

DRAFT PLANNING PROPOSAL TO PERMIT REUSE OF FORMER DARKES FOREST MINE SITE FOR CIDER PROCESSING FACILITY AND ASSOCIATED USES



LOCAL GOVERNMENT AREA: Wollongong City Council

NAME OF DRAFT LEP: Former Darkes Forest Mine site - Proposed agricultural produce industry (fruit crushing, fermenting and bottling facility) and associated uses

ADDRESS OF LAND: Lot 86 DP 752054, 117 Darkes Forest Road, Darkes Forest

Draft Planning Proposal - Table of Contents

Part 1 – Statement of intended outcomes	3
Part 2 – Location and Background	3
Part 3 – Proposed amendments to planning controls	7
Part 4 – Justification	19
Section A – Need for the Planning Proposal.....	19
Section B – Relationship to strategic planning framework	21
Section C – Environmental, social and economic impact.....	24
Section D – State and Commonwealth interests.....	26
Part 5 – Mapping	31
Part 6 – Community Consultation	33
Part 7 – Projected Timeline.....	33
Table A - Checklist of State Environmental Planning Policies.....	35
Table B - Checklist of Section 117 Ministerial Directions	38

Part 1 – Statement of intended outcomes

This draft Planning Proposal seeks to enable the surface buildings and hardstand areas of the former Darkes Forest Mine site to be adapted for use as a cider processing facility in association with a nearby commercial orchard, whilst maintaining the important environmental values of the site and surrounds. In addition to the primary use of producing cider, this proposal seeks to permit the following uses:

- a cellar-door premises and visitors centre (allowing for sale of the cider),
- a cooking school and café, and
- bed and breakfast accommodation (associated with the existing dwelling on the southern portion of the property).

The proposal seeks to support a local orchard in diversifying their business and providing a distinctive tourist attraction for the region. By providing this former coal mine site with a new and viable use, incentives to protect and restore the natural environment are created, as visitors to the site will also be attracted to the unique and beautiful setting.

As the northern portion of the property (north of Darkes Forest Road) is located within the Sydney Drinking Water Catchment, a key objective of the proposal is to ensure that any future development will have a neutral or beneficial effect (NorBE) on water quality. Whilst further information to assess the environmental impacts of wastewater management is necessary, the proposal represents a good opportunity to showcase sustainable water management in the food processing industry.

The applicant was also seeking an amendment to permit a two lot subdivision along Darkes Road, splitting the southern portion of the property containing an existing dwelling-house from the northern portion which houses the former mine infrastructure. This subdivision is not supported by Water NSW as it is likely to lead to future wastewater arrangements being contained on separate properties, potentially under different ownership. In any case, Council does not consider that sufficient justification exists to exempt the subject land from the minimum lot size provisions which apply to the entire locality of Darkes forest. The draft Planning Proposal therefore does not seek to progress the amendment to the minimum lot size map.

Part 2 – Location and Background

This draft Planning Proposal applies to Lot 86 DP 752054, 117 Darkes Forest Road, Darkes Forest ('subject land'). Darkes Forest is a small suburb in the north of the Wollongong Local Government Area, located on the plateau of the Illawarra Escarpment, within the O'Hares Creek and Woronora Catchments. Darkes Forest supports mostly rural land uses and environmentally sensitive areas. The area also includes a number of recreational facilities including the Maddens Falls bush walking tracks, Darkes Forest Horse Riding Ranch, Boomerang Golf Course and the Glenbernie Orchard (fruit picking, orchard tours & sales), all of which support tourism in the area. Helensburgh, 11km to the north east, is the closest local centre.

The subject property measures 41.4 hectares and is located on either side of Darkes Forest Road, to the west of the Princes Highway. The portion on the north of Darkes Forest Road contains buildings and other infrastructure (such as car parks and oxidation lagoons) associated with its former use as the Darkes Forest Mine (in operation from 1971-1991). This northern portion forms part of the Woronora River and Sydney Drinking Water Catchment. The area south of Darkes Forest Road contains a dwelling house as well as remaining effluent irrigation infrastructure associated with the former mine (no longer in use). This area drains to Maddens Creek to the south and does not form part of the Sydney Drinking Water Catchment but forms the headwaters of the Georges River, which flows to Botany Bay. The subject land is bounded by the Dharawal State Conservation Area to the south, a natural area which supports rich biodiversity. Whilst the area immediately surrounding the dwelling and former mine buildings is cleared, large parts of the subject land are vegetated and contain areas of Coastal Upland Swamp, an endangered ecological community (EEC).

Location Map

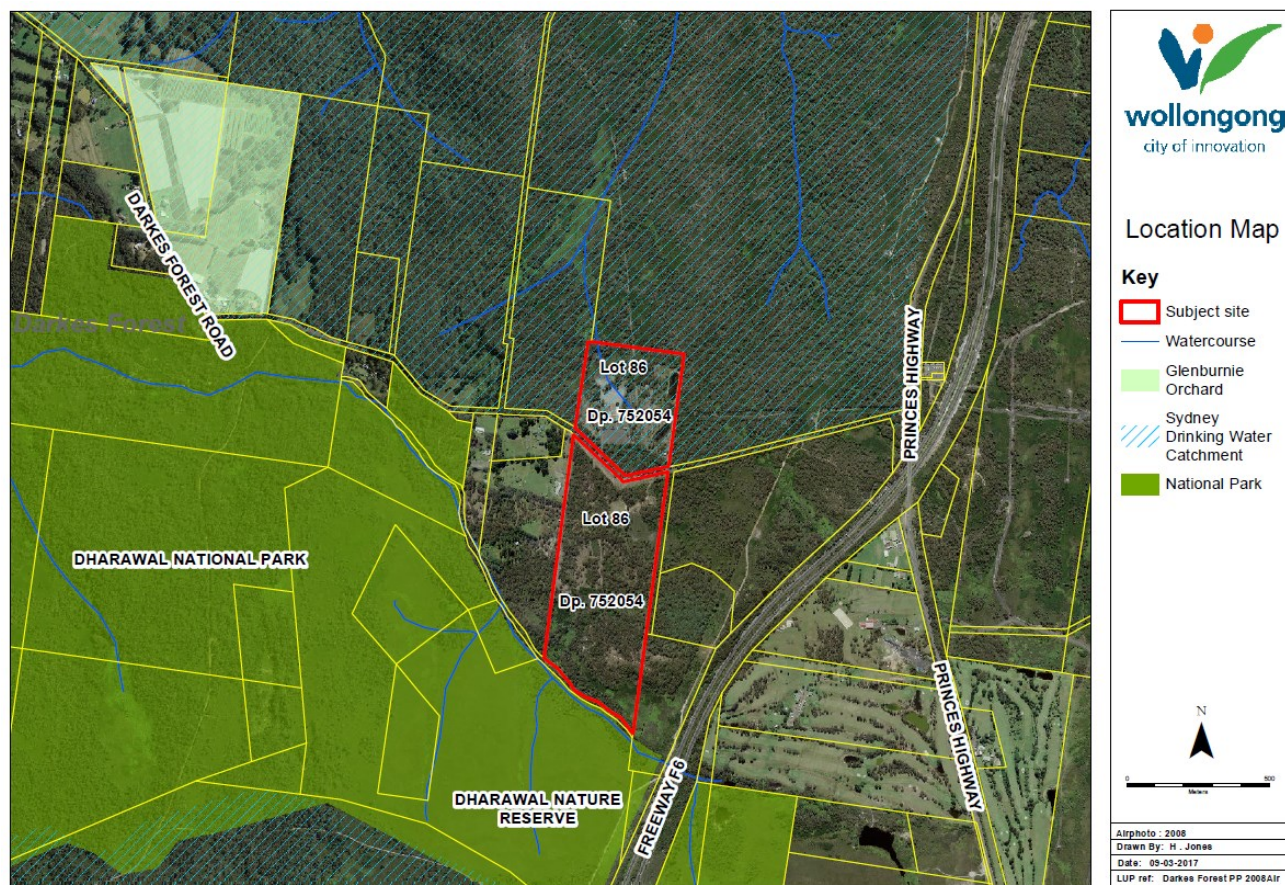


Figure 1: Location Map showing Lot 86 DP 752054, 117 Darkes Forest Road, Darkes Forest (subject land) in relation to the Glenburnie Orchard to the west, Sydney Water drinking catchment, and the Dharawal Nature Reserve to the south.

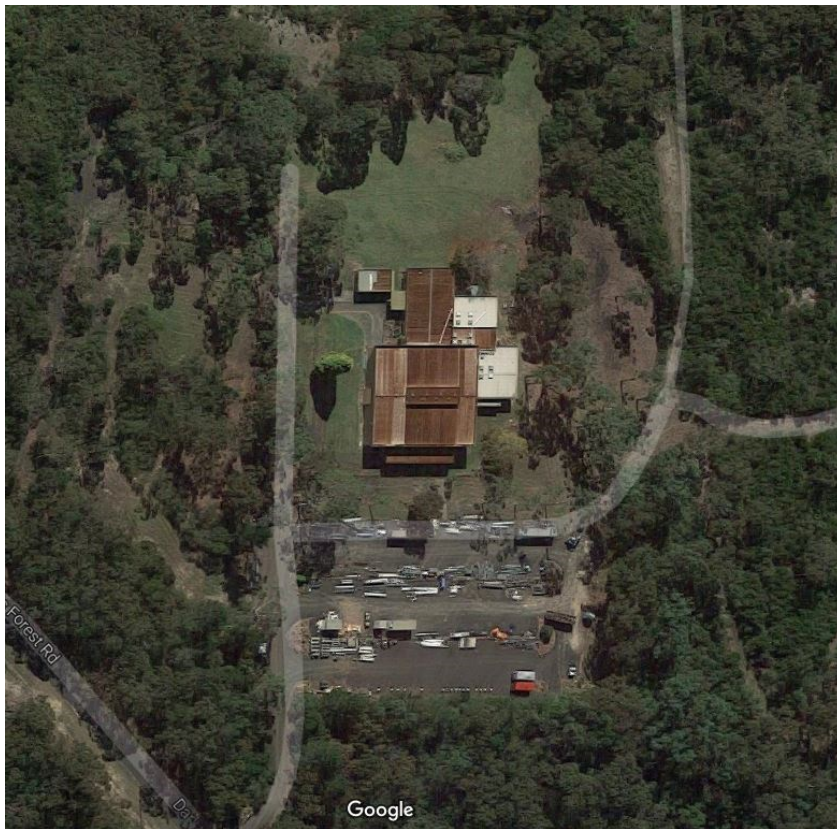


Figure 2: Aerial photograph (2017) - the northern portion of the subject land which is occupied by the former mine facilities.

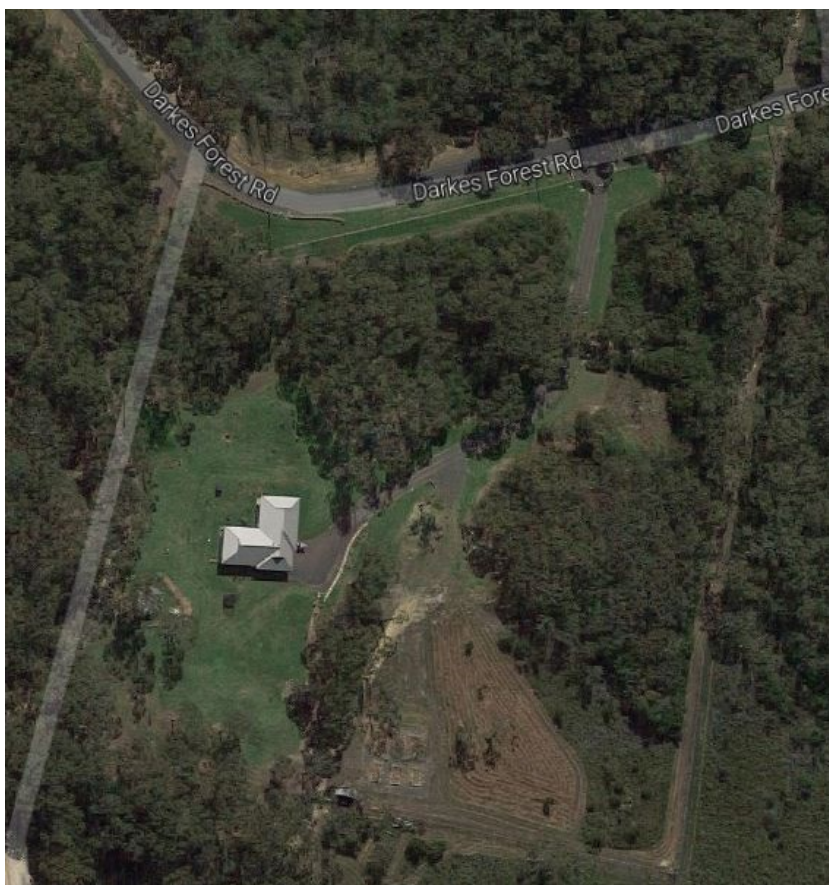


Figure 3: Aerial photograph (2017) - the southern portion of the subject land which is occupied by a dwelling.

Historical photographs

In 1971 a new mine was created at Darkes Forest to mine the western lease area of the Coalcliff Mine. The mine development included sinking an access shaft, large administration and bathhouse buildings, access lift, ventilation shaft and wastewater systems (oxidation lagoons and effluent irrigation areas). Below are some historical photographs of the mine during operation.



Darkes Forest Mine Surface Facilities, 1972

(Kembla Coal & Coke Company Publications)

Source: <http://www.illawarra-heritage-trail.com.au/index.php/sites/jetty-mine-csa-composite/jetty-mine>



Darkes Forest Mine site 1979 – Source: Illawarra Images, Wollongong City Library:

http://mylibrary.wollongong.nsw.gov.au/cgi-bin/spydus.exe/FULL/PIC/BIBENQ/2198685/17579783_1

Currently, there are limited incentives to manage the former mine site and vandalism is evident.

Unauthorised clearing and importation of fill was carried out in a number of locations across the subject land in 2005. Wollongong City Council and the Sydney Catchment Authority (SCA) investigated the matter. The SCA issued a clean-up notice under the *Protection of the Environment Operations Act 1997* in October 2006 with requirements to remove fill and submit a Revegetation Management Plan. Council issued an Order in June 2006 under the *Environmental Planning and Assessment Act 1979* requiring works to assist natural regeneration of the site and maintenance until 2011.

In accordance with the SCA and Council's requirements, a Vegetation Restoration Plan was prepared and a qualified bush regeneration company was engaged to carry out the works. Council and the SCA subsequently carried out maintenance inspections and Council closed the Order in 2011.

The dwelling was approved in 2006, under former planning controls (Wollongong Local Environmental Plan No.38), with modifications to the method of wastewater treatment and internal layout approved in 2010.

Part 3 – Proposed amendments to planning controls

The subject site is currently zoned E2 Environmental Conservation under Wollongong LEP 2009 which greatly restricts options for reusing the former mine buildings.

The current landowners of the subject land also own the nearby Glenbernie Orchard (located 1.3km to the west) which produces apples, stone fruit and a variety of products such as honey, jams, oil and juice. Alcoholic and non-alcoholic cider from apples grown on the orchard is currently produced in stages at three different locations: crushing at Thirlmere (30km west of the site), fermenting at Sutton Forest (70km south-west of the site) and bottling at Prestons in Western Sydney (35km north of the site). To increase efficiency and produce the cider locally, it is proposed to retrofit the existing mine building to allow for production of cider in one central nearby location.

It is proposed to amend *Schedule 1 Additional Permitted Uses* of Wollongong LEP 2009 to include:

- agricultural produce industry (fruit crushing, fermenting and bottling facility);
- information and education facility (visitor centre);
- industrial retail outlet (or cellar door premises); and
- food and drink premises (café and ancillary cooking school).

as additional permitted uses (with consent) for the subject land.

It is also proposed to rezone parts of the subject land surrounding the existing mine buildings, carpark and dwelling from E2 Environmental Conservation to E3 Environmental Management to better reflect the current and proposed future land uses over parts of the property (refer to Part 5 for maps).

The E2 Environmental Conservation Zone will be retained over Endangered Ecological Communities (EECs) and other ecologically sensitive vegetation to ensure the highest level of protection.

Currently there are no height restrictions which apply to the subject land, given the limited amount of development that can occur in an E2 zone. It is proposed to place a height restriction of 9 metres over the areas proposed to be rezoned E3 Environmental Management.

The proposal will not change the minimum lot size for subdivision applying to the subject land which is 40 hectares.

This proposal will allow the last apple farm in Wollongong to diversify their offerings and remain viable by enabling them to produce boutique cider close to their orchard. Should this Planning Proposal be approved, a development application supported by environmental studies would be necessary to carry out these uses and any associated works.

Schedule 1 Additional Permitted Uses

A cider processing facility is not a definition found in Wollongong LEP 2009, however could legally be defined as an *agricultural produce industry*. Wollongong LEP 2009 states that an:

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Note.

Agricultural produce industries are a type of rural industry—see the definition of that term in this Dictionary.

Agricultural produce industries are only permitted in rural zones (RU1 Primary Production and RU2 Rural Landscape) and in order to maintain environmental protection objectives across the subject land it is not recommended to rezone the land for rural purposes. Including agricultural produce industries as a permissible use in environmental zones is also not recommended, as Wollongong contains a wide variety of environmentally sensitive and natural areas which are unlikely to be able to sustainably support rural industry.

To allow for the cider processing facility it is proposed to amend *Schedule 1 Additional Permitted Uses* of Wollongong LEP 2009 to include agricultural produce industries as a site specific permissible use on the subject land.

In addition, uses that are ancillary to the primary use (that are not considered additional [separate/stand-alone] uses) are permitted where the primary use is existing and lawful – for example the infrastructure associated with wastewater treatment and disposal from a cider processing plant would be considered ancillary to the primary use of producing cider.

To allow for some flexibility in utilising the former mine site and to support nearby local food producers, it is also proposed to include *food and drink premises*, *information and education facilities* and *industrial retail outlet* as additional permitted uses for the subject land to permit a café/cookery school, visitors centre and a cellar door.

There is no definition of a cooking school in Wollongong LEP 2009. A cooking school does not meet the standard definitions of ‘*educational establishment*’ or ‘*school*’ or ‘*industrial training facility*’ (refer to land use definitions below). It is considered that a cooking school which would utilise the commercial kitchen within the café would be an ancillary use to the café.

It is considered that a large restaurant is probably not appropriate for the subject land given its location and environmental values; however a small café to support the other uses may be able to operate within site constraints. In addition, some microbreweries offer tastings, food and drinks in a bar-like setting, which may offer an alternative associated use with the cider processing facility. The land use definition of ‘*food and drink premises*’ would allow for a range of these potential uses which could sustainably support the proposed tourist attraction.

The water and wastewater requirements of a café will need to be assessed prior to public exhibition, should the proposal proceed through the Gateway. Further analysis of environmental impact and management measures would also take place at the development application stage.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note.

Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.

The following land use definitions are not considered to fit the proposed cooking school:

educational establishment means a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

school means a government school or non-government school within the meaning of the Education Act 1990.

Note.

Schools are a type of educational establishment—see the definition of that term in this Dictionary.

industrial training facility means a building or place used in connection with vocational training in an activity (such as forklift or truck driving, welding or carpentry) that is associated with an industry, rural industry, extractive industry or mining, but does not include an educational establishment, business premises or retail premises.

The proposed visitors centre would be defined as an *information and education facility*:

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Presently, the definition of *cellar door premises* is very specific to the wine industry and *industrial retail outlet* is considered a better definition for the proposal:

cellar door premises means a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.

Note.

Cellar door premises are a type of **retail premises**—see the definition of that term in this Dictionary.

industrial retail outlet means a building or place that:

- (a) is used in conjunction with an industry or rural industry, and
 - (b) is situated on the land on which the industry or rural industry is located, and
 - (c) is used for the display or sale (whether by retail or wholesale) of only those goods that have been manufactured on the land on which the industry or rural industry is located,
- but does not include a warehouse or distribution centre.

Note.

See clause 5.4 for controls relating to the retail floor area of an industrial retail outlet.

Schedule 1 Additional Permitted Uses provides for site-specific controls where proposals have strategic merit but cannot otherwise be accommodated in the standard Land Use Tables. This proposal is considered a special case as it relates to disturbed land which contains viable (and relatively modern) infrastructure that could be adapted for a compatible use on a large parcel of land which is mostly characterised ecological values. There are currently no practicable permissible uses for the former mine surface buildings and carpark. This is evidenced by the number of development application refusals listed in the development application summary provided in **Table 1** below. Approved uses for the southern portion of the site are associated with the dwelling house.

Table 1: Development History 117 Darkes Forest Road

Application	Description/Comment	Status
DA 1977/277	Cycle shelter shed extension [associated with Darkes Forest Mine]	Approved 23/12/1977
BA 1978/1344	Brick Store [associated with Darkes Forest Mine]	Approved 6/11/1978
DA 1981/809	Alterations to the treatment and disposal works for bathhouse effluent at Darkes Forest mine	Approved 16/10/1981
DA 2006/346	Site rehabilitation of old mine shaft area, provision of services and roads, construction of a plant training area and provision for itinerant worker's accommodation. Refused based on inconsistency with Wollongong Local Environmental Plan 1990, adverse impacts on environment with respect to water quality, vegetation removal, drinking water catchment and local character and streetscape, and set undesirable precedent.	Refused 21/06/2006
DA 2006/450	Single storey dwelling house	Approved 7/10/06, CC approved 4/08/2010
DA 2006/450/B	Single storey dwelling-house - modification to internal layout, change of septic system and roof colour change	Approved 14/03/2011 CC Approved 11/03/2011
MP 2007/103	The proposal involved the drilling of approximately 20 exploratory wells to a depth of 50m below the base of the Illawarra Coal Measures to determine the gas potential in un-mined coal seams.	15 coal seam gas exploration boreholes approved by State Government under Part 3A.
MP 2007/103/A	Modification - proposed extra gas exploration borehole A19 off Darkes Forest Road - revised Environmental Assessment dated December 2010.	Approved by State Government under Part 3A
MP 2007/103/B	Apex Energy Gas Exploration Project Modification 2 – Extension of Time. Application to extend the expiry date of the approval, "from three years from the commencement of drilling the first borehole".	Refused by PAC of NSW under delegation.
DA 2008/601	Change of use from mine facility to camping area and amenities, landscaping and addition of decking to existing building. Characterisation: "leisure area", which was permissible in 7(a) zone. Refused based on inconsistency with WLEP 1990, Drinking Water Catchments REP No.1 and insufficient information for stormwater management; wastewater management; impact of tree removal; potential site contamination; on-site waste management; and, traffic and parking arrangements.	Refused 9/11/2009
DA 1589/2009	Two (2) lot subdivision Refused: Proposed development is inconsistent with the Draft Wollongong Local Environmental Plan 2009- minimum lot size 39.99ha	Refused 5/5/10
PL 2011/16	Recreation land use - recreation facility (outdoor) - camping area with cricket nets Withdrawn, incompatible with current land use zone.	Withdrawn 21/04/2011
DA 2015/51	Residential - construction of outdoor entertainment area and associated landscaping works	Approved 18/03/2015

PC 2016/770	Residential - construction of outdoor entertainment area and associated landscaping works	Approved 26/04/2016
-------------	---	---------------------

Land Use Zones

Rezoning of parts of the site is also proposed, in order to reflect the proposed reuse of the existing buildings and car park area associated with the former mine on the northern portion of the subject land, and the existing approved dwelling on the southern portion. As the maps in Part 4 illustrate, an E2 Environmental Conservation zoning will be retained over most of the subject land, reflecting its significant environmental and drinking water catchment values. An E3 Environmental Management Zone will be applied over the significantly disturbed and altered areas that are proposed to be used for cider processing and associated uses and the existing dwelling area. The Land Use Tables of both these zones are reproduced below, allowing for comparison of objectives and permissible uses.

Dwelling houses are permitted in the E3 Zone only when the requirements of *Clause 4.2A Erection of dwelling houses on land in certain rural and environmental protection zones* in Wollongong LEP 2009 are satisfied. To satisfy Clause 4.2A, a new dwelling would need to be located on a lot as large as the specified minimum lot size, in this case 40 hectares. The site measures 40 hectares but already houses one dwelling. No change to the minimum lot size for subdivision is proposed.

Secondary dwellings (granny flats) are permitted in the E3 zone with consent but are restricted to 67% of the size of the primary dwelling, in this case approximately 162.81 m². Secondary dwellings (granny flats) are not permitted to be subdivided into a separate lot from the primary dwelling unless both lots will meet the minimum lot size for subdivision (in this case 40 hectares so subdivision would not be possible). Any future secondary dwelling application would need development consent and would need to consider wastewater treatment arrangements as well as other environmental constraints such as bushfire protection.

The rezoning of the area surrounding the existing dwelling will also permit (subject to development assessment) bed and breakfast accommodation as defined in Wollongong LEP 2009:

bed and breakfast accommodation means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

Note.

See clause 5.4 for controls relating to the number of bedrooms for bed and breakfast accommodation. Bed and breakfast accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

The retention of an environmental zoning across the site will ensure that any future development application would need to have regard for the environmental values of the site and would need to protect, maintain and/or improve the environmental outcomes on the site. Potential environmental impacts of the proposal are discussed further in Part 3 of this document.

Table 2: Comparison of E2 and E3 zones

Zone	Objectives	Permitted without consent	Permitted with consent	Prohibited
E2 Environmental Conservation	• To protect, manage and restore areas of high ecological, scientific, cultural or	Nil	Environmental facilities; Environment protection works;	Business premises; Hotel or motel

	aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To retain and enhance the visual and scenic qualities of the Illawarra Escarpment. • To maintain the quality of the water supply for Sydney and the Illawarra by protecting land forming part of the Sydney drinking water catchment (within the meaning of <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i>) to enable the management and appropriate use of the land by Water NSW.		Extensive agriculture; Recreation areas	accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3
E3 Environmental Management	• To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. • To provide for a limited range of development that does not have an adverse effect on those values.	Home occupations	Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Farm stay accommodation; Forestry; Home-based child care; Recreation areas; Roads; Secondary dwellings	Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Height Restrictions

Land in the E2 Environmental Conservation zone does not include a height restriction as buildings are not permitted (unless they are ancillary to one of the few permissible land uses in the zone). As this proposal includes application of an E3 zoning to parts of the subject land, the 'Height of Buildings Map – Sheet BOB_019 will require amendment to include lot 86.

This will place a 9 metre height limit over areas proposed to be rezoned to E3 Environmental Management and ensure any future buildings or building modifications do not have unacceptable visual impacts.

Minimum Lot Size for Subdivision

Subdivision of the site is currently prohibited as the minimum lot size for subdivision is 40 hectares. The proposal does not support changing this minimum lot size to allow for subdivision as this could create an additional dwelling entitlement for the property, and additional dwellings on the subject land are not supported. Additional dwellings could have adverse environmental impacts especially in relation to clearing for bushfire protection (standards being stricter for residential and tourist uses than commercial/industrial uses) and waste water treatment and disposal. Water NSW does not support the proposed bed and breakfast accommodation (an intensified residential use) without further detail being provided as to wastewater treatment and disposal. Similarly, allowing subdivision via a Schedule 1 amendment is not proposed.

Maps and Site Photographs

The following zoning map from Wollongong LEP 2009 and Location map illustrate the current zoning and local area context of the subject land.

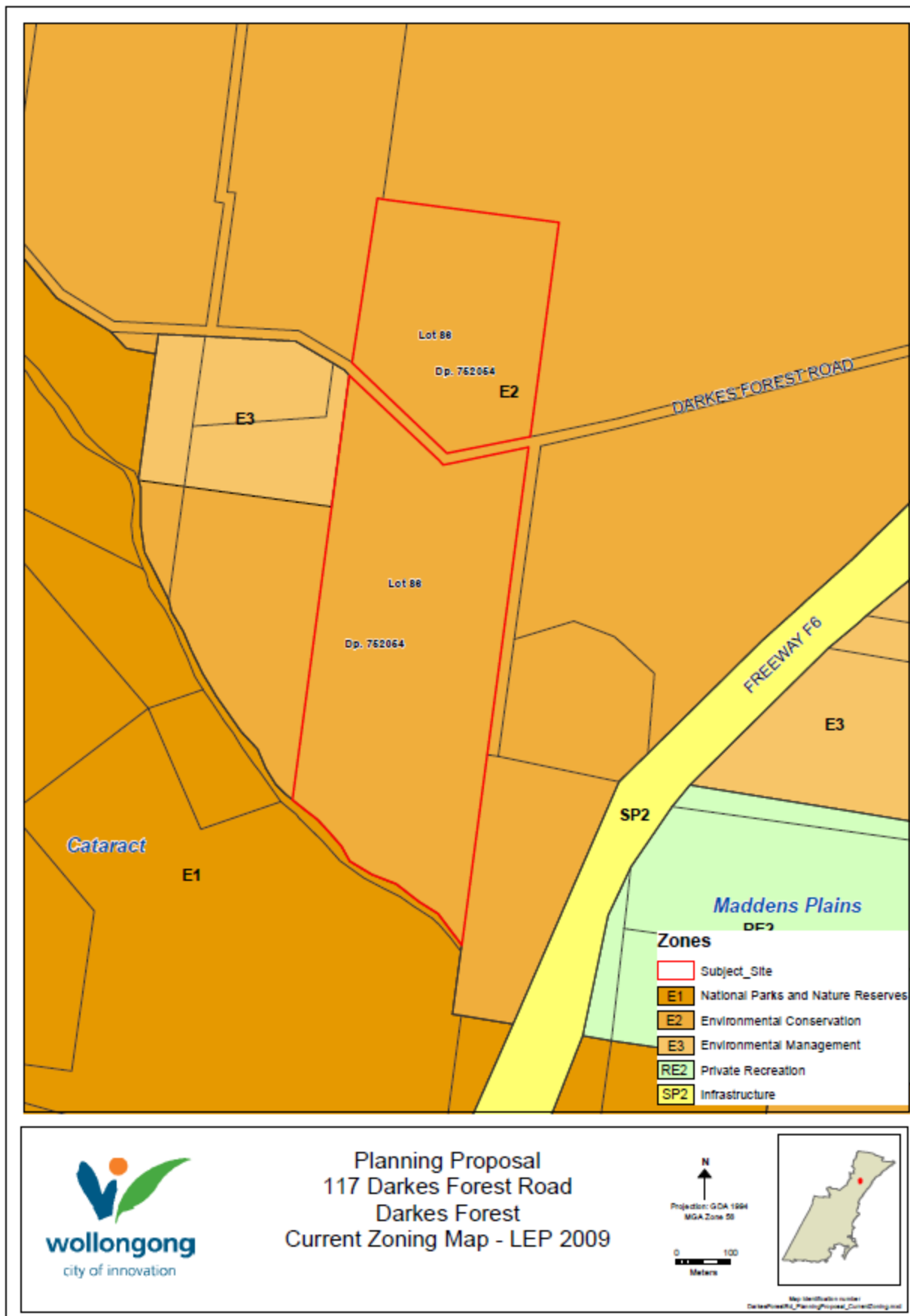


Figure 4: Wollongong LEP 2009 Zoning Map Sheet LZN_008 (Current Zoning)

Site Photographs

The following photographs were taken on a site visit 5 December 2016.



1. Darkes Forest Road



2. Potential O'Hares Shale Forest near Darkes Forest Road



3. Access road to northern portion of the subject land (former mine facilities).



4. Former administration building and shower block



5. Large car park and hardstand area



6. Managed land surrounding former mine building



7. Former effluent lagoons



8. South of Darkes Forest Road – Access trail (south of dwelling)



9. Previous effluent disposal area – Coastal Upland Swamp (Banksia Thicket)



10. Coastal Upland Swamp EEC

Part 4 – Justification

Section A – Need for the Planning Proposal

Q1: Is the planning proposal a result of strategic study or report?

The draft Planning Proposal is not the result of a specific strategic study or report prepared by or on behalf of Council. The draft proposal has been initiated by the landowner. However, the 2007 Darkes Forest Local Environmental Study (LES) prepared by Cardno Forbes Rigby is relevant to this proposal. Parts of the Darkes Forest and Maddens Plains areas located within the O'Hares Creek catchment were “deferred” under Wollongong LEP 1990, leaving the areas subject to the planning controls of Wollongong LEP 38 and zoned (7(c) *Environmental Protection (Water Catchment) Zone*) under that plan.

The LES was therefore commissioned to inform the preparation of Wollongong LEP 2009 and suggest appropriate land use zones for those deferred areas. The northern portion of the subject land (containing the mine buildings) was not included in the LES study area because it formed part of the Woronora catchment and was already within the defined Sydney Drinking Water Catchment area. However, the southern portion of the subject land located within the O'Hares Creek catchment, and which at the time was not occupied by a dwelling house, was included in the study and was recommended to be zoned E2 Environmental Conservation.

Significantly, however, the LES recommended that land with similar development characteristics to the southern portion of lot 86 as it currently stands, and located immediately adjacent to it and further west along Darkes Forest Road (Numbered '5' in Figure* below), be zoned E3 Environmental Management:

5. Two small rural holdings located on the southern side of Darkes Forest Road are well suited to an E3 Environmental Management zone. The land is characterised by rural homesteads situated on cleared grassland areas surrounded by bushland on all sides (p.21).

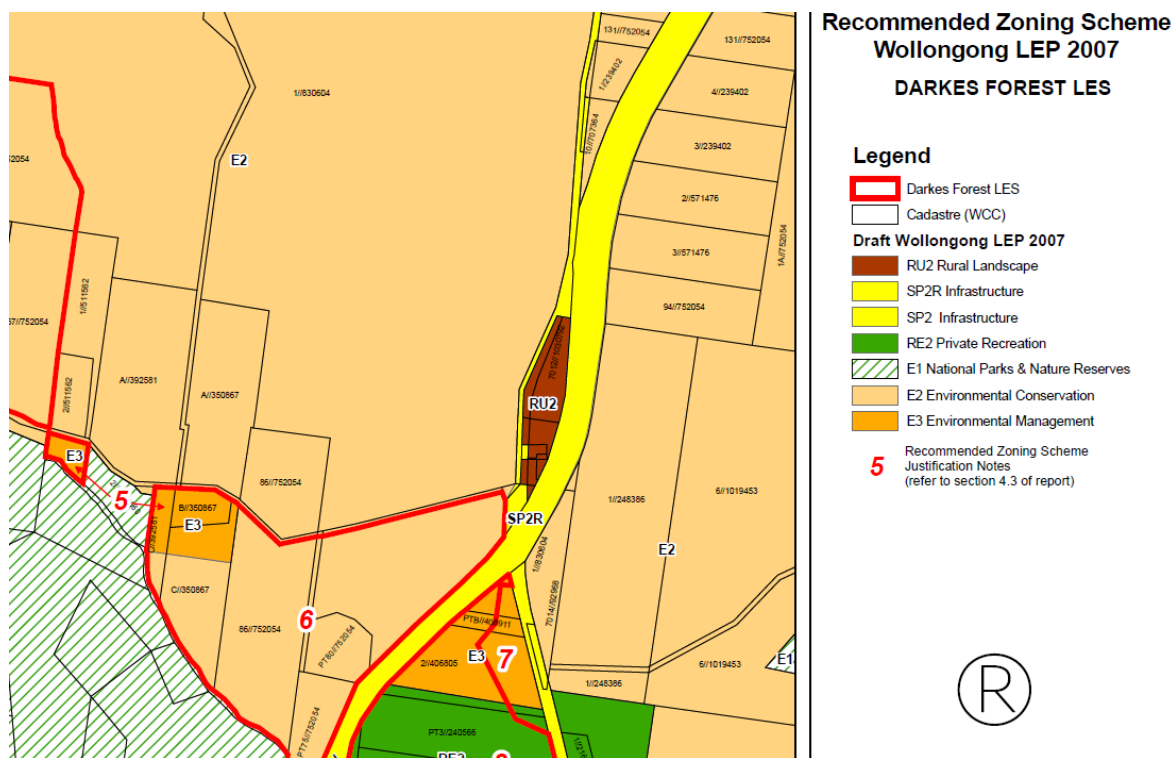


Figure 5: Proposed zoning map, Figure 9 of the *Darkes Forest Local Environmental Study, 2007*.

The current planning proposal to apply a split E2/E3 environmental zoning to the subject land would be consistent with this recommendation.

Q2: Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

This proposal is complex because there are a number of uses proposed and the former mine site is located within an environmentally sensitive area. To achieve the strategic outcomes of the draft Planning Proposal, being to permit the existing mine buildings to be reused and support an existing local business in producing boutique cider in a sustainable manner, a number of options were considered:

An RU2 Rural Landscape Zone

There are no zones in the Wollongong LEP 2009 land use table which contain all of the uses proposed for the reuse of the mine surface buildings, so irrespective of the zoning chosen a Schedule 1 amendment would be required to facilitate the proposal. A non-environmental conservation zoning such as RU2 Rural Landscape Zone would allow an agricultural produce industry however it would not be appropriate in this case due to location of the subject land on the Hawkesbury sandstone plateau and the resulting sensitive hydrological characteristics and biodiversity values of the landscape.

Adding the proposed new uses to the E3 Land Use Table in Wollongong LEP 2009 and rezoning the subject land or parts of it to E3

Inclusion of four new permissible uses to the E3 land use table would constitute a broad scale change to environmental conservation planning controls across the LGA and would weaken the legislative protection currently afforded to E3 zoned land. It would raise the expectations of landowners in terms of the types of uses their environmentally significant land can realistically be put to. This option is not supported.

The preferred option – Additional permitted uses through a Schedule 1 amendment and partial Rezoning to E3

This option involves the amendment of *Schedule 1 Additional Permitted Uses* of Wollongong LEP 2009 to permit:

- agricultural produce industry (fruit crushing, fermenting and bottling);
- industrial retail outlet;
- information and education facilities; and
- food and drink premises (café with ancillary cooking school)

as additional permitted uses for the subject land. This option also includes the rezoning of parts of the subject land to E3 Environmental Management and the retention of the E2 Environmental Conservation zone across the majority portions of the lot containing the highest conservation values.

A partial rezoning and Schedule 1 amendment would be consistent with the development and zoning pattern along Darkes Forest Road and the findings of the Darkes Forest LES 2007, whereby areas being utilised for rural purposes (e.g. the orchard) are zoned E3 and bushland areas are zoned E2. In addition, it is considered to provide an appropriate balance between protecting the environmental values of the subject land and the catchments within which it is located whilst allowing for some limited development in previously disturbed areas. Further information will be required to assess the environmental impacts and adequacy of management systems designed for the proposal however; the use of the existing infrastructure for the purposes of producing cider (associated with a nearby orchard) has strategic merit and could offer a number of economic and social benefits, including new local employment opportunities, a boost to a local food producer, and a new tourist destination in the Illawarra.

This is the option adopted by Wollongong City Council on 8 May 2017. A copy of the Council report accompanies this Planning Proposal.

Ideally, this option would include a change to the standard definition of 'cellar door premises' to include cider production in addition to winemaking. This change would require the Department of Planning to change the standard definition of 'cellar door premises' in clause 1.4 of the *Standard Instrument—Principal Local Environmental Plan*. If this change to the Standard Instrument occurred, the addition of 'industrial retail outlet' to the Schedule 1 amendment would be substituted with 'cellar door premises'.

A schedule 1 amendment is considered to be best planning mechanism to achieve the strategic planning outcomes of this proposal for the following reasons:

- An environmental zoning is considered to be the most appropriate zoning for the subject land, however it would not be appropriate to increase the range of permissible uses generally in the E3 zone as this would expand the potential uses of all E3 zoned land, thereby weakening the ability to limit development impacts on environmentally and culturally sensitive land;
- The subject land is unique and warrants site specific planning controls because it:
 - contains both extensive existing infrastructure with a high potential for adaptive reuse within a largely cleared pocket, and significant conservation values within its boundaries;
 - is strategically located in very close proximity (1.3km) to the primary producer of the apples that will be used to make the cider, thus supporting the viability of complimentary local industries and helping them to operate with small environmental footprints (reduced 'food miles') whilst at the same time supporting a diverse and robust local economy.
- The partial rezoning of the subject land from E2 to E3 is necessary to allow the proposed additional uses to be consistent with zone objectives. If the land was to remain E2, the zone objectives would render the proposed uses inconsistent with the LEP, notwithstanding the proposed Schedule 1 amendments.

The proposal has the potential to support an outcome where conservation objectives and income generating uses can occur within the one allotment. That said, additional studies relating to the management of potential environmental impacts from the proposal, particularly wastewater treatment and disposal, will be very important in determining the development's feasibility due to its potential to impact on the Coastal Upland Swamp EEC. Retention of an environmental zoning will highlight this constraint and ensure development options do not adversely impact on the natural environment or drinking water quality.

Section B – Relationship to strategic planning framework

Q3: Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The proposal is consistent with the Illawarra Shoalhaven Regional Plan 2015. In particular, the proposal is consistent with the following principles:

- *Identify and protect land with high environmental value and recognise cultural heritage values;*
- *support the sustainable use of land and water resources and build resilience to natural hazards and climate change;*
- *support a strong, resilient and diversified economy that will enable the community to respond to environmental, economic and social challenges.*

Under *Goal 1 A prosperous Illawarra Shoalhaven*, tourism is noted as a priority growth sector, with "sustainable use of national parks...agricultural lands...promote trails and activity experiences such as nature and eco based, food and wine (including agri-tourism)" encouraged (p.26). The proposal can be considered agri-tourism given its association with the Glenbernie Orchard and could add to the tourism

offerings in the area, including nature-based National Park experiences. The proposal is also consistent with *Direction 1.4: Support new and expanded industrial activity by providing well-located and serviced supplies of industrial land close to Sydney and Wollongong*. The proposal represents a small-scale rural industry unlike the traditional metal manufacturing type industries that are common in Wollongong and is consistent with the aim to diversify the economy. The proposed cider processing plant is well-located close to the apple orchard and the markets of Wollongong and Sydney.

The proposal is also consistent with *Goal 4: A region that makes appropriate use of agricultural and resource lands*. The proposal will assist in offering additional business opportunities for the existing local family-owned Glenbernie Orchard, consistent with *Direction 4.1 Protect regionally important agricultural lands as an asset to food and fibre production*. The proposal will however need to demonstrate its ability to meet *Direction 4.3 Manage and protect the Sydney Drinking Water Catchment*.

As the subject land is located within a mapped regionally significant biodiversity corridor, *Goal 5: A region that protects and enhances the natural environment* is relevant to the proposal. The goal lists a number of relevant actions including:

- *Action 5.1.1 Avoid, minimise and mitigate the impact of development on significant environmental assets; and*
- *Action 5.1.3 Protect the region's biodiversity corridors in local planning controls.*

The proposed split E2/E3 Environmental Conservation zoning in Wollongong LEP 2009 would be consistent with the need to protect the integrity of this biodiversity corridor. The potential for the proposed uses to impact upon the functioning of the corridor primarily relates to the clearance of vegetation. However because the proposal is based on the reuse of existing infrastructure and a cleared managed area already surrounds the carpark and former mine surface buildings that would house the cider processing facility, the need for further vegetation clearance is predicted to be minimal. If bushfire safety assessments and other studies identify that significant vegetation clearance will be required, then the new Biodiversity Assessment Methodology (BAM) would need to be applied to determine offsetting requirements in accordance with the *Biodiversity Conservation Act 2016*.

As stated previously, at development assessment stage, the intensity of the use of the subject land can be limited to ensure that impacts remain neutral or beneficial, both in terms of water quality, biodiversity and biodiversity corridor functioning. Based on the relationship between the existing Glenbernie Orchard and the subject land in terms of ownership and proposed uses, there is also likely to be some commercial flexibility, if necessary, in terms of the uses which take place on the subject land, and those, such as sales of cider, that could potentially continue to take place at the 'Apple Shack'.

Q4: Is the Planning Proposal consistent with a Council's local strategy or other local strategic document?

Council's community strategic plan is Wollongong 2022, and the proposal is consistent with the following objectives:

- Community Goal 1: We value and protect our natural environment
 - The natural environment is protected and enhanced;
 - Wollongong's ecological footprint is reduced;
 - Community awareness and appreciation of heritage is increased; and
 - Local food production and community food initiatives are supported.
- Community Goal 2: We have an innovative and sustainable economy
 - Local employment opportunities are increased within a strong local economy;

- The region's industry base is diversified;
- The profile of Wollongong as the regional city of the Illawarra is expanded and improved; and
- New industries and green technologies are established and flourish.

This proposal supports the diversification of the region's resource base, local employment opportunities and the production of food locally, all key components for achieving sustainable settlements. There is significant potential for the attraction to boost tourism in our region and also operate as an interpretive centre for visitors to understand the mining heritage of Wollongong. Further, the potential for the entire process of apple cider production to take place within a 1.4km radius, including the possible use of waste products from the cider processing to irrigate/fertilise the orchard would certainly reduce the ecological footprint of the commercial operation, provided that water quality and hydrological parameters can be consistently met.

Q5: Is the planning proposal consistent with applicable State Environmental Planning Policies?

A systematic assessment of the consistency of the proposal with applicable SEPPs is provided in **Table A**. The proposal has been assessed against applicable SEPPs (and deemed SEPPs) and found to be consistent in all cases, apart from SEPP Sydney Drinking Water Catchment 2011 and Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment. Further information is required to be submitted by the proponent to enable a full assessment of consistency with these two SEPPs.

Q6: Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

A systematic assessment of the consistency of the proposal with applicable s.117 Directions is provided in **Table B**. The proposal has been assessed as being consistent with all applicable Ministerial Directions, with the exception of Ministerial Direction 2.1 which is discussed below, and Ministerial Directions 4.4 (Planning for Bushfire Protection) and 5.2 (Sydney Drinking Water Catchments), which require additional information in order for a conclusive assessment to be carried out.

2.1 Environment Protection Zone

In compliance with clause 2.1(4) of this Direction, this planning proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas by maintaining an Environmental Protection zone to the subject land and utilising split E2/E3 zoning rather than applying an E3 zoning to entire lot. The proposal is however technically inconsistent with subclause (5) because the environmental protection standards (as reflected in the zone objectives and list of permissible uses in the E3 zone) are not as high as those applying to the E2 zone. This inconsistency is considered to be of minor significance because:

- the objectives of the E2 and E3 zone have in common the objective "*to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values*";
- the 'lower' zoning only applies to those parts of the subject land that are characterised by existing access ways, historic cleared areas and that contain existing built structures (former mine surface buildings, carpark and dwelling); and
- in spatial terms, that part of the subject land that would be zoned E3 would comprises less than one quarter of the subject land.

The proposal is for a split rezoning and is consistent with the advice contained in LEP Practice Note 09-002 which provides that “*where council wishes to acknowledge different land capabilities on a single allotment, council may consider applying more than one zone across the land. For example, this approach may be considered appropriate over an allotment to distinguish between areas of environmental value and areas for agricultural purposes*”. It further provides that an E3 zoning is appropriate for lands where:

...there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.

Bed and breakfasts and secondary dwellings are permissible in the E3 zone, whereas these uses are not permissible in the E2 zone. If, following a detailed assessment of the waste water management options available on the subject land (noting the sensitivity of the upland swamp ecosystems to changes in hydrology), it is revealed that these uses cannot be sustained on the subject land in addition to the cider processing facility and associated uses, then rezoning part of the southern portion of the lot containing the dwelling to E3 may need to be reconsidered.

Section C – Environmental, social and economic impact

Q7: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

An ecological assessment of the subject land is yet to be carried out and would be required prior to any public exhibition of the proposal, should Gateway approval be granted. Council's mapping system shows areas of Coastal Upland Swamp (an Endangered Ecological Community (EEC)) are located within the subject land, and the presence of this community was confirmed as occurring on both the southern and northern portion of the subject land during a site inspection by Council officers. These ecosystems are highly sensitive to changes in the hydrological regime of the landscape and to changes in water quality.

Threatened species such as the Glossy Black Cockatoo and *Pultanea aristataea* have also been recorded on the subject land (BES, Vegetation Restoration Plan, 2006).

As the proposed development would be housed within the existing former Darkes Forest Mine surface buildings and utilise the existing carpark, there is predicted to be no net changes to the area covered by impervious surfaces on the subject land and so the volume of stormwater generated is unlikely to be altered. Similarly, vegetation removal is predicted to be very limited. However, a bushfire risk assessment and the impact of the management of generated waste water streams would need to be thoroughly assessed prior to the public exhibition of the proposal.

Q8: Are there any likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The potential for environmental effects from proposed uses of the subject land primarily relates to waste water management. This is both in terms of water quality and the altering of hydrological processes which is identified as a key threat to the Coastal upland swamp EEC. The potential impacts of the proposed uses in terms of vegetation clearance is predicted to be minimal on the basis that no new structures are proposed and all existing buildings are already surrounded by a cleared area which would minimise the need for clearing to achieve the required asset protection zones.

Overall, it is considered that facilitating a viable income generating use for parts of the subject land will encourage investment in environmental conservation as this is complimentary to the visitor experience to the area, increase surveillance of the subject land and reduce the potential for the subject land be used for illegal purposes which have the potential to impact negatively on the natural environment.

A report dated 6 May 2016 detailing a preliminary assessment of stormwater quality was undertaken by Cardno to determine whether or not the proposal was likely to be able to achieve the required NorBE standard for water quality in accordance with the Sydney Drinking Water Catchment SEPP 2011. This report concluded that the proposal can achieve NorBE if there is no increase to the existing development/hardstand area footprint.

A draft report dated 5 May 2016 outlining a preliminary assessment of potable water and wastewater was also submitted by Cardno in support of the proposal. It is noted that this assessment on both potable water demand and waste water generation was based on the following uses:

- Cider production & Sales;
- Visitors Centre (estimated 60 visitors per week on average); and
- Cooking classes (estimated 40 people per week on average).

No café use was included in the assessment and this omission will need to be rectified in subsequent studies.

Potable Water

The assessment concluded that rainwater collection and treatment prior to use was the most feasible option for potable water supply to the facility. It considered that a groundwater bore may also be a potential option pending further investigations.

Waste Water

At this preliminary stage, Cardno recommend that sanitary and process wastewater be managed and treated in two separate streams. The process wastewater would ideally be used to irrigate the orchard some 1.4km away, while the treated sanitary wastewater is proposed to be disposed of using irrigation areas on the southern portion of the lot. Stored wastewater could be taken off-site by truck during periods of prolonged rainfall.

It is noted that although irrigation areas on the southern portion of the lot were used when the former Darkes Forest mine was in operation, further ecological investigations would be required to determine whether such a practice would now be suitable given current knowledge of the sensitivity of Coastal upland swamps, now listed as an EEC under the *Biodiversity Conservation Act 2016*. The Cardno reports do not refer to these swamps or the fact that the land drains into the Dharawal Nature Reserve.

Further, a NorBE assessment for the irrigation area within the Glenbernie orchard would be required given that this orchard is located within the Woronora Special Catchment Area.

The future studies into water use and wastewater management will also need to include a Strategic Land and Water Capability Assessment in accordance with Ministerial Direction 5.2(4)(b) and (c).

Assessment of Contamination Risk

Given the former use of the subject land as part of the Darkes Forest mine and subsequent unauthorised clearing and land filling, a Stage 1 contamination assessment to determine whether any remediation of the land is required would also need to be carried out following Gateway determination.

Bushfire Constraints Assessment Report

A thorough assessment of the bushfire constraints on the subject land would be required following a Gateway determination.

Q9: Has the planning proposal adequately addressed any social and economic effects?

The abandoned building of the former Darkes Forest mine is not heritage listed and in any event, the adaptive reuse of the building would offer far greater support for the preservation of any heritage value in the buildings, than leaving the building derelict. Interpretation of the former uses of the building would offer visitors to the site yet another experience of potential interest.

No Aboriginal cultural heritage sites have been identified within the subject land; however there are recorded sites within a few hundred metres of the planning proposal area. Lack of records across the site may be a product of no archaeological surveys having been conducted, rather than an actual absence of sites. An Aboriginal cultural heritage assessment is not required to be conducted at the rezoning stage, however, it would be required if ground disturbance works were proposed as part of subsequent development of the subject land.

Based on the uses currently being proposed for the subject land, all of which would occur within existing structures, there is no disturbance to the landscape predicted. This may change once greater detail regarding wastewater management emerges following a favourable Gateway determination. In this case the proponent would be required to conduct a due diligence assessment to establish whether the impact area contains known Aboriginal objects, or is likely to contain Aboriginal objects. The assessment would need to consider whether further archaeological investigation is required and comply with OEH guidelines.

An assessment of traffic impacts would be required following a favourable Gateway determination.

The proposal is not likely to have any implications for community infrastructure and its social and economic impact is predicted to be positive as the proposal will generate a site for local employment within a boutique development which does not detract from any existing retail centres.

Section D – State and Commonwealth interests

Q10: Is there adequate public infrastructure for the planning proposal?

The subject land is not serviced by mains water supply or reticulated sewerage and this, combined with the environmental sensitivity of the subject land presents one of the most significant constraints to development of the subject land.

The proposal is likely to increase traffic use of Darkes Forest road, but to levels lower than those experienced when the subject land was being used as part of the Darkes Forest mine. Any upgrades to the public road likely to be required will be identified as part of the traffic assessment.

Q11: What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Pre Gateway consultation

To assist with Council's initial assessment, the following agencies were consulted:

Water NSW

The northern portion of the site (north of Darkes Forest Road) drains to the Woronora River and is located in the Sydney Drinking Water catchment. State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and Section 117 Direction 5.2 require that changes to planning policy must ensure that any new development will have a NorBE on water quality in the catchment.

In its letter of 29 November 2016, Water NSW noted that the applicant's current NorBE assessment deals only with storm water runoff and does not consider the whole water cycle, including wastewater generated from the cider processing facility and sewage from the associated uses.

Water NSW advised that based on the current information and a desktop analysis, it has no objections to the proposed rezoning, stating that 'it would be in accordance with the existing land use pattern along Darkes Forest Road'. Water NSW also support the amendment of Schedule 1 of WLEP 2009 to include 'agricultural produce industry' (cider processing) as a permissible use.

Water NSW did not support the bed and breakfast component as 'ancillary to the agricultural produce industry' because additional information is required considering the implications for wastewater treatment and effluent disposal. Water NSW states that should Council support permitting bed and breakfast accommodation that a NorBE assessment is required and an onsite system would need to cater for the maximum predicted load or the existing system would need to be augmented to these standards.

Water NSW also opposes the applicant's proposal to subdivide the property along Darkes Forest Road. This is because the proposal currently states that water treatment will occur on the northern portion of the site (in the Sydney Drinking Water Catchment) but be disposed of (via irrigation) on the southern portion of the site as occurred when the mine was in operation. However, should the property be subdivided and sold separately, the wastewater treatment and effluent disposal would be contained on two separate titles under two different owners rendering wastewater management potentially untenable.

Water NSW also opposes a 'pump out' effluent disposal system.

Although Water NSW initially opposed the option of reusing wastewater to irrigate the nearby apple orchard, this position was clarified in correspondence dated 16 December 2016 where it was stated that, with the appropriate safeguards, and if process wastewater (waste water from cider processing) was kept separate from sanitary wastewater (effluent from bathrooms, kitchen and laundry) and treated separately, use of process wastewater for irrigation on the remote orchard could potentially be supported.

Assessing Officer's Comment

Should a Gateway Determination be issued, additional information will be required, including a NorBE assessment that considers storm water and wastewater from the following uses: cider processing facility, visitors centre and cellar door sales premises, café and cooking school and bed and breakfast accommodation. This information will be forwarded to Water NSW for comment as part of the public exhibition stage.

It is also noted that the disposal of wastewater on the southern portion requires further investigation to determine its suitability in regards to the potential impacts on Coastal upland swamp EEC.

Rural Fire Service

The majority of the site is mapped as bushfire prone land. The NSW RFS noted that limited detail is available at this stage and that a bushfire assessment has not been carried out. Nonetheless, the RFS has no objection to the proposal subject to the following being considered:

- Any proposed bed and breakfast accommodation is defined as a 'Special Fire Protection Purpose (SFPP)' under section 100B of the *Rural Fires Act 1997*. This means that a Bush Fire Safety Authority

issued by the RFS would be required to be obtained at Development Application (DA) stage for any tourist accommodation component. In issuing an Authority, the RFS needs to be satisfied that appropriate bush fire protection measures would be in place, including necessary asset protection zones (APZs), water supply for firefighting purposes, and satisfactory access and emergency evacuation plans.

- The provision of necessary APZs may require the removal of substantial amounts of vegetation. Given the current and proposed environmental zonings and that 'bushfire and tree removal' has been cited as a reason for refusal of a previous application, this may be a problematic issue.

Assessing Officer's Comment

The applicant has stated that tree removal would be minimal to establish an APZ and that this should be assessed at DA stage.

However, this conclusion does not take into account a potential secondary dwelling which would become permissible under an E3 zoning. Further, as a Bushfire Hazard Assessment has not been undertaken to support the planning proposal, it is unknown what APZs and other bush fire management measures would be required for the proposed uses, and how much, if any, vegetation removal will be necessary. As such, the potential environmental impacts cannot accurately be quantified at this stage.

It is recommended that should a Gateway Determination be issued, a Bushfire Hazard Assessment Report be required to be submitted, detailing the extent of the hazard and required APZs and other bushfire management measures. This report would be forwarded to the NSW Rural Fire Service for comment as part of the public exhibition period.

NSW Office of Environment and Heritage

The NSW Office of Environment and Heritage (OEH) did not raise any major objection to the proposal overall, however recommend that further information be submitted following the issue of a Gateway Determination, including a detailed bushfire assessment and ecological impact assessment.

Zoning amendments: OEH had no major issue with the northern portion of the site (containing former mine buildings) being rezoned to E3 Environmental Management. However it recommends that Council be satisfied with the proposed rezoning on the southern side from E2 Environmental Conservation to E3 Environmental Management. In particular Council should consider Section 5.1.3 of the Illawarra Shoalhaven Regional Plan 2015 and S117 Direction 2.1 Environment Protection Zones and the accompanying LEP Practice Note (PN09-002).

OEH noted that the site is mapped as part of a biodiversity corridor under the Illawarra Shoalhaven Regional Plan 2015. The actions outlined in this Plan for land within biodiversity corridors is aimed at protecting their values in local planning controls. In particular regard should be given to Action 5.1.3 which recommends investigating 'opportunities to improve the functioning of resilience of corridors in strategic planning'.

A key component of the ecological impact assessment should include an assessment of any impact associated with the management and disposal of onsite wastewater and sewer. This is of particular importance given the presence of Coastal Upland Swamp, an important EEC.

OEH also noted that whilst no Aboriginal cultural heritage sites have been identified on the subject site, there are recorded sites nearby, and that the lack of records relating to the subject site result from a lack of archaeological investigation (rather than the actual absence of sites). OEH note that an Aboriginal Cultural Heritage Assessment is not required at the rezoning stage, but would be required should subsequent development (facilitated by the planning amendments) disturb the ground.

It is recommended that a Due Diligence Assessment be undertaken if the development activities facilitated by the planning proposal may impact Aboriginal objects. This assessment should establish whether the impacted area contains Aboriginal objects, or is likely to contain Aboriginal objects. The assessment should consider whether further archaeological investigation is required and must comply with OEH guidelines.

Assessing Officer's Comment

Should a Gateway Determination be issued, additional information (a Bushfire Assessment, Ecological Impact Assessment and Due Diligence Assessment) will be requested, in accordance with OEH specifications detailed above.

Action 5.1.3 within the Illawarra Shoalhaven Regional Plan requires Councils to clarify the location of a biodiversity corridor when planning new development and consider uses which are appropriate to maintaining and where possible, enhancing ecological connectivity. The proposal is for the adaptive reuse of existing buildings, access ways and car parking and is not expected to impact on the integrity or resilience of the biodiversity corridor within which the subject land is located. If vegetation clearance is required to achieve APZs which meet current standards, it is expected to be minimal and there is significant scope for compensatory planting to take place outside the APZs. There is also opportunity to formalise this through bio banking of parts of the subject land with significant environmental value, to enhance the long term integrity of the biodiversity corridor.

It is noted that the comments provided by OEH withholding support for the rezoning of the southern portion of the subject land to E3 (as outlined in detail in section D) are in response to the proponent's original proposal to rezone the entire lot to E3. This current proposal is for a split rezoning and is consistent with the advice contained in LEP Practice Note 09-002 which provides that an E3 zoning is appropriate for lands where:

.. there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.

Bed and breakfast accommodation and secondary dwellings are permissible in the E3 zone, whereas these uses are not permissible in the E2 zone. If, following a detailed assessment of the waste water management options available on the subject land (noting the sensitivity of the upland swamp ecosystems to changes in hydrology), it is revealed that these uses cannot be sustained on the southern portion of the subject land, then rezoning part of the southern portion of the lot to E3 may need to be reconsidered.

Post Gateway consultation

It is proposed that the following State authorities be consulted following Gateway determination and upon completion of additional studies:

- Water NSW
- NSW Rural Fire Service
- NSW Office of Environment and Heritage
- RMS
- Endeavour Energy
- NPWS
- Illawarra Local Aboriginal Land Council

Council requests that the Gateway Determination nominate any other State or Commonwealth authorities required for consultation. All identified authorities/stakeholders will be notified during the exhibition period.

Conclusion

The area occupied by the surface facilities and carpark of the former mine is different to surrounding areas zoned E2 Environmental Conservation, and a retrofit of the existing buildings for the purposes described is expected to have limited environmental impact. The extent to which vegetation removal will be required to achieve adequate bush fire safety standards is yet to be determined, however given that a cleared area around the buildings already exists, the amount of clearing likely to be required is predicted to be small. Further, it is anticipated that the intensity of the proposed uses on the subject land can be tailored to ensure that wastewater treatment and disposal arrangements can achieve a NorBE water quality outcome. It is proposed that the uses would be small-scale and co-located, for example the visitors centre will be part of the cellar door and could also include a café component. Should the planning proposal be adopted, the proposed uses will require separate approval as part of a DA process.

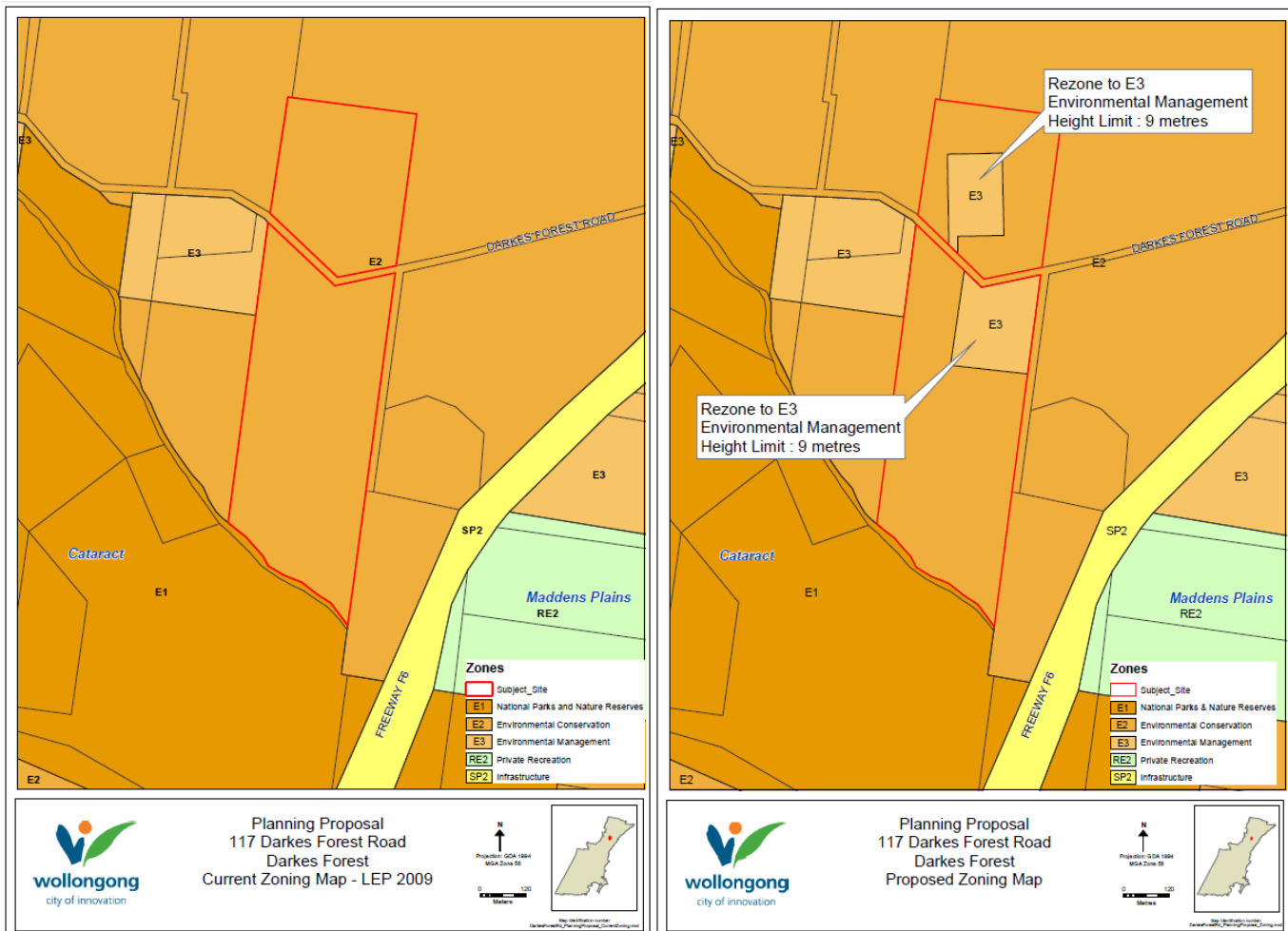
By providing for viable uses to be established, incentives are provided to continue to maintain and rehabilitate the site as the natural environment is a significant attraction for tourists to northern Illawarra.

Part 5 – Mapping

Changes are proposed to the following maps in Wollongong LEP 2009:

Land Zoning Map sheet LZN 19

1. Amend the Land Zoning Map - Sheet LZN_19 applying to Lot 86 DP 752054 to show a split zoning of the land from all E2 to E2 and E3.



Height of Buildings Map sheet HOB_19

- Amend Height of Buildings Map - Sheet HOB_19 applying to Lot 86 DP 752054 to apply 9m height restriction.



Part 6 – Community Consultation

If the Planning proposal is supported, Council requests that the planning proposal be exhibited for a period of 28 days and include:

- Hard copies at Council's Administration building and relevant Libraries;
- Electronic copy on Council's website;
- Notification letters to surrounding and nearby property owners;
- Notification letter to Destination Wollongong; and
- Notification letters to relevant State agencies and other authorities nominated by the NSW Department of Planning and Infrastructure including:
 - Water NSW
 - NSW Rural Fire Service
 - NSW Office of Environment and Heritage
 - Illawarra Aboriginal Land Council
 - RMS
 - Endeavour Energy
 - NPWS

Part 7 – Projected Timeline

A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. This timeline tentatively sets out expected timelines for major steps in the process. These timeframes are subject to change and are to be used as a guide only. The Minister may consider taking action to finalise the LEP if timeframes approved for the completion of the Planning Proposal are significantly or unreasonably delayed.

	Action	Estimated Timeframe	Responsibility
1	Anticipated date of Gateway Determination	June 2017	Department of Planning and Infrastructure
2	Anticipated completion of required technical studies	August 2017	Proponent/Consultants
3	Government agency consultation	September 2017	Agencies
4	Public exhibition period	September 2017	Council
5	Date of Public Hearing (<i>if applicable</i>)	-	Council
6	Consideration of submissions	October 2017	Council
7	Assessment of proposal post-exhibition	October 2017	Council
8	Report to Council	December 2017	Council
9	Final maps and Planning Proposal prepared	January 2017	Council
10	Submission to Department for finalisation of LEP	January 2017	Council
11	<i>Anticipated date RPA will make the LEP</i>	February 2017	Council (if under delegation)

12	Anticipated date Council will forward final Planning Proposal to DOP&I for notification	February 2017	Council
13	Anticipated date LEP will be notified	February 2017	<i>Parliamentary Counsel and DoP&I</i>

Table A - Checklist of State Environmental Planning Policies

State Environmental Planning Policy		Compliance	Comment
SEPP No. 1	Development Standards	N/A	N/A - no variations to development standards sought
SEPP No. 14	Coastal Wetlands	N/A	N/A – site note mapped as containing Coastal Wetlands
SEPP No. 19	Bushland in Urban Areas	Does not apply to Wollongong	N/A
SEPP No. 21	Caravan Parks	N/A	Not proposed.
SEPP No. 26	Littoral Rainforests	N/A	No littoral rainforests identified by the policy in the Wollongong LGA
SEPP No. 30	Intensive Agriculture	N/A	Not proposed.
SEPP No. 33	Hazardous and Offensive Development	N/A	Cider processing facility is not considered a potentially hazardous or offensive industry – whilst some chemicals will be used for cleaning the facility will produce cider for human consumption
SEPP No. 36	Manufactured Home Estates	N/A	Not proposed.
SEPP No. 44	Koala Habitat Protection	Applies – Proposal is not inconsistent with this SEPP	Koalas are mapped as potentially occurring in the locality in Council's mapping system. Site may support limited Koala habitat. The draft proposal will retain an environmental zoning, consistent with the requirements of this SEPP.
SEPP No. 47	Moore Park Showground	Does not apply to Wollongong	N/A
SEPP No. 50	Canal Estate Development	N/A	Not proposed.
SEPP No. 52	Farm Dams and Other Works in Land and Water Management Plan Areas	Does not apply to Wollongong	N/A
SEPP No. 55	Remediation of Land	Applies - Proposal is not inconsistent with this SEPP	A contamination assessment will be required prior to exhibition.
SEPP No. 62	Sustainable Aquaculture	N/A	N/A – Aquaculture is not proposed
SEPP No. 64	Advertising and Signage	N/A	N/A – Signage is not proposed. Any future signage associated with the new uses would require development consent.
SEPP No. 65	Design quality of residential apartment development	N/A	N/A – Proposal does not relate to residential flat development

State Environmental Planning Policy		Compliance	Comment
SEPP No. 70	Affordable Housing (revised schemes)	Does not apply to Wollongong	N/A
SEPP No. 71	Coastal Protection	N/A	N/A – The proposal is not located on the coast
SEPP	Housing for Seniors or People with a Disability 2004	N/A	N/A – The proposal does not relate to housing for seniors or people with a disability
SEPP	Building Sustainability Index: BASIX 2004	N/A	N/A – BASIX relates to sustainable dwelling construction
SEPP	State Significant Precincts 2005	N/A	N/A – The proposal does not relate to a state significant precinct as defined by this SEPP
SEPP	Development on Kurnell Peninsular 2005	Does not apply to Wollongong	N/A
SEPP	Sydney Region Growth Centres 2006	Does not apply to Wollongong	N/A
SEPP	Mining, Petroleum Production and Extractive Industries 2007	Applies – proposal is not inconsistent with this SEPP. Proposal does not relate to mining uses but SEPP provides provisions, controls and prohibitions on potential future mining activities.	The proposal does not relate to any mining uses, however has a history of being used as a coal mine site and approval was previously granted for coal seam gas exploration (licence for exploration has now been cancelled). SEPP provides more information on permitted and prohibited mining activities.
SEPP	Infrastructure 2007	Applies – Proposal is not inconsistent with the provisions of this SEPP.	This SEPP relates to providing infrastructure in an orderly and timely manner, generally by or on behalf of public authorities. The proposal will not affect any public infrastructure proposals.
SEPP	Miscellaneous Consent Provisions 2007	N/A	This SEPP contains miscellaneous provisions that have no implications for the proposal.
SEPP	Kosciuszko National Park – Alpine Resorts 2007	Does not apply to Wollongong	N/A
SEPP	Rural Lands 2008	Does not apply to Wollongong	N/A
SEPP	Affordable Rental Housing 2009	Secondary dwellings	N/A SEPP does not apply to E2 or E3 zoned land. However, if

State Environmental Planning Policy		Compliance	Comment
			E3 zoning is applied to the portion of the lot containing the dwelling, a secondary dwelling would be permissible under WLEP.
SEPP	Western Sydney Employment Lands 2009	Does not apply to Wollongong	N/A
SEPP	Exempt and Complying Development Codes 2008	N/A	N/A – the proposal will not permit any exempt or complying development as it is located within environmental zones.
SEPP	Western Sydney Parklands 2009	Does not apply to Wollongong	
SEPP	Penrith Lakes Scheme 1989	Does not apply to Wollongong	N/A
SEPP	State and Regional Development 2011	N/A	N/A – The proposal does not relate to any state or regionally significant development as defined by this SEPP.
SEPP	Sydney Drinking Water Catchment 2011	Applies – Further information is necessary to ascertain impacts on catchment	The proposal relates to land in the Sydney Drinking Water Catchment. Further information is required regarding wastewater treatment and disposal to ascertain impacts on the catchment.
SEPP	Three Ports 2013	N/A	N/A – The proposal does not relate to Port lands.
SEPP	Urban Renewal 2010	N/A	N/A The proposal does not relate to urban renewal precincts.
SEPP	Integration and Repeals	N/A	N/A – This SEPP details policies repealed in 2016
Deemed SEPPS(former Regional Plans)			
Greater Metropolitan REP No.2	Georges River catchment	Applies – Further information is necessary to ascertain impacts on Georges River Catchment	The proposal relates to land in the Georges River Water Catchment. Further information is required regarding wastewater treatment and disposal to ascertain impacts on the catchment.

Table B - Checklist of Section 117 Ministerial Directions

Ministerial Direction	Comment
1. Employment and Resources	
1.1 Business and Industrial Zones	N/A – Proposal does not relate to business or industrial zone changes
1.2 Rural Zones	N/A – Proposal does not relate to any rural zoning changes
1.3 Mining, Petroleum Production and Extractive Industries	Consistent – the site was formerly used as a coal mine. An application for extension of time for gas exploration under Part 3A was refused by the State Government on 10/7/2013. The proposal will utilise existing infrastructure within the existing development footprint and is not expected to unduly compromise any future mining activities.
1.4 Oyster Aquaculture	N/A – not proposed
1.5 Rural Lands	N/A – Rural Lands SEPP does not apply to Wollongong
2. Environment and Heritage	
2.1 Environment Protection Zone	The proposal is to apply an E3 zoning to strategically located pockets within the E2 zoned land to allow for compatible uses within existing development footprints. Any development occurring within the proposed E3 pockets will need to demonstrate its ability to meet stringent environmental protection standards relating to water quality, EECs and biodiversity in general, at the DA stage.
2.2 Coastal Protection	N/A – The proposal is not located in the coastal zone.
2.3 Heritage Conservation	Consistent – no known items, objects or places. Before any site disturbance is permitted, a due diligence assessment will be undertaken.
2.4 Recreation Vehicle Areas	N/A –not proposed
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A to Wollongong
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	N/A – The proposal does not relate to residential zones.
3.2 Caravan Parks and Manufactured Home Estates	N/A – not proposed
3.3 Home Occupations	Consistent – no change proposed.
3.4 Integrating Land Use and Transport	N/A – the proposal does not relate to urban development.
3.5 Development Near Licensed Aerodromes	N/A – the proposal is not located near a licensed aerodrome.
3.6 Shooting Ranges	N/A – The proposal does not impact planning provisions relating to shooting ranges.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	N/A – The site does not contain Acid Sulfate Soils.

4.2 Mine Subsidence and Unstable Land	N/A – The land is not part of the mine subsistence district or mapped as unstable.
4.3 Flood Prone Land	Consistent – The site is notated as flood-affected but is located in the upper catchment and the proposal will not significantly increase flood-related risks.
4.4 Planning for Bushfire Protection	Further assessment and consultation with the Rural Fire Service is required should a Gateway Determination be issued.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent – The proposal is consistent with the Illawarra-Shoalhaven Regional Plan in that it will support tourism - a priority growth sector. Further studies will be completed to ensure that the proposal protects the Sydney Drinking Water Catchment and the ecological values of the subject land.
5.2 Sydney Drinking Water Catchments	Further information is required to assess the impact on water quality and capability in the drinking water catchment as a result of the proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A to Wollongong
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A to Wollongong
5.8 Second Sydney Airport: Badgerys Creek	N/A to Wollongong
5.9 North West Rail Link Corridor Strategy	N/A to Wollongong
5.10 Implementation of Regional Plans	Consistent – The proposal is consistent with the Illawarra Shoalhaven Regional Plan.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent – The proposal does not relate to designated development and does not contain additional concurrence provisions.
6.2 Reserving Land for Public Purposes	N/A – The proposal does relate to any public land
6.3 Site Specific Provisions	Consistent – the proposal contains site specific provisions but does not impose any additional development standards or requirements than otherwise specified in WLEP 2009, thereby complying with cl.4(c).
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	N/A to Wollongong
7.2 Implementation of Greater Macarthur Land Release Investigation	N/A to Wollongong
7.3 Parramatta Road Corridor Urban Transformation Strategy	N/A to Wollongong

