



IRF24/666

## Plan finalisation report – PP-2023-1224

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Proposed local heritage listing at 34 Flood Street,  
Bondi

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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 and present.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Waverley Local Environmental Plan 2012.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	The planning proposal applies to land at 34 Flood Street, Bondi (the site)
Type	Site
Council / LGA	Waverley

The planning proposal (**Attachment A1**) applies to land at 34 Flood Street, Bondi (Lot 1 DP 1094020). It has a primary frontage to Flood Street, Bondi (western boundary), and secondary frontage to Anglesea Street, Bondi (eastern boundary).

The site is owned by Karimbla Properties Pty Ltd (Meriton Group).

Existing development on the site comprises a synagogue designed by architect Harry Seidler and an ancillary building at the rear of the site (**Figure 1**). It has been developed in conjunction with the adjacent property to the south at 36A Flood Street, Bondi (Lot A DP 340445) which is occupied by an educational establishment known as Yeshiva College and is structurally connected to the synagogue. Land at 36A Flood Street, Bondi, does not form part of the planning proposal.

Land adjacent to the north at 24-32 Flood Street, Bondi, shares a driveway with the site and contains a multi storey seniors housing development.



**Figure 1 : Subject site (Sources: Nearmap 2024; and Planning proposal, November 2023, p.4)**

### 1.1.3 Purpose of plan

The planning proposal seeks to amend the Waverley Local Environmental 2012 to identify the site as a local heritage item in Part 1 of Schedule 5 and on the Heritage Map.

The proposal seeks to provide statutory protection for a Harry Seidler designed synagogue (comprising the former Sydney Talmudical College premises) at 34 Flood Street, Bondi, by listing it as a local heritage item.

The proposal does not seek changes to any other development standards or LEP provisions which currently apply to the site.

### 1.1.4 State electorate and local member

The site falls within the following state and federal electorates:

Electorate	Member
<b>State electorate:</b> Vaucluse	Ms Kellie Slone MP
<b>Federal electorate:</b> Wentworth	Ms Allegra Spender MP

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination (**Attachment B1**) issued on 2 August 2023, determined that the proposal should proceed subject to conditions. The Gateway did not authorise Council to be the local plan-making authority.

The Gateway determination was subsequently altered on 31 January 2024, to extend the timeframe for completion of the LEP to allow sufficient time for the Department to seek advice from the Independent Planning Commission and subsequently complete the finalisation assessment of the planning proposal. The LEP completion date was extended to 5 April 2024 (**Attachment B2**).

## 3 Public exhibition and consultation

The planning proposal and supporting documentation was publicly exhibited by Council from 3 August 2023 to 14 September 2023.

Council received 47 community submissions, 1 submission from the (former) NSW Department of Planning and Environment's Environment and Heritage Group, and one landowner submission (including two expert heritage assessments) on the proposal during exhibition (Refer to pp.78-85 of **Attachment E**).

On 26 October 2023, Council met with representatives of the landowner.

### 3.1 Community submissions during exhibition

A total of 47 community submissions were received by Council. Approximately 41 submissions (87%) were supportive of the proposal and 6 submissions objected.

Key issues raised in submissions include:

- religious and heritage significance of the site;
- the high demand for housing in the area; and
- potential impacts of the proposed listing on the future development and utilisation of the site.

A summary of issues raised in the submissions and Council's response is in **Attachment E**.

The Department is satisfied that Council has given consideration to the submissions and provided a response.

## 3.2 Landowner submissions

Condition 2 of the Gateway determination required Council to consult the landowner and to consider any information provided in its post exhibition assessment and reporting.

The landowner made a submission objecting to the planning proposal (**Attachment D**) which is supported by heritage significance assessment reports by James Phillips of Weir Phillips (September 2023) and another by Dr Maclaren North of Extent Heritage (September 2023).

Issues raised in the landowner submission include:

- The site is not a significant work of Harry Seidler and most likely he himself would not consider this work of heritage significance;
- The Synagogue building has materially changed since construction and the heritage significance assessment fails to consider the changes which have occurred;
- The site is not of wide social or Jewish religious value;
- The heritage reports prepared by two well respected heritage consultants (Dr Maclaren North of Extent Heritage and James Phillips of Weir Phillips) conclude that the Site is not of heritage significance and should not be listed as a local or State heritage item;
- Council has not properly considered and assessed the heritage reports provided by the landowner;
- Council did not recognise the site as worthy of heritage retention in its 2020 LGA-wide heritage review;
- Council is weaponising the Heritage Act 1977;
- A heritage listing on the Site would impose an unnecessary management and financial burden on the owner;
- The landowner has no intention to redevelop the site in the immediate future but wants to ensure its not unreasonably constrained by incorrect or inappropriate planning controls; and
- Council has not adequately consulted with the landowner as required by the Gateway determination.

Council's post exhibition report on the proposal also acknowledges a separate submission from the landowner (dated 7 August 2023) which identified a scheme for the possible redevelopment of the site which represented a significant variation to the current maximum permissible height and flood space controls (Refer to pp.84-85 of **Attachment E**).

A meeting between representatives of Council and representatives of the landowner was held on 26 October 2023. It is understood that at the meeting, the landowner reiterated their objections to the proposal.

Council has given consideration to the landowner's submission and provided a response (Refer to pp.80-85 in **Attachment E**).

### 3.2.1 Post-exhibition landowner representations to the Department

On 16 November 2023, the Meriton Group made representations to the Department objecting to the proposal. In summary, the landowner raised the following objections in its submission:

- The synagogue building is not of heritage significance.
- Council's heritage assessment report by Hector Abrams has failed to properly consider the internal fabric of the building which has been significantly altered and modified.
- Council has not properly discharged its Gateway Approval conditions, in particular condition 2 which requires consultation with the Landowner and consideration of any submissions made by the Landowner.
- Council failed to provide the Landowner and the Public with procedural fairness.

## 3.3 Advice from agencies

In accordance with Condition 3 of the Gateway determination, Council consulted with the Environment and Heritage Group of the (former) Department of Planning and Environment. The submission raised no objection to the proposal however, advised the following:

*'Heritage NSW supports and encourages local Councils in the updating of their heritage schedules to include items that have been assessed as having heritage significance. As local heritage is protected under the Environmental Planning and Assessment Act 1979, the determination for listing of Local heritage items rests with Council. As such, the Heritage Council of NSW and Heritage NSW as its Delegate do not require further referral or consultation on this planning proposal.'* (Refer to p.85 of **Attachment E**).

### 3.3.1 State heritage register nomination

Separate to the planning proposal process, the Department is aware that Council submitted a nomination to Heritage NSW in June 2023 for the site to be State heritage listed.

The State heritage register nomination was considered by the State Heritage Register (SHR) Committee on 1 August 2023. It was resolved that:

*"The State Heritage Register Committee:*

1. *Considers that the Synagogue and Former Sydney Talmudical College Premises Building Including Interiors, Bondi may be of State heritage significance and advises that the nomination will be progressed to a full assessment".*<sup>1</sup>

It is understood that Waverley Council wrote to the Minister for Heritage requesting a second Interim Heritage Order on the site until the assessment of the State heritage nomination was complete.

On 7 May 2024, the SHR Committee of the Heritage Council of NSW considered the IHO request and the SHR nomination for the property. The SHR Committee made the following resolutions:

1. *Advises the Minister for Heritage that an interim heritage order is not appropriate because it would be unlikely to result in heritage listing.*
2. *Decides that, while the Synagogue and Former Talmudical College may, upon further investigation, be found to meet the threshold for State heritage significance, it is not a current priority for listing on the State Heritage Register and will not be progressed.*

<sup>1</sup> The minutes of State Heritage Register Committee Meeting of 1 August 2023 are available [online](#).



3. *Seeks to engage with the owner to ensure any future development recognises, conserves where possible, and interprets the significant elements of the property<sup>2</sup>.*

**Note:** *State Heritage and Interim Heritage Orders are a matter for the Heritage Council and the Minister for Heritage under the Heritage Act 1977. The Department and Minister for Planning and Public Spaces do not have a role in these decisions.*

## 4 Council resolution to proceed to finalisation

On 7 November 2023, Waverley Council's Strategic Development and Planning Committee considered the post exhibition report on the planning proposal and recommended to heritage list the site at 34-36 Flood St, Bondi (**Attachment E & F**).

The planning proposal and supporting mapping were submitted on 16 November 2023 and 5 December 2023 respectively, for finalisation.

The final planning proposal package included a Heritage Inventory Form and updated Heritage Assessment prepared by Hector Abrahams Architects (dated 15 November 2023) (**Attachments A2 and A3**).

## 5 Independent Planning Commission's advice

On 2 February 2024 the Department referred the proposal to the NSW Independent Planning Commission (the Commission) for advice, pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (the Act), given the conflicting recommendations of the three independent specialist heritage studies undertaken for the site (including one commissioned by Council, and two commissioned by the landowner).

Under section 2.9(1)(c) of the Act, a function of the Commission is to 'advise the Minister or the Planning Secretary on any matter on which the Minister or the Planning Secretary requests advice from the Commission'.

The Department requested that the Commission:

- review the final planning proposal and supporting documentation;
- provide opportunity for Council and the landowner to present their views on the proposal;
- consider the submissions received by Council during the public exhibition period; and
- provide advice, including a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the planning proposal (PP-2023- 1224) to list the subject site as an item of local heritage significance in the Waverley LEP 2012 should be finalised (with or without amendment) and whether any further information is required (**Attachment G**).

In February 2024, to inform its advice, the Commission reviewed the documentation and submissions, undertook a site inspection, and held separate briefings with representatives from the Department, Waverley Council, the landowner and Heritage NSW.

Following the initial briefings, the Commission requested further information and clarification from Council, the landowner and Heritage NSW on various matters.

A copy of all documents, meeting transcripts and correspondence can be accessed on the Commission's [website](#).

<sup>2</sup> The minutes of State Heritage Register Committee Meeting of 7 May 2024 are available [online](#).



### 5.1.1 Commission’s advice

On 13 March 2024, the Commission published its Advice Report. In summary, it advised that:

- *“The Commission acknowledges the history of the Site and recognises that it does have heritage value, specifically with respect to the technical and architectural features of the thin concrete shell roof, as well as through its association with Seidler and the local Jewish community. However, the integrity of the heritage significance of the roof and associations has been significantly compromised by the intrusiveness of the later additions and alterations, the absence of a practically or financially feasible option for reversibility of these alterations and additions, and the declining condition of the roof.*
- *Any consideration for a local heritage listing of the Site would require further information to satisfactorily confirm that the Site has reasonable prospects of enhancing the current condition and/or restoring the site at a feasible cost. No such evidence is before the Commission.*
- *Should the Department elect to progress the Planning Proposal, the extent of the impact of alterations and additions on the integrity of the heritage significance are such that the Commission would recommend the interiors of the building be excluded from any listing.*
- *The Commission considers that the Site should not be subject to a local heritage listing unless and until there is sufficient detail regarding the prospect of enhancing the current condition and/or restoring the Site. In making this recommendation, the Commission notes that the heritage value of the Site, taking into account its current state of conservation, should be considered and appropriate conservation measures taken into account at the time of any future development application for the Site, and such measures should be achieved through the provisions of the EP&A Act and relevant EPIs.*
- *Accordingly, the Commission advises that the Department should not finalise Planning Proposal (PP-2023-1224) at this time.”*

The Commission’s advice is available on its [website](#) and a copy of the report is included in **Attachment H**.

## 6 Department’s assessment

The proposal has been subject to detailed review and assessment the planning proposal process. It has also been subject to a high level of public consultation and engagement.

Following the receipt of the planning proposal for finalisation, the Department has considered:

- the issues raised in the submissions, the submissions from the landowner, and Council’s responses to issues raised in submissions;
- Council’s post-exhibition recommendation to progress the proposal without amendment, and the supporting documents submitted for finalisation; and
- the Commission’s advice of 13 March 2024.

The Department’s Gateway assessment report found that the proposal had demonstrated that the site had heritage value and this was based on an assessment of heritage significance prepared by Hector Abrahams Architects (June 2023). While local heritage is typically a local matter, the reasons that the Department did not authorise Council to be the local plan-making authority for this proposal at Gateway included that:

- the proposal was 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 in July 2023 contested 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 had been appealed with the Land and Environment Court, which may revoke the IHO if the court forms the view that the site does not have local heritage significance (see Gateway report for more information).

A Gateway determination to proceed to consultation (subject to conditions) was issued on 2 August 2023. A condition of the Gateway required that Council consult with the landowner.

As discussed above, since Gateway, the landowner and Council have submitted further detailed heritage assessments. Given the conflicting recommendations of the three specialist heritage studies undertaken for the site, the Department subsequently sought independent advice from the Commission on the finalisation of the proposal.

In its Advice Report to the Department (dated 13 March 2024) the Commission acknowledged the synagogues heritage value, particularly in respect to the technical and architectural feature of the concrete shell roof and its association with Seidler and the local Jewish community.

However, the Commission noted the integrity of the heritage significance of the roof and associations had been significantly compromised by the intrusiveness of the later additions and alterations, the absence of a practically or financially feasible option for reversibility of these alterations and additions, and the declining condition of the roof (Refer to p.18 of **Attachment H**).

The integrity and condition of the subject place or object is a consideration for determining heritage significance, as set out in NSW Government’s ‘Assessing heritage significance’ guidelines (May 2023). The Department accepts the detailed expert advice of the Commission.

The Department acknowledges the heritage value of the site and Council’s recommendation to make a statutory heritage listing. However, based on the advice of the Commission and the information available the Department is not satisfied that it has been demonstrated that in accordance with the current framework for assessing heritage significance the site in its current state has sufficient value to warrant local statutory heritage listing at this time.

## 7 Recommendation

Whilst the Department acknowledges the history and heritage of the site, it is recommended that the Minister’s delegate as the local plan-making authority, determine not to make the draft LEP under clause 3.36(2)(b) of the *Environmental Planning and Assessment Act 1979* because:

- The Department is not satisfied that a statutory heritage listing to identify the site as a local heritage item is warranted at the present time.



3/04/2024

Kelly McKellar

Manager



12/06/2024

Jazmin van Veen

Director, North, East and Central Coast

Assessment officer

Claire Mirow

Senior Planning Officer, Eastern and South District

## Attachments

Attachment	Document
A1	Final Proposal Package - Planning proposal (PP-2023-1224)
A2	Final Proposal Package - Draft Heritage Inventory Form
A3	Final Proposal Package - Hector Abrahams Architects Heritage Assessment of 34 Flood Street, Bondi (15 November 2023)
B1	Gateway Determination (2 August 2023)
B2	Gateway Alteration (31 January 2024)
C	Community Submissions
D	Landowner Submission and supporting Heritage studies
E	Waverley Council Strategic Planning and Development Committee – Meeting Agenda – 7 November 2023
F	Waverley Council Strategic Planning and Development Committee – Meeting Minutes – 7 November 2023
G	DPHI letter of request for Commission advice on finalisation of PP-2023-1224 – February 2024
H	Commission Advice Report – 13 March 2024