

Our ref: PP-1/2023
27 February 2024
Re: Independent Planning Commission Questions on Notice

Samantha McLean
Executive Director
Office of the Independent Planning Commission NSW
Suite 15.02, Level 15, 135 King Street
SYDNEY NSW 2001

Dear Ms McLean,

Waverley Council Responses to Questions on Notice 34-36 Flood Street, Bondi – Heritage Listing

Please find below responses from Waverley Council to questions taken on notice before the Independent Planning Commission on the heritage listing of 34-36 Flood Street, Bondi.

1: Provide any documentation of previous efforts by Council to list the site as a local heritage item, including confirmation of timing of these efforts and any assessment undertaken at the time:

The site's ownership and history of use has been complex, involving numerous court cases. This has impacted on Council's ability to view and assess the heritage significance of the Seidler synagogue building. The following is a brief history:

Year	Event
1958-61	Harry Seidler-designed Synagogue constructed with money raised by post-WWII refugees
1994	Mining magnate Joe Gutnick loans \$5m to Yeshiva school and synagogue run by Rabbi Feldman, by way of mortgage on Yeshiva properties.
1999	Debt falls due
2002-03	NSW Supreme Court orders Yeshiva to pay Gutnick \$15m in relation to the loans (including interest). If not paid, Gutnik can repossess 34-36 Flood Street from Rabbi Feldman as part payment of the debt. Feldman's wife is Gutnick's sister, Pnina, who asks Council officers to assess the heritage significance of the synagogue. Heritage study does not progress because of ongoing court action
2003	Gutnick prepares to sell 34-36 Flood Street (1300sqm) to cover debt.

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2004	Request for Council officers to heritage list synagogue. Ownership changes affect access. No final report made to Council
2005	34-36 Flood St sold for \$1.8m
2008	Prime Minister Kevin Rudd visits synagogue; greeted by Waverley Cr Wy Kanak
2009	34-36 Flood St sold for \$1,884,500
2012	34-36 Flood St sold for \$2.7m Harry Triguboff purchases 2 properties 34-36 Flood Street and 36a Flood St for \$6m and leases back to Yeshiva and other Chabad institutions at a peppercorn rent, leading the school to name a building after him.
2013	Council officers begin historical research on Synagogue. No formal study reported to Council because of ownership changes and ongoing blast wall construction
2014	Blast wall constructed funded by 2012 federal Secure Schools grant.
2017	NSW Supreme Court judge find "there is no factor which establishes a legitimate basis" for members of the Feldman family to remain at Yeshiva's property in Flood Street after their lease ended 49 years after becoming spiritual leader at Flood St, Feldmans' lease on the site expires and is not extended despite court case and appeal. Feldman family entities required to surrender vacant possession back to the lessor, The Harry Triguboff Foundation
2018	Yeshiva College and Our Big Kitchen host their annual Gala Dinner for 1000 people in honour of Harry Triguboff's 85th birthday. Triguboff states that the more things he sees Our Big Kitchen and Yeshiva College achieve, the more he wants to extend his charitable hand.
2022	Registration of Yeshiva College cancelled by NSW Department of Education
2022	Meriton seeks spot rezoning of 34-36 Flood Street from SP2 Infrastructure (educational establishment) to R3 Medium Density Residential
Feb 2023	Seidler family fears synagogue is at risk of demolition; Interim Heritage Order gazetted by Waverley Council
May 2023	Independent heritage assessment conducted by architect and architectural historian Hector Abrahams finds the synagogue meets all categories for listing at a local level and 6 out of 7 for State listing
2023	Billionaire property developer Harry Triguboff tells Jewish media he intends to keep the former Yeshiva College property in Bondi as a Jewish educational facility, despite rezoning and lodgement of pre-DA plans for a residential tower.



Heritage Protection by Development Consent Conditions, 2013:

Despite complexities involving ongoing court cases and ownership changes at Flood Street, Council officers have been aware of the synagogue's heritage significance and have managed change at 34-36 Flood Street, Bondi, to limit impact to the synagogue's original fabric for more than a decade. Council issued a Notice of Determination of a Development Application lodged in 2013 (DA-158/2013) to Karimbla Properties in relation to works at 36 Flood St, Bondi. The DA's Conditions of Consent included the following:

- e) **The applicant is to consult with the estate of Harry Seidler, in particular the firm of Harry Seidler and Associates in terms of the material and finishes for new work and conservation measures in order to retain the architectural integrity of the building.**

Other Conditions included the following:

- a) To minimise the impact upon the appearance of the streetscape and retain the architectural integrity of the building, the reinforced concrete wall and demolition of the existing front stairs are not approved and shall be deleted. The open character of the building's entry courtyard and foyer to the Synagogue are to be retained.
- d) The application is to include details of conservation measures to maintain the existing building's detailing.

The heritage significance of the Synagogue to the local community and encapsulated in the DA Conditions (above) was later borne out in the independent assessment of the building by Hector Abrahams Architects. The associated Statement of Significance at a local level is provided below:

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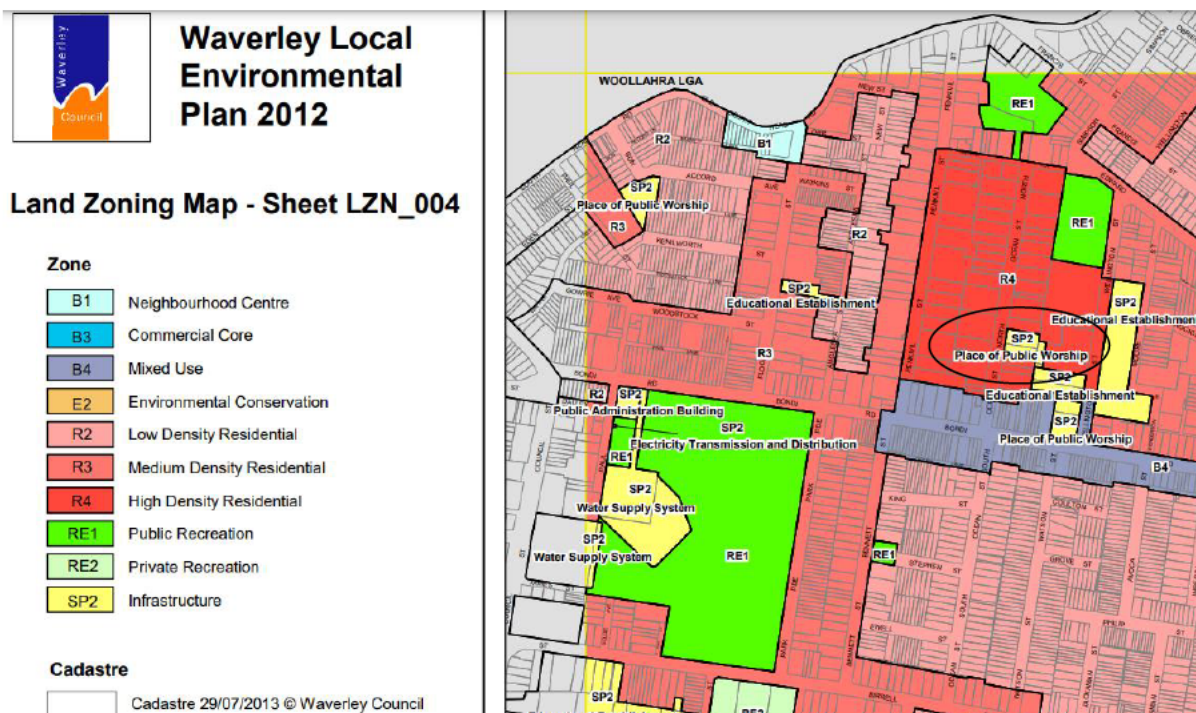


Current Use	Religious education
Former Use	Religious worship and education
Statement of Significance	<p>The synagogue and former Sydney Talmudical College premises building located at 34 Flood St Bondi satisfies significance thresholds for historic, associational, aesthetic, scientific, rarity and representative values at the State level. Additionally, it satisfies threshold for social significance at the local level.</p> <p>The synagogue and former Sydney Talmudical College premises building located at 34 Flood St, Bondi is significant as:</p> <ul style="list-style-type: none"> • 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 most 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. • An historically important place in the development of; Jewish religion in New South Wales, the post war migration period, as the first Talmudical school with integral synagogue. • Highly representative of the history of post war migration in New South Wales, being 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.
Level of Significance	State AND Local

2: Financial hardship: any evidence of Council policy at the time with respect to Council’s consideration of financial burden on the landowner:

a: Land zoning

Council policy of maintaining for the community all land zoned for social infrastructure such as education, religious and health facilities has been in place since 1985 and was confirmed with the gazetting in 2012 of the Waverley Local Environmental Plan. The impact of the planning changes contained in WLEP 2012 were well communicated when introduced.



Above: WLEP map with cadastre dated 2013. Synagogue (circled) is SP2 Infrastructure.

In January 2023, at a public meeting of the Strategic Planning and Development Committee, Waverley Council unanimously endorsed the gazettal of an Interim Heritage Order on the synagogue building at 34-36 Flood Street, Bondi. The IHO process was prompted after concerns were raised by the Seidler family about the possible demolition of the synagogue after Meriton lodged a Planning Proposal (PP-1/2022 D22/53017) to amend the Waverley Local Environmental Plan 2012 by changing the site's zone from SP2 Infrastructure to R3 Medium Density Residential.

Council refused the rezoning request, as did the Waverley Local Planning Panel. The NSW Department of Planning later approved the spot rezoning, despite Council's objection. At the time, Waverley Mayor Paula Masselos told media that Council remains committed to retaining social and scarce educational infrastructure. "This historical religious and educational facility has served the Jewish community for more than 60 years and it is critical that this facility is not lost for this community."

b: Philanthropy



Media reports in 2012 about the purchase of the synagogue building at 34-36 Flood Street by the HOT Foundation (HOT – Harry Oscar Triguboff) included comments that it was bought as a philanthropic gesture to the Jewish community with knowledge of the social services it provided. It was purchased knowing that it had not-for-profit community uses and that ongoing maintenance of the site would be required. Until recently, the site continued to function as an active synagogue and housed community facilities - as it has for over 60 years.

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c: Potential to redevelop:

The proposed heritage listing of the Flood Street Synagogue – which has been given Gateway approval to proceed to public exhibition and has been exhibited – does not inherently prevent additional land uses or further development of the site.

Furthermore, the R3 rezoning, which has been approved, makes the site more valuable for apartment development. Heritage listing is unlikely to create additional financial burden because it would not prevent sensitive development and adaptive reuse of the site.

2: Provide further considerations from Council’s heritage consultant on whether the site meets the threshold for local significance, as distinct from state significance. In considering local significance, Council may want to consider the definition of ‘local heritage significance’ in section 4A of the *Heritage Act 1977*, which refers to significance to ‘an area’ as defined in the *Local Government Act 1993* and the definition of local significance in Figure 1 of *Assessing Heritage Significance (DPE, 2023)*:

Please see separate response provided by Hector Abrahams Architects and attached to this email.

3: Provide any additional comments from Council’s heritage consultant in response to the heritage reports provided by the landowner:

Please see separate response provided by Hector Abrahams Architects and attached to this email.

4: Provide any additional comments from Councillor Wy Kanak on the matter.

Councillor Wy Kanak was contacted for further comment or extra information following the IPC hearing, but has not provided any new material.

5: Documentation from Council that is relevant to Council’s nomination of the subject site to the State Heritage Committee for consideration for State heritage significance:

On June 6, 2023, Waverley Council’s Strategic Planning and Development Committee unanimously endorsed a motion to seek State Heritage Register listing for the synagogue building at 34-36 Flood Street, Bondi. Council also endorsed seeking a meeting with the Minister for Planning to advocate for the listing.



The Council resolution is as follows:

UNANIMOUS DECISION

That Council:

1. Forwards the planning proposal seeking to list 34–36 Flood Street, Bondi (Lot 1 DP 1094020), as a local Heritage Item in the *Waverley Local Environmental Plan 2012* (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 that may be issued by the DPE.
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 *Environmental Planning and Assessment Act 1979* 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:
 - (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.

Division

For the Motion: Crs Betts, Burrill, Goltsman, Gray, Kay, Keenan, Lewis, Masselos and Nemesh.

Against the Motion: Nil.



The Waverley Local Planning Panel also supported the local heritage listing of the Synagogue building at its meeting on 24 May 2023:

ADVICE OF THE WAVERLEY LOCAL PLANNING PANEL
Planning Proposal PP-1/2023
34-36 Flood Street, Bondi – Heritage Listing Planning Proposal
Wednesday 24 May 2023

Resolution

For the reasons outlined in the Council officer's report, the Panel supports the recommendation for the Planning Proposal seeking the local heritage listing of 34-36 Flood Street to proceed to Gateway Determination and public exhibition, subject to the following changes:

1. Change the WLEP 2012 draft Schedule 5 listing from '20th 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	34-36 Flood Street, Bondi	Lot 1 DP 1094020	Local*
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The Waverley Local Planning Panel also supported Council's reasons for refusal of Planning Proposal PP-2022-676 to rezone 34-36 Flood Street, Bondi, to R3 Residential. The panel on the day included:

- The Hon. Paul Stein AM KC (Chair), Judge of the NSW Land & Environment Court, 1985-1997
- Jan Murrell, Commissioner of the NSW Land & Environment Court, 1998-2012
- Sharon Veale, Chief Executive Officer & Partner, GML Heritage
- Allyson Small, Community Representative

Please be in contact if you have any questions.

Kind regards



Timothy Williams
Manager Urban Design and Heritage,
Waverley Council