

15 November 2023

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**Planning Proposal PP-2023-1224
Proposed Heritage Listing for 34-36 Flood Street Bondi (Site)**

Dear Amanda

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 (**Landowner**).

On 7 November 2023 Council resolved to:

“Forward 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 Waverly Local Environmental Plan 2012 (WLEP) subject to Officer consideration of emails and attachments mentions in 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.”

As you will recall the NSW State Government only recently approved the rezoning of the Site to R3 to provide consistent and appropriate land use controls across the entire Site, as per the Planning Guidelines. The introduction of a heritage zoning will again split the planning controls and will inhibit the Landowner's reliance on the recently gazetted planning controls.

The Landowner raises the following objections to the planning proposal:

1. The synagogue building is not of heritage significance

- (a) The synagogue building (built in 1961) is not of heritage significance and despite a local government wide heritage assessment in 2020, the Council did not consider the site as heritage. It was only after a request was made by Harry Seidler's daughter (following the R3 zoning change) that the item was considered by the Council as heritage. Council staff advised the Landowner at a meeting on 24 October 2023 that staff were only following direction of the elected Council further verifying the political (not technical) nature of the planning proposal.
- (b) It is not a significant work of Harry Seidler.
- (c) The building has been materially altered, with the majority of the interior being redone and contemporary extensions added.
- (d) It is not a building with wide social or Jewish religious value, particularly noting that the building is situated in a local government area which has a very high number of Jewish constituents. It is only the HOT Foundation which makes financial contributions to maintain and operate the building and the site.

Of the 51 submissions which were made to Council in support of the planning proposal, only 14 indicated that the synagogue had personal religious significance. This is in stark contrast to the 2021 census which recorded the population of Waverley Council at 69,388 residents, with 16% (being 11,102 residents) identifying as Jewish (0.12%).

If the Council were serious about the purported heritage significance of the Site, it should have properly consulted with the Landowner regarding the incentivisation of the building as part of any future redevelopment of the site. This was put to the Council in our letter of 23 August 2023 (attached) however the Council did not discuss this in any detail with the Landowner. Council adopted this approach with the redevelopment of the Telstra Exchange building in Bondi, but this was not afforded to the Landowner.

2. 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.

The report prepared by Hector Abrams (relied on by Council to support the planning proposal) does not make any real assessment of the synagogue building as it currently stands today. The barrel-vaulted roof has been significantly altered in order to comply with the requirements of the National Construction Code. The interiors have been completely altered from the original fabric.

The Landowner relies on the expert reports prepared by two highly regarded heritage experts, James Phillips and Dr Maclaren North. Both reports set out in detail the extent of the alternations made to the synagogue building. A copy of these reports was provided to the Council on 14 September 2023 and they are enclosed in this letter.

Accordingly, the scope of the proposed listing is completely incorrect as it covers interiors and exteriors.

3. 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.

Following Gateway Approval, Council sent to the Landowner what could only be described as a generic notification letter regarding the progression of the Planning Proposal. A copy of this letter is attached.

Council only met with the Landowner on 24 October 2023, which was well after the closing of the exhibition period on 14 September 2023 and just two weeks prior to the scheduled Council meeting.

The Council failed to provide the Landowner with any real information at this meeting and therefore it could hardly be considered to be 'consultation'. The Landowner was requested to provide a letter outlining its objections to Council. The Council's response to these objections were recorded in the Council report, which the Landowner only obtained 3 days prior to the meeting. The Landowner was therefore unable to 'consult' with Council in relation to its position on the Landowner's objections.

Consultation is generally considered to mean the act of exchanging information and opinions in order to reach a better understanding. Council's correspondence with Landowner therefore cannot be considered to be consultation as no information was exchanged by Council.

4. Council failed to provide the Landowner and the Public with procedural fairness.

Council did not provide the Landowner with a report which formed the basis of the Council's heritage assessment report until 3 days prior to the Council meeting. This was despite the Landowner's heritage consultant submitting a *Government Information (Public Access) Act 2009* request to the Council during the exhibition period. The report was ultimately provided to Meriton on 3 November 2023.

Council did not provide its own report to the Landowner, despite a request for this from the Landowner at the meeting of 24 October 2023, and it was only when the report was made available online (on 3 November 2023) that Meriton obtained a copy.

As the Landowner is to be significantly impacted if the planning proposal is made, the reports should have been made to the Landowner earlier than this, to give the Landowner proper time to consider the reports with its heritage consultants and prepare a proper detailed submission to Council. Council's

failure to provide this information must result in the planning proposal being re-exhibited with all available information.

Documents

We include the following documents in support of this letter:

- (a) Letter from Meriton Group's Managing Director to Council, dated 23 August 2023;
- (b) Letter from the Landowner to Council, dated 14 September 2023, including reports prepared by Extent Heritage and Weir Phillips;
- (c) Letter from Meriton Group to Council dated 27 October 2023;

Conclusion

The Landowner is not proposing to change the use of the site at this point in time so there is no 'threat' to the synagogue building. In addition to this, the Landowner (and its expert heritage consultants) is of the view that the Site is not of heritage significance, and the scope of the listing cannot be reasonably applied. Council is therefore weaponising the *Heritage Act 1977* in order to appease a very small number of its constituents.

Based on the above the Landowner submits that the Planning Proposal should not be made, and the Council should be directed to notify the planning proposal, along with all of the relevant reports.

If Department of Planning is considering anything else (which we do not support), we would request a meeting with the Department of Planning at your earliest convenience to discuss the Landowners objection to the Planning Proposal.

We look forward to meeting with you.

Yours faithfully,

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