



W A V E R L E Y
COUNCIL

COUNCIL MEETING

URGENT BUSINESS

7.00 PM, TUESDAY 19 MARCH 2024

Waverley Council
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URGENT BUSINESS

10. Reports

CM/10.1/24.03 Planning Proposal - 34 Flood Street, Bondi - Heritage Listing3

REPORT CM/10.1/24.03



Subject: Planning Proposal - 34 Flood Street, Bondi - Heritage Listing

TRIM No: PP-1/2023

Manager: George Bramis, Executive Manager, Urban Planning

Director: Fletcher Rayner, Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council:

1. Writes to the NSW Minister for Planning and Public Spaces, Paul Scully, and the Minister for Heritage and Environment, Penny Sharpe, seeking a second Interim Heritage Order (IHO) to delay the finalisation of planning proposal 2023-1224 so that the ongoing State Heritage Register (SHR) assessment process for the Harry-Seidler-designed synagogue at 34 Flood Street, Bondi, can be properly completed before the Department of Planning, Housing and Infrastructure (DPHI) finalises its decision on the local heritage listing of 34 Flood Street based on the Independent Planning Commission's (IPC) recommendation attached to the report.
2. Publishes a media release, e-newsletter post and social media posts to inform the community and the synagogue's heritage advocates of the IPC's recommendation, the likely next steps and the options available to the community to advocate further for the heritage listing of the site.

1. Executive Summary

The Independent Planning Commission (IPC) has recommended to the Department of Planning, Housing and Infrastructure (DPHI) that the Harry-Seidler-designed synagogue at 34 Flood Street, Bondi, should not be heritage listed as a local heritage item in the *Waverley Local Environmental Plan (WLEP) 2012* in its Advice Report dated 13 March 2024 (Attachment 1).

The IPC's recommendation is highly concerning as Council (informed by the findings of an independent heritage expert) has found that the site does meet numerous categories of heritage significance under the Heritage NSW Guideline, rendering the site worthy of heritage listing. There was also an overwhelmingly positive community and industry response received during the August and September 2023 public exhibition period, with 41 of 48 submissions strongly supporting the listing.

If DPHI agrees with the IPC's recommendation and does not list the site as a local heritage item, the Harry-Seidler-designed synagogue is at risk of demolition under complying development legislation. Council's Interim Heritage Order (IHO) on the site is no longer in valid, having a one-year time limit which expired in early February. Council is not able to seek a second IHO, but can apply to the Minister for another IHO to allow the SHR assessment process to be completed.

Currently, there is a very brief window of opportunity for both Council and the community to advocate to DPHI on this matter, raising concerns regarding IPC's Advice Report and reiterating the heritage merits of the site. DPHI has until 5 April 2024 to make their final decision; however, they may determine the planning proposal before this deadline, leaving the synagogue at risk of demolition.

2. Introduction/Background

34 Flood Street, Bondi, contains a building currently used as a synagogue closer to the Flood Street frontage, and a detached structure ancillary to the synagogue closer to the Anglesea Street frontage.

A recent heritage assessment commissioned in response to a Council resolution has found that the building fronting Flood Street at 34 Flood Street meets the following Heritage NSW categories of heritage significance, rendering the site worthy of listing as a local heritage Item in the WLEP.

- *Criterion (a) An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area)*
- *Criterion (b) An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area)*
- *Criterion (c) An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or in local area)*
- *Criterion (d) An item has strong or special association with a particular community or cultural group in NSW (or local area) for social, cultural or spiritual reasons*
- *Criterion (e) An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history (or the cultural or natural history of the local area)*
- *Criterion (f) An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area)*
- *Criterion (g) An item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places or environments (or a class of the local area's cultural or natural places or environments)*

The following Statement of Significance for 34 Flood Street was prepared:

The building fronting Flood Street at 34 Flood Street, Bondi is significant as [it is]:

- *A seminal work in the development of the civic and sculptural concrete architecture of the pre-eminent Australian Modern architect Harry Seidler, displaying the application of Bauhaus principles for which he is known.*
- *The largest and best example of thin concrete shell technology of the 1950s in NSW.*
- *One of the most architecturally distinguished religious chambers of the immediate post-war period in New South Wales and one of the finest synagogues of the period.*
- *A historically important place in the development of Jewish religion in New South Wales in the post-war migration period and the first Talmudical school with integral synagogue.*
- *Highly representative of the history of post-war migration in New South Wales, behind the establishment of a new religious building and educational institution by a migrant community.*
- *A place held in high esteem by the Jewish community of Waverley and broader afield.*

Subsequently, Council lodged a planning proposal with DPHI seeking to heritage list the site by making changes to the WLEP as per Table 1 and Figure 1 in June 2023.

Subsequent to the finalisation of the Statement of Significance (above), Hector Abrahams Architects (HAA) has been made aware that the Canberra Bowling Club has been demolished. This means that the Talmudical School and Synagogue is now the earliest surviving civic building by Harry Seidler.

Table 1. Summary of proposed changes to the WLEP2012.

WLEP 2012 Provision	Existing	Proposed
Heritage map	34 Flood Street, Bondi is not shown as a Heritage Item on the Heritage Map	34 Flood Street, Bondi is to be shown as a local Heritage Item on the Heritage Map. Refer to Figures 1 and 2.
Schedule 5, part 1 Heritage Items	34 Flood Street, Bondi is not listed in schedule 5 part 1 as a Heritage Item	34 Flood Street, Bondi is to be listed in schedule 5 part 1 as a Heritage Item



Figure 1. Proposed change to Heritage Map (WLEP 2012, Heritage Map - Sheet HER_004A , showing 34 Flood Street as a Heritage Item).

DPHI granted permission for the planning proposal to proceed to public exhibition with a Gateway determination dated 2 August 2023.

Public exhibition was held for six weeks in August and September 2023, with 41 of 48 submissions supporting the local heritage listing.

The exhibition results were reported back to Council in November 2023, at a Strategic Planning and Development Committee meeting where Council unanimously resolved to support the planning proposal being sent back to DPHI with a recommendation to proceed with the listing.

Before making their final determination, DPHI referred the planning proposal to the IPC for advice in February 2023.

The Independent Planning Commission (IPC) is a body that was established under the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) on 1 March 2018. It performs the following key functions under the Act:

- Provide independent expert advice on any planning matter, when requested by the Minister of Planning and Public Spaces or the Planning Secretary.
- Determine State significant development applications in certain circumstances.
- Conduct public hearings for development applications and other planning and development matters.

Regarding the 34 Flood Street planning proposal, the IPC was requested to provide independent expert advice on the local heritage listing of the site. Attachment 1 contains the IPC's Advice Report, which resolves to not support the listing despite strong Council and community support for the listing.

DPHI is now considering IPC's advice and must make its final decision on whether to list 34 Flood Street as a local heritage item or not before 5 April 2024.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 7 November 2023	PD/5.2/23.11	That Council: <ol style="list-style-type: none"> 1. Forwards the planning proposal attached to the report (Attachment 1) to list 34 Flood Street, Bondi (Lot 1 DP 1094020), as a local heritage item in the <i>Waverley Local Environmental Plan 2012</i> (WLEP), subject to officers considering the emails and attachments referred to in the representations from members of the public, and the submissions received during public exhibition, to the Department of Planning and Environment (DPE) with a recommendation to proceed to finalisation and gazettal. 2. Requests the DPE to exercise the delegations issued by the Minister under section 3.36 of the <i>Environmental Planning and Assessment Act 1979</i> to amend the WLEP. 3. Notifies the owner of 34 Flood Street of Council's decision.
Strategic Planning and Development Committee 6 June 2023	PD/5.2/23.06	That Council: <ol style="list-style-type: none"> 1. Forwards the planning proposal seeking to list 34–36 Flood Street, Bondi (Lot 1 DP 1094020), as a local Heritage Item in the <i>Waverley Local Environmental Plan 2012</i> (LEP) to the Department of Planning and Environment (DPE) for Gateway determination for the purposes of public exhibition. 2. Publicly exhibits the planning proposal in accordance with any conditions of the Gateway determination

		<p>that may be issued by the DPE.</p> <ol style="list-style-type: none"> 3. Requests and accepts, if offered, the role of the planning proposal authority from the DPE to exercise the delegations issued by the Minister under section 3.36 of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the making of the amendment. 4. Submits an application to NSW Heritage to nominate 34–36 Flood Street for State Heritage Item listing on the State Heritage Register. 5. Writes to the NSW Minister for Heritage seeking support to urgently process Council’s application for State Heritage Listing of 34–36 Flood Street. 6. Writes to the NSW Minister for Planning and Public Spaces in respect of the rezoning of 34–36 Flood Street from SP2 Infrastructure to R3 Medium Density Residential, seeking an urgent meeting for the Mayor and senior Council officers to request that: <ol style="list-style-type: none"> (a) The rezoning be refused by the Department of Planning and Environment, or (b) Should the Minister or his delegate decide to finalise the rezoning, the LEP amendment includes a site-specific provision to protect the existing community/educational/religious facilities at basement and ground levels as per the advice of the Sydney Eastern City Planning Panel and in consultation with Council officers.
<p>Strategic Planning and Development Committee 7 February 2023</p>	<p>PD/5.1/23.02</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes that on 5 July 2022, Council refused a spot rezoning request for 34-36 Flood Street, Bondi to rezone the site from SP2 Infrastructure to R3 Medium Density Residential. 2. Notes that the NSW Department of Planning and Environment provided provisional Gateway approval for the spot rezoning of the site, in spite of Council’s refusal. 3. Approves the submission on the planning proposal for 34–36 Flood Street, Bondi, attached to the report (Attachment 1) to the Department of Planning and Environment, subject to the following amendment: <ol style="list-style-type: none"> (a) Page 25 of the agenda – Amend the statement of significance to read as per the statement on page 38 of the agenda, incorporating the

		<p style="text-align: center;">amendment in clause 4 below.</p> <p>4. Lodges the interim heritage order attached to the report (Attachment 2) for 34–36 Flood Street with Heritage NSW, subject to the following amendment:</p> <p>(a) Page 38 of the agenda, paragraph 6 of the statement of significance – Amend to read as follows:</p> <p style="padding-left: 40px;">‘Subsequent additions and change of interiors to the building have served to maintain its historic function and role in the Orthodox community. Recent unsympathetic additions to the street frontage detract from the buildings aesthetic and streetscape qualities but are at distance from the core building and able to be removed, should the use of the buildings change in the future and the security blast wall not be required.’</p> <p>5. Engages an independent heritage expert to undertake a heritage assessment of the site’s synagogue, which was designed by Harry Seidler.</p> <p>6. Officers prepare a report to Council on whether the building should be nominated for inclusion in schedule 5 (heritage items) of the Waverley Local Environmental Plan 2012 and the State Heritage Register.</p> <p>7. Officers note the information presented by Emeritus Professor James Weirick in his address to the meeting in the report referred to in clause 6 above.</p>
<p>Strategic Planning and Development Committee 5 July 2022</p>	<p>PD/5.1/22.07</p>	<p>That Council:</p> <p>1. Does not support the planning proposal set out in the report to amend the <i>Waverley Local Environmental Plan 2012</i> in respect of 34–36 Flood Street, Bondi, Lot 1 DP 1094020, as the proposal lacks strategic merit and involves a change in Council's long-established policy in relation to SP2 Infrastructure Zones.</p> <p>2. Investigates the strategic merit of amending the current zoning of SP2 Infrastructure ‘Educational Establishment’ to a more appropriate zoning that represents the existing uses and considers potential future uses on the site in a future housekeeping planning proposal.</p>

4. Discussion

Issues with the IPC Advice Report

Serious concerns have been identified with IPC's Advice Report, which are expected to jeopardise the likelihood of DPHI deciding to list 34 Flood Street as a heritage item. The key issues are detailed as follows:

- Paragraph 7 on page 2 and paragraph 60 on page 18 suggests that the site cannot be listed unless repairing the vaulted roof can be shown to be economically and physically feasible. The report continues to suggest that even if the repair works were undertaken, the impact of the upgrades would leave the building without any heritage fabric worth listing. This opinion has been founded on the advice of a structural report commissioned by the applicant, which has not been peer reviewed or independently verified. It also conflicts with the advice of independent heritage expert, Hector Abrahams, who inspected the building in person and has stated in his assessment that repairs to the vaulted roof are possible and will not detract from the heritage significance of the roof and wider site. It is noted that the structural report of 2023, commissioned by the owner, states that the roof is not repairable, but this should be verified independently before it can be used to justify refusal to heritage list the building. It is noted that the building remains occupied and is therefore safe. Advice provided by HAA and DOCOMOMO during the assessment process was that the changes to the front of the building are reversible, and changes to finishes and liturgical layout do not impinge on its key architectural merit—contrary to the assessment of the Commissioner that the building is too far changed.
- Paragraph 29 on page 11 states that 'the listing of an item as a local heritage item can impact on the prioritisation of the State Heritage assessment work plan, as it can be considered to have a lower level of threat if it is listed on a LEP'. Heritage NSW's workplan is not a consideration for locally listing a site.
- Paragraph 46 on page 16 raises that there are 13 other places of Jewish worship in Waverley and that only 16% of the local government area is Jewish. This incorrectly surmises that all people who identify as Jewish on the ABS Census are of the same sect and will feel the same connection to and value for a synagogue of any type.
- Paragraph 62 on page 18 suggests that heritage would still be a consideration for any future DA on the site even if it remains unlisted. This is incorrect, as the DA team cannot raise heritage as a consideration for a site that is not an item or in a heritage conservation area as they would have no legislative grounds to do so.
- Paragraph 64 on page 18 recognises that the association with Seidler and the local Jewish community does provide the site with heritage value. As only one heritage criterion needs to be met to make the item suitable for local listing, the IPC should therefore still support the synagogue for listing on association and historical grounds, despite their opinions on the value of the vaulted roof.

State Heritage listing

34 Flood Street was found to meet criteria for both local and state heritage listing by Council's independent heritage assessment. In July 2023, Council submitted an application to Heritage NSW to nominate 34 Flood Street for listing on the State Heritage Register. In August 2023, the Heritage Council advised Council that the State Heritage Register Committee (SHRC) considers that the Seidler Synagogue on Flood Street may be of heritage significance at a State level and will progress to full assessment for listing on the State Heritage Register.

The Heritage Council will continue their assessment of the site as a possible State Heritage item regardless of the outcome of the local listing. However, recent correspondence from Heritage NSW has indicated that the assessment is unlikely to be completed until 30 June 2025. Council officers have asked that this timeline be expedited in light of the IPC report.

If Council's planning proposal does not receive support from DPHI, the site will have no protection while the Heritage Council assesses it for possible listing on the SHR, leaving it at risk of significant alteration or complete demolition because Council's IHO is no longer active.

Next steps and further advocacy

If DPHI agrees with the IPC's recommendation and does not list the site as a local heritage item, the Harry-Seidler-designed synagogue is at risk of demolition. There is still opportunity for Council and the community to advocate for the heritage listing of 34 Flood Street between now and the time of DPHI making their final determination (which must be made at the latest by 5 April 2024).

This could include:

- Contacting the NSW Minister for Planning and Public Spaces, Paul Scully, and the Minister for Heritage and Environment, Penny Sharpe, seeking urgent intervention in the finalisation of PP-2023-1224 relating to the local heritage listing of 34 Flood Street and urging the Minister/s to place a second IHO on the site until the SHR assessment process is completed.
- Writing to DPHI to highlight the issues with the IPC recommendation and reiterate the heritage merits of the site.
- Writing to the Jewish Board of Deputies seeking their support for the heritage listing of the synagogue and their advocacy with State Government ministers.
- Seeking further support from the Australian Institute of Architects and DOCOMOMO in advocating for the synagogue's future and conservation.
- A social media campaign requesting interested members of the wider community to contact the State Ministers expressing their concern for the synagogue's future. Council officers can provide wording that might assist the public in advocating for the building based on the independently assessed heritage significance.
- Writing to the Heritage Council expressing concern about the IPC's failure to recommend local heritage listing and the anomalies in its report related to the established grounds for listing items with identified heritage significance.
- Press releases to media who have covered this heritage process, spelling out Council's concerns about the synagogue's future and the IPC report's findings.
- Seeking the independent opinion of Professor Philip Goad on the synagogue's significance, to be given to the Heritage Council independently of Council review or input. Professor Goad is internationally known as an authority on modern Australian architecture. He has worked extensively as an architect, conservation consultant and curator and is currently serving as Professor of Architecture in the Faculty of Architecture, Building and Planning at the University of Melbourne. He is a former president of the Victorian Chapter of the Royal Australian Institute of Architects.

Community engagement

Further community engagement is proposed under this report to inform the community of IPC's recommendation, outline next steps and detail what further advocacy can be done to support the heritage listing of 34 Flood Street. This engagement may include but not be limited to a media release on Council's website and a feature in Council's e-newsletters and social media platforms.

5. Financial impact statement/Time frame/Consultation

Financial impact

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with the administration and assessment of the planning proposal, and the fees associated with the heritage assessment by Hector Abrahams Architects (HAA), which has informed the WLEP amendment. HAA also attended the IPC hearing at Council's request and has provided ongoing advice on this process.

Time frame

In order to comply with the time frames provided in the Gateway determination for this planning proposal, DPPI must make its final decision before 5 April 2024. If the listing is approved, the proposed change would come into effect shortly after the date of determination.

Consultation

Consultation during a six-week public exhibition period between August and September 2023 revealed strong support for the local listing from:

- Local community members including both Jewish and non-Jewish-identifying persons.
- The North Bondi and Bondi Beach Precincts.
- Numerous architects including the Australian Institute of Architects, architectural scholars (adjunct Professor James Weirick), and architectural and construction historians including DOCOMOMO and the Head of the School of Architecture at the University of Technology Sydney (UTS).

Forty-one out of the 48 submissions received were in strong support of the listing.

Further community engagement is proposed under this report, to inform the community of IPC's recommendation, outline next steps and detail what further advocacy can be done to support the heritage listing of 34 Flood Street.

6. Conclusion

The building that fronts Flood Street at 34 Flood Street, Bondi, has been found by Council's independent heritage assessment to meet the criteria for listing as a local Heritage Item in the *Waverley Local Environmental Plan 2012* and as a State Heritage item in the State Heritage Register.

It is recommended that further action is taken to advocate for the listing of the site as a local heritage item, given the issues found with the Independent Planning Commission's Advice Report which recommends to not support the listing.

7. Attachments

1. IPC - 34 Flood Street, Bondi - Advice on Local Heritage Listing - 13 March 2024 [↓](#) .

