



EXPLANATION OF INTENDED EFFECT

## Agritourism and small-scale agriculture development

Proposed amendments to support farm businesses and regional economies

March 2021



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## Contents

<b>About this explanation of intended effect .....</b>	<b>1</b>
<b>Part 1 – Executive summary .....</b>	<b>2</b>
1.1 This document .....	2
1.2 Background .....	2
1.3 What is proposed .....	3
<b>Part 2 – Context.....</b>	<b>4</b>
2.1 Background .....	4
2.2 Consultation and collaboration .....	5
2.2.1 Making Business Easier .....	5
What is ‘agritourism’? .....	5
<b>Part 3 – Proposed amendments .....</b>	<b>7</b>
3.1 Overview .....	7
3.1.1 Simplified planning pathways .....	7
3.2 Farm stay accommodation .....	8
Current Definition (Standard Instrument LEP).....	9
3.2.1 Proposed amendments.....	9
3.2.2 Farm stay accommodation - consultation questions.....	13
3.3 Farm gate activities .....	14
3.3.1 Proposed amendments.....	15
3.3.2 Farm gate activities - consultation questions.....	19
3.4 Farm events.....	20
3.4.1 Proposed amendments.....	21
3.4.2 Farm events - consultation questions .....	24
3.5 Additional proposed changes relating to agritourism .....	25
3.5.1 Proposed amendments.....	25
3.6 Small-scale processing plants.....	26
3.6.1 Proposed development standards .....	26
3.6.2 Small scale processing plants - consultation questions.....	27
3.7 Rebuilding of farm infrastructure .....	27
3.7.1 Proposed development standards .....	27
3.7.2 Rebuilding of farm infrastructure - consultation questions.....	28
3.8 Stock containment areas.....	28
3.8.1 Proposed development standards .....	28
3.8.2 Stock containment areas - consultation questions .....	29
3.9 Farm dams .....	29
3.9.1 Proposed amendments.....	29

3.9.2 Farm dams - consultation questions .....	29
3.10 Biosecurity for poultry farms and pig farms .....	29
3.10.1 Proposed amendments .....	29
3.10.2 Biosecurity for poultry and pig farms - consultation questions .....	30
3.11 Rural dwelling setbacks from intensive livestock agriculture .....	30
3.11.1 Proposed amendments .....	30
3.11.2 Rural dwelling setbacks from intensive agriculture - consultation questions .....	30
3.12 Recreational Beekeeping .....	31
3.12.1 Proposed amendments .....	31
3.12.2 Recreational Beekeeping – Consultation Questions .....	32
<b>Part 4 – Have your say .....</b>	<b>33</b>
4.1 Consultation Questions .....	34
4.1.1 Farm stay accommodation .....	34
4.1.2 Farm gate activities .....	34
4.1.3 Farm events .....	34
4.1.4 Small scale processing plants .....	34
4.1.5 Rebuilding of farm infrastructure - consultation questions .....	35
4.1.6 Stock containment areas .....	35
4.1.7 Farm dams .....	35
4.1.8 Biosecurity for poultry and pig farms .....	35
4.1.9 Rural dwelling setbacks from intensive agriculture .....	35
4.1.10 Recreational Beekeeping .....	35

## About this explanation of intended effect

This explanation of intended effect (EIE) has been prepared for the purposes of section 3.30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

It is presented in four parts:

- Part 1 – Executive summary
- Part 2 – Context
- Part 3 – Proposed amendments
- Part 4 – Have your say



## Part 1 – Executive summary

### 1.1 This document

This explanation of intended effect (EIE) proposes amendments to the NSW planning system to better enable 'agritourism' and small-scale agricultural development to be approved. It also seeks to respond to natural disasters such as droughts and bushfires, and to simplify planning approvals for development or activities that have no or low environmental impact.

This document outlines the intended effect of proposed amendments to:

- the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument LEP Order)*,
- the *State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP)*, and
- the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.

### 1.2 Background

In recent years, NSW farmers and farming communities have faced many challenges including prolonged drought, land fragmentation and declining terms of trade. This year alone, farming communities have had to deal with unprecedented bushfires and economic impacts arising from COVID-19 including travel and trade restrictions, cancellation of regional events, and temporary closure of local businesses.

The NSW Government is committed to supporting the recovery and resilience of our regional communities and farming by growing emerging industries that are supplementary to, or based on, agriculture. One such industry is agritourism, which will help to strengthen rural communities as travel restrictions ease across NSW.

Agritourism is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events. Agritourism activities enable farmers to diversify their income from farming businesses while maintaining primary production on the land as the principal use.

The NSW Government is seeking comment on proposals recommended by stakeholders to:

- broaden the types of agritourism activities that can be undertaken and provide approval pathways tailored to the scale and types of activities,
- support farmers during times of hardship or following natural disaster events,
- reduce land use conflict by providing clearer rules and better managing environmental and social impacts, and
- clarify current planning controls and expand approval pathways for certain agricultural activities.

The proposed amendments are underpinned by the principle of no or low environmental impact.

### 1.3 What is proposed

Informed by the NSW Government's *Making Business Easier Program* and a wider agritourism project led by the NSW Small Business Commission and Service NSW, the following amendments are proposed to the NSW planning system to facilitate agritourism:

- **farm stay accommodation** – to support more farm stay accommodation amendments are proposed to the existing definition of 'farm stay accommodation'
- **farm events** – to remove existing barriers and support farm events amendments are proposed to introduce a new definition for 'farm events'
- **farm gate activities** – to enable farm gate businesses to be established amendments are proposed to introduce a new definition for 'farm gate activities'

Fast track approval pathways, known as exempt and complying development, will also be established for these types of agritourism.

Comment is also sought on the following proposals to facilitate or improve approval pathways for low-impact agricultural activities:

- **small-scale processing plants** – allow establishment of these plants as complying development for meat, dairy and honey where certain development standards are met
- **rebuilding of farm infrastructure** – allow reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to same size and contemporary building standards
- **stock containment areas** – update and rationalise existing planning controls to reflect current practice, and ensure stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses
- **farm dams** – clarify terminology used in the planning system and provide a consistent approval process across the state
- **biosecurity for poultry farms and pig farms** – update development standards to align with separation distances required under biosecurity standards
- **setbacks for rural dwellings** - review controls that allow dwellings on rural lots as complying development to ensure there is sufficient separation from adjacent primary production enterprises
- **recreational beekeeping** – providing an exempt development pathway for recreational beekeeping to improve certainty.



## Part 2 – Context

### 2.1 Background

With changes in markets, diminishing wholesale returns from traditional agricultural production and the seasonal nature of many agricultural industries, some traditional farms can no longer remain viable by simply producing food or fibre for wholesale markets. The planning system seeks to protect agricultural land and secure it as a resource for food production for future generations. There is scope for the planning framework to better support farmers' ability to innovate and diversify from purely primary production to other forms of value adding or complementary agribusiness.

Agritourism involves visiting a farm or food related business for enjoyment and education or to participate in activities and events. Agritourism is a growing sector of both the Australian and NSW economies, worth more than \$2 billion in NSW in 2014–15<sup>1</sup> and is expected to be worth \$18.6 billion in Australia by 2030, up from \$10.8 billion in 2018.<sup>2</sup> In 2019, Australians took 4.7 million trips to a farmgate, winery, brewery or distillery in a regional destination.<sup>3</sup>

Farmers are increasingly seeking options to diversify their income stream or value-add to their core agricultural business to make it more resilient, profitable and attractive to a new generation of farmers. The current regulatory and land use planning framework for these options can be complicated, costly and challenging for farmers to navigate.

Certainty, confidence and consistency in the planning framework will support investment in agritourism. A robust and flexible land use planning framework can provide strategic direction and a streamlined and efficient process for facilitating land uses that supplement agricultural industries.

In addition to agritourism, the department has identified other changes that could be made to reduce red tape and make it easier to use for farmers, particularly those running small-scale operations.

The NSW Government is committed to supporting economic development and job creation for NSW farms through a range of initiatives including simplifying land use definitions and development approval processes.

The proposed changes outlined below recognise the significance of agricultural industries and seek to:

- support investment in farms seeking supplementary incomes through other uses on the land
- facilitate a simple and streamlined approach to gaining approval for uses supplementary to primary production
- support farmers during times of hardship and following disaster events
- reduce land use conflict.

<sup>1</sup> NSW Department of Primary Industries, *NSW Agribusiness Positioned for prosperity*, Deloitte Access Economics report for the NSW Department of Primary Industries, July 2019,

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0009/691191/Positioned-for-prosperity\\_final.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0009/691191/Positioned-for-prosperity_final.pdf).

<sup>2</sup> CSIRO, *Growth opportunities for Australian food and agribusiness: Economic analysis and market sizing*, 2019, <https://www.csiro.au/en/Do-business/Futures/Reports/Ag-and-Food/Opportunities-for-Food-and-Agribusiness>.

<sup>3</sup> Tourism Research Australia, *Wineries, Breweries, Distilleries, Farmgates*, Headline Stats for 2019.



## 2.2 Consultation and collaboration

### 2.2.1 Making Business Easier

The NSW Small Business Commission in collaboration with Service NSW has undertaken a program to help farmers diversify as part of the NSW Government's *Making Business Easier* program. Diversification is especially important in times of drought where land typically reserved for productive use is unable to generate enough income through its primary activities. It also supports the continued sustainability of agriculture in rural areas.

The department has worked with the commission to identify simplified pathways to establish low impact agritourism businesses on farms, including farm stay accommodation, farm tours, roadside stalls, farm events and retail on farms. This work aligns with the department's commitment to reduce red tape and make the planning system easy to use.

#### What is 'agritourism'?

'Agritourism' is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events.

Agritourism activities include direct shopfront outlets with produce tastings, regional markets, farm and winery tours, cooking classes, food and wine festivals, farm stays, restaurants sourcing local produce, self-picking experiences and farm gate sales. The term also covers farm-stay, camping and other on-farm accommodation, farm tours and activities, and events based on farms for their scenic quality, such as weddings.

More broadly, agritourism allows regional economies to showcase what's special about the region, its unique growing conditions and natural resources and provides a visitor draw card from which other regional tourism businesses and experiences can benefit.

Service NSW has conducted research that identified challenges in the current planning regime for aspirational agri-entrepreneurs.<sup>4</sup> Many regional businesses have experienced difficulties in setting up agritourism businesses as:

- there is a lack of guidance to understand the planning approvals required
- it can be costly and time consuming to obtain approval
- some requirements have not kept up with contemporary practices
- some existing land use definitions and standards are inappropriate for the proposed use.

There is also variability in how the planning system is applied across NSW. This variation often relates to historical land use planning approaches and is not necessarily justified by regional differences or reflective of modern agricultural businesses.

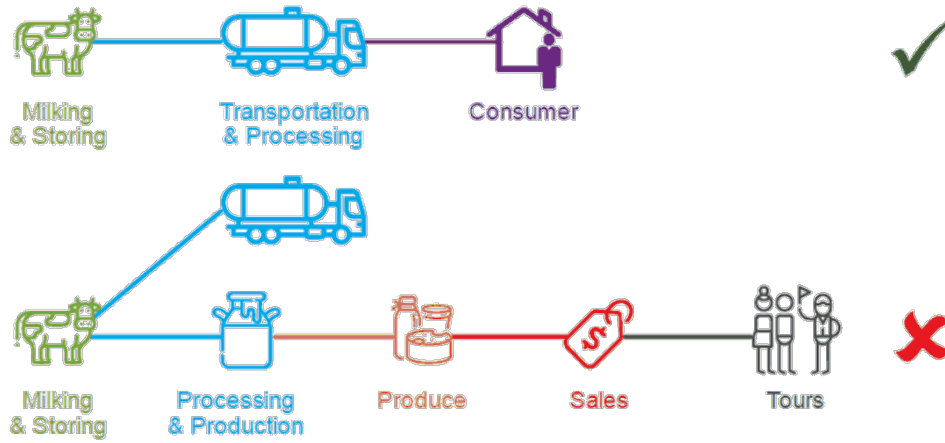
Figure 1 illustrates the variation between the permissibility of a traditional supply chain compared with agritourism activities, approval for which may vary for land with the same zoning in adjoining local government areas.

For example, two farmers can have cows, milk the cows and send the milk off site for processing, as intensive livestock agriculture is permitted. However, if they want to turn some milk into cheese, sell it on the property and provide tours, there may be different local environmental planning controls in place, which mean different rules apply to each farmer. On one side of the fence the farmer may be able to undertake the additional activities, but these may not be permitted on the other side because of local regulations. The activities could also be categorised, in planning terms,

<sup>4</sup> Service NSW and NSW Small Business Commissioner, *Starting and running an agritourism business: Farmers' experiences and needs*, December 2019.

as covering a range of different uses including retail, artisan food and drink, light industry, eco-tourism, and information and education premises.

**Figure 1 - Traditional supply chain compared with agritourism activities**



## Part 3 – Proposed amendments

### 3.1 Overview

The department is proposing amendments to existing controls within the planning system to facilitate more agritourism and small-scale agricultural developments, while balancing the need for individual councils to respond to different environmental and development settings.

The proposed changes include:

1. **Farm stay accommodation:** amending the existing definition for farm stay accommodation in the Standard Instrument LEP Order
2. **New land use terms:** introducing two new land use terms for farm gate activities and farm events in the Standard Instrument LEP Order. Including the new term in the Standard Instrument LEP Order will automatically introduce the term into all Standard Instrument LEPs
3. **New optional LEP clauses** - introducing new optional clauses for farm stay accommodation and farm gate activities that councils can apply where a development application is required
4. **New approval pathways** - providing exempt and complying development approval pathways in the Codes SEPP for agritourism activities where certain development standards are met
5. **Small-scale processing plants** - allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey where certain development standards are met
6. **Rebuilding of farm infrastructure** - allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size and contemporary building standards including the Building Code of Australia and relevant Australian Standards.
7. **Stock containment lots** - updating and rationalising existing controls for stock containment lots to reflect current practice, and ensuring stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.
8. **Farm dams** - clarify terminology used in the planning system and provide a consistent approval process across the state
9. **Biosecurity** - updating development standards for poultry farms and pig farms to align with separation distances required under biosecurity standards
10. **Rural dwelling setbacks** - updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.
11. **Recreational beekeeping** – providing exempt development pathway for recreational beekeeping to improve certainty

These changes will allow small-scale agritourism development and other small-scale agricultural activities to occur on land where the primary use of the land is agriculture. Recognising the seasonal nature of some agricultural uses of land and the variability of the Australian climate, the proposals will also allow agritourism activities on farms that are not currently producing for reasons outside the landowner's control such as prolonged drought. The changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses.

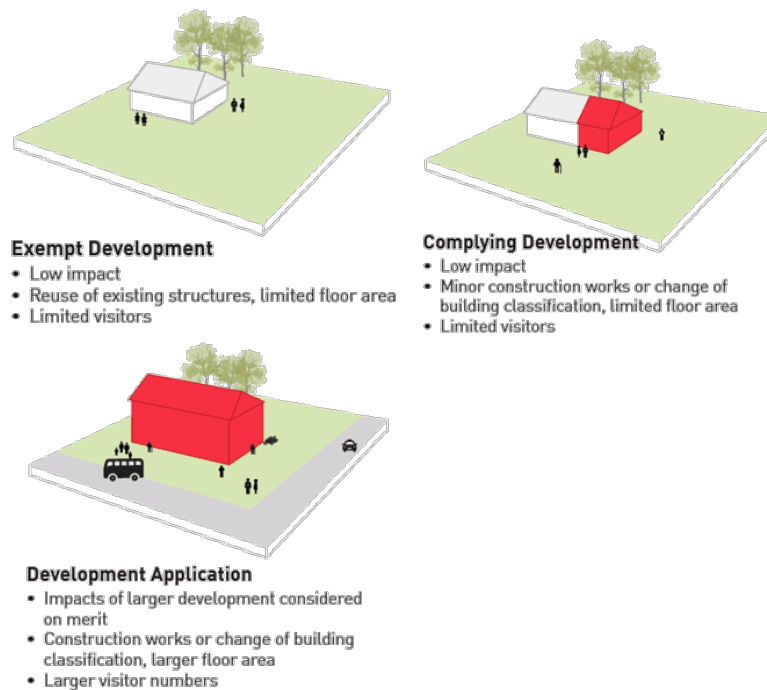
#### 3.1.1 Simplified planning pathways

As illustrated in Figure 2 below, exempt development is minor, low impact development that can be undertaken without the need for planning or building approval if the work complies with specified development standards. Complying development is a combined planning and construction

approval for straightforward development that can be determined through a fast track assessment by a local council or a registered certifier. Complying development must also meet specified development standards.

Some councils have already simplified their planning requirements at a local level. The new exempt and complying development will allow more activities and development of low environmental impact on farms to gain planning approval quickly across NSW. Proposed new development standards will ensure development is at a scale appropriate for the agritourism or agricultural activity with minimal impacts on the surrounding land and amenity. Where these standards cannot be met, a landowner can lodge a development application with the local council.

**Figure 2 - Illustration of development approval pathway thresholds (indicative only)**



### 3.2 Farm stay accommodation

A key aspect of an agritourism business is the provision of on farm accommodation. It is also critical to the tourism industry in some regions. On farm accommodation:

- encourages tourism to locations that cannot be reached by day trip from major centres
- encourages longer stays
- can utilise existing assets – such as farm workers' accommodation or large homesteads
- can provide ancillary income for a business – particularly where the business is seasonal or affected by weather conditions
- allows visitors to understand and engage with the area in greater depth than can be offered by day visits. It is often coupled with activities within the property
- facilitates recreation, entertainment and/or educational experiences to visitors
- supports increased awareness of agriculture and an improved connection between food

production and consumption.

#### Current Definition (Standard Instrument LEP)

*'farm stay accommodation'* means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

### 3.2.1 Proposed amendments

The changes propose to amend the existing definition of farm stay accommodation to recognise that farming activities may fluctuate seasonally (particularly during periods of drought) and to broaden the use to include camping.

To ensure farm stay accommodation remains a low impact use, an optional clause is proposed that councils can choose to adopt, with development standards councils can tailor to suit local conditions.

Exempt and complying development pathways have been developed to allow some building works, the change of use of existing buildings to farm stay accommodation and some camping opportunities without the need for a development application as long as the development standards are met.

#### 3.2.1.1 Proposed definition

It is proposed to amend the existing definition of farm stay accommodation in the Standard Instrument LEP Order to:

- remove the references to working farm and secondary business as these requirements are restrictive for farms that operate on a seasonal basis and are not typically planning considerations
- replace these references with a requirement that the existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes to ensure a farm stay supplements an existing commercial farming business
- enable farm stay accommodation on a farm that is currently not producing goods because of drought or similar events outside the landowner's control
- include accommodation in a building and camping (camping is currently not included under farm stay accommodation). It is proposed to amend the definitions of camping ground and caravan park to exclude tents, campervans and caravans erected on land for the purposes of farm stay accommodation. This is intended to facilitate small-scale camping being undertaken on a farm as exempt development (described below).

Amending the definitions in the Standard Instrument LEP Order will amend the definitions in all Standard Instrument LEPs.

#### 3.2.1.2 Permissibility

Farm stay accommodation will continue to be permissible with consent wherever councils currently identify it as permissible with consent in their LEPs.

#### 3.2.1.3 Approval Pathways

The proposed approval pathways for farm stay accommodation are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 1.

**Table 1 - Summary of proposed approval pathways for farm stay accommodation**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Change of use of an existing dwelling or part of a dwelling</li> <li>Use of land for farm stay accommodation in tents, caravans or similar</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building or manufactured home</li> <li>Erection, alteration or addition to a building or manufactured home</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further details about these proposed approval pathways and the proposed development standards for each pathway are explained below.

#### Exempt development

##### **Change of use of an existing dwelling or part of a dwelling**

It is proposed to allow the change of use of an existing dwelling or part of a dwelling (including rural workers dwelling and secondary dwellings) on rural zoned land as exempt development for the purpose of farm stay accommodation where it has been lawfully constructed and introduce the following development standards:

##### **Maximum guests**

- allow up to two persons aged over 12 per bedroom

##### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and managed.

##### **Use of land for farm stay accommodation**

It is proposed to allow the use of land for farm stay accommodation as exempt development where visitors reside in tents, caravans, campervans or other similar portable and light weight temporary shelters on rural zoned land and introduce the following development standards:

##### **Operational requirements**

- the use must be permissible with consent under council's local environmental plan
- allow up to 20 persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters at any one time on the landholding for up to 14 days
- unoccupied caravans, campervans and tents are not to remain on the land after 24 hours

### Location and size

- a tent must not be installed closer than 6 metres to any building, caravan, annexe or campervan or closer than 3 metres to any other tent
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*
- the development cannot occur on land that is bush fire prone land

### Setbacks

- the minimum following setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation may have the same setback
- a setback of 100 metres from any waterway

### Waste management

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and managed
- if human waste storage devices are proposed, these devices must not be emptied on sites without reticulated sewerage.

### Complying development

#### Change of use of an existing building or manufactured home

It is proposed to enable a change of use of an existing building or manufactured home to farm stay accommodation on rural zoned land as complying development under the Codes SEPP. The following development standards are proposed:

#### Use, number of buildings and size

- the current use must be a lawful use
- maximum one dwelling per 15 hectares, to a maximum of six dwellings on a landholding
- the new use must not be carried out at premises that are a moveable dwelling or associated structure (except for a manufactured home), temporary structure, or tent
- maximum floor area of the development must be 60 square metres

#### Bush fire prone land and flood control lots

- the development must comply with the flood control lots requirements in the Codes SEPP (clause 3D.7) if the building is on this type of land
- the development must not be a type that requires a bush fire safety authority under section 100B of the *Rural Fires Act 1997* because it is on bushfire prone land.

#### Setbacks

- the minimum setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres

- other intensive livestock agriculture – 500 metres
- intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater

- if an existing dwelling has a setback from another use that is less than these setbacks or is less than 250 metres from the boundary, the farm stay accommodation may have the same setback

#### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

Note: Farm stay accommodation is a type of 'tourist and visitor accommodation' under the SI LEP Order. Under the *Rural Fires Act 1997*, development for the purpose of tourist accommodation cannot be undertaken as complying development on bush fire prone land.

#### **Erection, alteration or addition to a building or manufactured home**

It is proposed to enable the **erection, alteration or addition to a building or manufactured home** as complying development on rural zoned land to be used for farm stay accommodation. The following development standards are proposed:

#### **Use, location and size**

- any structure constructed or converted for the purpose of farm stay accommodation cannot be used as a dwelling without consent
- the erection of a new building or manufactured home for farm stay accommodation must be within 300 metres of the existing dwelling
- maximum height of 6 metres
- for a new building or manufactured home, a maximum floor area that is the greater of the standard in the relevant LEP or 60 square metres
- maximum one dwelling per 15 hectares, to a maximum of six dwellings on a landholding
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

#### **Setbacks**

- side setback of the existing dwelling on the land or 200 metres, whichever is less
  - the minimum following setbacks from any adjoining established or proposed:
    - pig farm, feedlot or poultry farm – 1,000 metres
    - other intensive livestock agriculture – 500 metres
    - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres
- or 250 metres from the boundary with the other use, whichever is greater



- if an existing dwelling has a setback from the other use that is less than these setbacks or is less than 250 metres from the boundary, the farm stay accommodation may have the same setback

### Services

- the development cannot occur on unsewered land to which *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* applies, if that development will result in an increase to the number of bedrooms on the site or in a site disturbance area of more than 250 square metres or in any other drinking water catchment identified in any other environmental planning instrument

### Waste management

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### Development application

Where a proposal for farm stay accommodation does not satisfy the requirements for exempt or complying development, a development application can be lodged with the local council. To appropriately consider the impact of farm stay accommodation where development consent is required, an optional clause is proposed that councils can choose to include in their LEPs which:

- includes objectives to:
  - allow for small scale tourism and commercial uses that complement the agricultural use of the land
  - balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- provides the following requirements for farm stay accommodation:
  - allow the number of people accommodated in any buildings/manufactured homes to be three times the number of bedrooms permitted under clause 5.4(5) of the council's LEP, or the number the council specifies in its LEP
  - allow the number of persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters on the landholding to be 20 at any one time for up to 14 days
  - require the maximum floor area of any new building to be 75 square metres or the number the council specifies in its LEP (which must be not more than 75 square metres).

It is also proposed to amend clause 2.6 of the Standard Instrument LEP Order to prevent the creation of a dwelling entitlement in relation to farm stay accommodation. This is intended to preclude the fragmentation of prime agricultural land.

### 3.2.2 Farm stay accommodation - consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.



Photo courtesy of Smith and Tzannes Architecture and Urban Planning

### 3.3 Farm gate activities

Farm gate is a common term used where value is added to a farm's produce and there is an interaction with the farm by the purchaser of the goods. Farm gate activities may include appropriate infrastructure to enable on-farm dining or entertainment.

Farm gate activities are in keeping with the surrounding agricultural landscape, community and region. These activities can also protect farming from encroachment by non-agricultural or conflicting uses by strengthening the value of the agricultural activity itself.

Landholders are generally unable to process and sell retail products produced on a farm under existing planning requirements.

The proposed changes will make it easier for farmers to gain approval and establish businesses associated with their agricultural production activity. Farm gate activities vary significantly, from selling apple pie on a farm where the apples are grown on the property, to developing a cidery on a farm which uses ingredients predominantly grown in the surrounding area.

It is proposed to introduce a new land use term 'farm gate activities' into the Standard Instrument LEP Order to provide greater opportunities for landowners to showcase the agricultural produce from their land or the surrounding area through retail sales, a small restaurant or café, or tastings and workshops.

To ensure farm gate activities remain low intensity uses, an optional clause is proposed that councils can choose to adopt and tailor to suit local conditions.

Exempt and complying development pathways have also been developed to allow streamlined approval pathways for farm gate activities on certain land. This will allow some building works as complying development, changing the use of existing buildings to farm gate activities and erecting a roadside stall as exempt development.

### 3.3.1 Proposed amendments

#### 3.3.1.1 Proposed definition

It is proposed to introduce a new land use term in the Standard Instrument LEP Order for farm gate activities which includes:

- a. the processing, packaging and sale of agricultural produce, or
- b. a restaurant or café, or
- c. facilities for the holding of tastings, workshops or providing information or education to visitors

for agricultural produce grown on the farm or predominantly grown in the surrounding area.

The proposed definition will make it clear that the principal use of the land must be the production of agricultural goods for commercial purposes. The proposed new term will also enable farm gate activities where the farm is currently not producing goods because of drought or similar events outside the landowner's control.

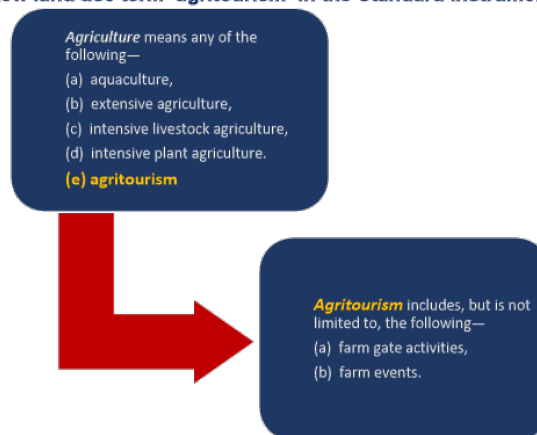
#### 3.3.1.2 Permissibility

It is proposed to create a new land use term 'agritourism' in the Standard Instrument LEP Order and farm gate activities will be a subset of this new term. It is further proposed that 'agritourism' will be a subset of the existing land use term 'agriculture'.

Additional proposals include existing terms in the Standards Instrument LEP Order, 'roadside stall' and 'cellar door premises', to become subsets of the new 'farm gate activities' term.

These changes mean that farm gate activities will initially be permissible in all LEPs wherever 'agriculture' is currently permissible. Councils can then permit farm gate activities in additional zones, such as zones in which existing land uses, e.g. roadside stalls, are currently permitted. Roadside stalls and cellar door premises will continue to be permissible where they are currently permitted, as well as being permitted wherever 'agriculture' is permissible.

**Figure 3 - Proposed new land use term 'agritourism' in the Standard Instrument LEP Order**



*Note: This is indicative only and subject to change in response to feedback received during exhibition*

#### 3.3.1.3 Approval pathways

The proposed approval pathways for farm gate activities are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 2.

**Table 2 - Summary of proposed approval pathways for farm gate activities**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Use of land for farm gate activities</li> <li>Change of use to a roadside stall</li> <li>Erection of a roadside stall</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building</li> <li>Erection, alteration or addition to a building for a farm gate activity</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further detail about these proposed approval pathways and the proposed development standards for each pathway are explained below.

#### Exempt development

##### Use of land for farm gate activities

It is proposed to allow the use of land for farm gate activities on rural zoned land as exempt development and introduce the following development standards:

##### Operational requirements

- the development must not involve a change of building use
- standard hours of operation to apply – 7.00 am to 7.00 pm Monday to Saturday and 9.00 am to 6.00 pm on a Sunday or a public holiday

##### Setbacks

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres
 or 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback

##### Site location and access

- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5
- the development cannot be carried out on land in bush fire attack level-40 or the flame zone

##### Maximum guests

- maximum number of guests is 50 at any one time

### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### **Change of use to a roadside stall**

It is proposed to allow a change of use to a roadside stall on rural-zoned land as exempt development subject to the existing development standards in clause 2.20B of the Codes SEPP (roadside stalls are currently excluded from these provisions), which include preventing an increase in gross floor area of the building, compliance with existing conditions of development consent relating to hours of operation, noise, car parking, waste management, etc.

### **Erection of a roadside stall**

It is proposed to allow the erection of a roadside stall on rural zoned land as exempt development and introduce the following development standards:

#### **Building use, location and size**

- the use must be permissible with consent under council's local environmental plan
- maximum footprint 8 square metres
- the development must be located on private property
- the development must not be located adjacent to a classified road

#### **Site access and parking**

- development must use an existing access point to a road and this access is to have a clear sight distance of 250 metres to an approaching vehicle along the road or comply with the sight distance requirements of Austroads Part 3, Table 5.5.
- any parking accommodated on the verge:
  - must be at least 3 metres from any carriageway
  - the verge must be graded
- if parking is not provided on the verge, it must be provided within the boundary of the property and cars must be able to access and leave the property in a forward direction
- maximum one roadside stall per land holding

#### **Waste Management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

Note: Approval from the roads authority is required for any new access driveway.

### **Complying development**

#### **Change of use of an existing building**

It is proposed to allow the **change of use of an existing building** to a farm gate activity premises on rural zoned land as complying development and introduce the following development standards:

#### **Use, location and size**

- the current use must be a lawful use
- the new use must not be carried out at premises that are a manufactured home, moveable dwelling or associated structure, temporary structure, tent
- maximum 200 square metre footprint for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events

### **Maximum guests**

- maximum number of guests is 50 at any one time

### **Setbacks**

- the minimum following setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### **Erection, alteration or addition to a building for a farm gate activity**

It is proposed to allow the **erection, alteration or addition to a building for a farm gate activity** on rural zoned land as complying development and introduce the following development standards:

#### **Building location and size**

- maximum 200 square metres for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events provide that a road setback is not required for structures with a floor area less than 12 square metres and height up to 3.5 metres and which are for the sale of goods or produce (roadside stalls)
- maximum height:
  - 7 metres for landholding 4000 square meters to 10 hectares
  - 10 metres for landholding greater than 10 hectares
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

### **Maximum guests**

- maximum number of guests is 50 at any one time

### **Setbacks**

- the minimum following setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater

- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

### **Services**

- the development cannot occur on unsewered land in the Sydney drinking water catchment if it will cause a site disturbance area of more than 250 square metres, or in any other drinking water catchment identified in an environmental planning instrument

### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### **Development application**

Where a proposal for farm stay accommodation does not satisfy the requirements for exempt or complying development, a development application can be lodged with the local council. To appropriately consider the impact of farm gate activities where development consent is required, an optional clause that councils can adopt in their LEPs is proposed which will:

- introduce objectives:
  - to allow for small scale tourism and commercial uses that complement the agricultural use of the land
  - to balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- introduce the following standards:
  - a. the gross floor area must not exceed 200 square metres or the number the council specifies in its LEP (which must be not less than 200 square metres)
  - b. the maximum number of people is not to exceed 50 at any one time or the number the council specifies in its LEP (which must be not less than 50)
  - c. despite a., if a structure is a roadside stall, the maximum floor area must not exceed 8 square metres or the number the council specifies in its LEP (which must be not less than 8 square metres).

### **3.3.2 Farm gate activities - consultation questions**

5. How far do you think a roadside stall should be setback from the road?
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?



Photo courtesy of Smith and Tzannes Architecture and Urban Planning

### 3.4 Farm events

The ability to hold rural events can allow farmers to diversify and value add to their agricultural business. In addition to the direct benefits to agricultural business, rural events can have a far-reaching supply chain benefit to the surrounding economy. For example, if a farm can host a wedding, beyond just the hiring of a venue on a farm, the event can result in hiring of local accommodation services, engagement of event services (such as photographers, stylists and transport), food and drink services, supporting services (gift shops, child minding) and facilities services (party hire, mobile toilet hire etc).

There are limited land use terms in the planning system that enable rural events. Applicants can rely on the definition in the Standard Instrument LEP Order for 'function centre' or use the temporary use of land clause in the Standard Instrument LEP Order (clause 2.8) to seek development consent. Including a definition for events on farms will provide greater certainty around where such development can take place.

It is proposed to introduce a new land use term 'farm events' into the Standard Instrument LEP Order to allow events, tours, functions and conferences on land used for agriculture.

The proposed definition will also enable farm events on a commercial farm that is currently not producing goods because of drought or similar events outside the landowner's control.

Exempt and complying development pathways have been developed to allow streamlined approvals for low scale, low impact farm events. The exempt development pathway will only be available for a limited number and scale of events per year and certain development standards must be met. Complying development pathways will allow some building works and a change of use of existing buildings for farm events.



### 3.4.1 Proposed amendments

#### 3.4.1.1 Proposed definition

It is proposed to introduce a new land use term in the Standard Instrument LEP Order to permit events, tours, functions, conferences, fruit picking, horse riding and other similar experiences on land for which the principal use of the land is the production of agricultural goods for commercial purposes. The definition will also enable farm events on a commercial farm that is currently not producing goods because of drought or similar events outside the landowner's control.

#### 3.4.1.2 Permissibility

It is proposed to create a new land use term 'agritourism' in the Standard Instrument LEP Order and farm events will be a subset of this new term. It is further proposed that 'agritourism' will be a subset of the existing land use term 'agriculture' – see diagram at section 3.3.1.2 Permissibility.

These changes mean that initially, farm events will be permissible in all local environmental plans wherever 'agriculture' is currently permissible. Councils can then permit farm events in any additional zones.

#### 3.4.1.3 Approval pathways

The proposed approval pathways for farm events are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 3.

**Table 3 - Summary of proposed approval pathways for farm events**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Use of rural zoned land for farm events</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building to farm event premises</li> <li>Erection, alteration or addition to a farm event building</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further detail about these proposed approval pathways and the proposed development standards for each pathway are explained below.

#### Exempt development

##### Use of rural zoned land

It is proposed to allow the use of rural zoned land for a farm event that does not involve manufacturing food or drink as exempt development and introduce the following development standards:

##### Operational requirements

- the development must not involve a change of building use
- events must only take place during the following times:

- 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event
- the event holder is to notify neighbours of an event at least one week before holding the event

### **Setbacks**

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation gate activity may have the same setback
- setback at least 50m from any other fence or otherwise marked property boundary
- events that have amplified music or voices, must be located at least 1,000 metres from the nearest existing dwelling house and any building which houses animals including stables, stock yards and poultry sheds, on an adjoining property

### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### **Complying development**

#### **Change of use of an existing building to farm event premises**

It is proposed to allow a change of use of an existing building to farm event premises on rural zoned land as complying development and introduce the following development standards:

#### **Operational requirements**

- the current use must be a lawful use
- the new use must not be carried out at premises that are a manufactured home, moveable dwelling or associated structure, temporary structure, tent
- events must only take place during the following times:
  - 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event

### **Use, location and size**

- maximum 200 square metres for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events

### **Setbacks**

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm event may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed

### **Erection, alteration or addition to a farm event building**

It is proposed to allow the erection, alteration or addition to a building that is to be used for a farm event on rural zoned land as complying development and introduce the following development standards:

#### **Operational requirements**

- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event
- events must only take place during the following times:
  - 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- the event holder is to notify neighbours of an event at least one week before holding the event

#### **Building location and size**

- maximum footprint of 200 square metres for each building and 500 square metres for all buildings used for farm gate activities and farm events
- maximum height:
  - 7 metres for landholding 4000 square metres to 10 hectares
  - 10 metres for landholding greater than 10 hectares

- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

**Setbacks**

- the minimum following setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm event may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

**Services**

- the development cannot occur on unsewered land in the Sydney water catchment if it will cause a site disturbance area of more than 250 square metres, or in any other drinking water catchment identified in an environmental planning instrument

**Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

**3.4.2 Farm events - consultation questions**

7. The proposed maximum number of people and events per day for exempt and complying development are:
  - a) 52 event days per year and up to 30 guests per event, or
  - b) 10 event days per year and up to 50 guests per eventAre these appropriate?
8. What events, if any, do you think should be excluded from the definition of farm events?
9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.
  - a) RU1
  - b) RU2
  - c) RU4 zones
  - d) Other zones (please specify)
10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?
11. Is there any rural land or areas in which agritourism activities should not be permitted? If yes, why?



### 3.5 Additional proposed changes relating to agritourism

The following additional changes are proposed to apply existing standards to the agritourism activities and amend existing exempt development standards to better facilitate these activities.

#### 3.5.1 Proposed amendments

**Bush fire prone land:** Apply existing complying development standards in the Codes SEPP for bush fire prone land to buildings used for farm activities or farm events as complying development.

**Business identification signs:** Amend clause 2.83 exempt development provisions of the Codes SEPP to allow business identification signs for farm stay accommodation, farm gate activities and farm events, limited to 4 per landholding and one sign every 2 kilometres.

**Free standing signs:** Amend the Codes SEPP to allow the construction of business identification signs as exempt development that are displayed on a free-standing structure, fixed to the fence adjacent the entry gate or the entry gate. Introduce the following development standards:

- a) the development must not result in more than 3 business identification signs of this type per property
- b) the development must be associated with a farm gate activity use, farm stay accommodation, or farm events use on the land
- c) the development must not be more than 2 metres above ground level (existing)
- d) each sign must not have an area greater than 2 square metres
- e) the development must be constructed and installed in accordance with Australian Standards:
  - i. AS/NZS 1170.0:2002, Structural design actions, Part 0: General principles
  - ii. AS/NZS 1170.2:2011, Structural design actions, Part 2: Wind actions
- f) only one sign may be illuminated and if illuminated must:
  - i. not be animated, flashing or moving
  - ii. comply with AS 4282-1997 Control of the obtrusive effects of outdoor lighting
- g) if the hours of operation of the business identified on the sign have been approved, operate during those hours, or if the hours of operation of the business identified on the sign have not been approved, operate between 7.00 am and 10.00 pm on any day

- h) a sign on rural zoned land advertising a roadside stall may only be located on the same landholding as the roadside stall.

**Verandahs:** Amend clause 2.12 of the Codes SEPP to allow decks, patios, pergolas, terraces and verandahs on the front of buildings in rural zones as exempt development if they are setback 50 metres from the road. This will allow farm gate businesses to provide an area for tastings.



### 3.6 Small-scale processing plants

Amendments to the Codes SEPP are proposed to allow small-scale processing plants associated with agricultural produce industries that process meat, honey and dairy as complying development. The provisions would use the definitions of livestock processing industries and agricultural produce industries contained in the Standard Instrument LEP.

#### 3.6.1 Proposed development standards

Small-scale processing plants would be complying development with the following development standards:

- maximum throughput per annum of:
  - 3 million litres for dairy
  - 4,000 carcasses for pork
  - 1,000 lamb carcasses
  - 100 beef carcasses
  - 4,000 carcasses for poultry
  - 1,000 carcasses for other animals such as deer, kangaroo
- not be used for the processing of skins or wool of animals, or as knackereries, tanneries, woolscours or rendering plants
- must be setback a minimum of:
  - 100 metres from a natural waterbody or wetland
  - 500 metres from the nearest existing dwelling house other than the house located on the property
  - 5 kilometres from a residential zone

- no more than one per property.
- hours of operation 6am to 7pm Monday to Saturday, 8am to 5pm Sunday
- must be a minimum of 500 metres from another existing or proposed poultry or pig production facility.

Note: There are provisions in the EP&A Regulation (Schedule 3) that classify livestock processing industries and agricultural produce industries as designated development by certain locational criteria. Designated development cannot be complying development.

### 3.6.2 Small scale processing plants - consultation questions

12. Should any other agricultural produce industries be complying development? What standards should apply?
13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?
14. Should any additional standards be included?
15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:
  - a) as complying development?
  - b) through the standard DA process?

## 3.7 Rebuilding of farm infrastructure

This year, farming communities were impacted by unprecedented bushfires. A range of amendments were made to planning controls in January and February 2020 to help people affected by the bushfires such as allowing certain activities without planning approval including temporary accommodation, temporary portable offices, temporary storage, and demolition and repair of damaged buildings.

To further assist in efficient recovery following future events, amendments to the Codes SEPP are proposed to allow farm buildings that have been damaged or destroyed by a natural disaster event to be rebuilt as exempt development, if built to a contemporary standard and in the same location. This will benefit farmers that are unable to use the existing exempt development provisions to rebuild farm buildings because of requirements such as minimum setbacks from boundaries.

### 3.7.1 Proposed development standards

Reconstruction of farm buildings is exempt development with the following development standards:

- The structure must have been destroyed or significantly damaged in a natural disaster.
- The structure must be of the same building class under the BCA.
- The structure must have been a lawful structure.
- The structure must be built to current BCA standards.
- The new structure is to be located on the same building footprint as the former structure.
- The height of the new structure must not be greater than the structure that was lost due to a natural disaster.
- The new structure must comply with standards identified under the following provisions except for provisions relating to height and footprint. If it is:
  - a farm building (other than stock holding yards, grain silos, and grain bunkers) it must comply with clause 2.32 of the Codes SEPP
  - a stock holding yard it must comply with clause 2.32B of the Codes SEPP

- a grain silo or grain bunker it must comply with clause 2.32D, 2.32E, 2.32F of the Codes SEPP.

### 3.7.2 Rebuilding of farm infrastructure - consultation questions

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?
17. Should any additional standards be included?



## 3.8 Stock containment areas

These proposed amendments relate to the construction of stock containment areas to temporarily contain livestock to assist during and immediately after natural disasters, and for routine animal husbandry purposes:

- amendments to implement locational requirements for all stock containment areas in response to impacts some containment areas have had on waterways and the oyster industry
- amendments to simplify clauses 18(2) and (3) of the Primary Production and Rural Development SEPP and update them to reflect current practice
- currently the provisions for stock containment areas and feedlots are spread across the Primary Production and Rural Development SEPP and Standard Instrument LEP. To reduce complexity, options to locate these controls in one place are being explored.

Allow minor permanent infrastructure to be developed without consent for stock containment areas (to contain livestock temporarily, not permanently).

### 3.8.1 Proposed development standards

Development for the purpose of a stock containment area, or other feeding or housing arrangements, for any or a combination of the following purposes:

- to manage stock during or immediately following a drought, flood, fire or similar emergency
- for temporary agistment or housing; or
- for weaning, dipping, tagging, backgrounding or similar husbandry purposes may be carried out without development consent if:



- a) development for the purpose of agriculture may be carried out with or without development consent on the land
- b) there is currently an agriculture land use lawfully occurring on the land
- c) it is not located in an environmentally sensitive area
- d) it is not located within 100 metres of a natural watercourse
- e) it is not located within 500 metres of a residential zone or an adjoining dwelling that is not associated with the development.

### 3.8.2 Stock containment areas - consultation questions

- 18. What type of permanent infrastructure should be permitted for stock containment areas?
- 19. What type of permanent infrastructure should not be permitted for stock containment areas?

## 3.9 Farm dams

Farm dams are minor development that is essential for agricultural purposes to provide water for stock, fire protection and irrigation. In areas of NSW (near the Murray River) small farm dams are permitted without consent while in other areas they are considered 'water storage facilities' that often need consent.

There is some inconsistency in terminology used around farm dams in the Standard Instrument LEP, the PPRD SEPP, and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

Stakeholders have suggested the various planning terms and approval pathways that apply across the state could be consolidated to simplify the planning system.

### 3.9.1 Proposed amendments

Clarify terminology used in the SI LEP, PPRD SEPP and EP&A Regulation 2000 and consider providing a consistent approval process.

### 3.9.2 Farm dams - consultation questions

- 20. How could we simplify planning provisions for farm dams?

## 3.10 Biosecurity for poultry farms and pig farms

Currently, the standards for biosecurity for poultry farms and pig farms in the Standard Instrument LEP (clause 5.18) and PPRD SEPP are not in line with industry standards such as the Best Practice Management for Meat Chicken Production in NSW produced by the NSW Poultry Meat Industry Committee in conjunction with the Department of Primary Industries and other government agencies.

Amendments are proposed to better address biosecurity for poultry farms and pig farms. Biosecurity risks for poultry are negligible up to 10,000 birds, so it is proposed to raise the provisions allowing poultry farms to be developed without consent from 1,000 to 10,000 birds, subject to locational restrictions.

### 3.10.1 Proposed amendments

Clause 5.18 of the Standard Instrument LEP will be amended so that development consent is not required for poultry farms with less than 10,000 birds but only if they are not within:

- 1,000 metres of other poultry farms, or
- 5,000 metres of poultry farms used for the breeding of poultry
- If it is a poultry farm used for the breeding of poultry – 5,000 metres of a poultry farm.

Development consent is not required for pig farms with fewer than 20 breeding sows, or fewer than 200 pigs (of which fewer than 20 may be breeding sows) but only if they are not within 3,000 metres of another pig farm.

Other locational restrictions in clause 5.18 will remain. The PPRD SEPP will be amended to align with these changes.

### 3.10.2 Biosecurity for poultry and pig farms - consultation questions

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?
22. Should any additional standards be included?

## 3.11 Rural dwelling setbacks from intensive livestock agriculture

Currently, the Codes SEPP requires a setback of 250m for rural dwellings from a boundary with adjoining land being used for any of the following:

- (i) forestry
- (ii) intensive livestock agriculture
- (iii) intensive plant agriculture
- (iv) mines and extractive industries
- (v) railway lines
- (vi) rural industries.

There are concerns that these setbacks may not be large enough to minimise impacts from intensive livestock agriculture on new dwellings.

### 3.11.1 Proposed amendments

In addition to the existing setbacks from boundaries of properties being used for intensive livestock agriculture, the department proposes that rural dwellings have a setback of:

- 1,000 metres from any existing or proposed pig farm, feedlot or poultry farm
- 500 metres from any existing or proposed other intensive livestock agriculture development

The greater separation distance will apply. If these setbacks cannot be complied with, a development application will be required.

These changes to setbacks seek to reduce potential land use conflict without significantly reducing the ability for rural landowners to develop new houses as complying development.

### 3.11.2 Rural dwelling setbacks from intensive agriculture - consultation questions

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?
24. From which point should the setbacks be measured?
  - a) From the proposed or existing intensive agricultural use
  - b) From the property boundary shared with land used for intensive agriculture
  - c) A combination of the above



### 3.12 Recreational Beekeeping

Recreational beekeeping has grown in popularity in recent years, including in urban and metropolitan areas. It can be an interesting and rewarding hobby with minor impacts if managed appropriately.

While commercial beekeeping is defined as a form of extensive agriculture in the Standard Instrument LEP, recreational beekeeping is not defined. This has led to some confusion regarding whether development approval is needed for the activity.

In NSW, beekeepers who own honey bees for more than 3 months during a 12 month period, are required to hold a biosecurity registration under the *Biosecurity Act 2015*. The biosecurity registration requires information on the location, contact person and number of hives on a property and ensures that the Department of Primary Industries can effectively manage any disease outbreaks.

The proposed amendments will clarify that recreational beekeeping is exempt development and does not need planning approval if it complies with certain standards. These standards are in line with the NSW Beekeeping Code of Practice and are designed to avoid inappropriate development and minimise impacts related to such development.

#### 3.12.1 Proposed amendments

Amendments are proposed to the Codes SEPP to permit recreational beekeeping as exempt development if certain development standards are met. Where the development standards cannot be met a development application would be required.

The development:

- Must not be used for a commercial purpose.
- Must not consist of more than:
  - 2 hives for lots up to 300m<sup>2</sup>,
  - 4 hives for lots 300m<sup>2</sup> to 1000m<sup>2</sup>,
  - 8 hives for lots above 1000m<sup>2</sup>,
  - no limit for lots in a rural zone.
- Must not contain any hive within 1m of any lot boundary, or within 3m of any boundary adjoining a public reserve, childcare centre, health services facility, educational establishment or community facility.
- Must be located in a rural, residential, or environmental zone.

- If it is in a residential zone, be located in the rear yard.
- If it is located on bush fire prone land, not be within 5m of a dwelling.

Note: Beekeepers must also comply with the requirements of the *Biosecurity Act 2015*, the Australian Honey Bee Industry Biosecurity Code of Practice and the Beekeeping Code of Practice for NSW.

### 3.12.2 Recreational Beekeeping – Consultation Questions

25. Are the proposed development standards appropriate and are any additional standards needed?

## Part 4 – Have your say

This EIE outlines proposed changes to the NSW Planning System to better support farming businesses and rural and regional areas. The department welcomes your feedback during public exhibition.

Your feedback will help us better understand the views of the community, which will then inform the preparation of the proposed changes to the planning framework.

The department will publish all individual submissions and an assessment report on all submissions received, shortly after the exhibition period has ended.

To view the EIE and supporting documents, and to make a submission online, please follow the steps below:

[www.planningportal.nsw.gov.au/exhibition](http://www.planningportal.nsw.gov.au/exhibition)

- 1) Read our privacy statement and decide whether to include your personal information in your submission.
- 2) Fill in the online submission form. Your submission can either be typed or uploaded as a PDF and should include:
  - a. the name of the proposal (Agritourism and small-scale agriculture development: Proposed amendments to support farm businesses and regional economies)
  - b. a brief statement on whether you support or object to the proposal
  - c. the reason why you support or object to the proposal.
- 3) Ensure you disclose reportable political donations. Anyone lodging submissions must declare reportable political donations (including donations of \$1,000 or more) made in the previous two years.
- 4) Agree to our online statement and lodge your submission.

You may also lodge your submission via post by sending it to:

Executive Director  
Local Government and Economic Policy  
Department of Planning, Industry and Environment  
Locked Bag 5022, Parramatta NSW 2124

In your submission, you are encouraged to respond to the consultation questions at the end of each proposal. Alternatively, you can respond to these questions via a survey on the department's website [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission.

### **Call for expressions of interest from local councils**

During exhibition of the EIE, councils are asked to consider whether they wish to adopt the new optional clauses for farm stay accommodation and farm gate activities and identify the zones in which they wish to allow the new farm events and farm gate activities. Councils who wish to make these changes to their LEPS are invited to provide an expression of interest and nominate a suitable contact(s) to liaise with the department about implementation.

Following exhibition, the department will work with councils that have submitted an expression of interest to facilitate amendments to their LEPs through an amending State environmental planning policy, saving the time and resources required to progress individual planning proposals.

To find out more, please visit [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

## 4.1 Consultation Questions

### 4.1.1 Farm stay accommodation

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?
4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

### 4.1.2 Farm gate activities

5. How far do you think a roadside stall should be setback from the road?
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

### 4.1.3 Farm events

7. The proposed maximum number of people and events per day for exempt and complying development are:
  - a) 52 event days per year and up to 30 guests per event, or
  - b) 10 event days per year and up to 50 guests per eventAre these appropriate?
8. What events, if any, do you think should be excluded from the definition of farm events?
9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.
  - a) RU1
  - b) RU2
  - c) RU4 zones
  - d) Other zones (please specify)
10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?
11. Is there any rural land or areas in which agritourism activities should not be permitted?

### 4.1.4 Small scale processing plants

12. Should any other agricultural produce industries be complying development? What standards should apply?
13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?
14. Should any additional standards be included?

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:
- as complying development?
  - through the standard DA process?

### 4.1.5 Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?
17. Should any additional standards be included?

### 4.1.6 Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?
19. What type of permanent infrastructure should not be permitted for stock containment areas?

### 4.1.7 Farm dams

20. How could we simplify planning provisions for farm dams?

### 4.1.8 Biosecurity for poultry and pig farms

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?
22. Should any additional standards be included?

### 4.1.9 Rural dwelling setbacks from intensive agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?
24. From which point should the setbacks be measured?
- From the proposed or existing intensive agricultural use
  - From the property boundary shared with land used for intensive agriculture
  - A combination of the above

### 4.1.10 Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?

enquiries refer  
**Simon Scott**  
in reply please quote  
21/32543



XX April 2021

Executive Director  
Local Government and Economic Policy  
Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Sir/Madam

**Re: Submission to Agritourism and Small-scale Agriculture Development EIE**

Thank you for the opportunity to provide feedback with respect to the proposed agritourism reforms.

Council notes the recent exhibition of the Agricultural Land Use Planning Options Paper by the NSW Agriculture Commissioner. Council's submission to that exhibition is attached for your reference. Council notes that the two reform papers appear to represent diametrically opposed land use planning philosophies, suggesting a lack of policy consistency in the direction and priorities of the State Government with respect to agricultural land management.

Council encourages the Government to develop a consistent and holistic policy framework for the protection of agricultural productivity and provision for appropriate rural development (including agritourism) that balances the interests of stakeholders and provides for an appropriate level of impact assessment.

From an economic development perspective, the value of agricultural land for production and associated activity is recognised in Ballina Shire. It is noted that Ballina Shire's 'Ballina Coast and Hinterland Destination Management Plan', prepared in consultation with the tourism industry includes the following relevant actions:

- Action 12: '*Preserve primary production land for food security and diversity purposes*'.
- Action 16: '*Enable visitation and alternative revenue streams that promote the long term viability and agricultural character of our rural areas. A key point of difference for the destination is the abundance of primary producers. Build on this strength and ensure visitors can engage with authentic experiences*'.

Over the last few years Ballina Council has also been adjusting its local planning framework (to the extent possible within the standard instrument) to provide for some forms of agritourism development whilst protecting the values identified by our community with respect to rural land in the shire. These local reforms include the following:

- Providing for small-scale roadside stalls as exempt development, subject to obtaining relevant approvals under the *Roads Act 1993*.
- Providing for small-scale retail sales in association with approved rural industries ('industrial retail outlets').



Page 2  
Department of Planning, Industry and Environment  
22 April 2021

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- Introducing additional development assessment criteria in relation to function centres (wedding venues) on land zoned RU2 Rural Landscape zone whilst reinforcing the prohibition of these facilities on land zoned RU1 Primary Production zone. This amendment was introduced in response to concerns with ongoing land use conflict and compliance issues associated with a number of existing approved rural wedding venues.

In supporting emerging agritourism activity Council has been careful to ensure these opportunities are balanced with respect to protecting the viability of agriculture and minimising the risks associated with land use conflict. These changes have been made within the context of the North Coast Regional Plan, local strategic planning policy, community engagement and Council's experience in considering development proposals in rural areas of the shire.

Having regard to this, some aspects of the Department's proposal are welcomed, as outlined below. In particular, the intention to refine the range of land use definitions under the Standard Instrument LEP (SILEP) to provide councils with flexibility regarding the range of land uses enabled in rural areas is supported. Notwithstanding, further work is required to refine the details of these reforms to achieve an appropriate balance between private interests and the broader public interest with respect to rural land use activity.

In summary, the following elements of the proposed agritourism reforms are generally supported:

- Provision for genuine agriculture-related tourism activities such as farm tours, tastings and (agriculture-related) workshops, which may complement ongoing agriculture production activity on the land.
- The opportunity to distinguish between "farm events" such as farm tours and paddock-to-plate on-farm restaurant experiences that might occur on an infrequent or irregular basis, and "farm gate activities" (such as farm gate retail) that might occur on a regular and ongoing basis.

Notwithstanding, it is recommended that the reforms require further refinement to avoid significant problems for coastal areas of the North Coast which, due to the history of rural subdivision in the region, is dominated by small rural allotments and relatively high density of rural landholdings (comprising a broad range of agricultural, rural and tourism uses) compared to western parts of the State. The presence of State and regionally significant farmland is also a key consideration in this regard.

As noted above, in general terms the amendment of the Standard Instrument Local Environmental Plan (SILEP) to better capture agritourism activities within the set of definitions is supported. In particular, farm gate retail activities and farm events that relate directly to agricultural production occurring on the land are currently not adequately addressed in the SILEP. Enabling local councils to consider such uses would (in principle) be an improvement to the SILEP and support the development of genuine agritourism opportunities. The provision for such uses through the land use table should, however, be at the discretion of local councils.

Notwithstanding, Council is concerned with the proposal to include a range of non-agriculture related activities as forms of 'agritourism' under the definition, and to include 'agritourism' as a form of 'agriculture' within the SILEP definition hierarchy. These aspects of the proposal have the potential to significantly undermine State and local planning objectives relating to agriculture.

Page 3  
Department of Planning, Industry and Environment  
22 April 2021

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It is noted that the Merriam-Webster Dictionary defines 'agriculture' as:

*'the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products'.*

The proposal to include a range of land uses that are currently captured under the definitions of 'tourist and visitor accommodation' (such as farm stays) and 'function centres' (such as wedding venues) as forms of 'agritourism' is ill-conceived. With reference to the dictionary definition of agriculture, it is noted that tourist accommodation and wedding venues do not relate (directly or indirectly) to the production of crops or raising of livestock in any sense, other than that they may occur on the same allotment of land. It would be incorrect and inappropriate to include these uses in the definition of agriculture.

Further, the inclusion of these 'agritourism' uses as forms of 'agriculture' in the SILEP would have the consequence of making these uses permissible without consent on all land subject to the RU1 Primary Production zone and RU Rural Landscape zone, unless Council's were to list agritourism as either permissible with consent or prohibited under the land use table to the LEP.

The primary purpose of rural zoning, particularly in the case of the RU1 Primary Production zone, is the preservation of agricultural productivity. An important distinction should be made, therefore, between those rural land uses that support and add value to agricultural production (such as tastings, farm tours, and modest retail sales in association with on-farm rural production) and those higher-impact activities that do not directly relate to the agricultural activity occurring on the land and which have a greater potential to complete or conflict with other legitimate rural activities and undermine the viability of agriculture.

Having regard to the above, should these reforms be implemented in their current form Council will need to give serious consideration to whether agritourism should be listed as a development activity that is prohibited on land zoned RU1 under the Ballina LEP 2012, in order to protect agricultural values consistent with the zone objectives. This would have the disadvantage of limiting opportunities for genuine agritourism in these areas.

In summary, Council is concerned with the following elements of the proposed reforms:

- The introduction of a new 'agritourism' definition that would include activities such as wedding venues, farm stay accommodation and restaurants and cafes, and the inclusion of agritourism as forming part of the LEP definition of 'agriculture', despite these activities not relating in any practical or real sense to agricultural production.
- Provision for 'small scale' wedding venues as a form of 'farm event', allowing 52 events annually of up to 30 guests per event or 10 events annually of up to 50 guests per event that could occur as forms of exempt or complying development or otherwise as development with consent on any agricultural land.
- Provision for restaurant or café development as a form of 'farm gate activity' that could occur as either exempt or complying development or development with consent on any agricultural land.
- Provision for the conversion of existing farm buildings or the erection of tents as forms of 'farm stay' accommodation that could occur as either exempt or complying development or development with consent on any agricultural land. This is particularly problematic given farm buildings can often occur without requiring development consent.

- Provision for 'small-scale' animal process facilities as forms of exempt or complying development (allowing for example the annual on-farm processing of up to 3 million litres of dairy, 4,000 pigs, 100 cattle and 4000 poultry). The lack of adequate residential setbacks, effluent management provisions or details regarding how the proposal relates to the relevant food safety regulations are particular concerns.
- The lack of appropriate exempt and complying development standards that explicitly address issues such as wastewater management, or the provision of appropriate setbacks from nearby rural residential uses and intensive horticulture. Further, the proposals setback requirements are problematic by not recognising that rural villages or hamlets do not have 'residential zoning'. It is further noted that the failure to properly consider the risk spray-drift could be detrimental to ongoing agricultural production.
- With respect to 'farmgate activities' proposed as exempt development, the failure to acknowledge the need for appropriate authorisations for any works within the road reserve, pursuant to section 138 of the *Roads Act 1993*. Further, the self-assessment by applicants with respect to road safety standards (sight-distances and verge conditions) is not supported.
- The failure to appreciate the impracticalities of undertaking compliance activities in relation to many uses and activities that would be enabled by the proposed reforms. The consequence of this being that the proposed exempt and complying development activities could be largely unregulated in a practical sense, or compliance will be limited to reactive efforts after impacts have occurred.

With respect to the exempt and complying development proposals, a key concern is that the framework put forward does not allow for an appropriate level of impact assessment and is reliant on compliance and enforcement when issues arise. It is arguable as to whether the proposed uses are low impact and it is suggested these types of uses are more suited to the merit assessment process so that the implications of the use relative to the local circumstances and characteristics of the land and surrounds can be properly examined and addressed (where they are permitted).

As noted above, the reforms should focus on genuine agritourism activities that have strong linkages with ongoing agricultural production occurring on the land. Examples of such uses might include farm gate retail activities (some of which although already provided for under the SILEP could be improved) and genuine 'farm events' such as 'paddock to plate' on-farm restaurant experiences, farm tours and tastings and food or agriculture-related workshop activities. Such uses would support ongoing farm production while catering to visitor demand for genuine on-farm experiences.

These uses should be distinguished, however, from uses that are not agriculture-related such as 'function centres' (wedding venues) and 'café and restaurant' development, which are already well-defined and have more significant land use implications. The widespread provision for these uses in rural areas has the potential to give rise to significant land use conflicts (such as by spray-drift and use of farm machinery) and further compete with agriculture by increasing rural land values.

If provision is to be made for small scale café or restaurant activity in association with primary production, it is suggested a preferred course of action would be drafting complying development provisions relying on existing land use definitions and containing the scale of the activity by way

Page 5  
Department of Planning, Industry and Environment  
22 April 2021

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of strong associations with other lawful agricultural activity (beyond simply grazing for example), floor area controls and limitations on hours of operation.

The Department should also give further consideration to the interoperability of the land use term 'café and restaurant' as it relates to the existing group term of 'food and drink premises' (under which café and restaurant are currently placed), inclusion under the 'artisan food and drink industry' and its proposed inclusion under the 'agritourism' definition as a form of 'agriculture'. The current proposal risks introducing significant confusion with respect to the interpretation of group terms under the SILEP. This aspect of the proposal should be clarified before proceeding further.

It is also suggested that there may be merit in making further distinction between the following activities that currently fall within the 'function centre' definition of the SILEP (but which vary in terms of their operation and associated impacts):

- Wedding venues, with the potential to further distinguish between wedding ceremonies (typically held during the day with impacts mostly associated with traffic) and wedding receptions (typically held into the evening with higher impacts associated with music and revellers and night-time traffic);
- Conference facilities, typically involving a large number of attendees without (necessarily) including accommodation on site, but which may include a café and restaurant; and
- Health or retreat centres (such as yoga and meditation retreats) that may be characterised by less frequent traffic and less noise but which incorporate forms of accommodation.

With the introduction of any amendments to the SILEP, the Department should have careful regard to the implications of these reforms on relevant non-standard local LEP clauses that councils may have included in their respective LEPs, such as clause 7.9 'Rural and nature-based tourism development' of the Ballina LEP 2012 (similar provisions are contained in other North Coast LEPs).

The Department should also give careful consideration to the potential impacts of these reforms, beyond the narrow view of the benefits to individual landowners. For example, whilst these reforms are proposed to provide certainty to landholders regarding what they can do on their land, if implemented in their current form, the reforms could significantly increase uncertainty regarding what neighbours and competitors may do. Further, by reducing opportunities to ensure rural development is undertaken sensitively the reforms have the potential to erode the character and amenity of rural areas and thereby undermine the very features that attract tourists to regions in the first place.

Having regard to the above, the Department is encouraged to take a deeper and broader view of rural land use issues relating to this matter and focus its reforms on providing for genuine agritourism opportunities.

If you have any enquiries in regard to this matter please contact Simon Scott on telephone 1300 864 444 or email [simon.scott@ballina.nsw.gov.au](mailto:simon.scott@ballina.nsw.gov.au).

Page 6  
Department of Planning, Industry and Environment  
22 April 2021

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Yours faithfully

Matthew Wood  
**Director**  
**Planning and Environmental Health Division**

Enc. Ballina Shire Council submission to NSW Agriculture Commissioner's Agricultural Land Use  
Planning Options Paper

DRAFT

enquiries refer  
Simon Scott  
In reply please quote  
Submission to NSW Agriculture Reforms (259-10)



26 February 2021

Agriculture Commissioner  
NSW Department of Primary Industries  
Emailed to: [agcommissioner@dpi.nsw.gov.au](mailto:agcommissioner@dpi.nsw.gov.au)

Dear Sir/Madam

**Re: Submission to Agricultural Land Use Planning Options Paper**

Thank you for the opportunity to provide feedback with respect to the above. The following feedback is provided by Council staff from a technical perspective.

Feedback on Chapter 1

*Option 1 – The NSW Government could identify production areas across the State.*

This option is supported on the basis that:

- The information would assist in the development of sound evidence-based policy relating to agricultural land.
- The NSW Department of Primary Industries is in the best position, with respect to expertise and resources, to develop a consistent and comprehensive data set of this kind across the State.

*Option 2 – The NSW Government could monitor land use change and the loss of rural land that is best suited to agriculture.*

This option is supported on the basis that:

- The information would assist in the development of sound evidence-based policy relating to agricultural land.
- The NSW Department of Primary Industries is in the best position, with respect to expertise and resources, to develop a consistent and comprehensive data set of this kind across the State.

Notwithstanding, there is a question as to how "loss" would be defined. For example, would this include agricultural land productivity that is lost in areas due to a high take up of rural residential activity or other land use conflict that limits agricultural activity? Including such areas would provide a more comprehensive measure of agricultural activity and decline.

*Option 3 – The NSW Government could support local government planners to understand the needs of agricultural operations.*

The delivery of educational programs for planning professionals is supported.

40 cherry street, po box 450, ballina nsw 2478  
t 1300 864 444 e [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au) w [ballina.nsw.gov.au](http://ballina.nsw.gov.au) abn 530 29 887 360

Page 2  
NSW Department of Primary Industries  
26 February 2021

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In developing such programs it is recommended that particular attention be given to specific examples illustrating where understanding the particular needs of agricultural enterprises might materially affect the decision making process associated with development assessment or preparation of local strategic plans.

*Option 4 – The NSW Government could implement a policy on all rural land, including mandatory considerations in the planning framework and fill the schedule in the State Environmental Planning (Primary Production and Rural Development) 2019.*

The options paper would benefit from further details regarding what the 'mandatory considerations' referred to would involve in practice. In the absence of such detail, it is difficult to form a view as to the suitability of this approach.

It is noted that Ministerial Local Planning Direction 1.5 Rural Lands already requires that councils give consideration to the implications of planning proposals on agriculture. Further, Agricultural Impact Assessments (AIA) and Land Use Conflict Risk Assessments (LUCRA) are regularly undertaken in association with planning proposals and development assessments involving the conversion of rural land to urban purposes.

*Option 4a - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and provide councils with a list of criteria that defines SSAL in Schedule 1 in the PPRD SEPP for councils to make their own maps.*

The NSW Department of Primary Industries is in the best position to provide a comprehensive and consistent agricultural mapping dataset across the State. Local councils typically have neither the specific expertise nor the resources to deliver such mapping. Further, this option risks the production of inconsistent mapping and associated planning outcomes across the State. Consequently, this option is not supported.

*Option 4b - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and a map of SSAL in Schedule 1 in the PPRD SEPP.*

Subject to adequate resources being applied by NSW Department of Primary Industries, the preparation of SSAL mapping is supported.

Council is concerned, however, with over-reliance on mapping undertaken as part of the Northern Rivers Farmland Protection Project (NRFPP) as the basis for the SSAL mapping for the North Coast. If SSAL mapping is to be associated with strong planning constraints, the existing mapping for the north coast and its methodology should be reviewed.

It is recommended that SSAL mapping:

- Be undertaken in a scientifically rigorous manner that reflects the multiple criteria relevant to identifying high value agricultural land (beyond simply selecting certain "soil landscape" types) such as water availability, slope and access to markets and labour.
- Be undertaken with a consistent methodology.
- Ideally be spatially accurate to a property scale or provide a mechanism for review against objective assessment criteria.

Page 3  
NSW Department of Primary Industries  
26 February 2021

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Before proceeding with this approach though it is requested that further details be provided regarding the mandatory considerations referred to under this option, for areas identified as State Significant Agricultural Land (SSAL).

*Option 4c - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and a map of SSAL which is optional for councils to adopt.*

As noted above, it is difficult to comment on this option in the absence of further detail regarding what the 'mandatory considerations' referred to would involve in practice.

Notwithstanding, as noted above, it is preferred that SSAL mapping be prepared by the NSW Department of Primary Industries (subject to such mapping having scientific rigor). Further, providing local councils with the option to adopt any such arrangements is a preferred approach, particularly in light of the lack of detail provided in the options paper.

*Option 5 - The NSW Government could prohibit zone changes or non-agricultural uses on agricultural land except in certain tightly defined circumstances or through a stringent exceptions process.*

Land use planning decisions often involve the weighting up of public interest outcomes associated with housing, employment, resource management (including agriculture) and the environment. If the State Government wishes to elevate a particular consideration to the status of an absolute constraint, this should be done in full recognition of the broader implications of such policy approach.

Before proceeding with the implementation of this type of approach, further information on the nature of exceptions criteria or review mechanisms would be beneficial.

The NSW planning system should provide a robust framework for rural land that prioritises the protection of productive agriculture, whilst balancing the consideration of other values such as economic development, community facilities and the environment.

This would be most appropriately achieved through maintaining a robust land use planning framework of State Regional Plans, Ministerial Directions and local Strategic Plans informing the statutory planning proposal process, supported by consultation with relevant Government agencies and the local community.

With respect to details presented under this option, the following points are noted:

- Mandating the zoning of SSAL as RU1 Primary Production zone requires scientifically robust SSAL mapping that is accurate at a property scale, as per the comments above.
- Prohibiting the changing of rural land zones to non-rural zones may significantly constrain the capacity of local councils to achieve outcomes based on sound strategic planning processes where there is a need to balance various issues and viewpoints.
- In the case of the Ballina LEP 2012, the RU1 Primary Production zone is already a closed zone meaning 'Any other development not specified in item 2 or 3' is identified as prohibited development in the zone.
- The Ballina LEP 2012, in its current form, does not provide for further subdivision of rural land to create new lots with dwelling entitlements.



Page 4  
NSW Department of Primary Industries  
26 February 2021

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*Option 6a – The NSW Government could require councils to obtain approval from DPI and DPIE-Planning before deciding on the development of non-agricultural uses on SSAL and in IPAs.*

This option would appear inconsistent with previous reforms of the NSW Department of Planning and Environment to remove concurrences from development assessment processes.

*Option 6b – The NSW Government could require councils to seek formal advice from DPI for the development of non-agricultural uses on SSAL and in IPAs.*

It is standard practice for Council to refer development applications to the NSW Department of Primary Industries where the proposal is considered to have potential implications on agriculture or where the DPI expertise may assist the assessment of the matter.

Provided the Department of Primary Industries has sufficient resources to respond to such referrals in a timely manner, clarifying the circumstances under which such referrals would be beneficial.

#### Feedback on Chapter 2

No comments are made in relation to this aspect of the options paper.

#### Feedback on Chapter 3

*Option 1 – The NSW Government could revise and update definitions in the Standard Instrument LEP to address ambiguity between LGAs.*

The need for a review of Standard Instrument LEP definitions is supported, with particular reference to the 'Artisan food and drink industry' definition. This definition is considered problematic, in the case of potential application to rural zones, due to the inclusion of 'cafes and restaurants' and 'workshops and the like' as permitted elements.

Under the Ballina LEP 2012, 'cafes and restaurants' and 'function centre' development are permissible in the RU2 Rural Landscape zone. In order to protect primary production areas from incompatible non-agricultural land uses, these uses are prohibited in the RU1 Primary Production zone of the Ballina LEP 2012.

Due to concerns that the 'artisan food and drink' definition may enable function centre like development in all rural zones, this use is prohibited in the RU1 and RU2 zones under the Ballina LEP 2012.

Having regard to the above, the inclusion of artisan food and drink premises as a mandatory permissible land use in rural zones under the Standard Instrument LEP is not supported. The permissibility of uses like this in local plans should be matters for the consideration of each local government authority relative to local circumstances.

It is noted that Ballina Shire Council has recently made 'Industrial retail outlets' permissible development in the RU1 and RU2 zones, to provide for the modest retail sale of items produced within approved rural industries. It is suggested that this approach, which supports on-farm diversification of income and on-site value adding in support of agriculture, could have broader application across the State than currently appears to be the case.

Page 5  
NSW Department of Primary Industries  
26 February 2021

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*Option 2 - The NSW Government could expand the list of exempt and complying developments in agriculture.*

The inclusion of low impact agriculture-related activities as appropriate forms of exempt and complying development is supported.

Notwithstanding, provision for additional non-agricultural land uses in rural areas should be considered carefully, due to the potential for land use conflicts and competition to squeeze out legitimate agricultural activities.

Consequently, the inclusion of non-agricultural activities such as forms of tourist and visitor accommodation, function centre uses or artisan food and drink premises as forms of exempt or complying development in rural zones is not supported.

*Option 3 - The NSW Government could establish a guideline to clarify and consolidate buffer requirements across industry and LGAs.*

Provision of standardised evidence-based advice on appropriate land use buffers, having regard to the variable nature of rural activities and patterns of rural settlement across New South Wales, is supported.

Land use buffers utilised by local councils on the NSW North Coast are largely based on the guideline *Living and Working in Rural Areas - a handbook for managing land use conflict issues on the NSW North Coast* (Department of Primary Industries, Northern Rivers Catchment Management Authority and Southern Cross University).

These North Coast guidelines have benefitted the region in providing a consistent benchmark for the consideration of land use conflict issues.

*Option 4 - The NSW Government could introduce the agent of change principle and reverse the onus of buffer requirements to new/encroaching developments.*

The responsibility for the accommodation of land use buffers in rural areas should fall upon the proponents of new/encroaching non-agriculture related development.

*Option 5 - The NSW Government could amend the planning regulation to better guide councils on how to consider submissions.*

As noted in the options paper, local councils and their planning staff have the appropriate expertise and experience to consider local submissions, in association with planning proposals and development applications. Consequently, this option is not supported.

Page 6  
NSW Department of Primary Industries  
26 February 2021

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Thank you for the opportunity to comment.

If you have any enquiries in regard to this matter please contact Simon Scott on telephone 6686 1432 or email [simon.scott@ballina.nsw.gov.au](mailto:simon.scott@ballina.nsw.gov.au).

Yours faithfully



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