscape.</i></p> <p>The planning proposal is consistent with this planning priority. The proposal will implement the recommendations of a Heritage Assessment by Hector Abrahams Architects into Council’s LEP, an assessment that is ancillary to the wider Heritage Review. The statutory listing of 34 Flood Street as a heritage item will celebrate and share the sites local heritage and cultural story.</p> <p>The LSPS also identified the work of council to undertake a comprehensive heritage assessment for the LGA. This work is outlined below.</p>
Waverley Community Strategic Plan 2018-2029	<p><u>Strategy 1.2.1</u></p> <p><i>Maintain the unique cultural value and heritage significance of key landmarks</i></p> <p><u>Strategy 5.2.1</u></p> <p><i>Protect, respect and conserve items and places of heritage significance within Waverley</i></p> <p>The proposal will provide the mechanism to ensure that will ensure that local heritage is conserved and celebrated. It will protect the heritage significance of a key landmark and place of heritage significance within Waverley, the synagogue at 34 Flood Street Bondi.</p>
Waverley Heritage Assessment	<p>In 2021 council conducted a comprehensive assessment of the LGA to identify new heritage items/places of significance. This assessment was the Draft Heritage Assessment and was used to inform a recent planning proposal that has not yet been progressed that proposes to list additional heritage items and conservation areas in the LGA.</p> <p>This assessment considered 750 new sites for heritage listing but did not identify the subject site to be of heritage significance or recommend that site be included in a heritage conservation area. While many of the proposed listings are for Inter-war and Post-war period buildings, there was also consideration of modernist buildings. Some of these were included in the recommendations for heritage listing.</p>
Waverley Architectural Mapping Project (2019)	<p>This project sought to undertake and create a comprehensive database of information relating to the building forms throughout the LGA. This work informed the work to identify items of heritage interest. This work assessed more than 12,000 lots across the LGA. This work lead the development of an interactive map.</p> <p>While 8 other sites in Flood Street were identified as a potential for heritage significance, the subject site as not identified.</p>

### 3.4 Local planning panel (LPP) recommendation

The WLPP supported the recommendation for the planning proposal seeking the local heritage listing of 34 Flood Street to proceed to Gateway Determination and public exhibition subject to the following changes:

- Change the WLEP 2012 draft Schedule 5 listing from ‘20<sup>th</sup> Century Modernist synagogue by architect Harry Seidler featuring repetitive thin-shell concrete roof vaults, experienced internally and externally’ to ‘Sydney Talmudical College and Synagogue building and interiors and,
- Amend the planning proposal to be wholly consistent with the final Heritage Assessment by Hector Abrahams Architects, most importantly the item and the site description.

### 3.5 Section 9.1 Ministerial Directions

The planning proposal’s consistency with relevant section 9.1 Directions is discussed below:

**Table 8 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for consistency or inconsistency
3.2 Heritage Conservation	Yes	<p>The Direction applies to the planning proposal as it seeks to conserve an item of environmental heritage significance. The Direction requires that a planning proposal contain provisions that facilitate the conservation of items identified in a study of environmental heritage significance.</p> <p>The planning proposal is informed by a heritage assessment undertaken in accordance with the NSW Heritage Office manual. The assessment concluded that the subject site satisfies the relevant criteria for local heritage listing and thereby the proposal is warranted. The proposal will facilitate the conservation and protection of the site.</p> <p>The proposal is consistent with this Direction.</p>

### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, however discussion of the implications under the SEPP (Exempt and Comply Development Codes) 2008 has not been included in the planning proposal.

#### Codes SEPP

Under the SEPP (Exempt and Complying Development Codes) 2008 (Codes SEPP), a range of exempt developments may be undertaken for heritage items.

The SEPP specifies in Part 1 Division 2 *Exempt and complying development*, clause 1.18(1)(c3) that:

*“To be complying development for the purposes of this Policy, the development must –  
.... not be carried out on land that comprises, or on which there is, a draft heritage item”.*

This means that if the site is listed as a local heritage item, the complying development (CDC) pathway would not be possible for development such as alterations to residence, certain internal alterations, minor external works and signage, etc. A development application (DA) would need to be prepared.

The SEPP was designed to have limited impact on buildings with heritage values, and thus this impact is a result of the SEPP operating as intended.

## 4 Site-specific assessment

### 4.1 Environmental

The proposal will not have any adverse effects on any critical or threatened species, populations or ecological communities, or their habitat.

The planning proposal seeks to provide statutory protection to a Harry Seidler designed synagogue which has been found to have local heritage significance. The proposal is informed by a heritage report undertaken by Council. The assessment of significance has been carried out in accordance with the NSW Heritage Office manual.

### 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 9 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The planning proposal is unlikely to have any significant adverse social impacts. Listing the site as a heritage item will provide the community with greater certainty regarding the heritage significance of the sites, facilitate their ongoing protection and provide opportunities for the community to appreciate their values.</p>
Economic	<p>There would be a minor economic impact to the landowner as the heritage listing of the sites may require specialist heritage studies to form part of any future development application submission. It is noted that this matter has not been addressed in the proposal.</p> <p>Notwithstanding, the proposal does not change the zoning or development standards applicable to the sites. As discussed above, the proposed listing means that the consent authority will need to consider the effect of any future development on the heritage significance of the sites pursuant to Cl. 5.10 of the LEP, it does not prohibit change or development as such.</p> <p>The proposal is considered to have an acceptable economic impact.</p>

### 4.3 Infrastructure

The proposal does not seek to change any existing infrastructure or facilitate further infrastructure provision. The proposal will not alter the existing zoning or development standards applicable to the sites. The subject site is currently zoned SP2 Infrastructure, which is an anomaly in the Waverley LEP 2012. The current use of the site is a synagogue associated with Yeshiva College. The proposal would not facilitate intensified developments and therefore would not generate additional demand for infrastructure.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate. Consistent with the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2022) an exhibition period of 20 working days is recommended and forms part of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. It is recommended the NSW Environment and Heritage Group, Department of Planning and Environment be consulted on the planning proposal and given 30 working days to comment.

## 6 Timeframe

Council proposes a 5 month time frame to complete the LEP.

The Department recommends a time frame of 6 months to ensure it is completed in line with its commitment to reduce processing times. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

While the planning proposal is of local significance the Department recommends that Council not be authorised to be the local plan-making authority for this proposal. The reasons for this are that:

- the proposal is inconsistent with Council's recent comprehensive Heritage Assessment (which was further informed by its detailed Architectural Mapping Project of all sites in the LGA) – which did not identify the site has having any specific architectural and/or heritage significance;
- the landowner's submission to the Department contests the proposed heritage listing based on their heritage consultant's advice that the site and/or its buildings do not have heritage significance; and
- the matter of the IHO has been appealed with the Land and Environment Court, which may revoke the IHO if the court forms the view that the site is does not have local heritage significance.

## 8 Assessment summary

The planning proposal is conditionally supported to proceed with conditions for the following reasons:

- It is supported by an assessment of heritage significance prepared in accordance with the NSW Heritage Office manual, *Assessing Heritage Significance*, 2001, which finds that the site satisfies the relevant listing criteria and reach the threshold for local heritage listing.
- The proposal has the capacity to recognise and provide statutory protection of the heritage significance of the site.

- The proposal is consistent with relevant objectives, directions and priorities of the Greater Sydney Region Plan, Eastern City District Plan and the applicable State Environmental Planning Policies and Section 9.1 Ministerial Directions.

## 9 Recommendation

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

1. Consultation is required with the NSW Environment and Heritage Group, Department of Planning and Environment.
2. The planning proposal should be made available for community consultation for a minimum of 20 days.
3. Council should consult with the landowner regarding the planning proposal and consider any information provided in its post exhibition assessment and reporting.
4. The planning proposal must be exhibited two months from the date of the Gateway determination.
5. The timeframe for completing the LEP is to be six months from the date of the Gateway determination.
6. Given the nature of the circumstances outlined in Section 7, Council should not be authorised to be the local plan-making authority.



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2 August 2023

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