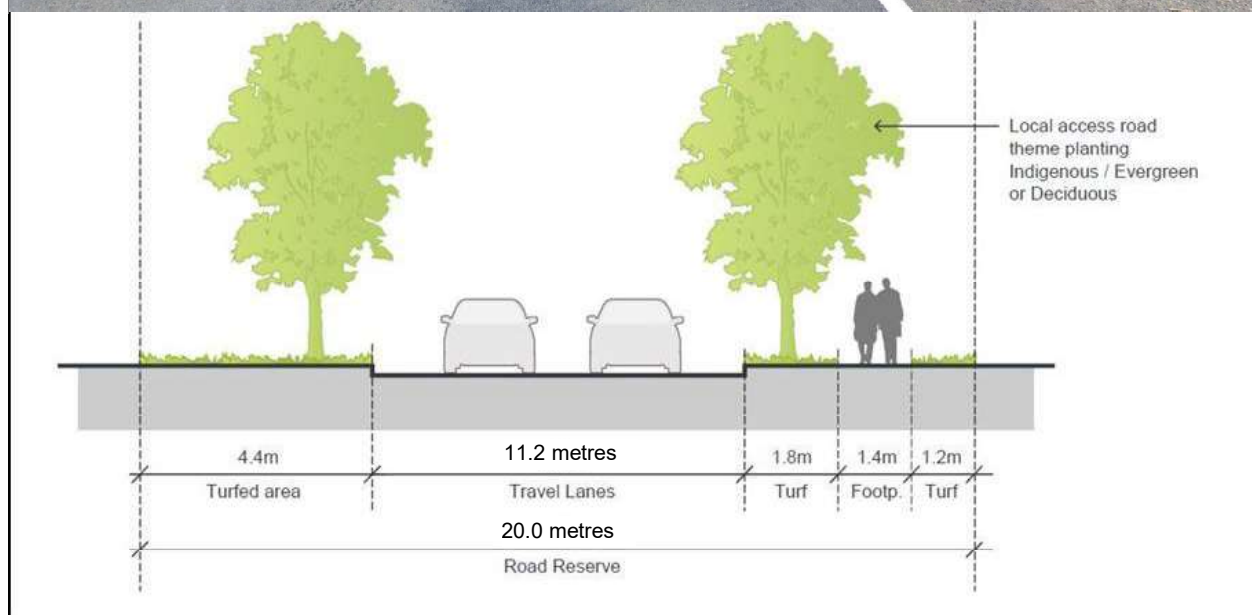


# PLANNING PROPOSAL

To Amend Schedule 5 of the Oberon Local Environmental Plan (OLEP) 2013 to identify and establish Avenue of Trees as a Heritage Item along O'CONNELL ROAD, O'CONNELL.

As 23 January 2025



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Version	Date	Reviewer
1	22 January 2025	B Kennedy

## EXECUTIVE SUMMARY

Oberon Council has prepared a Planning Proposal that proposes an amendment to Schedule 5 of the Oberon Local Environmental Plan 2013 to identify a heritage item along O'Connell Road, OBERON.

The site would extend from the northern boundary of the Oberon Council at the Fish River adjacent to 2519 O'Connell Road and the Hassal Reserve and Rest Area to the southern boundary of the O'Connell Hotel at 2408 O'Connell Road (adjacent to the intersection with Box Flat Road and Mutton Falls Road).

The heritage item is described as a linear arboretum of Desert Ash. It was established toward the early part of the 19<sup>th</sup> Century along O'Connell Road O'Connell to acknowledge the sacrifices of our Armed forces in the first and second World Wars. There are significant aspects on local, state and national levels that warrant its consideration (Attachment 1).

The significance of the tree species was that they were donated by the Department of Agriculture who had liaised with Sydney Botanical Gardens to propagate them. The reason they were climatically suited to the Bathurst region was because the species was originally from the Middle East (the Theatre of the War association with the ANZACS) and hence ties back to the significance of the proposed Heritage Item.

Attention has been drawn through the interest of Council' Heritage committee and the need to ensure the items character and significant is retained and maintained.

The proposed amendment will require both an amendment to Schedule 5 of the Oberon Local Environmental Plan 2013 and a mapping notation to identify the location of the item. While the item is identified in the road reserve of O'Connell Road it is considered that the proposed amendment will not significantly change works that would be assessed under Division 17 Roads and Traffic of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

The item is a stand-alone item but contains a number of elements with the predominant species being the Desert Ash. With effective care and maintenance, it is possible that a canopy could be created over O'Connell Road offering respite to vehicles but would be more significant in creating a visual element in keeping with the surrounding O'Connell conservation area.

With the item not being currently identified, no funding for maintenance has been available. This has resulted in a gradual (but not fatal) deterioration of some of the individual trees. With identification of the item and commensurate Conservation Management Plan being created, a healthier tree lined avenue will lend itself to significant visual interest and mark the entry and exit to the conservation area.

The subject land is land zoned RU1 Primary Production under the Oberon Local Environmental Plan (OLEP) 2013 therefore the subject item is required to be identified under Schedule 5 of the OLEP 2013. This Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act, 1979 and *A Guide to Preparing Planning Proposals*.

## **PART 1 OBJECTIVES OR INTENDED OUTCOMES**

The objective of this Planning Proposal is to include a culturally significant heritage item in the Oberon Council Local Government Area to be identified by an Amendment to Part 1 of *Schedule 5 Environmental Heritage* of the Oberon Local Environmental Plan (OLEP) 2013.

The inclusion of the proposed *Avenue of Trees* in Schedule 5 would have three (3) intended outcomes for afforded to all listed heritage items:

- (a) Protection from minor works permitted as Exempt under any State Environmental Planning Policies where with vegetation these could have a significant impact on the health of the item,
- (b) A greater level of scrutiny to any development application lodged that would have the potential to impact on the item.
- (c) A greater level of assessment of any development application on the subject land.

## **PART 2 EXPLANATION OF PROVISIONS**

The proposed objective and intended outcome of this proposed amendment to the Oberon Local Environmental Plan (OLEP) 2013 are to amend the Schedule 5 Environmental Heritage of the Oberon Local Environmental Plan 2013 to identify an Avenue of Trees on O'Connell Road O'Connell worthy of State Heritage Listing.

The subject site is identified as the Bathurst-Oberon Road (MR 253) therefore the Environmental Planning & Assessment Act framework requires that the *State Environmental Planning Policy (Transport and Infrastructure) 2021* specifically *Division 17 Roads and traffic* will require consideration. While major development will continue to be assessed under this SEPP, works that may be considered Exempt or Complying Development will not be impacted by the escalation of the Heritage Status because of the operation of Section 2.20 of the SEPP.

### **2.20 General requirements for exempt development**

*(1) This section applies to any development that this Chapter provides is exempt development.*

#### **Note.**

*Section 2.21 and other provisions of this Chapter identify kinds of development that are exempt development if they meet the requirements of this section.*

*(2) To be exempt development, the development—*

- (a) must meet the deemed-to-satisfy provisions of the Building Code of Australia, and*
- (b) must not, if it relates to an existing building—*
  - (i) cause the building to contravene the BCA, or*
  - (ii) compromise the fire safety or an access to any fire exit, and*
- (c) must meet all relevant requirements of the Blue Book, and*

*(d) must not be designated development, and*

**Note.**

*Designated development is defined in section 4.10 of the Act as development that is declared to be designated development by an environmental planning instrument or the regulations.*

- (e) if it is likely to affect a State or local heritage item or a heritage conservation area, must involve no more than minimal impact on the heritage significance of the item or area, and***
- (f) must not involve the demolition of a building or work that is, or is part of, a State or local heritage item, and***
- (g) must be carried out in accordance with Australian Standard AS 2601—2001, The demolition of structures, and*
- (h) must be installed in accordance with the manufacturer's specifications, and*
- (i) must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent, and***

**Note.**

*A permit for the removal or pruning of a tree or other vegetation may be granted under a local environmental plan. A development consent for the removal of native vegetation may be granted under the [Native Vegetation Act 2003](#).*

- (j) must not involve the removal of asbestos, unless in accordance with Code of practice published by SafeWork NSW in December 2022.*

Any future works in the road reserve, for example erection of plaques and memorial paraphernalia that would be consistent with heritage significance of the item, would be permissible as a development application. A Plan of Management for the item could further clarify what works could be done as Exempt or Complying Development. Because Council does not have vegetation removal guidelines, tree pruning or tree maintenance would be permissible under Section 2.20 with submission of for example an arborists report. Extension of the tree planting along the road would also be permissible but would require consideration of the scope of works under Clause 5.10 of the Oberon LEP 2013.

As shown in figure 1 below the proposed heritage item is located within an identified Heritage Conservation Area and amongst several State and Locally identified Heritage items listed under Schedule 5 of the Oberon Local Environmental Plan and the State Heritage Inventory and very much consistent with the heritage theme of the locality and is entirely consistent in this context.

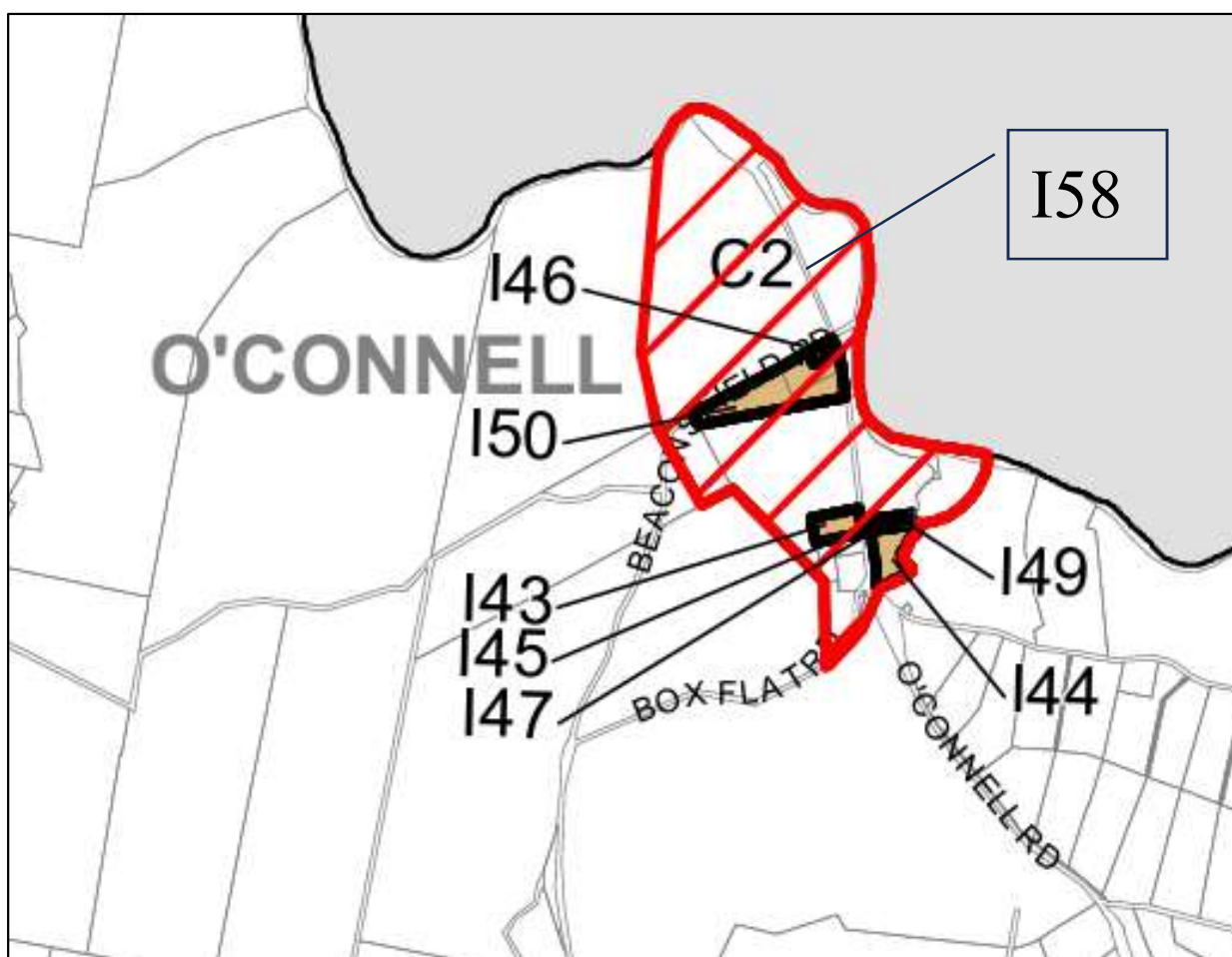


Figure 1 The locality of the subject site

The subject site is zoned as RU1 Primary Production as shown in **Figure 2**.

**(a) Proposed Amendment to the Oberon Local Environmental Plan 2013**

The proposed amendment will identify the trees within the road reserve under Schedule 5 of the Oberon Local Environmental Plan 2013.

An amendment to the Heritage Map (6100\_COM\_HER\_001\_160\_21050415) will be required to identify the scale and extent of where the item is located as shown below in **Figure 2**

Part 1 Heritage Items of the Oberon Local Environmental Plan 2013 would be updated as follows.

Locality	Item Name	Address	Property Description	Significance	Item No
O'Connell	Avenue of Trees	O'Connell Road	Road Reserve	State	I58



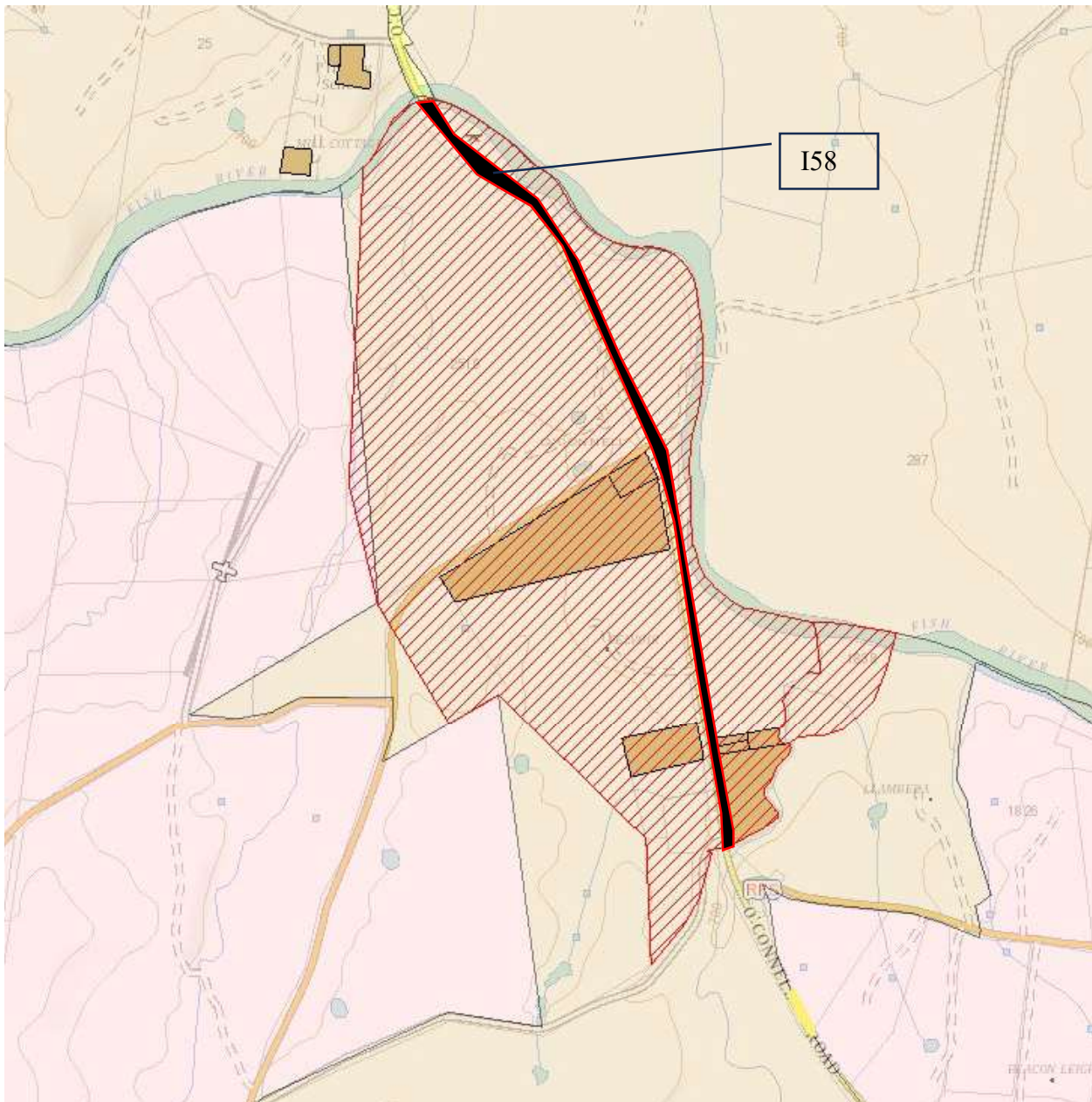


Figure 2 subject site shown black with Zoning and existing heritage items surrounding

## PART 3 JUSTIFICATION

### A Need for the Planning Proposal

#### 1. Is the Planning Proposal the result of any strategic study or report?

The Planning Proposal is the result of considerable interest shown by Council's Heritage Committee and a Heritage Assessment prepared by Christo Aiken and Associates on Council's behalf attached as **Appendix 1**.

## **2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes or is there a better way?**

In order to elevate the identified item for heritage listing to enable protection and conservation while preserving works that can be Exempt and Complying Development, an amendment to the Oberon Local Environmental Plan 2013 is really the only option available.

Notwithstanding inclusions and exclusions for heritage items, the environmental planning framework can only consider exemptions and complying development under an environmental planning instrument where the item is specifically identified in Schedule 5 of the OLEP 2013.

The risk however is that not identifying the item on the heritage schedule may eventually result in the deterioration of the item itself.

### **B Relationship to Strategic Planning Framework**

## **3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?**

a) Does the proposal have strategic merit?

The Planning Proposal is considered to be consistent with the Central West and Orana Regional Plan 2041 as follows:

- *Direction 17: Conserve and adaptively re-use heritage assets*

*Action 17.1 encourages increase heritage protection and revitalise main streets and town centres through community education and development incentives in local plans.*

The proposed amendment identifies this action through invigorating the main street of O'Connell and more particularly the Heritage significance of the item by adaptively reusing a tree lined avenue to provide, in addition to bring the heritage significance of the locality to travellers, passers-by and drivers providing a contribution to scenic value by providing a tree lined avenue.

- *Direction 29: Deliver healthy built environments and better urban design.*

*Action 29.1 encourages Develop regional urban design guidelines for planning, design and developing healthy built environments.* The proposed Avenue of Trees provides an opportunity to develop a healthy urban environment by giving an opportunity to develop a healthy urban environment that provides shade and respite from sometimes harsh climactic conditions.

*Action 29.2 encourages Enhance the quality of neighbourhoods by integrating recreational walking and cycling networks.* Council is currently preparing a



Comprehensive Land Use Strategy (CLUS) including but not limited to recreational and active transport strategy initiatives. The proposed tree lined avenue provides an opportunity for a cycle or pedestrian path or walkway connecting the O’Connell Hotel, Church and Schoolhouse precinct with the Fish River and Hassall Park precinct.

The Planning Proposal is considered to be consistent with the provisions of the Central West and Orana Regional Plan 2041.

b) Does the proposal have site-specific merit?

The proposed amendment does have site specific merit demonstrated clearly in the heritage assessment prepared by Christo Aiken and Associates.

#### **4. Is the Planning Proposal consistent with a local strategy or other local strategic plan?**

##### Oberon 2040 Community Strategic Plan

The Oberon 2040 Community Strategic Plan was adopted by Council in 2019. The plan identified development projects

The Planning Proposal is considered to be broadly consistent with Oberon 2040 Community Strategic Plan and in particular the following economic and liveability strategies:

*“Community Well Being - 1.2 Meet the social, cultural and physical activity needs of the community.*

*Infrastructure & Services - 4.2 Provide accessible, safe and well-maintained community spaces and facilities.”*

The Planning Proposal will facilitate the development of a significant item that will foster .....  
enjoy the added economic benefits provided to both the local community and the wider Oberon Local Government Area. The image on page 56 of the original CWORP resonates strongly with the proposed amendment.

##### Oberon Regional Local Strategic Planning Statement

The Local Strategic Planning Statement for the Oberon Local Government Area was adopted by Council in June 2020. It identifies the strengths for O’Connell as History and Heritage in a Conservation Area with the Memorial Avenue (the subject site) and natural landscape beauty. It then identifies the weaknesses as Poor pedestrian bike access with limited walking paths and heavy truck traffic and fragmentation of historic sites as weaknesses.

The proposed amendment to the OLEP 2013 would have the desirable effect of potentially joining and balancing these elements to make a positive contribution to the streetscape and the locality.

#### **Planning Priority One – Growth**

The Planning Proposal directly supports Planning Priority One – Growth of the LSPS, which seeks to:

*“Protect areas with high environmental value and/or cultural heritage value and important biodiversity corridors”.*

#### **Planning Priority Two – Community Wellbeing**

The Planning Proposal directly supports Planning Priority Two – Community Well Being identified by Direction 17 of the CWORP which seeks to:

*“Conserve and adaptively reuse Heritage Assets.”*

The Planning Proposal directly supports Planning Priority Two – Community Well Being which seeks to deliver:

*“Promote the active reuse of heritage buildings that maintain the integrity of the historic character of the townships” and*

*“Provide accessible pedestrian areas within main commercial areas while maintaining the character of the main street”.*

It achieves this by providing a connection from the O’Connell Hotel to Hassall Park which adjacent to the Fish River on the LGA boundary.

The uniqueness of the item addresses and achieves Action 8 which is to:

*“Action 8. Wherever possible provide or encourage the provision of infrastructure that is different to adjacent towns and villages so that variety is maintained and encourage people from nearby townships to visit.”*

The opportunity to address this action comes from the manner in which the theatre of war was celebrated and creates a certainly unique experience for visitors and residents alike.

#### **Planning Priority Four - Environment**

The Planning Proposal directly resonates with Planning Priority Four which is consistent with Direction 13 of the CWORP to: Protect and Manage environmental assets.

To deliver this planning priority Council has committed to:

*“Liaise with NSW Government agencies to further develop and provide opportunity for the natural areas of the local government area”.*

Actions to achieve Priority Four include:

*“Continually review and amend the Oberon Local Environmental Plan 2013 as required, seeking to maximise opportunities and protect sensitive areas.*

**5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

In March 2022 the Department of Planning and Environment consolidated 45 SEPPs into 11 policies. For the most part, the consolidation did not introduce any amendments to the existing SEPPs other than renumbering and changes consequent on the consolidation. The new SEPPs are listed in the table below, with the previous SEPPs that have been consolidated underneath.

<b>State Environmental Planning Policy [SEPP]</b>	<b>Applicable Yes/No</b>	<b>If Applicable – Consistency with Planning Proposal</b>
SEPP (Housing) 2021	No	Not Applicable
SEPP (Primary Production) 2021	No	Not Applicable
SEPP (Resources and Energy) 2021	No	Not Applicable
SEPP (Exempt and Complying Development Codes) 2008	Yes	The Planning Proposal is consistent with the provisions of the SEPP.
SEPP (Resilience and Hazards) 2021	No	The site has been assessed as not being contaminated land.
SEPP (Industry and Employment) 2021	Yes	Schedule 5 of this SEPP is the relevant provisions. Any signage proposed in this area would be assessed against the Schedule 5 Criteria and a Plan of Management for the Avenue would assist in this assessment.
SEPP (Transport and Infrastructure) 2021	Yes	The site is on a State Classified Road. Works to the item within the road reserve would not be greatly impacted by the operation of the SEPP

SEPP (Biodiversity and Conservation) 2021	Yes	The Proposal does not threaten the existing exotic vegetation and is consistent with the SEPP.
SEPP (Planning Systems) 2021	No	The Planning Proposal will not affect the application of this SEPP.
SEPP (Precincts – Eastern Harbour City) 2021	No	Not applicable
SEPP (Precincts - Regional) 2021	No	Not applicable
SEPP (Sustainable Buildings) 2022	No	Not applicable
SEPP No 65—Design Quality of Residential Apartment Development	No	Not Applicable

#### **6. Is the Planning Proposal consistent with any applicable Section 9.1 Directions?**

The following table provides consideration of the applicable Section 9.1 Directions for consideration in the Planning Proposal:

<b>Direction</b>	<b>Requirement</b>	<b>Consistency</b>
1.1 Implementation of Regional Plans	Planning Proposal must be consistent with Regional Plan	Planning Proposal is consistent
1.3 Approval and Referral Requirements	Planning Proposal must be consistent	Planning Proposal is consistent
1.4 Site Specific Provisions	Planning Proposal must be consistent	None required.
1.4A Exclusion of Development Standards Variation	Planning proposal must minimise exclusion from Development Standards	No Development standard exclusions proposed.
Focus Areas Place Based	NA	
Focus Area 2 Design and Place	NA	
Focus Area 3		
3.1 Conservation Zones	The Direction applies to environmentally sensitive areas.	No (ecologically) environmentally sensitive area located on the subject site.

3.2 Heritage Conservation	Applies when a Planning Proposal is prepared.	The Planning Proposal seeks to (1) Conserves an item of heritage (2) NA (3) NA
3.3 Sydney Drinking Water Catchments	Planning Proposal is not located with the Sydney Drinking Water Catchment.	
3.4 Application of C2 and C3 in Far North Coast.	NA	
3.6 Strategic Conservation Planning	NA	
3.7 Public Bushland	NA	
3.10 Water Catchment Protection	Drinking Water Catchment	The Spatial Viewer shows the land as in a Drinking Water Catchment. The proposal is justifiably inconsistent with this Direction.
4.1 Flooding	The subject land is flood prone, but the nature of the proposal will not impact the flood behaviour of the location	Justifiably inconsistent
4.4 Remediation of Contaminated Land	The subject land is not identified as contaminated or having ever been	Consistent
5.2 Reserving Land for Public Purposes	When preparing a Planning Proposal	The planning proposal will assist in reserving the land for a public purpose.
5.5 High pressure dangerous goods pipeline	When preparing a planning proposal located near the gas pipeline	Consistent
6.1 Residential Zones	When preparing a planning proposal	NA

6.2 Caravan Parks and Manufactured Home Estates	NA	
7.1 Employment Zones	NA	
7.2 Reduction in non-hosted short-term rental accommodation period	NA	
7.3 Commercial and Retail Development along the Pacific Highway North Coast	NA	
8.1 Mining, Petroleum Production and Extractive Industries	NA	
9.1 Rural Zones	NA	
9.2 Rural Lands	Where a Planning Proposal is prepared on land zoned RU1 Primary Production outside the Metro area	Consistent
9.3 Oyster Aquaculture	NA	

## **C Environmental, social and economic impact**

### **7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected?**

It is considered that the proposed amendment to the Oberon Local Environmental Plan 2013 Planning Proposal will not adversely affect critical habitat, threatened species, populations or ecological communities or their habitats. The predominant species, Desert Ash, are exotic and the location within a road reserve has no environment for habitat. The layout and design of the Avenue of Trees is considered consistent and suitable for its location adjacent to the Bathurst Oberon connecting road.



**8. Are there any environmental impacts and how will they be mitigated?**

a) Development within a designated buffer

The site is not located within a designated buffer area.

b) Contamination

Local knowledge and Councils records indicate that the subject land is not contaminated and has for many years been used as a road reserve.

c) Stormwater

Stormwater management from the site is considered satisfactory and not requiring significant attention at this stage.

Part of the site has been known to flood however this has had minimal impact on the functioning of the road reserve or any apparent impact on the health of the Avenue species of Desert Ash.

**9. Has the Planning Proposal adequately addressed any social and economic impact?**

The Planning Proposal is not anticipated to result in or be impacted by any negative economic or social impacts.

**D State and Commonwealth interests**

**10. Is there adequate public infrastructure for the Planning Proposal?**

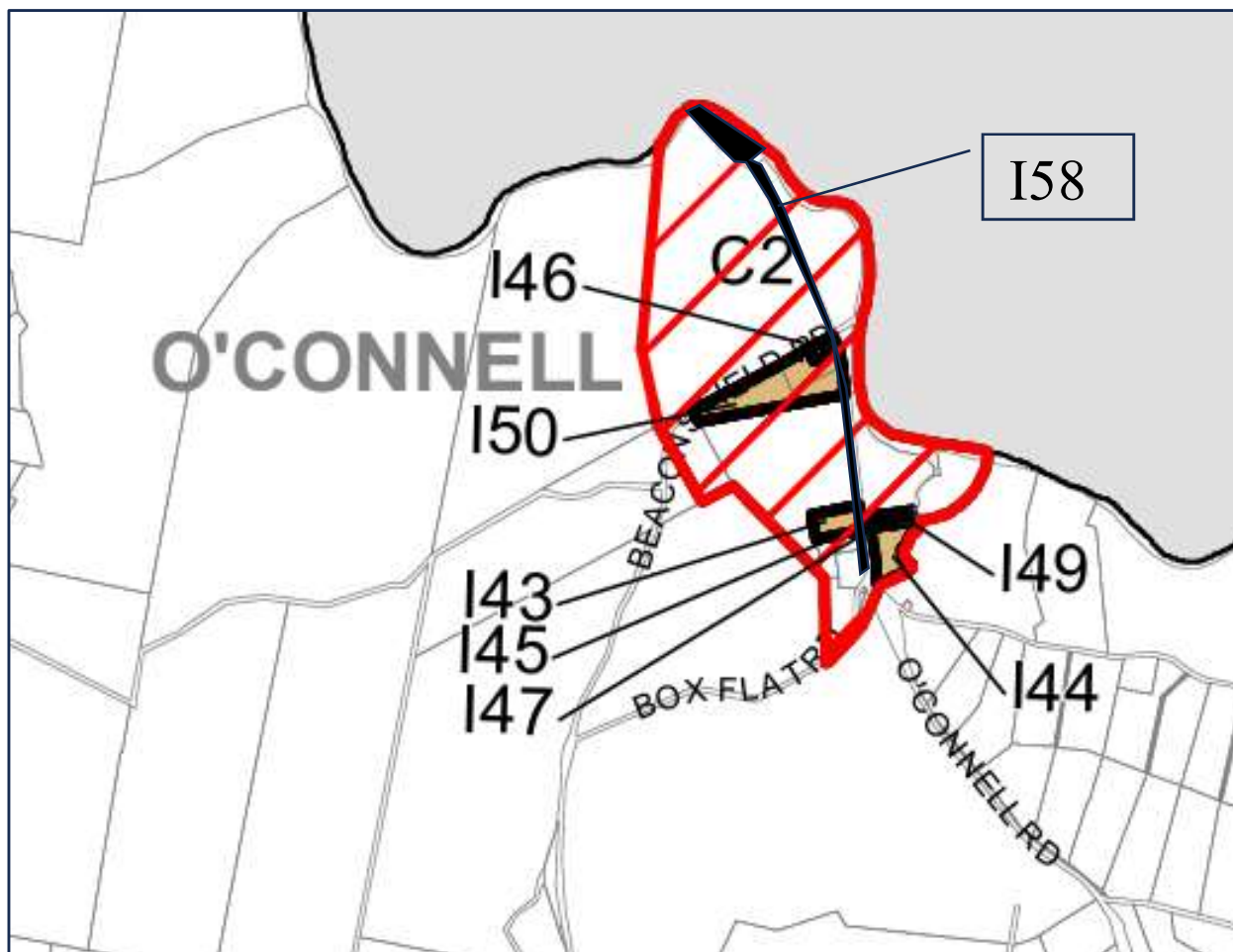
It is considered that the Planning Proposal is unlikely to result in any significant requirements for upgrading of public infrastructure. The detailed requirements for public infrastructure will be assessed further with any Development Applications.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?**

State and Commonwealth public authorities, including but not limited to the Roads and Maritime Services (RMS) will be consulted in accordance with the Gateway Determination and will be given at least 21 days to comment on the Proposal.

## PART 4 MAPPING

A component of the Planning Proposal will be required to revise the Heritage MAP 6100\_COM\_HER\_001\_160\_20150415 to identify the location of the item (see also Figure 2).



## PART 5 COMMUNITY CONSULTATION

Initial Community Consultation has been done over many years as part of Council's engagement with Council's Heritage Committee and have long supported the proposed nomination of the subject item as a heritage item. Further consultation will be undertaken in accordance with and subject to the Department of Planning, Industry and Environment's Gateway Determination.

Due to the support for the Planning Proposal and Council's active engagement with the Heritage Committee it is anticipated that the Planning Proposal will be placed on public exhibition for a period of not less than 28 days.

Council will also undertake consultation with State Public Agencies as required by the Gateway Determination.

## **PART 6 PROJECT TIMELINE**

The following project timeline is intended to be a guide only and may be subject to changes in response to the public consultation process and/or community submissions.

<b>Step</b>	<b>Task Name</b>	<b>Completion Date</b>
1	Preparation of the draft Planning Proposal	22 January 2025
2	Consideration by Council at its Ordinary meeting.	11 June 2024
3	Request for Gateway Determination sent to DPIE	31 January 2025
4	Receive Gateway Approval	28 February 2025
5	Public Exhibition 28 days	4 April 2025
6	Considered of submissions by Council at its Ordinary meeting	20 <sup>th</sup> May 2025
7	Preparation of correspondence to the Department of Planning and Environment and/or the Office of Parliamentary Counsel in relation to legal drafting of the Planning Proposal.	15 July 2025
8	Gazettal	21 August 2025

## **Appendix 1 – Heritage Assessment – ANZAC MEMORIAL AVENUE O’CONNELL Bathurst-Oberon Road MR253**

**Appendix 2 – Council Resolution 11 June 2024**