

ITEM 5

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

On 10 May 2021, Council resolved to seek a new Gateway Determination for the revised draft Planning Proposal and to exhibit for 28 days, following resolution of some matters. The Planning Proposal seeks to facilitate the adaptive reuse of the former mine site as a cider processing facility with complementary uses.

The draft Planning Proposal was exhibited from 1 December 2021 to 31 January 2022. Four submissions were received. This report discusses the issues raised in the submissions. It is recommended that Council progress the draft Planning Proposal to finalisation.

RECOMMENDATION

- 1 The Planning Proposal for 117 Darkes Forest Rd, Darkes Forest (Lot 86 DP 752054) be progressed to finalisation, through an amendment to the Wollongong Local Environmental Plan 2009 to -
 - a Rezone parts of Lot 86 DP 752054 (the areas surrounding the existing dwelling and mine-related infrastructure) from C2 Environmental Conservation to C3 Environmental Management (Attachment 2) with a Maximum Building Height of 9m
 - b Include Artisan food and drink industry in Schedule 1 Additional Permitted Uses for the northern part Lot 86 DP752054 within the C3 Environmental Management zone and waste-water treatment management on the southern part Lot 86 DP752054 within the C3 Environmental Management zone.
- 2 The final Planning Proposal be referred to the NSW Department of Planning and Environment for the making of arrangements for drafting to give-effect to the final proposal.
- 3 The General Manager will thereafter proceed to exercise delegation as issued by the NSW Department of Planning and Environment under Section 3.36 of the Environmental Planning & Assessment Act 1979 (NSW), in relation to the final proposal.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

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

ATTACHMENTS

- 1 Site Location
- 2 Proposed Zoning Map

BACKGROUND

In 2016, a draft Planning Proposal request was submitted for 117 Darkes Forest Rd, Darkes Forest (Attachment 1). The site is zoned C2 Environmental Conservation under Wollongong Local Environmental Plan (LEP) 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. The submitted proposal suggests the proposed use will be complementary to the nearby Glenbernie Orchard. It is understood however, that there is no formal agreement between the owners of the two sites.

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

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 C2 Environmental Conservation to C3 Environmental Management be considered, alongside specific additional permitted uses in Schedule 1 of Wollongong LEP 2009 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 requiring additional studies and agency consultation prior to exhibition. As a consequence of the additional studies, agency consultation, and the introduction of a new definition for artisan food and drink premises, the draft Planning Proposal was revised.

On 19 March 2021, the revised draft Planning Proposal request was referred to the Wollongong Local Planning Panel 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 after satisfactorily addressing State Environmental Planning Policy (Koala Habitat Protection) 2021.

On 10 May 2021, Council considered a further report on the proposal and resolved that -

- 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.*
- 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.*
 - b *NPWS.*
 - c *Endeavour Energy.*
 - d *Water NSW.*
 - e *Transport for NSW.*
 - f *NSW Rural Fire Service.*
 - g *Illawarra Local Aboriginal Land Council.*
 - h *Environmental Protection Authority.*

Exhibition occurred from 1 December 2021 and concluded on 31 January 2022, being extended due to the Christmas / New Year period. Four submissions were received. This report addresses the issues raised in submissions during the exhibition period.

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.

The revised draft Planning Proposal seeks the -

- 1 Partial rezone of the Lot 86 DP 752054 from C2 Environmental Conservation to C3 Environmental Management, with a Maximum Building Height of 9m.
- 2 An amendment to Schedule 1 – Additional Permitted Uses of Wollongong LEP 2009 to include *artisan food and drink industry* as an additional permitted use (with consent) for C3 Environmental

Management zoned land on the northern part of the site, and waste-water treatment management on the southern part of the site within the C3 Environmental Management zone (Attachment 2).

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 Wollongong LEP 2009. 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 C2 Environmental Conservation under the Wollongong LEP 2009, and *artisan food and drink industries* are not permissible.

The proposal, therefore, requires partial rezoning of the site to C3 Environmental Management, and an amendment to Schedule 1 – Additional Permitted Uses of the Wollongong LEP 2009, to proceed. *Bed & breakfast accommodation* is permissible in C3 Environmental Management zoned land.

Zone	Land Uses Permitted with consent under WLEP2009	
C2 Environmental Conservation	Environmental facilities; Environment protection works; Extensive agriculture; Oyster aquaculture; Recreation areas	
C3 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 mine infrastructure for cider production has strategic merit and could offer several economic and social benefits, including new local employment opportunities and a new tourist destination in the Illawarra.

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 C3 Environmental Management, and bushland areas are zoned C2 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.

REQUIREMENTS FOR FUTURE DEVELOPMENT APPLICATIONS (DA)

- Detailed Site Investigations and contamination information.
- Address avoidance and mitigation measures for *Pultenaea aristata* under both the NSW Biodiversity Conservation Act 2016 (BC Act) and Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act).
- Any future DA may have to consider the previous land uses (i.e. mining and the oxidation ponds) and how existing contaminants from these uses will be managed.
- Council will require two separate wastewater management reports, one for domestic wastewater and the second for brewery wastewater.
- Recycling of grey water and where possible brewery wastewater is encouraged.
- Asset Protection Zones (APZs) cannot encroach into the C2 Environmental Conservation zones .

CONSULTATION AND COMMUNICATION

The revised draft Planning Proposal was exhibited between 1 December 2021 and 31 January 2022, in accordance with the Community Participation Plan. The exhibition was advertised through -

- Council's website, in the Illawarra Mercury and Advertiser newspapers, and in the 2508 Newsletter.
- Copies of the suite of documents were available for viewing on Council's website, in Wollongong and Helensburgh libraries, and at Council's Customer Service Centre in the Administration Building, Wollongong.
- Letters sent to all landowners and residents in Darkes Forest.
- Letters were sent to the agencies identified in Council's resolution.

The 'Join the Conversation' page on Council's website was viewed by 83 people.

The NSW RFS, NPWS, Endeavour Energy and TfNSW responded to the notification, but did not raise any issues.

Submissions were received from the following –

- 1 Water NSW
- 2 NSW Department of Planning and Environment – Biodiversity & Conservation Division
- 3 A resident of Helensburgh
- 4 Consultant on behalf of Glenbernie Orchard.

The table below notes the issues raised during the public exhibition of the draft revised planning proposal -

Submitter	Issue Raised	Comment
WaterNSW	Council to confirm with us that any ancillary uses to the B&B (e.g. wastewater treatment areas, APZs) will be contained in the C3 zoned area or otherwise be permissible in the C2 zoned areas. If not permissible in the C2 zoned area, a broader C3 may need to be considered as was earlier proposed. This would also reduce pressures on uses being focused in the SDWC in the east of the southern portion of site.	<p>The waste water treatment mounds must be located within the C3 zoned area, outside of the SDWC. The applicant will need to demonstrate that this is achievable in a future development application.</p> <p>WaterNSW advised on 17 May 22 that the C3 zoning configuration in the southern portion of the site appears broad enough to include the ancillary uses required for the proposed B&B. There is no objection to the Proposal proceeding.</p>
Submitter	Issue Raised	Comment
WaterNSW	Council to confirm with us and demonstrate to WaterNSW's satisfaction how the Planning Proposal will ensure that the <i>commercial</i> wastewater transfer, treatment and disposal will be permissible in the C2 zone in the western areas of the southern portion of the site which is located outside the SDWC.	<p>The waste water treatment mounds must be located within the C3 zoned area and outside of the SDWC. The applicant will need to demonstrate that this is achievable in a future development application.</p> <p>The Artisan Food and Drink Industry is proposed to be included as a Schedule 1 amendment. WaterNSW advised on 17 May 22 that there is no objection to the Proposal proceeding.</p>
WaterNSW	To facilitate the Bed & Breakfast and justify the configuration of the C3 zoning in the south, provide supplementary information on the nature and location of proposed effluent management measures, APZs, and stormwater management measures, and to ensure that there is no contamination risk to the site from past mining activities and related effluent disposal.	<p>Council's Bushfire specialist has confirmed that the APZs are satisfactory.</p> <p>Development assessment of any future bed and breakfast proposal at the site will ensure that the proposal complies with the current planning policies and legislation.</p> <p>Current effluent management is via the existing ECOMAX system located to the northwest of the dwelling house and shown in the Harris report dated 9 September 2020.</p> <p>Detailed Site Investigations and contamination information are required to be submitted as part of any future DA for the site.</p>

Submitter	Issue Raised	Comment
		WaterNSW advised on 17 May 22 that there is no objection to the Proposal proceeding.
NSW Department of Planning and Environment - Biodiversity and Conservation Division	<i>The Biodiversity and Conservation Division</i> still advocates for the C2 lands to be considered for permanent conservation management via a Biodiversity Stewardship Agreement (BSA). Given the biodiversity impacts from coal activities and their need to offset, we feel the proponents (and the biodiversity) would benefit with a BSA outcome. The proponent should liaise with the Biodiversity Conservation Trust to better understand the pros/cons with establishing a BSA.	Noted.
Submitter	Issue Raised	Comment
NSW Department of Planning and Environment - Biodiversity and Conservation Division	There are a few plants, <i>Pultenaea aristata</i> , located towards the western boundary on the northern portion of the site that falls into the C3 zone. The various <i>Pultenaea aristata</i> plants on the southern site are included in the C2 zoning. The C2 zoning offers better protection for a species that is listed as Vulnerable under both the NSW and Commonwealth legislation. It is unclear why the C2 zone could not also be extended over the species on the western boundary on the northern portion of the site. Unless there is a practical reason (not currently stated in documentation) to not do so, it is recommended the C2 extend zone over the <i>Pultenaea aristata</i> in the northern portion.	The C2 zoning was chosen in consultation with Council's Environment Officer who advised that the area is significantly disturbed. The additional area of C3 in the northern portion of the site (beyond that exhibited in 2017) was included to allow for tertiary treated domestic wastewater disposal in a Wisconsin Mound, in a cleared and disturbed area. Any future development applications will be required to address avoidance and mitigation measures for <i>Pultenaea aristata</i> under both the NSW BC Act and Commonwealth EPBC Act.
Helensburgh resident	The Glenbernie Orchard is not the applicant and there is no documentation from the orchard owners to support the proposal. Potential implications of the proposal on the Glenbernie Orchard's business. The cidery would be more appropriate at the orchard.	It has been clarified that there is not a commercial agreement in place with the nearby orchard. The proposal has been assessed on its merits. The proposal has strategic merit separate from the orchard. The Orchard property is not the subject of this Planning Proposal and it is not able to be included at this late stage.

Submitter	Issue Raised	Comment
TCW Consulting on behalf of Glenbernie Orchard	The Glenbernie Orchard should be permitted equal development opportunities as this lot.	This proposal does not alter the current development potential of Glenbernie Orchard. The Orchard property is not the subject of this Planning Proposal and it is not able to be included at this late stage.

PLANNING AND POLICY IMPACT

Illawarra Shoalhaven Regional Plan 2041

In May 2021, the *Illawarra Shoalhaven Regional Plan 2041* was finalised. The updated *Illawarra Shoalhaven Regional Plan 2041* will guide strategic planning and land use decisions in the region for the next 20 years. The 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”.

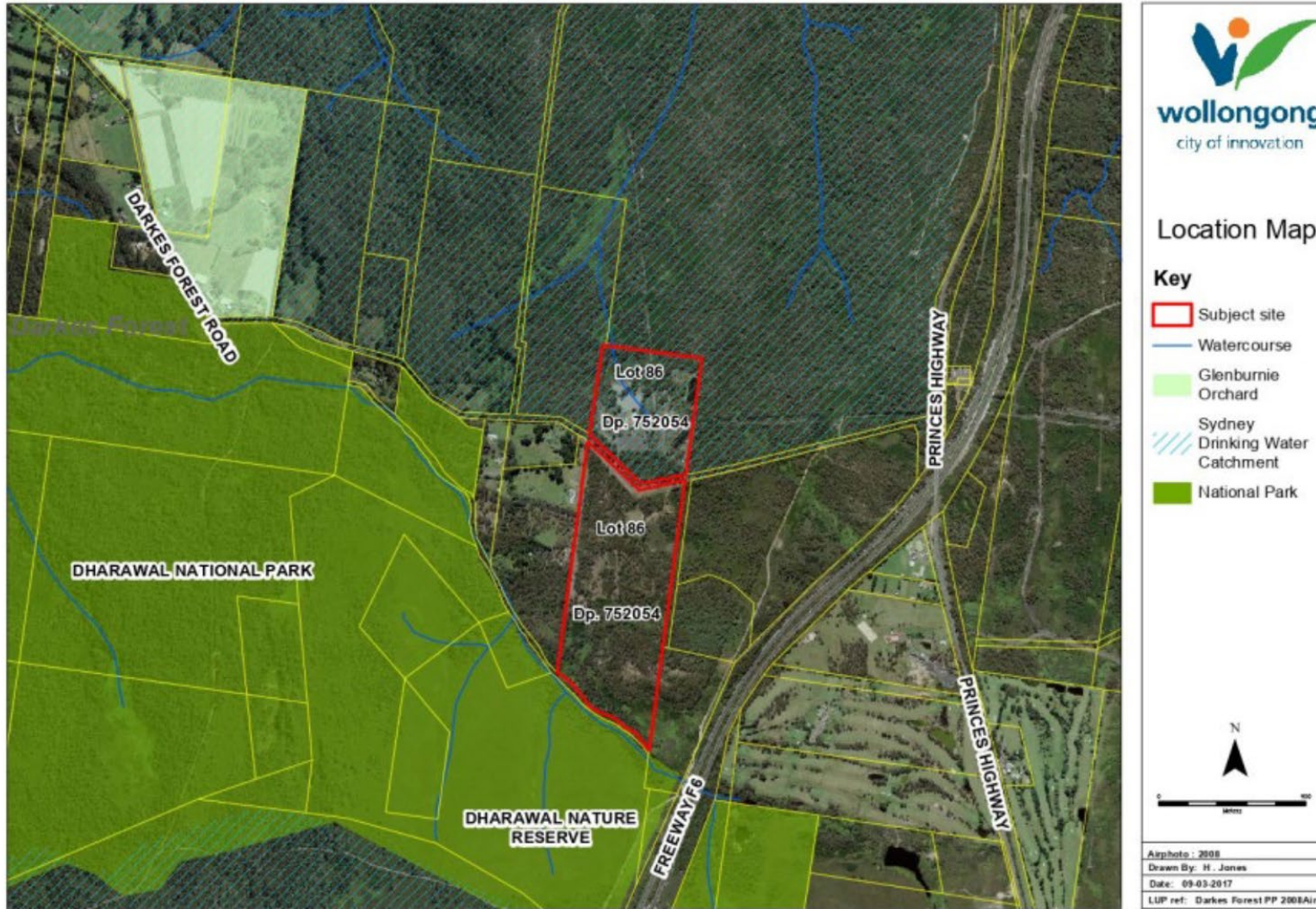
This report relates to Wollongong 2028 Community Strategic Plan Objective 1.3 “The sustainability of our urban environment is improved” under Community Goal 1 “We value and protect our environment”.

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2021-22
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

The draft Planning Proposal seeks to rezone parts of Lot 86 DP 752054 from C2 Environmental Conservation to C3 Environmental Management, with a Maximum Building Height of 9m, and a Schedule 1 amendment to the Wollongong Local Environmental Plan 2009 to include artisan food and drink industry within the C3 Environmental Management zoned land on the northern part of the site, and waste-water treatment management on the southern part of the site within the C3 Environmental Management zone.

It is recommended that the Planning Proposal for the site to amend the Wollongong LEP 2009 be progressed to finalisation.



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Location Map

Key

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

N

0 100 METRES

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

