



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

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

LANDOWNER MEETING

PANEL: TERRY BAILEY (PANEL CHAIR)

OFFICE OF THE IPC: SAMANTHA MCLEAN
JAMES INNES
TAHLIA SEXTON

LANDOWNER REPRESENTATIVES: MATTHEW LENNARTZ
ASHNA AGGARWAL
DR MACLAREN NORTH
JAMES PHILLIPS

LOCATION: IPC, SUITE 15.02 - LEVEL 15,
135 KING STREET, SYDNEY NSW 2000

DATE: 11:30AM-12:30PM
TUESDAY, 20TH FEBRUARY 2024

<THE MEETING COMMENCED

MR BAILEY: Before we begin, I'd like to acknowledge the traditional owners of the lands that we meet on today, the Gadigal people of the Eora nation and I pay my
5 respects to their Elders past, present and acknowledge 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, which is to list 34 Flood Street, Bondi, as a local
10 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 of the Commission Panel, and we're joined by Samantha McLean, James Innes and Tahlia Sexton from the Office of the Independent Planning Commission. And in the interest of openness and transparency, and to ensure the full capture. Of information. Today's
15 meeting is being recorded and a completed transcript will be produced and made available on the commission's website.

The meeting is one of part of my consideration to the matter and will form one of several sources of information upon which the Commission will base its advice. It's
20 important that I ask questions of attendees to clarify issues whenever it's appropriate, which we will do as part of the discussion. If you have and if you're asked a question and not in a position to answer, please feel free to take the question on notice and provide any additional detail in writing which will then be put up on our website. And I'd request that all members here today introduce themselves before speaking for
25 the first time. And for us to be mindful that we're not to speak over the top of each other to ensure the accuracy of the transcript.

And I just wanted to note, as we commence, the Commissioners requested to review the final Planning Proposal and supporting documentation provide opportunity for
30 Council and the Landowner to present their views on the proposal. Consider those submissions received by Council during the public exhibition period and then to provide advice, including a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the Planning Proposal is to list the subject item as an item of local heritage significance in the Waverley LEP, 2012
35 should be finalised with or without amendment and when whether any further information is required. But just to outline that, and just before we begin, I will ask James to make one statement for the record, just to make sure that there's transparency.

40 MR INNES: Thank you, Mr. Bailey. We just wanted to disclose for the record, that Mr. Phillips is engaged by the Commission on an unrelated matter in the Land and Environment Court. Mr. Bailey has had no involvement in that other matter, and we'll have no involvement in that other matter. That's all, thank you.

45 MR BAILEY: So welcome again. Thank you for your time. And it was just first up to open the opportunity for any opening comment that you'd like to make.

MR LENNARTZ: Yeah, I think - should I introduce who we have here or-

MR BAILEY: Happy to introduce. And just a reminder, before you do speak to speak into the audio with your name again as well -

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MR LENNARTZ: So my name is Matthew Lennartz. I'm the Executive Manager of Planning and Government at Meriton Group. A representative of the Landowner who is Karimbla Properties (No. 10) as a trustee for the Harry Triguboff Foundation and the not-for-profit entity. We've got Dr. McLaren North, the CEO of Extend Heritage, who's provided expert advice on this project. Mr. James Phillips, also providing expert heritage advice. And at the end is one of our town planners who've worked on the plan, original Planning Proposal for the site.

15 So I think just I think part of it is for us to I think this is why the Department's come to the IPC, given there is a little bit of conjecture around the use of heritage provisions at a local level, and how they've been interpreted and how they've been applied more broadly, and I'll let our heritage experts go into that a little bit more detail lately. But particularly on this project, we can see through, I guess, looking back through history, that the identification of potential heritage significance, which we obviously refute, has come out at about at a time when or has suddenly arisen at a time in a sequence of events around the Planning Proposal and the potential zoning of this site.

25 From our point of view, the Council is effectively weaponizing the IHO and the local heritage provisions to appease a small number of constituents. And if the Planning Proposal is made as presented for the local heritage listing, it'll undo the work that we've recently done to get a consistent application of land use zoning across this site. Being an R3 zoning, which went through a planning proposal prior to this, and which probably gave rise to where Council sits.

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After many years of Council looking at this site, it only identified the potential of heritage when the R3 rezoning was finalised, formalised and sent to be gazetted. Initially Council staff supported that planning proposal to convert so this site was sort of split into maybe it's sort of without sort of going back, I'm assuming there's a level of understanding of how the site is. Yeah situated (indistinct) was previously zoned. Yeah, yeah. And there's a -

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MR BAILEY: Document that we've went through -

40 MR LENNARTZ: Yeah. So sorry. I should have taken that first. I'm assuming a certain level of understanding of where we are. And Council staff initially wrote a report to the local Planning Panel supporting the R3 zoning of the land because it met a whole bunch of state government guidelines.

45 The SP or special purpose zoning that it used to have was typically for public or institutional owners and for major public assets. It couldn't be used for anything else. That was overtaken, by when there was, I guess, political understanding and

intervention within the, within the process. And the Council itself overturned that and support and ended up refusing the or proposing to refuse the Planning Proposal that was then overturned via a review process through the regional planning chair, or the regional planning panel chaired by Mr. Carl Scully.

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And that at that time is when all of a sudden the IHO was listed and heritage significance of this site becomes quite significant. At no time throughout the Council assessment and objection of their R3 rezoning did Council staff or Councillors ever raise heritage as a factor. That planning proposal was lodged in 2022, gazetted in July 2023. Further to that, the Council undertook an LGA wide heritage review in 2020. And the site was never identified as holding any heritage significance while the adjoining building was identified.

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It was never raised until somehow the Seidler family became aware of their reputation of blindly condoning the listing of any Seidler building. It must be noted that the Mr. Seidler's last CBD office tower was and remains Meriton's head office. It was one of his largest buildings, and he was a close friend and colleague of Mr. Triguboff's, who continues to admire his work. But we've mentioned the yeshiva does not qualify as heritage, which our experts will refer to later. There are numerous examples of Seidler works that are not heritage listed, the quality of his work.

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I think we've got some, media coverage here where the City of Sydney refutes and actually advises that the Seidler buildings themselves would detract from certain urban amenities and a planning proposal, which I think was a little while ago, which I provide on at a later date. To compound that, I guess no recognition of the heritage significance of the building or identification of heritage significant building. We also have to look at why the IHO's are presented, and it's usually where there's an imminent threat.

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At no time has the Landowner demonstrated an immediate threat to the building being demolished. It only has a small and diminishing congregation that is solely supported by the Harry Oskar Triguboff Foundation, or the HOT foundation, costing millions of dollars. If it wasn't for the for the HOT foundation itself acquiring the site back, I think it was 2012, it would have been sold off to developers like the rest of the site, which was demolished and redeveloped into adjoining aged care developments.

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And the HOT Foundation has continued to support the site when the Yeshiva College itself lost its license, when no others would. We continue to explore ways of utilising the existing buildings, and we are and we're currently coordinating Jewish conversion classes at the site. So at all times under this process, both the previous planning proposal and now we've consistently been seeking that we're going to use the existing building. But we're seeking consistent planning controls across the entirety of the site itself.

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This was resolved predominantly through that R3 rezoning process, where we got a consistency of planning controls and land use controls across the site.

The introduction of the heritage listing reintroduces that split zoning, or split set of planning controls that affected the property, accordingly we object to the listing as outlined our submission, and the experts will go through it in more detail now.

5 And we also want to raise that in this case, it's abundantly clear that the Council is weaponizing the heritage process, as it only came up at a certain point of time where it has been dissatisfied with an appropriate planning outcome and without proper consideration of the actual heritage significance of the site. Which experts will go into later.

10 These clear issues of both the timing and I guess the inconsistency between the Council's heritage advice and our heritage advice is why I think that the Department of Planning has come to the IPC and it's, you know, I guess, a broader context of what is happening in broader Sydney and about the either the use or the implications of heritage provisions in the planning sense. So I'll just finalise and wrap up that the
15 IPC should not support the unfounded heritage listing of any of any new land, of any land, let alone the yeshiva, and place unnecessary burden on the Landowner. What I'll do now is I'll just ask Mac and James to go through a few things that can have a quick discussion, and then we can go from there. Unless there's a different process.

20 MR BAILEY: No, so thank you Matthew. And it follows, just in terms of the agenda, I did want to make sure that we get to some critical points of discussion in the next while but James, I'm happy to hand across and want to make sure that we do get into the discussion around the advice and particularly the application of
25 guidelines, as you'd see in the agenda. So if we could if we could move to that conversation, that would be valued.

DR NORTH: Sure. I might lead off Mac North Extent Heritage. So I was approached to provide advice to Meriton on the site after the or Karimbla Properties rather on
30 this site following the interim heritage listing listed made rather I had no involvement with the earlier planning proposal. And so I came at this site knowing nothing about it and was looking at it from first principles.

So I conducted my own investigations based largely in response to some assertions that were made to the Council via both the Seidler family and Docomomo, which is a
35 you know Docomomo? Very good, I won't go into that regarding the building and its significance. So I wanted to test that as rigorously as I could, there were assertions made about the position of the building in Seidler's career. There was there were assertions made about the technical innovation of the building, and there were
40 assertions made about its intactness and about its significance to the Jewish community. And I systematically worked through those issues.

Fundamentally, I would just start from the position of simply because a building is designed by a named architect, it does not necessarily merit heritage listing. And I
45 think from very early on in this process, the position of some of the advocates for its listing has simply been it's a Seidler building, therefore it must be listed. Secondly, it is Seidler's only synagogue, therefore it is unique, therefore it must be listed. Now, the heritage listing process around associational significance does not

say that simply because a place is associated with a known individual, that it must be heritage listed. Otherwise, frankly, almost everything would be heritage listed. Similarly, the criteria around rarity does not say that simply because something is unique, it must be heritage listed. So, just bear that in mind, I guess in terms of the position that I'm coming from.

I then worked through a number of issues in relation to the design of the building. So much is made of the concrete arch barrel vaults and the position within, modern architecture and technical innovation and was able to demonstrate that this is not a particularly unique innovation. By 1959, when the building was designed and built, concrete barrel vaults had been in use since, pre-Roman times, and thin shell reinforced concrete arch barrel vaults for roofs had been in wide use since the 1920s. Now, they may not have been in common use in Australia, but they were certainly widely used elsewhere in the world, particularly in Europe and in the United States.

MR BAILEY: A recurring theme I want to come back to discussion is determining the place's level of significance and the contextual level of significance. When I'm considering local heritage. And I just point to the comparative analysis that's in the Extent report includes international, national and state places. What I do need to hone in on is the relevance in the local context.

DR NORTH: And I guess, again, I would say simply because something does or does not exist within a local context does not necessarily mean that it is significant. It is possible to find unique elements in almost every building in terms of the use of materials or use of architectural style. And if we were to take so low a bar, then it would be possible to argue almost anything is locally significant because it differs from the building next door, or down the street or around the block.

MR BAILEY: Understanding that in the context of your report, in particular, Mac, which really does give a comparative analysis that drives fundamentally, in my reading, the comparative analysis does look at international comparative. national comparative state comparators. The question we're giving consideration to is the local significance. And you know I can take that definition, as we do - local significance means significance with a local context for a local area or local community. So how am I to give the comparative analysis understanding in that threshold question? And this is taken from the State's guidance material on determining the place or objects level of heritage significance. So again, coming back, local significance means significance with a local context or for a local area or community. So that's the comparative piece that I need to be thinking about.

DR NORTH: So I would say to you in that regard that local government boundaries are entirely artificial administrative creation.

MR BAILEY: And it doesn't say local government boundaries. So it's not determining this local government boundary, it's determining it as a local, having local significance. So while it's captured in LEP I understand that, but it is pointing to the fact that its local significance and it's for a local area or local community.

DR NORTH: So I guess I display with I respectfully disagree with that view,
because that essentially says that if anything is unique or different within any local
area and you're not providing a definition of now what local means, that it should be
5 considered a heritage significance.

MR BAILEY: It's pointing out it's not my view. I'm referring to the view that's given
in the state guide -

10 DR NORTH: And I think that that is a debateable point. Yes -

MR BAILEY: Putting back the context of the question that I've been asked -

DR NORTH: And again, I think that is a debateable point, and I think it is also a bit
15 disingenuous to suggest that local government boundaries don't matter, because
fundamentally, that is how the planning system works. So we're still going to be
dealing with. So I guess let me.

MR BAILEY: Let's just zip right. Because I don't know that that's the particular issue
20 that we need to consider in terms of the local government, because it is while it's
recorded in a local government, LEP, that is a mechanism in and of itself. But the
context, it's the local significance and significance with a local context or for a local
area or local community. So that's the threshold question.

DR NORTH: Well, I guess you're not providing me then with a definition of what
25 local means in that in that situation, what is local? Is local Waverley? Is local
Bondi? Is local the eastern suburbs of Sydney? Is local the greater Sydney
metropolitan area?

MR BAILEY: A critical point would be in your comparative analysis, which is very
30 comprehensive. It does provide material at international, national and state level.
Outside the context -

DR NORTH: I have not found any examples of a similar building in the local
35 environs of this building. No. However, I do not believe that in and of itself is
sufficient to rise to the level of local significance.

MR BAILEY: That's fine. So I'd love you to just explain that through.

DR NORTH: So again, I have to say, like I said, I disagree with that reading of how
40 you're constructing local significance. I think that local is an administrative term that
is used to recognise the administrative structures that manage local heritage.
We can't the significance system does not sit outside the planning and statutory
control system.

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So if it did, then we would only have non-statutory heritage listings, such as that by the Institute of Architects or the National Trust, where they can list whatever they want and it doesn't actually make a practical difference.

5 MR BAILEY: Yes, it's - I'm pointing to the definition that's provided for us. It's the statutory definition. It's the definition that then follows through the New South Wales Planning Framework, we have a series of criteria for which there are multiple thresholds. The State, recognising the State and Local criteria follow each other. The threshold question is around this issue of state significance means significance
10 for New South Wales. Local significance means significance for the local-

DR NORTH: So I don't -

15 MR BAILEY: If you don't mind doing that in the context of your comparative analysis. So I'm interested to understand your view in the local sense.

DR NORTH: Well, as I said, I have not identified other any other buildings in the immediate locality that have a similar construction technique. Now, that doesn't mean that they don't exist. The Docomomo letter references a study undertaken by a
20 professor at the University of Sydney Architecture School, where it asserts second hand that this is the earliest example of this type of construction. I have found, that professor is on sabbatical. We were not able to get a copy of the study. That study wasn't provided. So as far as I'm concerned, that's hearsay evidence we have. We can't test that.

25 The two other examples of buildings that you would consider local, earlier examples of that type of construction. And I'm talking about type of construction. I'm talking about thin shelled concrete are the Wave House, which is an earlier building by Seidler, which is on the State Heritage Register and has been completely gutted. And
30 the only things that have been kept that are original are the two shells and the Rice House in Melbourne, which is from 1951, which is an earlier building by a different architect. The use of thin-shelled concrete roofing is not a common technique that exists at that time, but also because it was coming out of fashion because it had been around since the 1920s. So what my analysis led me to conclude was this is a late
35 example of a commonplace construction technique that had been widely used internationally and was introduced very late and in what may be a fairly uncommon circumstance in this particular building. Again, that doesn't necessarily equate to heritage significance.

40 MR LENNARTZ: And also, I mean, I think we're heading with it is every religious building in Waverley, if that's what you want to do as a local area is every religious building, whether it's a synagogue or a Catholic church or anything else, is that heritage listed? No it's not.

45 DR NORTH: Well, we're getting out of social significance, and I might address that separately.

MR BAILEY: And I think there's a social significance question to the associative, aspects that you talk to as well in the report.

5 DR NORTH: So shall we move on from this issue about the construction technique, or is there more you want to discuss with that?

MR BAILEY: I'll come back on the fabric question.

10 DR NORTH: If there had been local examples, we would have. We certainly did our best to identify like examples in Australia.

MR BAILEY: My query was actually in the comparative analysis piece at the local area. So that's addressed the construction aspect. Yes. So I'd be curious if we could move into that conversation around your findings on the associated values and the social values, particularly as it relates to criterion B and D.

20 DR NORTH: So let's talk about associative significance. So again I get back to and James, you may want to chime in on this. Simply because a building is constructed by a known architect, does not necessarily equate to heritage significance. There are many buildings constructed by many architects, and if every building by a known architect was heritage listed, then the vast majority of buildings would be heritage listed. That's not the purpose of associative significance. There are also many other buildings by Seidler that are heritage listed at state and local levels throughout New South Wales.

25 In terms of how this fits into Seidler's career, yes this is an early building by Seidler. This is actually a building that was designed before his practice was established, when he was a new architect in Australia, and this is not something that is in my report, but this is my view as somebody who founded a business 20 years ago. When you start your new business, you take whatever job comes. And I suspect he was a new architect. He was involved with the Jewish community and he was approached. Would you like to design a synagogue for the community?

30 You have to remember, his first commission was a house for his mother, Rose Seidler House. So in 1959, Seidler was not a big name architect. Seidler also went on to design buildings for the Housing Commission of New South Wales, some of which exist still, some of which don't, as well as a range of buildings that are ranged from very good buildings like Australia Square to very mediocre commercial buildings that were no doubt dictated by the client requirements.

40 So the purpose of associative significance, even if the individual is significant, is not to say everything that is associated with them must be inherently significant. Similarly, there are there are tangential claims made about associative significance. For example, with Justice Evatt, now Justice Evatt opened the building in 1961. If we were to accept the claim that every building Justice Evatt ever opened was of heritage significance.

I don't know how many buildings justice have opened, but I suspect there were a few. And similarly, if we did that with every Lord Mayor, how many plaques are there around the city that says this building was opened?

5 MR BAILEY: I understand at that point the associated piece that we're talking here. I'm curious to get a deeper understanding of is though the intersection between Seidler and Evatt.

10 DR NORTH: I don't believe there is an association between Seidler and Evatt, other than they were members of the Jewish community, and they -

MR PHILLIPS: I think his wife was an Evatt.

15 DR NORTH: Right. Was she okay? I don't know that.

MR PHILLIPS: She was. Her maiden name was Penelope Evatt. And, so there is an association between the Evatts and the Seidler's -

20 DR NORTH: Right. Okay-

MR PHILLIPS: That exists, it's a family, association, and I don't think it has impact on that particular building in that, from my point of view in reviewing this work. This building has lost a lot of what it said, for being a Harry Seidler design in the subsequent alterations that have been made to it. And the interesting thing about
25 Harry Seidler's canon of work, which is extensive, is there are a lot of buildings that have been maintained very intact. In fact, the MLC Centre, which is one of his biggest buildings, it's just had hundreds of millions of dollars spent on it, and-

30 DR NORTH: And is locally heritage listed.

MR PHILLIPS: But reinforcing the quality of Harry's design. There are a lot of houses and of course the Rose Seidler House his first house in Australia is quite iconic. And it forms actually part of the little group of Harry Seidler houses in that area on Clissold Avenue in Wahroonga. But this building has just undergone massive
35 changes. So there are vaulted ceilings of, within the building. They're quite degraded because concrete does that which poses a separate conservation issue.

40 But to look at the front of the building now, having known Harry Seidler's work all of my professional career and having met Harry on quite a number of occasions. To see what's happened to the front of that building, I think he'd weep, and not wish it to be listed on the basis that part of what Harry offered as an architect was incredible integrity. And the integrity of these buildings is very important to him and subsequently to his family.

45 I find it unusual that they're, so concerned with this building in that the integrity of the building has been, lost. I've worked on a lot of buildings, that are owned by the Jewish community.

And one of the big issues over the last 10 or 15 years has been protection of the buildings, particularly from bomb attack. I mean it's a major threat that's, in every building I've worked on has been identified and has been properly identified. Making that protection has a profound effect on the building, particularly as a synagogue or a building where religious worship takes place. I've also worked on, other buildings that he hasn't worked on, such as the Emanuel Synagogue, where there's the same set of bollards and, more incidentally, on the Great Synagogue in Elizabeth Street.

So, this is an example of a Harry Seidler building that happens to be a religious building that happens to have undergone profound change in order to make a dwindling congregation safe. His other buildings, his secular buildings don't experience such predations because they're not necessarily identified as religious buildings or directly identified with the Jewish community. So that's where the great problem with this building lies. There are certain architectural features of it that are interesting but they can be seen elsewhere.

And at a local level, Churches are listed at a local level, generally because of their associative significance, the significance of the congregation has with the building. There are a lot of very architecturally unspectacular buildings that are listed through local government areas that are places of Christian worship. They're an easy target for Councils. Councils list them. Then the congregation has the responsibility of maintaining the heritage building. And there's some Anglican congregations in central Sydney with sandstone buildings that have got terrific problems.

MR BAILEY: Accepting my curiosity then brings to that question as it relates to criterion D, which is about the community aspects from the people aspect in criterion B, so if we could just touch on that on your views.

DR NORTH: So I lead off on this?

MR BAILEY: Sure, go for it.

DR NORTH: So again I start there were a number of assertions made about the significance of this building to the local community, to the Jewish, specifically to the Jewish community. And so I, as you may have noted in my report, I actually undertook to look at what is the extent of the Jewish community in I had to use the Waverly Local Government area, because that's how the ABS works. About 16% of the Waverly Local Government Area is Jewish, identifies as Jewish. That's not broken down by the various subbranches of Judaism, of which this is a more conservative branch that the one associated with this building, I was also able to identify that the Bondi locality now getting away from the Waverly Local Government Area has the largest number of Jewish places of worship in Australia.

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So in terms of the question of is the Jewish community going to be under serviced, if this building were no longer in use as a synagogue? The answer is probably not because there are a lot of existing formal places of worship, and I am informed by Jewish colleagues of mine, there are also informal places of worship that may be in
5 homes or other buildings that are not specifically identified as temples or synagogues. So in terms of that I think that the- Is the Jewish community catered for with places of worship in this area? And I think the answer to that is yes. Now-

10 MR BAILEY: Can I just ask though it's the association of people not with the building itself in and of itself. That's actually the consideration in the criteria. Not the alternates.

DR NORTH: Sorry.

15 MR BAILEY: Well, it's not alternate sites. It's the association of people -

DR NORTH: No, no, that's true -

20 MR BAILEY: With the building -

DR NORTH: But one can again. It's how low a down the level of association you want to go. So as both I think Matt and James alluded to, there are lots of other places of worship, of varieties of religions in this and lots of other places around the State does one list every place of worship because it is associated with a particular
25 congregation at a particular moment in time and may consider it to be significant to that congregation at that moment in time -

MR PHILLIPS: I think in terms of associate significance. I've done a lot of work on churches, both Christian, Jewish and of other faiths. And one of the things with
30 association with places of worship, it's a very dynamic association. The association ebbs and the association flows, it flows within, the religious group that, it has from different forms of worship, for instance, more evangelical or Pentecostal churches within the Anglican church are doing better than high churches or conservative churches. And this similar situation obtains within the Jewish community where
35 certain forms of worship are more dynamic at the moment and certain forms are less dynamic. This is very typical of a place of worship where a congregation has declined. The facilities were built at a time of greater optimism for that particular community. That decline has meant that the building is underutilised and ultimately that congregation is unable to sustain itself. And often as is the case with Mr.
40 Triguboff, a benefactor comes in and might help sustain that community for a period of time but ultimately it becomes a law of diminishing returns. And so the associative significance wanes to a point where that's not a leading dynamic in any sense of listing.

45 DR NORTH: And again, I think that that when you're talking about -

MR BAILEY: I understand that I'm still coming back to the context and the material in your reports that point as to where that association is assessed at the local level and how that's assessed at a local level.

5 MR PHILLIPS: Well. So that's a fairly tough assessment to make because you are talking about a dynamic group of people and an associative significance can be felt as being quite strong just by the fact that a Facebook group starts to protest or be activist about it.

10 DR NORTH: And how small does it get before that is irrelevant if there is still one impassioned person who says, this is a terribly significant place to me and I still want to come here to work -

MR BAILEY: By definition, it can't be -

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MR PHILLIPS: Yeah. But the even with the Facebook group it can be quite a -

MR BAILEY: I understand. Contextual around the local is what I'm pointing to -

20 DR NORTH: I understand and I suppose what I'm saying is that all we really have in terms of data rather than the vibe, is what we know in terms of the statistical makeup of the religious community in the Waverly Local Government Area and the physical location of 13 other places of Jewish worship within the Bondi area. Now, we have not and nor do I think that it is necessary gone and done a survey at every one of
25 those communities. I think that would be intrusive to say that-

MR BAILEY: I'm not looking to that, but -

DR NORTH: I guess -

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MR BAILEY: It is. The place that still I particularly like to move on, particularly to the fabric. The piece that I'm looking at now is in the analysis that I've received and reviewed, and I think it is a very good analysis. But there is this question around the significance at the local level-

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DR NORTH: And I guess I think -

MR BAILEY: And that is the pertinent decision, for -

40 DR NORTH: We have done our best to address that with the data that is available, both in terms of what we understand about the congregation of the existing building. And again, without getting-

MR PHILLIPS: In terms of local significance, there's two areas. There's the
45 congregation itself and churches are – or places of worship - are quite visible within the community.

And being a Judeo-Christian society as we might have in the past, called ourselves. We're a bit more than that now. But there's a certain esteem given to places of worship within the context of a local area.

5 This building now is not particularly strongly associated with people passing by as a place of worship. It's been crowded in with other activities and the blast wall and the paraphernalia around it make it hard to identify. So a person in the community and a person living in the area would know that there's a big Jewish community in the area and would know where synagogues are, as well as where Christian or other faith
10 places of worship are would not necessarily identify this building where they might identify and I worked on an Anglican church, sorry Uniting Church down on the corner of old South Head Road and I think Dover Road, where it had landmark quality. Because it was identifiable. So this building is generally not identifiable with the wider community because of the changes that have been affected to it.

15 DR NORTH: I think the other thing is just simply let me if I could just mention this building was a-

MR BAILEY: Particular community, so it doesn't have to be the wider community-

20 DR NORTH: No, I understand that, but I'm just trying to help you understand that definition -

MR BAILEY: Yeah.

25 DR NORTH: And again, I think if you think about the community this building was originally established for this was meant to be a rabbinical college for a particular conservative movement within Judaism in the 1950s. It's no longer a rabbinical college. And that particular movement, I don't think has anywhere near the level of
30 prominence it did within the Jewish community. And so this site is not, for example, seen as a site of wider Jewish scholarship and study. For example, it does not have a broader community above and beyond its immediate congregation.

MR LENNARTZ: I think that sort of reflected in the level of community
35 submissions that we got through like it was relatively low if you look at the 16% of, I think it was, I'm grabbing at numbers now 14/15,000 people in the local area, and it was quite low. And there was an array of submissions as well. It wasn't please keep it, it was also a well, we don't think it has as the value and it should be used for those purposes.

40 DR NORTH: And I would also-

MR BAILEY: Also reviewing all the submissions. And will have the understanding, but I think it's important. I just wanted to move on because we do have the fabric
45 question. I wanted to address this in particular in two ways. The first is your view on the reversibility of the additions and alterations that have occurred since the original.

MR PHILLIPS: Well, reversibility is now a big question. We can go to Paris, to Notre Dame and see a form of reversibility happening at huge expense to an iconic building. Here where we're dealing with off form concrete, we're tiling over things, building new walls. Reversibility becomes quite problematic in using the Notre
5 Dame example. Yes, it is possible always. But -

DR NORTH: Anything can be done with sufficient money -

MR BAILEY: And my question on the reversibility is in terms of the loss of the
10 value and the reversibility as it relates to, accepting the point that anything could be done at cost. But to understand, yes, your view on the reversibility of the addition.

DR NORTH: I would like to, I suppose, more and return this to the context of this
15 building as a as a religious building. Then, because it was designed and leaving aside the external alterations, the interior of this building has been entirely gutted. There is no original fabric other than the brick walls and the concrete arches. All of the liturgical furniture has been removed. All of the iconography has been replaced.

The mezzanine has been removed. The barrier that separated men from women in the
20 original configuration of the worship space has been completely removed. So, that is, if that's associated with a community, i.e. if we're talking about now authenticity, you could, in theory recreate all of that material, but it wouldn't be original, it would be an artificial creation.

25 MR BAILEY: And understand my-

DR NORTH: Wouldn't be Seidler's design then either-

MR BAILEY: My query is around the reversibility particularly as it relates to the
30 external editions. We're very aware of the internal.

MR PHILLIPS: Very difficult to achieve. You. As I said, you've put cementitious
35 products over concrete. It binds its removal destroys the substrate which is the original fabric. It's like if you rendered a brick wall and you take the render off, you destroy the brick wall. It's a very fraught process. And it's not going to achieve a reinstatement of the original Seidler design.

Usually in those circumstances, the way that it's handled is through an interpretation
40 strategy and an interpretation plan. And in that way you can illustrate you can show photographs of the building in its pristine form, because often, as in the case of this building, there are photos taken at the time of its construction which are much more instructive to the general public or the people appreciating that building than would be trying to take, tiling and other accretions off the building.

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DR NORTH: You'd also have to do things like, there's the practical issue about security. Could you remove the blast wall and security arrangements to reinstate the original public configuration of the building, if it were to continue to be a place of Jewish worship? I don't know the answer to that. That's really a question for the Jewish community as to what they would feel comfortable with.

The other thing would be there are numerous windows that have been opened up or infilled in the building. And so you could, in theory, close up the windows that had been added and get reproductions made. But you were talking about heroic efforts to reinstate design elements which have been fundamentally lost. It's not simply that things have been boarded over and one can remove a gyprock wall.

MR LENNARTZ: And that physically connected to the adjoining building-

DR NORTH: And it's physically connected to the adjoining building, which is also new.

MR BAILEY: So the final place that I'm would like to understand is this your view on the state of conservation of the building?

DR NORTH: In which aspect?

MR PHILLIPS: Its state of repair are you talking about?

MR BAILEY: Yeah.

MR PHILLIPS: Its state of repair is generally poor. And again, even if we're looking at a Victorian cottage in Burwood, the standard TV programme about its restoration would say there's going to be a massive budget overrun in the discovery of what's gone on in that small Victorian cottage here. We've got a building built in the 19, in the middle part of the 20th century.

There's a certain level of experimentation with the materials part of dealing with, with modern buildings that become heritage listed is the fact that no one could predict how these materials would perform over the next 50 years. It's not as though it's made out of brick or, brick and tile or very, solid tested building materials that go back to Roman times. And so, prima facie, the building is in a poor state of repair because timely repairs haven't occurred through its history. But secondly, that level of poor repair probably almost certainly masks a much deeper level of poor repair that isn't discovered yet through, proper interpretation or investigation because it needs to be an invasive investigation.

DR NORTH: Yeah.

MR PHILLIPS: Shell concrete's just, a warning sign in and of itself -

MR BAILEY: I understand, and it was just in addition to those reports, there aren't any further investigative reports in terms of -

5 MR PHILLIPS: Well they become. They usually start to happen at the time where restoration is instigated because they are invasive -

MR BAILEY: You know the question of are they there -

10 MR LENNARTZ: There is a structural engineer's report, and if it's there, if not, I'll -

MR BAILEY: That'd be good if I could -

MR LENNARTZ: Just write that.

15 MR BAILEY: Thank you.

DR NORTH: We were not. I don't think either James or I were briefed to do any kind of -

20 MR BAILEY: No No No. Not saying that the report is required.

DR NORTH: Investigation.

25 MR BAILEY: But it's a curiosity question.

MR LENNARTZ: That would be something which raise some of the issues.

30 DR NORTH: Yeah. And I mean, I raise a few, I make a few observations. I won't call them that. I won't say that they are deeply analytical. In our report about condition. And when you're on site, you'll be able to observe those yourself in terms of casting voids in the concrete arches, exposed reinforcement, rust jacking, dry rot on the formwork that is still present on top of the concrete arches. I mean these things are I'm not an engineer, these are obvious to a layperson and they don't look good.

35 MR BAILEY: Yeah, and I'll take it.

40 DR NORTH: And we'll have a look this afternoon. We can. Yeah. I'll point you to that-

45 MR BAILEY: I will take it on any report that you have in terms of the engineering interface. We're just a couple of other things that we wanted to cover off on the agenda. One was which we'll touch on in a minute, the consultation today between the Landowner and Councillor and offer you the opportunity, Matthew, to cover anything you might want to cover there. I think perhaps we might move into that now and then offer the opportunity for any other comments.

MR LENNARTZ: So I think I alluded to it in the opening statement that this site has been sitting there, you know, under our, under HOT Foundation ownership for since 2012. Nothing of heritage significance has been raised with us directly. It's gone through a 2020. I think those are 2002. There was -

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DR NORTH: A 2002 heritage study -

MR LENNARTZ: Review. A 2020 LGA wide heritage review. There was a direct and site-specific planning proposal that we initiated over the synagogue portion of the site to align it with state government guidelines which said it should be zoned R3. That progressed through a year and a year and a half of process. And what started out as Council officers supporting our proposition quickly turned from a political perspective into distinctive objection. But I think politically, personally and a few other things. And it got rather hostile at that point and particularly where the planning proposal itself was taken out of the Council's hands in their objection and that was the R3 planning proposal. Not that not their self-initiated one for local heritage listing. And then when that was seen to be progressing, then all of a sudden heritage came up as an issue. Heritage was identified as a key issue. It had never been raised over the last two decades through a site-specific planning proposal, and then through the entire process on the planning proposal. Heritage was never raised as an issue-

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DR NORTH: It was also never raised when the adjacent site was redeveloped for the aged care development.

MR LENNARTZ: Correct. So, in that 2020 review, our adjoining property was identified as potentially having heritage significance. So it wasn't like they weren't there, or they didn't look -

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MR BAILEY: Can I just check, what was the Zoning of the adjoining property?

MR LENNARTZ: R3. And half of this site was also R3, so it had this obscure zoning over the single portion only which was SP2, which was rectified through that R3 planning proposal to be consistent with state planning guidelines and that initiated the (Indistinct). Obviously, you can hear from ourselves and from our experts, there is a genuine position of it doesn't qualify as local heritage. It doesn't qualify as state heritage.

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The existence of it or the existence of the building, the way it stands today is only because of the foundation and the millions of dollars it's contributed through, I guess, the identification of an IHO and another things. The Foundation presented through Harry himself a proposition to Council that if it is such so significant and I think it sits in the package that there's potentially an alternative planning scheme or planning outcome for this site which would inherently facilitate the protection of the building itself through a change in planning controls, land use, density, FSR.

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And that would say a retention of the building and overcome, I think some of the inherent issues that Mac and James talked about it is not probably, from what I hear, physically possible to reverse the building when alterations have been taken over in the past. Whatever was in there does not exist today. It's gone to a landfill site
5 somewhere as part of that part of that renovation process. The- I guess the, the Gateway approval for this planning proposal required Council to directly engage with the landowner. That did not happen until exceptionally late in the piece. And I think after the reports were already written. There was documents withheld from Meriton as well, or from a panel, or the entity as the Landowner entity. I think
10 from memory Mac had to put GIPAs in. They were not fulfilled. So there was a genuine lack of engagement from Council from our point of view. And the only engagement that came I think at a Teams meeting very late in the process was disingenuous in that things had already been settled, reports had already been written, and the position was already taken against us. So there wasn't that -

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MR BAILEY: Rough timing.

DR NORTH: It was just before the planning proposal closed. So it would have been in -

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MR LENNARTZ: I think it was maybe, maybe a week or two before the -

MS AGGARWAL: 27th of October. I have a letter from Emma.

25 MR LENNARTZ: That's right.

DR NORTH: And yes. So example the internal report that had been done-

MR LENNARTZ: That's a really good reflection of our position on that, I guess the
30 disingenuous nature of it. Our General Counsel followed that to the letter.

MR BAILEY: Yes, I have that.

DR NORTH: So, for example, the expert report that Council commissioned by
35 Hector Abrahams' Architects refers extensively to a report written by a Council officer, Colin Brady, and says, you know, for further discussion on this, see the Brady report. Council refused to provide the Brady Report to me when requested.

I lodged a GIPA that was ignored until this meeting which had many members of
40 Council staff including I believe the head of Planning who at that meeting on the 27th of October finally said, "oh well, I suppose there's no reason not to release it". And it was subsequently released a few days later. But by then the process had closed. My report had been written. Well. So that was a fundamental document that Council was relying on that we were not provided.

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MR BAILEY: Just checking, is anything else Sam or Tahlia.

MR LENNARTZ: And I think we also never got any response to that proposition of given the disparity on the position of heritage significance between the Landowner wherever private landowner and an institutional public landowner, and where in our view, the politics was taking it from a heritage perspective and had never done it before. There was never any response on the alternative scheme either.

MR BAILEY: Sharing with you and I'd suggest that you go and have a look at the transcript from this morning's discussion, at which it became apparent that there were two previous discussions at Council around heritage listing in the LEP of the site. So I've asked for that background material. I wasn't aware of it. That was my take from this morning's discussion with Council that there were two previous and I've asked for the documentation, so I don't have much more information than that but the -

MR LENNARTZ: Landowner or internally?

MR BAILEY: But I think by Landowners, I suspect I don't have the timings and I don't have the documentation Matthew, but I've asked for it and it will be made available in that sense. But yeah, just to share with you that was a part of a conversation this morning with Council.

MR LENNARTZ: And that's okay and they'll present their position. But if it was placing significance and we'll try to run a planning proposal over for residential zoning. It was not right-

MR BAILEY: And I understand.

MR LENNARTZ: This is where the frustration comes from.

MR BAILEY: And I understand that. But just to share that there was a conversation this morning that pointed to prior discussions around heritage listing of the site, and I've asked for that material to be able to review what was in it and understanding the timings. And it will be material, it'll be made available on the website. So you will get access to it when we do. Is there anything else that you wanted to cover before we finish?

DR NORTH: I suppose I have two points I'd like to make. One is a general point about the interpretation of the local heritage listing criteria, and I do believe they there is a process of interpretation and judgement that is required when applying this. The local listing criteria. They are not a sausage machine where you crank a handle and you get an answer.

MR BAILEY: And understand entirely. Mac, having overseen national heritage listing for the country and having prepared World Heritage nominations for Australia, I do understand the heritage.

DR NORTH: It's very important -

MR BAILEY: It is. I do have that understanding.

DR NORTH: It is very important for the credibility of the system. And that goes to my second point. There are many assertions that have been made about this building in different reports, in different submissions that are not backed up by evidence. And I have done my level best to tie anything that is in my report back to something that is evidence based. And I think a lot of the assertions that are made about this building are not evidence based. And some of that is detailed in the critical review we do of, for example, the Hector Abrahams' Report in my -

MR BAILEY: I've got it open right in front of me Mac, and you're very definitive, in your view, that it doesn't adequately demonstrate significant against the criterion. You go through the criterion in the Abraham in the response against either state or local level. And again, that piece and it's just asking for your view on this as it relates to that comparative analysis at the local level.

DR NORTH: Well, again, if there were local examples to be found, we would have. We did our level best to find them and we would have added them, but we did not do we did not find other buildings of comparative architectural style at the local level. In our analysis, I believe James does a more detailed look at synagogues in the local other synagogues in the local area.

MR PHILLIPS: Yeah and to that point and, to your experience, Mr. Bailey, with listing at the highest level, the great issue with local listing at the moment is the seven heritage office criteria that are used. A very, it is a very wise document. It's wise up to the point where it's applied and, in its application, Councils through the desire to list things for whatever reason, have gradually lowered the bar that that originally set to a point where I could really write a report and get these glasses listed as a local heritage item without too much trouble.

MR LENNARTZ: You are a significant heritage practitioner.

MR PHILLIPS: Well, there are significant glasses, but I'm just saying that it's lowered itself to a point where it's you only have to meet one criteria to qualify for listing, at a local level and the bar is set extremely low within those very general topics that are raised as the seven criteria. It you- there's no established bar for the criteria. It's what happens in society. But the weaponization that we're talking about through interim heritage orders has meant that bar has gradually crept lower and lower through my professional life, to a point where we're getting absurd listings and people are not looking in a sensible and objective way as to why something should be listed.

DR NORTH: And I think that's-

MR BAILEY: Yeah. I do understand. And I might wrap there because I think happy to take your point that it still comes to determining the place or objects level of heritage significance. There is some guidance material that's set out by the New

South Wales Heritage Office. They use some guidance in that sense, which is relied upon whether people agree or disagree with that. I'm making a different observation in terms of the considerations that I've got in front of me.

5 MR LENNARTZ: Yes. Yeah.

DR NORTH: The final point I was simply going to make, really going on from James's is things like the rarity and representativeness criteria, which used to be used as so-called degree criteria to help gradate within the other heritage significance
10 criteria have now become listing criteria in their own right, and it is very easy to say something is representative. It is extremely easy to say something is rare. And if those are the primary reasons for heritage listing, then you are going to get 99% of buildings eligible for heritage listing which has never been the intent of the system and it undermines the integrity of the process.

15 MR LENNARTZ: I think that sort of conveyed from the landowner as well that, you know, there's no set sort of criteria that says why this should be heritage. And if it is heritage, then there's a plethora of other buildings that should be in Waverley, Council on every other Council should be going out in every area or anything. So
20 and then to compound that issue, we've now got a timing issue of when the issue has arisen. If the Council has had an opportunity on multiple occasions to raise. This is to separate out this a stakeholder issue and the personalities and things involved. And I think that's what the Department - there's a - we'll send through a bunch of other buildings that are Harry Seidler's that aren't listed. I mean, the same thing. It needs to
25 be some level of statistics.

MR BAILEY: Yes. Accepting. So there is -

30 DR NORTH: (Indistinct) -

MR BAILEY: Talked about today that important to hear that just reiterating the subject of my consideration is outlined in the correspondence. So my response will be in providing that concise recommendation to Ministers delegate whether or not the subject site should be listed as an item of local heritage significance. It's a
35 relatively narrow on some of the conversation points today, particularly as it relates to those constructs that set out, and I'll take guidance from what's already published material in terms of New South Wales heritage guidance material for the determination of the place or objects level of heritage significance. So just I will be thinking that through. Anything else before we finish? Thank you for your time and I
40 will see you in a couple of hours from now.

<THE MEETING CONCLUDED