

ITEM 1

PUBLIC EXHIBITION - REVISED DRAFT PLANNING PROPOSAL - 117 DARKES FOREST ROAD, DARKES FOREST

In 2016, a draft Planning Proposal request was submitted for 117 Darkes Forest Rd, Darkes Forest. The site is zoned E2 Environmental Conservation under Wollongong Local Environmental Plan 2009 and contains a dwelling house, as well as buildings and infrastructure associated with its former use as the Darkes Forest Mine (operational from 1971 to 1991). The draft Planning Proposal aims to facilitate the adaptive reuse of the former mine site as a cider processing facility with complementary uses in association with the nearby Glenbernie Orchard.

On 8 May 2017, Council resolved to support the overall intent of the proposal, as well as the recommendation that a partial rezoning of the site from E2 Environmental Conservation to E3 Environmental Management be considered, alongside specific additional permitted uses in Schedule 1 of WLEP and the maximum building height of 9m. The resolution also required the applicant to undertake additional investigations, prior to exhibition.

The Department of Planning, in July 2017, issued a Gateway Determination which required additional studies and agency consultation prior to exhibition. As a consequence of the additional studies and agency consultation, and the introduction of a new definition for artisan food and drink premises, a revised draft Planning Proposal has been prepared.

This report recommends that Council resolve to seek a new Gateway Determination for the revised draft Planning Proposal. Should a Gateway Determination be granted, the draft revised Planning Proposal be exhibited for 28 days.

RECOMMENDATION

- 1 A revised draft Planning Proposal be prepared for 117 Darkes Forest Road, Darkes Forest (Lot 86 DP 752054) and submitted to NSW Planning, Industry and Environment for a Gateway Determination, proposing to -
 - a Amend Schedule 1 Additional Permitted Uses of Wollongong Local Environmental Plan to include artisan food and drink premises on the northern part of the property
 - b Rezone parts of Lot 86 DP 752054 (the areas surrounding the existing dwelling and existing mine-related infrastructure) from E2 Environmental Conservation to E3 Environmental Management (Attachment 2).
- 2 Should the Gateway Determination be granted, the draft revised Planning Proposal be exhibited for a minimum period of 28 days.
- 3 The NSW Department of Planning, Industry and Environment be requested to issue authority to the General Manager to exercise plan making delegations.
- 4 During the exhibition period, consultation be undertaken with the following agencies –
 - a NSW Department of Planning, Industry and - Environment, Energy and Science (Heritage & NPWS)
 - b Endeavour Energy
 - c Water NSW
 - d Transport for NSW
 - e NSW Rural Fire Service
 - f Illawarra Local Aboriginal Land Council
 - g Environmental Protection Authority

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Location Map
- 2 Proposed Zoning Map

BACKGROUND

Site Location and Context

The subject site has an area of 41.4 hectares. It is located on either side of Darkes Forest Road, to the west of the Princes Highway (Attachment 1). The site is zoned E2 Environmental Conservation.

The southern part of the property contains a dwelling house, areas of Coastal Upland Swamp - an Endangered Ecological Community (EEC) and is bounded by the Dharawal State Conservation Area to the south. The southern part also contains a disused effluent irrigation infrastructure associated with the former mining use. This area drains to Maddens Creek to the south and does not form part of the Sydney Drinking Water Catchment but forms the Georges River's headwaters, which flows to Botany Bay.

The northern portion of the site contains buildings and other infrastructure (such as car parks and oxidation lagoons) associated with its former use as the Darkes Forest Mine (operational from 1971-1991). It also forms part of the Woronora River and Sydney Drinking Water Catchment, managed by Water NSW.

Planning History & Gateway Determination

Under Wollongong Local Environmental Plan 2009, the site is zoned E2 – Environmental Conservation. Land in the E2 zone does not include a maximum height restriction as buildings are not permitted (unless they are ancillary to one of the few permissible land uses in the zone).

On 8 May 2017, Council supported the overall intent of the proposal, as well as the recommendation that a partial rezoning of the site from E2 Environmental Conservation to E3 Environmental Management be considered, alongside specific additional permitted uses in Schedule 1 of WLEP. Council resolved that -

- 1 *A draft Planning Proposal be prepared for 117 Darkes Forest Road, Darkes Forest (Lot 86 DP 752054) and submitted to NSW Planning and Environment for a Gateway Determination, proposing to -*
 - a *Amend Schedule 1 Additional Permitted Uses of Wollongong Local Environmental Plan to include –*
 - *Agricultural produce industry (fruit crushing, fermenting and bottling facility).*
 - *Information and education facility (visitors centre).*
 - *Industrial retail outlet (cellar door premises).*
 - *Food and drink premises (and ancillary cooking school).**as additional permitted uses (with consent) for land at 117 Darkes Forest Road, Darkes Forest, being Lot 86 DP 752054.*
 - b *Rezone parts of Lot 86 DP 752054 (the areas surrounding the existing dwelling and existing mine-related infrastructure) from E2 Environmental Conservation to E3 Environmental Management to reflect the existing and potential future land uses.*

- 2 *The following additional investigations be requested as part of the Gateway determination –*
- a *A Potable Water and Wastewater Assessment that includes a Neutral or Beneficial Effect (NorBE) assessment.*
 - b *A Bushfire Hazard Assessment.*
 - c *An Aboriginal cultural heritage due diligence assessment.*
 - d *An Ecological Impact Assessment.*
 - e *A Contamination Assessment, due to the former mine use.*

On 18 July 2017 the Department of Planning issued a Gateway Determination which required (in part):

- 1 *Prior to community consultation the planning proposal is to be updated to include the information on the following issues to address potential impacts of the proposal –*
 - *Water quality.*
 - *Bushfire risk.*
 - *Contamination.*
- 2 *Consultation is required with the following public authorities under section 56 (2)(d) of the Act and comply with the requirements of relevant section 117 directions –*
 - a *Office of Environment and Heritage (NPWS).*
 - b *NSW Rural Fire Service.*
 - c *Transport for NSW - Roads and Maritime Services.*
 - d *Water NSW.*
 - e *Endeavour Energy.*
 - f *Illawarra Aboriginal Land Council.*

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal. Any agency advice received and Council's proposed response to this advice should be placed on public exhibition with the planning proposal.

As indicated, the Gateway Determination required the completion of additional studies and agency consultation prior to exhibition. The Gateway Determination was extended to allow the completion of studies and agency consultation; however, it expired on 21 January 2021. Despite the timeframe lapsing, the current determination remains valid pending a new decision from the Department. The legislation does not indicate a consequence if a Gateway timeframe is not met.

In 2018, the Department exhibited five strategic amendments to retail land use definitions, including a new 'artisan food and drink industry' definition. The aim was to clarify a definition reflective of the growing artisan and craft food and drink industries.

Artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following –

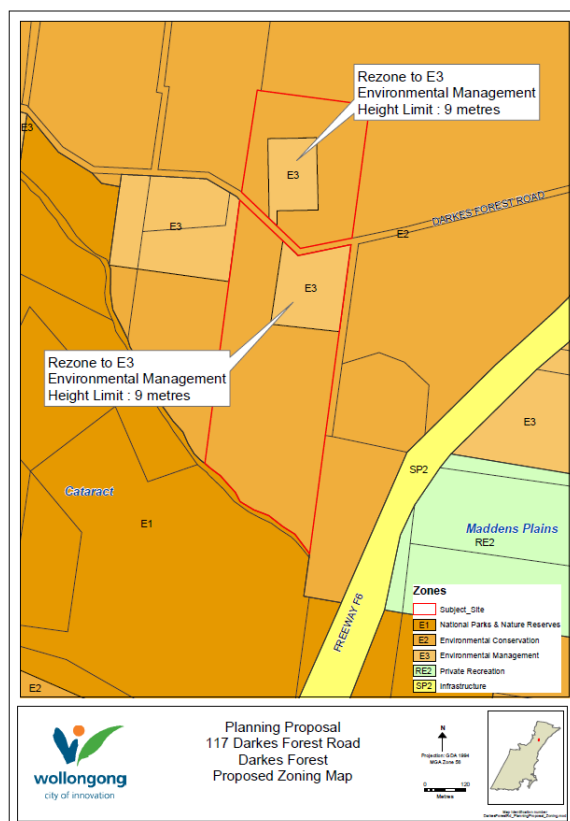
- a *A retail area for the sale of the products.*
- b *A restaurant or café.*
- c *Facilities for holding tastings, tours or workshops.*

The new definition accounts for all the uses proposed within this proposal, except for *bed & breakfast accommodation* which is permissible in E3 zone in the land use table. The new definition also simplifies the amendment needed to Schedule 1 of WLEP 2009. This creates greater certainty, for the community and the developer, about future uses at the site.

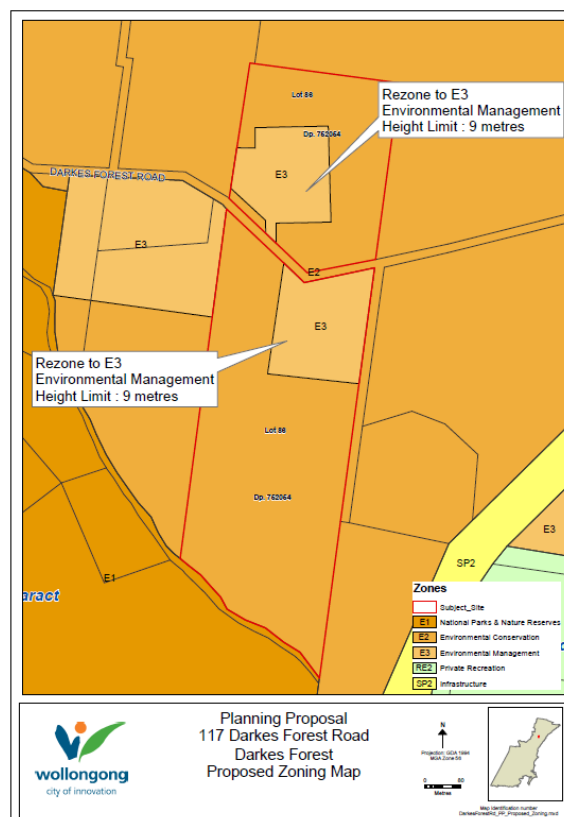
At this stage, it is not proposed to permit the *artisan food and drink industry* use more broadly across the E3 Environmental Management zone.

In January 2020, the additional reports required by the Council resolution were submitted for consideration. These have been reviewed internally and externally, and relevant comments provided to the applicant. Over the last year, the application has progressed, in liaison with Council's Environment Officer and Water NSW. The revised proposal is considered suitable for reporting to Council, and if supported, a new Gateway Determination and public exhibition.

The applicant has maintained their preference for most of the site to be rezoned to E3 Environmental Management to enable their redevelopment proposal. An extended E3 area in the northern portion of the site has been reviewed. It is now considered that a slightly larger area of land can justifiably be rezoned to E3. This is shown below in the Proposed Zoning Map 2021. The expanded boundary accommodates bushfire asset protection zones and proposed wastewater treatment areas.



WLEP 2009 Proposed Zoning Map 2017



WLEP 2009 Proposed Zoning Map 2021

On 19 March 2021 the revised draft Planning Proposal request was referred to the Wollongong Local Planning Panel (LPP) for advice prior to reporting to Council. The Panel advised that the proposal has demonstrated strategic and site-specific merit and the proposed instrument should be submitted for a Gateway Determination. The Panel recommended that prior to reporting to Council the ecological reports be updated with particular attention on the potential impacts on koala habitat (if any), as a consequence of legislative changes.

The applicant submitted a response to the Panel's comments, dated 7 April 2021, outlining how the Ecological Constraints Assessment (Ecoplaning 2020) supporting the application considers the proposal to have a 'low' likelihood of impacting koalas. Further, the revised State Environmental Planning Policy (Koala Habitat Protection) 2021 (Koala SEPP 2021) is not applicable to the proposal as no koalas have been recorded within 2.5 km of the site, within the last 18 years. The site is also not known to have a historical koala occupation. Due to the 'low likelihood' of Koala habitat on the site (trees listed in Schedule 2 of Koala SEPP 2021) and the Koala SEPP 2021 not being applicable to the site, the response concludes that the proposal will not adversely affect koalas.

PROPOSAL

The revised draft Planning Proposal seeks to facilitate redevelopment of the former mining infrastructure and the site as an *artisan food and drink industry* with complementary uses. This report addresses the applicant's response to Council's resolution of 8 May 2017, the changes to the Department's Standard Instrument Dictionary of standard definitions, and the increased area of land to be rezoned to E3, in the northern portion of the site.

The revised draft Planning Proposal seeks the -

- 1 Partial rezone of the site from E2 Environmental Conservation to E3 Environmental Management.
- 2 A maximum building height of 9m within the E3 areas.
- 3 An amendment to Schedule 1 – Additional Permitted Uses to include *artisan food and drink industry* as an additional permitted use (with consent) for E3 zoned land within the northern part of the site.

This will enable the small-scale reuse and adaptation of the former mine buildings on the site. The partial rezoning of the area surrounding the existing dwelling (southern side of the site) will also enable (subject to development assessment) *bed and breakfast accommodation*, as defined in the LEP. The retention of the site's environmental zoning ensures that any future development application will need to have regard to the site's ecological values and protect, maintain and/or improve the environmental outcomes at the site.

Permissibility

The subject site is currently zoned E2 Environmental Conservation under the Wollongong Local Environmental Plan (WLEP) 2009, and *artisan food and drink industries* are not permissible.

The proposal, therefore, requires partial rezoning of the site to E3 Environmental Management, and an amendment to Schedule 1 – Additional Permitted Uses of the WLEP 2009, to proceed. *Bed & breakfast accommodation* is permissible in E3 zoned land.

Zone	Land Uses Permitted with consent under WLEP2009	
E2 – Environmental Conservation	Environmental facilities; Environment protection works; Extensive agriculture; Oyster aquaculture; Recreation areas	
E3 – Environmental Management	Animal boarding or training establishments; Building identification signs; Community facilities; Environmental facilities; Extensive agriculture; Farm stay accommodation; Home-based child care; Pond-based aquaculture; Roads; Tank-based aquaculture	Bed and breakfast accommodation; Business identification signs; Dwelling houses; Environmental protection works; Farm buildings; Forestry; Oyster aquaculture; Recreation areas; Secondary dwellings;

The adaptation and reuse of the existing infrastructure for cider production (associated with the nearby orchard) has strategic merit and could offer several economic and social benefits, including new local employment opportunities, a boost to a local food producer, and a new tourist destination in the Illawarra. For the owner, it will reduce production costs, as the cider is currently manufactured over 3 sites. The reduction in food miles will have ecological benefits.

Further, the proposed revised partial rezoning and Schedule 1 amendment are consistent with the development and zoning pattern along Darkes Forest Road. The proposal also aligns with the findings of the Darkes Forest Local Environmental Study 2007, whereby areas being utilised for rural purposes (e.g. the orchard) are zoned E3 Environmental Management, and bushland areas are zoned E2 Environmental Conservation. The proposal achieves an appropriate balance between protecting the site and the surrounding catchment's environmental values whilst allowing for limited development, in previously disturbed areas.

CONSULTATION AND COMMUNICATION

The draft planning proposal has not been publicly exhibited.

The Wollongong Local Planning Panel has advised that the proposed instrument should be submitted for a Gateway determination because the proposal has demonstrated strategic and site-specific merit.

The revised information in support of the planning proposal has been reviewed by Council's Environment & Stormwater Officers, who are satisfied that the proposal gives adequate consideration to the S9.1 Directions and is consistent with the outcomes of the *Illawarra Shoalhaven Regional Plan 2015*.

Water NSW has also reviewed the amended planning proposal and is now satisfied that the wastewater treatment method has been sufficiently resolved. A neutral or beneficial effect (NorBE) on water quality can likely be achieved at DA stage, in compliance with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

The NSW RFS has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 9.1 of the Environmental Planning and Assessment Act 1979, and raises no objections to the proposal subject to future development complying with Planning for Bush Fire Protection 2019.

PLANNING AND POLICY IMPACT

The 2017 Council report included assessment that the draft Planning Proposal is generally in accordance with the objectives of the *Illawarra-Shoalhaven Regional Plan 2015* and Wollongong 2028 Community Strategic Plan. The following additional policies are also now applicable -

Wollongong Local Strategic Planning Statement (2020)

On 29 June 2020, Council adopted the Wollongong Local Strategic Planning Statement (LSPS). The draft Planning Proposal request was lodged prior to the exhibition and adoption of the LSPS. The draft LSPS noted that Council was assessing a draft Planning Proposal on the site. The draft Planning Proposal is not inconsistent with the LSPS. The adaptive reuse of the former mine buildings to support local agricultural production and tourism is appropriate and not inconsistent with Darkes Forest not being identified as an area for large scale growth or residential development.

Economic Development Strategy

The draft Planning Proposal request is consistent with Council's Economic Development Strategy (2019) which focuses on the provision of more local jobs through a variety of measures, including more local tourism attractions.

State Environmental Planning Policy (Koala Habitat Protection) 2021 (Koala SEPP 2021)

The revised Koala SEPP 2021 commenced on 17 March 2021. The SEPP's purpose is to stabilise and increase koala populations across NSW by ensuring that koala habitat is properly considered during the development assessment process. Consultants for the applicant have advised that the site is not known to have a historical koala population and this draft Planning Proposal is unlikely to adversely affect koalas.

Draft Illawarra Shoalhaven Regional Plan 2041

On 2 November 2020, the *draft Illawarra Shoalhaven Regional Plan 2041* was released for exhibition until 17 December 2020. On 7 December 2020, Council considered a report on the draft Plan and resolved to make a submission. The draft updated *Illawarra Shoalhaven Regional Plan 2041* will guide

strategic planning and land use decisions in the region for the next 20 years. The draft Plan contains 30 objectives, supported by a mix of actions, strategies and collaboration activities. The draft Planning Proposal is consistent with -

- *Objective 5: Create a diverse visitor economy* as the Planning Proposal represents a plan to protect heritage, biodiversity and agriculture to enhance cultural, agri and eco-tourism.
- *Objective 9: Promote agriculture innovation, sustainability and value-add opportunities* by allowing cider to be processed locally, replacing the need to transport and process the apples outside of the LGA.

Wollongong 2028 Community Strategic Plan

The report contributes to the delivery of Wollongong 2028 objective “There is an increase in the health and wellbeing of our community”, under the Community Goal “We have a healthy community in a liveable city”.

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-21
Strategy	4 Year Action	Operational Plan Actions
5.1.1 We work in partnership to build on opportunities to strengthen vulnerable communities	1.5.1.2 Continue to undertake social, land use and environmental planning activities that assists in service planning	1.5.1.2.4 Assess rezoning submissions and progress supported Planning Proposals

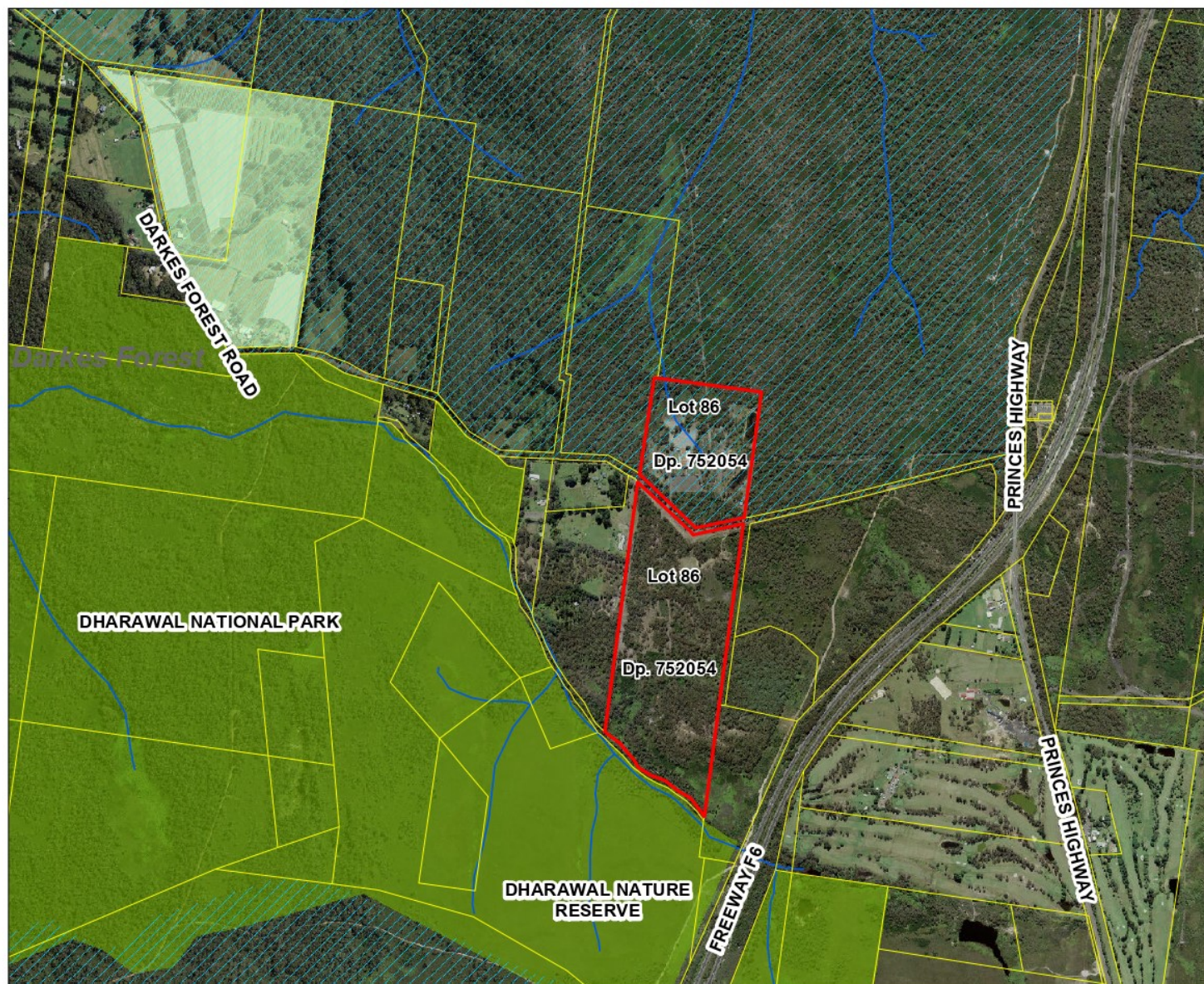
CONCLUSION

On 8 May 2017, Council resolved to prepare of a draft Planning Proposal for 117 Darkes Forest Road, Darkes Forest to enable former mine buildings to be used for cider production and as a visitor facility.

Following the completion of additional studies, agency consultation and the introduction of a new definition for artisan food and drink premises, a revised draft Planning Proposal has been prepared. The revised draft Planning Proposal is generally in accordance with the relevant objectives of the Illawarra-Shoalhaven Regional Plan 2015, the Wollongong Local Strategic Planning Statement and Economic Development Strategy.

The Wollongong Local Planning Panel determined that the proposal has demonstrated strategic and site-specific merit, and following clarification of Ecological matters, should be reported to Council.

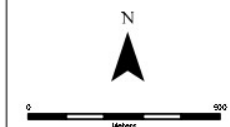
It is recommended that Council resolve to seek a new Gateway Determination, from the NSW Department of Planning, Industry and Environment, to enable public exhibition of the revised Planning Proposal, for a minimum period of 28 days.



Location Map

Key

- Subject site
- Watercourse
- Glenburnie Orchard
- Sydney Drinking Water Catchment
- National Park



Airphoto : 2008
 Drawn By: H. Jones
 Date: 09-03-2017
 LUP ref: Darkes Forest PP 2008Air

