

27 October 2023

Emily Scott
The General Manager
Waverly Council
PO Box 9
BONDI JUNCTION NSW 1355

By email: [REDACTED]

**Planning Proposal PP-2023-1224
Proposed Heritage Listing for 34-36 Flood Street Bondi
Meeting with Council 26 October 2023**

Dear Emily

I am the General Counsel for Meriton Group, which includes Karimbla Properties No 10 Pty Ltd, the owner of the above site, as trustee for the HOT Foundation.

Matthew Lennartz, Dr Maclaren North, Ashna Aggarwal and I met with the following Council staff on 26 October 2023 to discuss the Council's Planning Proposal to list the above site as an item of both local and State heritage significance:

1. George Bramis;
2. Emma Rogerson;
3. Tim Sneesby;
4. Tim Williams;
5. Anne McGovern;
6. Fletcher Raynor; and
7. Leonardo Shaw.

As part of this meeting, it was requested by your Mr Raynor that we provide a summary of our objections raised during this meeting, which would be considered as part of the report to Council for its meeting on 7 November 2023.

As requested, we confirm our objections to the planning proposal are as follows:

- 1. Council (through its Councillors) is weaponising the *Heritage Act 1977* in order to appease a very small number of its constituents.**

Council staff, in the meeting of 26 October 2023, indicated the following:

- (a) The site was considered over 20 years ago as a possible item of heritage, however the full Council did not support the listing at this time as it was of the view that the building was more concealed.

This is incorrect. The buildings surrounding synagogue building were lower 20 years ago, there was no blast wall and the original menorah gates still existed. Furthermore, the original interior furniture had not been removed. This means that the building was

substantially more visible and more intact at the time.

- (b) Council did not include the site as part of its 2020 local government area wide heritage assessment, despite considering other sites within close proximity. As the site was zoned SP2 Council considered that the site was not under threat of redevelopment.
- (c) The Councillors changed their position following the R3 zoning change and a request from the 'public' to protect the site. The staff advised they were only following the direction of the Councillors.

2. Council does not appear to have properly considered and indeed assessed the heritage reports provided by the landowner, which include detailed analysis of the internal fabric.

Council has indicated that it is the engineering of the roof which is the item of critical importance and that the intactness of the interior is a matter for consideration. Our heritage reports extensively show how significantly the building interior has been altered and it is not clear whether the Council has property. Council staff maintained, at the meeting, it was both the structure and the internal fabric of the building. This completely disregards the evidence provided by the landowner.

3. Council has not discharged its onus of consultation with the landowner, which is a condition of the Gateway Approval. Council has not, at any stage during the exhibition process until now consulted with the landowner.

The meeting which took place on 26 October 2023 did not provide the landowner with any further details regarding the progression of the planning proposal. The Council staff did indicate on-going support but could not justify the extent or advise us of the recommendations to be made in the Council report.

Furthermore, Council could not at any stage during this meeting point to the components of the synagogue which Council says makes it of heritage significance, other than the roof form and the 'space under the roof'. This was despite the Council having two heritage advisors in the meeting.

4. The Council has also failed to provide the landowner with any procedural fairness throughout the planning proposal process.

Council has failed in its duty due to the following:

- (a) Council's heritage significance report, references that it relies on a report prepared by Council's heritage advisor Colin Brady.
- (b) This report was requested from Council by our heritage expert on 24 August 2023 under the provisions of the *Government Information (Public Access) Act 2009*. The closing date for submissions was 14 September 2023. As the report has not been provided to date, our expert was forced to finalise his report without the benefit of all information which was available to the Council's heritage expert. In the meeting of 26 October 2023, Council indicated that this was a matter for its governance team.
- (c) The landowner (including its heritage consultants) was therefore forced to make a submission **without all of the relevant information** which Council was relying on to make a change to the statutory planning controls which significantly affect the site.

- (d) The failure of Council to provide this report was clearly identified in the submission prepared by Extent Heritage (at page 1 – see footnote). A reasonable person would assume that the Council officer(s) who reviewed the public submissions would have been aware of this request and its importance to provide to the landowner.
- (e) Council has now (some 10 days prior to the Council meeting) indicated it will provide us with the report as soon as possible.

The landowner is extremely frustrated with the Council withholding information in what is clearly an exercise by the Councillors to appease a very small number of constituents. The landowner also had similar issues with the residential planning proposal for the site where Council also withheld and frustrated the release of the initial LPP report which demonstrated Council support for the planning proposal. We therefore believe that the Council is intentionally withholding information from the landowner in this case.

Council's actions in failing to disclose critical information to the landowner constitutes a denial of procedural fairness. As you would be aware, administrative decision makers are required, absent a clear contrary legislative intention, to afford procedural fairness to those affected by their decision. In this case the landowner is to be most affected by the decision to be made regarding the planning proposal and at no stage has Council properly discharged its duty.

The landowner therefore requests that the planning proposal is publicly renotified, with ALL information made available to the landowner and the public, to allow the landowner, and its consultants, to properly consider the report which has to date been withheld by the Council. This report formed the basis of the Council's expert heritage advice and in accordance with the requirements of procedural fairness the landowner should be provided with a copy and an opportunity to respond.

We trust that the Council will include these submissions in its report to the full Council on 7 November 2023. We will also be making these submissions to the Council on this date.

If you require any further information, please don't hesitate to contact me directly.

Yours faithfully,
MERITON GROUP

Emma Whitney
General Counsel

Direct line: [REDACTED]

Email: [REDACTED]

CC: George Bramis, Emma Rogerson, Tim Sneesby, Tim Williams, Fletcher Raynor

CC: Amanda Harvey, Department of Planning and Environment