



**New South Wales Government**  
Independent Planning Commission

## **TRANSCRIPT OF MEETING**

RE: 34-36 FLOOD STREET, BONDI PP - HERITAGE LISTING ADVICE  
(PP-2023-1224)

### **DEPARTMENT MEETING**

PANEL: TERRY BAILEY (CHAIR)

OFFICE OF THE IPC: SAMANTHA MCLEAN  
TAHLIA SEXTON

DEPARTMENT OF PLANNING, HOUSING  
AND INFRASTRUCTURE: AMANDA HARVEY  
KELLY MCKELLAR  
CLAIRE MIROW

LOCATION: ZOOM VIDEO CONFERENCE

DATE: 3:00PM – 3:30PM  
THURSDAY, 15<sup>TH</sup> FEBRUARY 2024

<THE MEETING COMMENCED

MR BAILEY: So we might just to recognise as well that we're being recorded. And so there'll be a little bit, but just - Good afternoon, welcome. Thank you for your  
5 time in particular. And before we begin, I'd like to acknowledge that I'm speaking to you from the lands of the muwinina people, from nipaluna, litruwita which is Hobart, Tasmania. And I acknowledge the palawa and pakana peoples of litruwita. I also acknowledge the traditional owners of all the countries from which we're meeting today, and pay my respects to Elders, past and present, and acknowledge Elders,  
10 those that didn't make Elder status.

Welcome to the meeting today to discuss the request for advice on the finalisation of planning proposal PP-2023-1224 to list 34 Flood Street, Bondi as a local heritage item under the Waverley Local Environmental Plan 2012, which is currently before the Commission. My name is Terry Bailey and I'm the chair and sole member of the  
15 Commission panel. We're also joined by Samantha McLean and Tahlia Sexton from the Office of the Independent Planning Commission.

And in the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a complete transcript will be  
20 produced and made available on the Commission's website. And this meeting is one of my consideration of the matter and will form one of several sources of information upon which the Commission will base its advice. And it's important that I ask questions of attendees to clarify issues wherever, and whenever it's appropriate. And if you ask any questions or are not in a position to answer one, please feel free to  
25 take the question on notice and provide any additional information in writing, which will then also be included on our website.

We'll just ask very quickly for each member to introduce themselves before I speak for the first time and for us to be mindful, that we're not to speak over the top to  
30 ensure the transparency and the accuracy of the transcript. The only other thing that I did want to note, which you're very aware of, is the request to the Commission is to review the final planning proposal and supporting documentation, provide opportunity for Council and the landowner to present their views on the proposal to consider those submissions received by the Council during the public exhibition  
35 period, and provide advice, including a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the planning proposal to list the subject site as an item of local heritage significance in Waverley LEP should be finalised with or without amendment and whether, any further information is required. So I'm just repeating those terms back because they're, a very particular and  
40 specific terms for this panel. And we'll now begin just with those introductions. Thanks, Kelly.

MS HARVEY: So, Amanda Harvey, I'm the Executive Director for Metro East and South at the Department of Planning, Housing and Infrastructure. And today, I'm  
45 with Kelly, who will introduce.

MS McKELLAR: Hi, I'm Kelly McKellar. I'm the Acting Director for the Eastern and South Districts, and I report to Amanda Harvey.

MS HARVEY: Okay. And Claire Har – Mirow, rather.

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MS MIROW: Claire Mirow. I'm Senior Planning Officer in the East and South Districts team at the Department of Planning, Housing and Infrastructure.

MS HARVEY: Thanks.

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MR BAILEY: Thank you. Thanks for the introductions. Thank you for sending through, earlier your presentation. What we might do is allow you to take us through the presentation. But it would be ideal if we kept that really in the range of 5 to 7 minutes so that we can have some questions and discussions. I think most of my questions and discussions will come towards the end of the presentation as well. So I might hand across Amanda for you all the time to lead through.

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MS HARVEY: Sure. So, I might just go through to the next slide. We've got our slides here. We did send the slide pack to yourselves. So the next one please, the slide context. So as I'm sure you're aware, the site is located in Bondi. It's in what we call the harbour, eastern Harbour city of our region. And it's in the Waverly LGA. The next slide, please. The site in itself is one singular site, but it is actually associated with the adjoining site, which is part of the Yeshiva College. It's a site that runs and works together for the college and as a place of worship. And it's not a particularly big building. Next, please. So the current standards under the planning controls at the moment is that it's zoned R3 and has a certain height and floor space limit. That's probably just background context. But recently we had a planning proposal submitted to the Council for the rezoning of this site. It was previously zoned, what we call special uses to which permits for utilitarian type uses. Whereas the other side of the site, which is part of the college was zoned residential three, which is for medium density development including apartment buildings. Meriton, who are the landowners submitted that proposal in accordance with the control with the the sorry - the housing sorry - I've been on housing all day today. The Environmental Planning and Assessment Act and that was submitted with the request to make the zone similar or same as the adjoining site for R3. The Council then decided not to support that proposal and the proponent Meriton, sought what we call a rezoning review which basically seeks to appeal that decision or that recommendation. And a separate panel reviewed that application and felt that it had merit to proceed. And it should be supported. And we went through a process of rezoning with the panel. And that excluded Council at the time. So Council were not the planning proposal authority. So I'll just get you to the next page. So this is just a snapshot of how the current proposal that it's before us is a separate planning proposal that Council has initiated as opposed to the proponent. And that's been submitted. We issued a what we call a gateway approval or gateway determination which I'll explain a little bit about that process in the next couple of slides. But technically, the Council has sought to locally list this heritage as a heritage item, just this site, not the adjoining site by the way. And also we gave it a gateway but we at

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the time decided to withhold the local plan making authority from the Council given some circumstances which I'm happy to go into a little bit more detail. And now the process has been on exhibition. The Council exhibited, they received various submissions, including positive and negative submissions to support or not support the the heritage listing. And we've received the planning proposal and ordinarily we would normally finalise that proposal based on the Council's position, the position of the Proponent, which is contrary to Council's position and reviewing all of that information. So I just want to go to the next slide. So this is just a quick snapshot of the planning proposal process. So we're really at the end game. But technically speaking the gateway determination for us is a bit of a checkpoint. And while we thought that there could be some merit in the local listing based on what Council provided us. We had some concerns about the Council in the way that they had done a previous comprehensive heritage assessment only a few years before and when I mean comprehensive, the whole local government area. And they'd actually looked at the Flood Street itself and identified some precursor or identified some initial sites. And one of those wasn't this site. And similarly from that point of view - of time Council has progressed further studies, for other sites and other places and doled into a shorter list, I suppose, of sites. And we now have that planning proposal separate to this planning proposal for heritage listings and conservation areas across the LGA. So moving to the next slide. So I just wanted to we probably won't go into a great lot of detail but we thought we'd provide you the timelines with a number of things just to help you. While the planning proposal for the sites listing wasn't supported by Council, Council resolved, in early 2023 that there'd be an Interim Heritage Order placed on the site. What this means is that there's a request for the site to be listed as a state heritage item under the Heritage Act. This is a different heritage listing. This has different elevated importance over that of perhaps a local listing. That independent - sorry - that Interim Heritage Order was put in place for 12 months and we understand expired only five days ago on the 10th of February and hasn't been renewed. During the exhibition of the subject planning proposal for heritage listing, there was a response from the Heritage New South Wales office, saying that the matter was for local a local matter which funnily enough didn't address their own assessment process which we understand is going ahead still. So on the 1st of August this last year, the State Heritage Register Committee had met to discuss the listing. But at this time and without labouring on it too much, we actually have been in contact numerous times since we received the planning proposal to make the final determination but we haven't as yet heard back from the Heritage New South Wales to know what the progress or timing might be for that listing.

MR BAILEY: And can I guess that's a really interesting area for a little bit of exploration, Amanda? I'm curious to see where that's at in terms of what their thinking is and what's progressing. But the other, I'm probably curious to try and understand from Heritage New South Wales to see if we - is what the threshold for the State Heritage Register Committee is in making its considerations of what is then resolved to go to full assessment.

MS HARVEY: Sure. I can't answer that because we haven't been involved and we weren't consulted in the process thus far. But I would implore you to perhaps reach

out to the Heritage New South Wales to obtain, you know, their opinion and maybe what is happening in the process for themselves and when they might likely make a decision. So just to maybe reflect on that a little bit more in terms of a scenario because there's local listing which is a local matter which Councils generally have the dominion on making a determination with the support of the Department about whether it should be identified in an LEP. Similarly, if it was state listed while it gives that elevated heritage importance or heritage significance, it's not unusual for then to follow that the item be listed in an LEP as a state heritage item. So it really what it does is cover off when a development application might be lodged for that site as an identifier that it's a matter for consideration at the time a development application is lodged. So I suppose what I'm saying is Commissioner, that if it was that the Heritage Office came back and said it was worthy and they will be listing it as a heritage item for state, then I wouldn't, wouldn't probably be in this position of saying that I would be asking for your advice. It would be pretty ordinary for us to just then list that item in an LEP as requested, assumed by the Council.

MR BAILEY: No thanks, Amanda. That's an area, we will do a follow up directly with Heritage New South Wales to try and gather that information. And it's, just to be transparent, it is in two parts. It's not just in the process through and of itself but I'll be interested to see if they've got guidance material on when they put something into - if there's a threshold question they ask before they go to full assessment, recognising that there may well be some considerations there that would be interesting to look at. Thank you.

MS HARVEY: Sure. So just, the next slide, we've got just a snapshot of the committee submissions that we received. One of those was the landowner submission which resulted in expert reports also submitted to us and one agency submission which is Heritage New South Wales, which was exactly what we'd just heard just now which is that they were just saying this is a local matter. Despite the fact that they have a state heritage item pending listing with them at the moment, I suppose what I would say with this, normally for a local heritage item listing, we would give back the local plan making authority. And just if you want to just go back to the snapshot of the process from start to finish, so back again, so in this process normally with the finalisation, what we call the local plan making authorities the person who has the ability under the act to give effect to what the Minister only has the ability to do under the act which is to make the LEP where matters are local and their basic planning proposals. We generally give Council that control. Now you would look at other planning proposals that we have in the system. We do get a number in this area and adjoining Councils. And we would say to Council that's your decision to make whether or not it should be listed. I think in this instance was a little bit different or somewhat different because we had a comprehensive assessment that Council had conducted and never picked up the proposal during that comprehensive assessment. And also similarly, it wasn't picked up as part of the original planning proposals, the particular issue when the proponent sought to rezone the site for R3. So Council had obviously at that time, some considerations. It's not to say that heritage can't be discovered at a later point in time, which often can be the case. But it's something to be just be mindful of that there's sort of a bit of process involved

there. So when we if we do have the local plan making authority, one of the real challenges that we've got, Commissioner, is it's quite adversarial. We have the Proponent landowner, usually not particularly welcome of a heritage listing and Council trying to obviously seek a heritage listing. And so often what we find is that we're experts at ten paces. We have Councils. In this case we've got their own and then we've got the proponent expert and often we have to then get another expert in the mix. Now, one thing to note is that the Heritage Office at the moment is actually looking to review their guidelines. And I must say, the guidelines on local listings is quite like scarce. We do often find ourselves in this position trying to sort of arbitrate. So I think in this instance, because of that context, that's why we came to the IPC to ask for a further opinion that may be, with qualification that's different to perhaps just another heritage consultant coming into the mix.

MR BAILEY: Thanks, Amanda. There are - two pieces and I'm not sure how far you've exported it with the Heritage Office, but taking their guidance material which when I've looked at it's 2023. So it's a recent document in terms of the heritage significant threshold. And just to confirm, if you have a view on my recollection of page 9, which really talks to local heritage as being a local heritage listing recognises the place has significant to a local area and or community and the listing is included in the LEP. So it goes on in that construct. But is that really the comment that you were just making in regards the lack of specificity around what constitutes local heritage in terms of that definition that they provide?

MS HARVEY: I think local heritage is different things to different people, but there's a number of different criteria that we look at. And at the moment, the criteria only has to be met on one matter on one of those criterion. So you don't actually have to address all of them. It's preferable, obviously, that you have more list, you know, criteria listed. The problem we have is there's a dispute between the Proponent landowner and the Council about whether or not those criteria are actually satisfied. And this is where the matter becomes perhaps subjective. I will say the real challenge also for the Department is we do not do heritage within our Department, which does present another challenge. It's perhaps just a matter that we are charged with the responsibility of making heritage listings in the LEP. But unfortunately, we're not set up to be the experts on heritage and we can confer with the heritage office. But in this instance, they haven't actually provided us further advice here either.

MR BAILEY: So could I just test out, and it might be, but it's the difference between the criteria and the threshold for listing. So there is a nomenclature and criteria that does follow from a national state local level. There's a framework that sits, but the question of what passes threshold is I think the point you're referring to there, Amanda, as distinct. From the actual criteria itself, which of which there are ten or so that describe broadly. But it's this threshold question of whether it meets the test for local significance which is outlined in their document as being a place of significance to a local area and or community. Would that be -

MS HARVEY: Sorry. I'm not really sure what the question you're actually asking me.

5 MR BAILEY: So for heritage, there's a series of criteria and you must meet the criteria. There's a threshold that's implicit in the fact that you're - and the definition is really the definition in this instance is significance to the local area and or community. So that's really the threshold test as distinct from the criteria that you might -

10 MS HARVEY: But what I'm saying is I think that's very subjective. And because we're not actually we are planners. Yeah, we're not heritage experts that becomes very challenging. And that's why we're here to ask for further opinion from yourself as the IPC.

15 MR BAILEY: Yeah. And the critical piece which I will explore is Heritage New South Wales to see as we've already talked. So that's a really important aspect. So noting your comment there, and it's certainly one that we want to follow up to understand. Can I ask a pretty straightforward question that was in the agenda for today? Does the Department have a view?

20 MS HARVEY: No, I'm not here to provide a view at this stage. We've sought your advice, so I can't provide an opinion at this point in time and we haven't, we were hoping to rely on your advice in conjunction with the consistent like with the whole advice, we're still pending, obviously further information from the heritage office also about their state listing. So until I get that I can't make a final decision as the  
25 delegate of the Minister.

MR BAILEY: No, that's fine, I understand entirely, but just wanted to check to see if  
30 there was a view. That's on the general listing and I take it. So, the query that sits in the back of that is the consideration of those independent heritage advisors whether you have a view on those either.

MS HARVEY: No. Look, the original listing, that Council or the study that they  
35 submitted to your point met the terms that we look for to qualify for, you know, first pass to get through to the gateway process. The gateway is just a checks, it's like a checkpoint. So it's up to then for further consultation and further information to be discovered through that, you know, post gateway process. And that's now come before us as the local plan making authority to make the final decision. Yeah.

40 MR BAILEY: And one other question, which is something I will follow up with Council as well. But do you have a copy of the terms for the comprehensive review that was conducted in 2020 by Waverley Council.

MS HARVEY: No, I don't think we have the terms. You'd have to ask Council. We  
45 do have the reports. As I said, we actually now have the resulting planning proposal that seeks to rezone a number of sites that stem from that work.

MR BAILEY: Yeah. So is it possible could you please send through that report? Because I'd like to look at that report in the context of what was covered at the time.

5 MS SEXTON: Sure. We can send you that. I think there was an interim report from memory and then also for the final report. And the interim will first pass preliminary report showed all the sites and places that Council first considered, and then there was a distillation of further sites which has now resulted in the proposal. So not every site that was initially identified ended up in what is now the planning proposal before us. Yep.

10 MR BAILEY: So it'd be good if you could send that through it and there are some follow ups that I'll do with Council in that sense. I'm just looking very quickly. Sam and Tahlia to see if there's any other clarifications.

15 MS SEXTON: None for me at the moment.

MS McLEAN: Thanks, Terry. No, I think the only other thing that we had on the agenda that you touched on Kelly, which is obviously the Interim Heritage Order and having had expired a few days ago. Just if there was anything further that was in  
20 your considerations in relation to that?

MS HARVEY: It's not really a matter for our consideration. It's often a, I suppose, a precautionary approach that Councils may take when they're seeking to do a listing. It's often used when there's a threat of development that might occur such that they  
25 might demolish or alter a potential heritage item or place. And so Councils use it as a protection and, you know, protectionist tool to prevent that. But my understanding is that there has verbally has been told to us by Meriton that they weren't proposing to do any changes to the building but if you reflect back on the original planning proposal that was done to rezone it for R3, largely that proposal was sought because  
30 they wanted to modify the building as existing to make better accommodations for the current uses. So just to recap on what that means is that the current or the previous zoning, the special uses zoning that apply to the site when something is not permitted under an LEP. So, for instance, like just as an example, this church that they have there and they wanted to modify it and it's not permitted when a Proponent  
35 has to go to the Council, they have to demonstrate existing use rights which means that existing use exists on the site, and is suitably operating within suitable parameters and sometimes you can't always tell when the original approval was done. It might have been done in the 60s or 50s, you know, way before anyone can find records. But the onus is on that landowner to prove that it is a suitable and  
40 ongoing use before they can actually obtain approval. And that was part of the reason why the Proponent at the time sought, well landowner, sought to rezone the site to be R3, which makes that use permissive so they could actually do those major alterations or alterations.

45 MS McLEAN: Thank you.



MR BAILEY: Thanks. Probably covers off what's running around from my perspective, Amanda. Anything else that you wanted to cover before?

5 MS HARVEY: Not really, but I'm open to anything. Like, obviously you're going to be having conversations with the Proponent and the Council. We're certainly welcome of any further clarifications or anything else that you further need. We're here to help provide any info that we can.

10 MR BAILEY: No, thank you. Thanks very much. We've got those some more conversations in on Tuesday. So that will keep progressing and we'll see what comes from there. But if we could get access to that comprehensive assessment, that would be great to receive that report. Thank you. And we'll do as we discussed. So, some clarifications with Heritage New South Wales as well through the process.

15 MS HARVEY: One other last thing. And it might be pertinent to know is we, as a Department, work to quite tight timeframes to do these planning proposals. So it's very - we've got to make a decision quickly not to put any pressure on you, but it was more around if it was that the Heritage New South Wales were to take considerable time, it does place more pressure on us to try and identify whether or not it's worthy  
20 of listing as a local item. It would be a strange sort of thing to say that we don't think it has local listing, and then results in a heritage listing for a state listing at a later point in time, so that would be not typical, I would say, as a result of that. So if we could get a result from Heritage New South Wales sooner, then we could still stick to our government committed timeframes for making LEPs -

25 MR BAILEY: Yep.

MS HARVEY: Yep.

30 MR BAILEY: Certainly hearing and understanding that -

MS HARVEY: We're trying to work to these timeframes for all proposals, not just heritage. We have a lot to do for our government, mainly in housing, but it's still part of the course of our work.

35 MR BAILEY: Yeah. No understanding and hearing. We'll certainly do a follow up with Heritage New South Wales to see what information we can gather. And as mentioned earlier, the range of information that comes in, there's some well, I'll do a follow up there to see what I can look at and understand from their perspective as  
40 well.

MS HARVEY: Thanks. Anything else? No. Okay.

45 MR BAILEY: All good. Thanks again for your time. And, we'll be in touch after Tuesday. In particular, as needed, when we've got both Council and the Proponent.

MS HARVEY: That's fine. And we'll get you that report or reports that we can find for you.

5 MR BAILEY: Thank you. And if they just come back through the IPC Office, through Tahlia, that's the safest way to forward documents through.

MS HARVEY: Thanks. Thank you, Commissioner.

10 MR BAILEY: Thanks all.

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