



IRF23/2814

Gateway determination report – PP-2023-2146

Schedule 5 Amendment to Heritage List (Group Listing) Appian Way Central Reserve and Public Domain within the Appian Way Heritage Conservation Area

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1: Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Amendment of Schedule 5 of the Burwood LEP 2012 to list Appian Way Central Reserve and Public Domain as a Group Heritage Item (Burwood Council, September 2023)
Landscape Heritage Assessment – The Appian Way (Burwood Council, September 2023)

Burwood Local Planning Panel Meeting Minutes (12 September 2023)

Burwood Council Resolution Meeting Minutes (26 September 2023)

Heritage Data Form (Burwood Council, received 29 September 2023)

1 Planning proposal

1.1 Overview

The planning proposal seeks to amend the Burwood Local Environmental Plan 2012 (Schedule 5, Part 1 - Heritage items) to the Appian Way central reserve and the public domain (see **Table 3**) within the Local Government Area (LGA) as a group item of local significance.

The planning proposal is supported by:

- Landscape Heritage Assessment – The Appian Way, prepared by Burwood Council, dated September 2023.
- Heritage Data Form – prepared by Burwood Council, received 29 September 2023

Table 2: Planning proposal details

LGA	Burwood
PPA	Burwood Council
NAME	Schedule 5 Amendment to Heritage List the Appian Way central reserve and the public domain within the Appian Way Heritage Conservation Area
NUMBER	PP-2023-2146
LEP TO BE AMENDED	Burwood Local Environmental Plan 2012
ADDRESS	Various - Appian Way, Burwood
DESCRIPTION	the Appian Way central reserve and the public domain within the Appian Way HCA, Burwood
RECEIVED	29/09/2023
FILE NO.	IRF23/2814
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to recognise the local heritage significance of the Appian Way central reserve and the public domain encompassing the entire roadway and paths from Liverpool Road to Burwood Road (hereafter referred to as the public domain), and provide them with statutory protection.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to list the items in **Table 3** as local heritage items by amending the Burwood Local Environmental Plan 2012 (BLEP 2012) per the changes below:

- insert a local heritage group listing for the Appian Way central reserve and the public domain in Part 1 (Heritage items) of Schedule 5 (Environmental heritage); and
- amend relevant heritage maps (Sheet HER_001 and HER_002) to identify the Appian Way central reserve and the public domain heritage items.

The proposed item numbers and descriptions will be confirmed by Parliamentary Counsel at the finalisation stage of the LEP amendment.

The explanation of provisions in the planning proposal adequately explains the intended changes to the BLEP 2012.

1.4 Site description and surrounding area

The planning proposal relates to the Appian Way central reserve and the public domain, Appian Way, in the Burwood LGA. The sites are identified in **Table 3** and are outlined in red in **Figure 1** below.

The Appian Way central reserve is zoned RE2 - Private Recreation and the entire public domain is zoned R2 – Low Density Residential with a maximum building height of 8.5m and maximum floor space ratio of 1:1 for the Appian Way central reserve and 0.55:1 for the public domain under the BLEP 2012. The Appian Way central reserve and the public domain are located within the existing Appian Way HCA.

The planning proposal does not seek to amend the existing zoning or associated development standards.

Table 3: Properties identified for local heritage listing in planning proposal

Address	Lot Number	Deposited Plan Number
Appian Way Central Reserve	Lot 44	DP12249
Appian Way public domain, encompassing the entire roadway and paths from Liverpool Road to Burwood Road	-	-



Figure 1: Aerial photo of proposed heritage items (source: Burwood Council Planning Proposal)

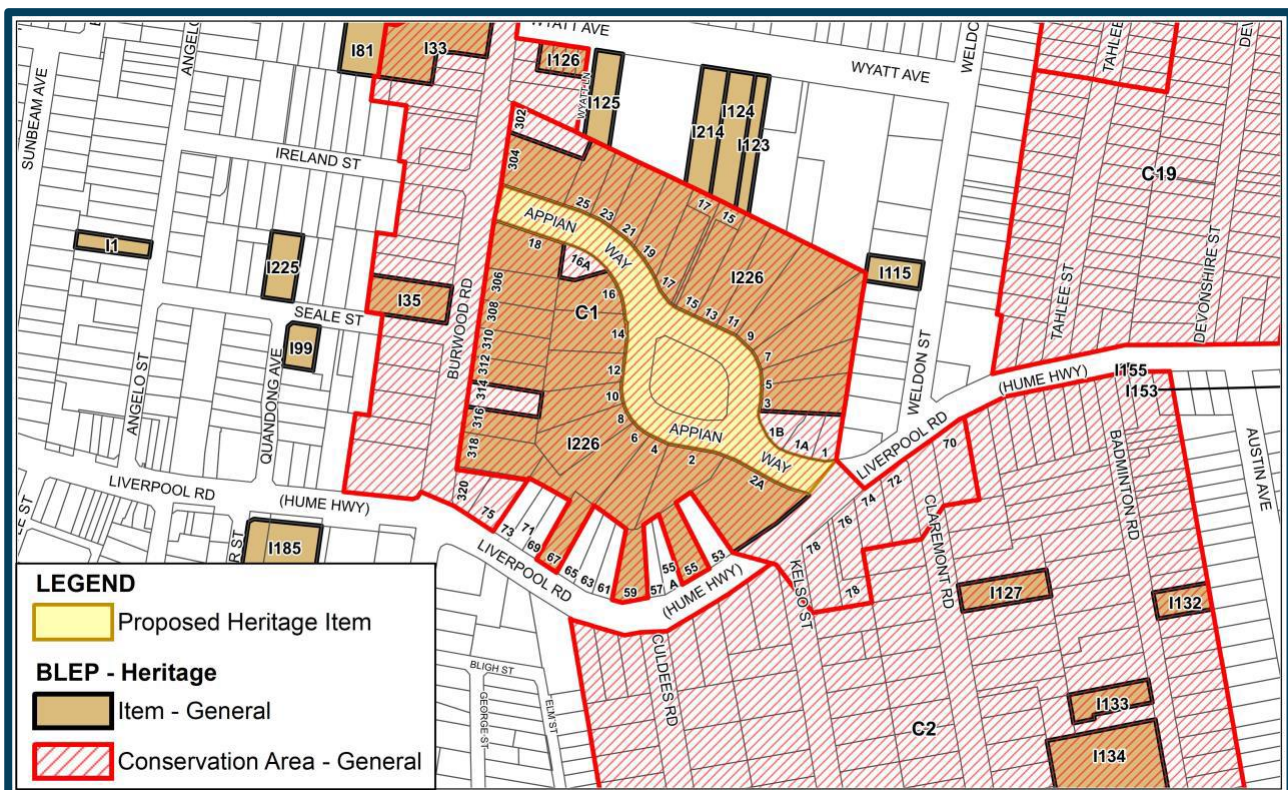


Figure 2: Existing BLEP Heritage Map of Appian Way, Burwood with proposed group item (source: Burwood Council Planning Proposal)

1.4.1 Background of the Appian Way HCA

Council considers the Appian Way (Heritage Conservation Area) HCA to be one of the most significant Federation precincts in Australia with exemplary heritage significance, noting the National Trust of Australia (NSW) describes the conservation area as:

“Probably the finest Edwardian bungalow precinct in Sydney. By virtue of its architectural cohesiveness, idyllic landscaped environment of street and allotment alike with community related sports reserve, this development sets a high standard by today’s criteria”. (National Trust, 1977).

Council and organisations such as the National Trust (NSW) and the Burwood and District Historical Society have strongly advocated for protection of the precinct. Council state that their experience with development applications and outcomes resulting from Land and Environment Court approvals demonstrated a need for a greater level of heritage protection. Council cites the outcomes at 13 Appian Way as an example where alterations approved through this process compromised the integrity of the Appian Way Conservation Area.

Council noted that although the properties were protected by the Appian Way Conservation Area, which granted heritage protection, the inclusion as a locally listed group item in Schedule 5 of the BLEP 2012 provides greater strength to the preservation of the properties. Council considers this to be consistent with other precincts of this significance in New South Wales.

On the 17 January 2023, Council’s Planning Proposal (PP) to heritage list, as a group listing under Schedule 5 of the BLEP, 35 properties within the Appian Way HCA (PP-2022-4117) was approved.

On 29 September 2023, Council submitted the current PP (PP-2023-2146) to the Department to group list the Appian Way central reserve and the public domain, encompassing the entire roadway and paths from Liverpool Road to Burwood Road, and provide them with the same statutory protection as the 35 properties in the previous PP (PP-2022-4117).

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Heritage Map sheets (Sheet HER_001 and Sheet HER_002). The maps identify the Appian Way central reserve and the public domain within the Appian Way HCA and include colour layer denoting the proposed heritage group listing.

The maps are suitable for community consultation.

1.6 Background of the Planning Proposal

The following background is relevant to the planning proposal:

PP-2022-4117 – group listing of Apian Way residential properties as an item

- On 22 November 2022, Council resolved to support the group listing of the approximately 30 residential properties identified as a local heritage item on the heritage schedule of the BLEP.
- On 28 November 2022, the above planning proposal PP-2022-4117 (Amendment 24 to the BLEP 2012) was submitted to the Department for a Gateway determination.
- On 17 January 2023, the above Gateway was approved.
- On 28 March 2023, Council at its meeting resolved (in part) the following:

“That Council’s Heritage Adviser undertake an investigation of the landscape features (significant trees and vegetation) and the Appian Way Recreation Club and if appropriate prepare a planning proposal for the heritage listing of the items”.

- On 26 May 2023, Amendment 24 to the BLEP 2012 was gazetted.

PP-2023-2146 – group listing of Appian Way Central reserve and public domain as an item

- On 12 September 2023, the Burwood Local Planning Panel supported the Planning Proposal to amend Schedule 5 of the BLEP 2012 to group list the Appian Way central reserve and public domain that demonstrate heritage significance and meet the threshold of local significance for the relevant criteria.
- On 26 September 2023, Council resolved to:
 - support the group listing of the Appian Way central reserve, owned by the Appian Way Recreation Club, and public domain, encompassing the entire roadway and paths from Liverpool Road to Burwood Road, as a group item of local heritage significance as outlined in the Planning Proposal as a local group heritage item on the heritage schedule of the Burwood Environmental Plan 2012.
 - endorse the forwarding of the Planning Proposal to the Department to request a Gateway Determination under Section 3.33 of the Environmental Planning and Assessment Act 1979 for an amendment to the BLEP 2012 to:
 - group list the Appian Way central reserve, and public domain, encompassing the entire roadway, paths and trees from Liverpool Road to Burwood Road, as a group as a heritage item in Schedule 5 Environmental heritage; and
 - mapping the land as “Item – General” on the Heritage Map
 - That subject to the Gateway Determination, affected property owners be notified in writing.
 - That the results of the public exhibition and consultation be reported back to Council.
- On 29 September 2023, the current planning proposal (PP-2023-2146) was submitted to the Department for a Gateway determination.

2 Need for the planning proposal

The planning proposal is based on the recommendations of the *Landscape Heritage Assessment - The Appian Way Report* prepared by Council's Heritage Advisor (Council's heritage assessment) and dated September 2023.

Council's heritage assessment:

- concluded that of the landscape elements and overall streetscape of the Appian Way which are located in the existing Appian Way HCA, meet the threshold for listing as heritage items;
- was undertaken in accordance with the heritage significance assessment guidelines published by Heritage NSW in 2001, the updated Assessing Heritage Significance (June 2023) and Investigating Heritage Significance (2021); and
- is consistent with the relevant principles and guidelines of the Australian ICOMOs *Charter for Places of Cultural Significance 2013 (the Burra Charter)*.

Council's heritage assessment notes that an independent external heritage consultant was not engaged for this assessment due to the site having previously been recognised as holding heritage significance within the conservation area and the broadly known heritage significance of the Appian Way HCA, its historic significance, its aesthetic significance and its rarity.

The site was assessed against the seven criteria included in the Heritage Office Guideline. If an item meets one of the seven listing criteria at a local level and retains the integrity of its key

attributes, it can be considered to have local heritage significance. The key findings of this assessment are summarised over the page in **Table 4**.

Table 4: Summary of Heritage Review

Address	a) historic	b) association	c) aesthetic	d) social	e) research potential	f) rarity	g) representativeness
The Appian Way Landscape	✓	✓	✓	✗	✗	✓	✓

It is noted that no internal areas of the club buildings were inspected and the report does not include any Aboriginal or archaeological assessment.

Criterion (a) Historical Significance

With regard to 'historical significance', Council's heritage assessment considers the proposed listings to have historical significance at a local level on account of:

- the inclusion of a recreational area may be an idea taken from the Haberfield Estate development of R. Stanton with its provision of recreational facilities including lawns and a community meeting pavilion.
- the landscape elements, including the club house, picket fence, organic shaped circular street the native Brush Box, believed to have been planted in 1905, meet the threshold for Historical Significance.

Therefore, the sites identified in Table 3 meet the threshold for Historical Significance.

Criterion (b) Associative Significance

Council's heritage assessment considers the landscape and streetscape elements as being associated with George Hoskins who was instrumental in developing the steel industry in New South Wales and who conceived a design for a model suburban estate.

Therefore, the sites identified in Table 3 meet the threshold for Associative Significance.

Criterion (c) Aesthetic Significance

Council's heritage assessment considers the sites identified to have an appropriate level of aesthetic significance at a local level as the street consists of rare Federation Queen Anne (Edwardian Bungalow) architectural and constructional excellence that are a unique part of the development of Burwood, especially the generous, high quality landscaped settings.

While it is acknowledged that the trees and shrubs used in the gardens have changed over the years, the landscape and organic shape of the Appian Way streetscape combine with the dwellings to form a particularly aesthetic precinct.

A condition is recommended to update the heritage assessment against this criterion prior to exhibition to clearly relate to the items in Table 3.

Criterion (d) Social Significance

The Department concurs with the Council's heritage assessment which does not consider the landscape and streetscape elements meet the threshold for social significance.

Criterion (e) Research Potential

Council's heritage assessment notes that while there is research potential within the combined landscaped area and grouped heritage dwellings as a rare 'garden city' estate, this potential does not extend to the landscape elements alone.

The Department concurs with the Council's heritage assessment which does not consider the landscape and streetscape elements meet the threshold for research potential.

Criterion (f) Rarity

With regard to 'rarity', Council's heritage assessment considered the landscape and streetscape elements to meet the criterion on account of:

- the landscaped elements and overall streetscape is a rare example of a garden city with recreational area for residents only.

Therefore, the sites identified in Table 3 are considered to have an appropriate level of rarity.

Criterion (g) Representativeness

With regard to 'representativeness', the identified sites are considered to have cultural significance at a local level on account of them being a representative of an innovative approach to residential development that contains outstanding examples of Edwardian and Federation architecture in a garden setting with central recreational area.

A condition is recommended to update the heritage assessment against this criterion prior to exhibition to clearly relate to the items in Table 3.

It is noted that the heritage assessment report prepared by Council describes the architecture of the residential properties that were previously listed as a group item in a separate planning proposal (PP-2022-4117). To avoid confusion, the Gateway determination has been conditioned to ensure that prior to exhibition, the heritage assessment be updated to clearly describe the reserve and public domain under each criterion.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan: *A Metropolis of Three Cities*.

Table 5: Regional Plan assessment

Regional Plan Objectives	Justification
Objective 13: Environmental heritage is identified, conserved and enhanced	<p>Objective 13 states that '<i>environmental heritage is identified, conserved and enhanced</i>'. It notes that environmental heritage should be protected for its social, aesthetic, economic, historic and environmental values.</p> <p>Environmental heritage is defined as '<i>the places, buildings, works, relics, movable objects and precincts of State or local heritage significance</i>'.</p> <p>The Heritage Assessment considers the Appian Way central reserve and the public domain should be identified as local heritage items under the BLEP 2012 as they have reached the threshold for listing at a local level.</p> <p>The planning proposal is consistent with this objective as it seeks to recognise and protect the identified heritage values and will ensure the continued contribution to the local character.</p>

3.2 District Plan

The Appian Way central reserve and the public domain are located within the Eastern City District. The Greater Cities Commission (formerly Greater Sydney Commission) released the Eastern City District Plan on 18 March 2018, which contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 6: District Plan assessment

District Plan Priorities	Justification
Planning Priority E6 – Creating and renewing great places and local centres and respecting the District's heritage	<p>The proposal seeks to list the Appian Way central reserve and the public domain as a local heritage group listing to ensure any future development of the Appian Way central reserve and the public domain are sympathetic to the heritage values of the sites.</p> <p>The planning proposal is consistent with this priority as the listing in Schedule 5 of the LEP would facilitate conservation of the environmental heritage and provide ongoing protection of its values.</p>

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 7: Local strategic planning assessment

Local Strategies	Justification
Burwood Local Strategic Planning Statement	<p>The Burwood Local Strategic Planning Statement (LSPS) is a 20 year plan that sets out the Burwood community's economic, social and environmental land use needs and includes a vision for the Burwood LGA. The LSPS identifies the special characteristics of Burwood that contribute to its identity, the shared community values which are to be maintained and enhanced, and how growth and change will be managed into the future.</p> <p>Planning Priority 5 – Identify local character areas considering preservation, enhancement and desired future character: This Priority recognises Burwood's rich cultural heritage includes numerous places that have unique and special built, archaeological, Aboriginal cultural and heritage significance.</p> <p>The proposal is consistent with this Priority as it will retain and protect the Appian Way central reserve and the public domain which have been identified as having local heritage value meeting the criteria for listing as items, which in turn will contribute to the local character of the area.</p> <p>By identifying sites as items of local heritage significance, this planning proposal is in keeping with the vision and objectives of the LSPS.</p>

Local Strategies	Justification
Burwood 2036 Community Strategic Plan	<p>The Burwood Community Strategic Plan, <i>Burwood 2036</i>, presents a long term vision for Burwood, describes the community, identifies current and future challenges and presents Council's goals and strategies.</p> <p>The planning proposal is consistent with the plans aim of creating places that are for and built around people. Specifically, the planning proposal would contribute to achieving Community Outcome 2.1 '<i>An urban environment that maintains and enhances our sense of identity and place</i>' and Strategy 2.1.2 '<i>Protect our unique built heritage and maintain or enhance local character</i>' as it would retain and protect items of local heritage significance within the Burwood local government area.</p>

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 8: 9.1 Ministerial Direction assessment

Directions	Consistency	Consistency Assessment
3.2 Heritage Conservation	Yes	<p>This Direction requires that a planning proposal must contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance, as identified in a study of the environmental heritage of the area.</p> <p>The planning proposal is informed by a Heritage Assessment with an analysis of significance undertaken in accordance with the NSW Heritage Office guideline.</p> <p>The report concluded the subject sites satisfy five of the assessment criteria for local heritage listing under the guideline and recommends the Council proceed with the listing of the Appian Way central reserve and the public domain as a local heritage item.</p> <p>The proposal will facilitate the conservation and protection of these sites and is therefore consistent with this Direction. Consultation with Heritage NSW will be required as part of the Gateway Conditions.</p>
6.1 Residential Zones	Yes	<p>This Direction applies to any planning proposal that would affect land within an existing residential zone. The Appian Way central reserve is zoned RE2 Private Recreation and the entire Appian Way public domain encompassing the roadway and paths is zoned R2 – Low Density Residential under the BLEP 2012.</p> <p>The planning proposal does not seek to amend the zoning or range of permissible uses for the subject lands.</p> <p>The listing of the Appian Way central reserve and public domain as local heritage items would require any future development application for the sites to be assessed against the provisions of Clause 5.10 <i>Heritage Conservation</i> under the BLEP 2012.</p> <p>The planning proposal is consistent with this Direction.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 9: Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Consistency Assessment
SEPP Housing (2021)	This SEPP aims to promote the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services and designing housing in a way that reflects and enhances its locality.	Not Applicable	The subject sites are not known to contain affordable housing. Furthermore, the proposal will not alter the existing zoning and development standards applicable to the site.
SEPP Biodiversity and Conservation (2021)	This SEPP aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Yes	This SEPP contains provisions in respect to heritage trees. The heritage listing of the Appian Way central reserve and public domain may alter whether development under the SEPP may be carried out on these sites, but this planning proposal would not contravene the SEPP in any way.
SEPP Exempt and Complying Development Codes (2008)	The policy aims to provide streamlined assessment processes for development that complies with specified development standards by providing exempt and complying development codes that have State-wide application.	Yes	The proposal seeks to amend Schedule 5 Part 1 Environmental Heritage to group list the Appian Way central reserve and public domain as a local heritage item. The Codes SEPP does not apply to heritage items. Further as the central reserve is zoned RE2 Private Recreation and the remaining sites are in the road reserve the proposal will not have any consequence for application of the SEPP.

4 Site-specific assessment

4.1 Environmental

The Appian Way central reserve and public domain are in an established urban area and the planning proposal relates only to the listing of the identified sites as items of local heritage significance and does not propose any changes to the BLEP 2012 controls that would facilitate intensification of land use.

It is considered highly unlikely that critical habitat areas, threatened species, populations, or ecological communities will be adversely impacted by the planning proposal.

The planning proposal does not seek to facilitate any significant change in the exiting land use. Accordingly, there are unlikely to be significant environmental impacts resulting from the proposal.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10: Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal may have a positive a social effect on the local community by preserving local character, enhancing placemaking outcomes.</p> <p>The planning proposal is unlikely to result in negative social impacts.</p> <p>Additionally, the public exhibition of the planning proposal will provide additional opportunity for the wider community to determine whether the proposed local heritage group listing is supported and appropriate.</p>
Economic	<p>As discussed above, the proposed listing means that the consent authority will need to consider the effect of any future development on the heritage significance of the sites as local heritage items pursuant to Clause 5.10 of the LEP, it does not prohibit change or development as such. The proposal is considered to have an acceptable economic impact.</p>

4.3 Infrastructure

There is no significant infrastructure demand that will result from the planning proposal. The planning proposal will not facilitate intensified development on the site.

5 Consultation

5.1 Community

Under the new Local Environmental Plan Making Guide (September 2022), the exhibition period for a standard planning proposal is 10 working days. This forms a condition of the Gateway determination.

The proposal is considered a standard planning proposal as it relates to a local heritage item in the BLEP 2012 and is consistent with the Eastern City District Plan and Local Strategic Planning Statement.

5.2 Agencies

The planning proposal states that Council intends to consult with Heritage NSW.

The Department concurs with Council's plan to consult with Heritage NSW on the planning proposal and recommends providing 30 working days for comment.

A condition is included in the Gateway determination for 30 days for Heritage NSW to comment consistent with the Guide to LEP making.

6 Timeframe

Council proposes a 7 month time frame to complete the LEP.

The Department recommends a time frame of 7 months, noting extra time is required due to the Christmas holiday period, to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has not advised if it would like to exercise its functions as a Local Plan-Making Authority.

The proposed heritage listings are a local matter, and is consistent with all strategic documents, including Section 9.1 Directions and SEPPs. A condition has been recommended to require consultation with Heritage NSW.

As the planning proposal is of local significance, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposed heritage listing is supported by a Heritage Assessment and Heritage Data Form which determined that the Appian Way central reserve and public domain are of local heritage significance;
- the heritage assessment has been undertaken in accordance with the NSW Heritage Office Guidelines;
- the proposal will recognise and provide ongoing protection of the heritage significance of the Appian Way central reserve and public domain; and
- the proposal is consistent with the Greater Sydney Region Plan, Eastern City District Plan, Council's Local Strategic Planning Statement, the relevant SEPPs and the Section 9.1 Ministerial Directions.

9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition, the heritage assessment be updated to clearly describe the reserve and public domain under each criterion.
2. Consultation is required with the following public authority:
 - Heritage NSW (Department of Planning and Environment)
 - Council is to provide Heritage NSW a minimum of 30 working days to comment on the planning proposal.
3. The planning proposal should be made available for community consultation for a minimum of 10 working days. The landowners should be notified of the consultation of the planning proposal.
4. The exhibition of the planning proposal must commence within 2 months from the date of the Gateway determination.
5. The planning proposal must be reported to Council for a final recommendation no later than March 2024.
6. The timeframe for completing the LEP is to be 7 months from the date of the Gateway determination.

7. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



(Signature)

31 October 2023 (Date)

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