

# BRIEFING PAPER – PROPOSED DPIE AGRITOURISM AMENDMENTS AND RELATIONSHIP TO LOCAL PLANNING FRAMEWORK

## Strategic Context

The Lithgow 2040 Local Strategic Planning Statement (LSPS) has identified the following planning priorities and actions relevant to rural land use planning:

Table 1

Lithgow 2040 LSPS Planning Priority	Relevant Action/s
<b>Planning Priority 3 Plan and appropriately manage rural lifestyle development.</b>	Action 3.1 Complete and implement the Lithgow Rural and Rural Residential Strategy to identify constraints and opportunities for development in our rural zoned areas.
<b>Planning Priority 7 Increase the Visitor Economy.</b>	Action 7.2 Review the LEP to incorporate increased tourist and visitor accommodation, and tourist support services and activities to capitalise on the LGA’s natural areas and landscapes.  Action 7.4 Liaise with the Department of Planning, Industry and Environment to further expand upon the definitions of tourism accommodation in the standard instrument, particularly around cabin style tourism development in regional areas.
<b>Planning Priority 8 Protect the economic values of rural areas through managing land use conflict.</b>	Action 8.2 Consider the findings of the DPIE Lithgow Agricultural Land Map and Report to support the LGA’s important agricultural lands from land use conflict.
<b>Planning Priority 9 Attract investment and grow local jobs.</b>	Action 9.5 Review the LEP and DCP to facilitate growth of agri-businesses/industries to capitalise on new technologies and proximity to new and emerging markets. Action 9.6 Review the LEP to create opportunities for creative industries such as artisan food and drink premises and to facilitate the paddock to plate strategy.

The above priorities are consistent with the Central West and Orana Regional Plan. Department of Planning, Industry and Environment (DPIE) have as part of the Regional Plan implementation undertaken a body of work to address these matters and have produced an *Explanation of Intended Effect - Agritourism and small-scale agriculture development (March 2021)* for consultation.

## Summary of the Agritourism and small-scale agriculture development proposed amendments

The *Explanation of Intended Effect - Agritourism and small-scale agriculture development (March 2021)* states the following:

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

## What is 'agritourism'?

Agritourism is a tourism-related experience or product that connects agricultural products, people, and 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.

## Proposed amendments

The proposed changes include:

**Farm stay accommodation:** amending the existing definition for farm stay accommodation in the Standard Instrument LEP Order.

- Remove references to a working farm and secondary business and **replacing with references requiring that the existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes.**
- To include accommodation in a building or camping.
- Providing for exempt and complying development pathways 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 development standards are met. Refer to 3.2.1.3 of EIE (Attachment 1) for proposed exempt and complying approval pathway development standards.
- Providing an optional clause that councils can choose to adopt to tailor development standards for farm stay accommodation via the development application approval pathway.
- Amend Clause 2.6 of the Standard Instrument LEP Order to prevent the creation of a dwelling entitlement in relation to farm stay accommodation.

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

**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 terms will automatically introduce them into Council's LEP.

**Farm gate activities** include:

- The processing, packaging, and sale of agricultural produce or
- A restaurant or café, or
- Facilities for the holding of tastings, workshop 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 new term will also enable farm gate activities where the farm is not producing goods because of drought or similar events outside the landowner's control.

**Farm events** include events, tours, functions, conferences, weddings, fruit picking, horse riding and similar experiences on land for which the **principal use of the land must be the production of agricultural goods for commercial purposes**. The new term will also enable farm events where the farm is not producing goods because of drought or similar events outside the landowner's control.

- It is proposed to create a new land use term "agritourism" in the Standard LEP Order and "farm activities" and "farm events" will be subset of this new term. Further, "agritourism" will be a subset of the land use term "agriculture" which means these terms will be initially permissible wherever "agriculture is currently permissible in Council's LEP.
- Refer to 3.3.1.3 of EIE and 3.4.1.3 (Attachment 1) for proposed exempt and complying approval pathway development standards.
- Providing an optional clause that councils can choose to adopt to tailor development standards for farm gate activities via the development application approval pathway.

**Small-scale processing plants** – amendments to the Codes SEPP 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 processing industries in LEP to determine permissibility.

Refer to 3.6.1 of EIE (Attachment 1) for proposed development standards.

**Re-building 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 other relevant Australian Standards.

Refer to 3.7.1 of EIE (Attachment 1) for proposed development standards.

**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. Allow minor permanent infrastructure for temporary stock containment to be carried out without development consent provided development standards are met.

Refer to 3.8.1 of EIE (Attachment 1) for proposed development standards.

**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** – updating development standards for poultry farms and pig farms to align with separation distances under biosecurity standards.

**Rural dwelling setbacks** – updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.

**Recreational beekeeping** – providing exempt development pathway for recreational beekeeping to improve certainty.

The above changes will allow small-scale agritourism development and other small-scale agricultural activities on land where the primary use of the land is agriculture.

**The changes are NOT intended to enable hobby farmers or other recreational farmers to establish agritourism businesses.**

#### **Response to EIE**

Council's strategic planning team participated in a briefing workshop conducted by the Department in April 2021 and previously completed a departmental region wide survey in relation to these matters in 2019. In the briefing workshop in April 2021, Council officers expressed the following key matters:

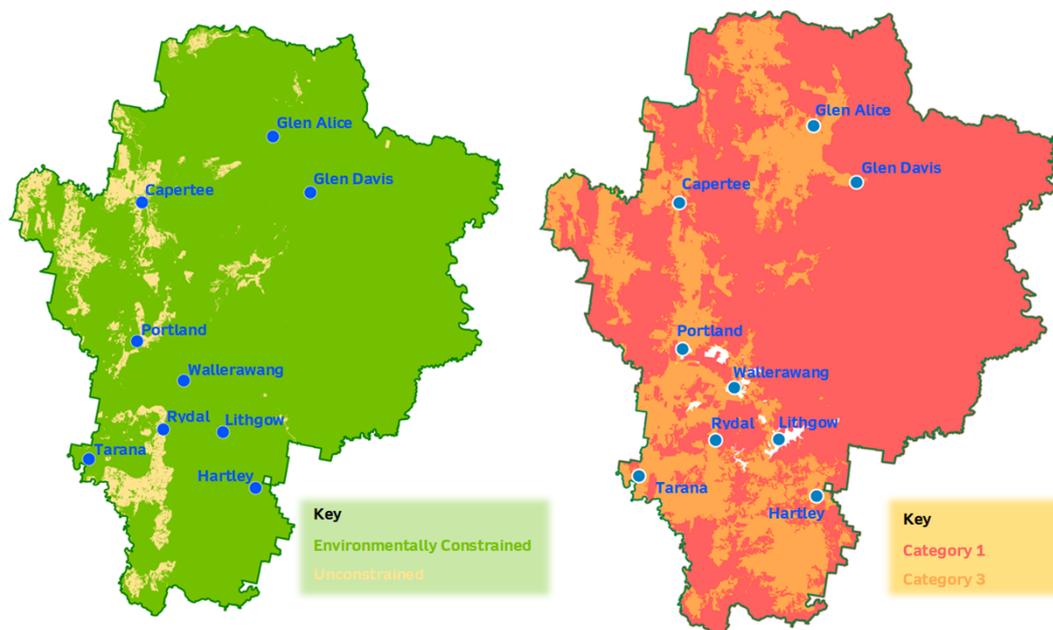
- The proposed reforms are supported in principle to support farmers and rural and regional communities by growing emerging industries that are supplementary to, or based on, agriculture. These reforms directly respond to several planning priorities adopted in the Lithgow 2040 Local Strategic Planning Statement as identified in Table 1.
- The underlying requirement for these types of developments to be on land where the **principal use of the land must be the production of agricultural goods for commercial purposes** will need concise and consistent definition criteria to enable all stakeholders to be certain that the provisions can be applied. The question of what will be defined as "commercial purposes" is even more important in local government areas such as Lithgow where agriculture is predominantly grazing undertaken with secondary off-farm income.
- The changes to Clause 2.6 in the Standard Instrument LEP Order to prevent the creation of a dwelling entitlement in relation to farm stay accommodation is critical.
- The development standards for the exempt and complying development pathways will have reduced application to local government areas such as Lithgow for farm stay accommodation due to the extent of bush fire prone land and for farm gate activities and farm events due to bush fire development standards under the Codes SEPP and the requirement for unsewered areas in the Sydney Drinking Water Catchment area to have reduced areas of site disturbance. This will force more of these development types to be considered under a development application approval pathway and this may require a more robust local planning response in either the LEP or DCP.
- Although the approval pathways for exempt and complying development are for those development types with little or no environmental impact, there is potential for this to require a higher level of compliance burden on councils resulting from neighbour complaints. For example: the operational development standards around farm events limiting number of event days and guests.
- Council registered for further consultation in relation to "opt-in" provisions to adopt optional clauses within the Lithgow LEP to tailor provisions for these development types via the development application approval pathway.

#### **Relationship of proposed changes to the local planning framework**

The rural land use zones in the Lithgow LGA represent 42.64% of the land area and therefore require careful and appropriate land use planning and management to balance social, economic, and environmental outcomes and expectations.

In total, 92.3% of land in the Lithgow LGA is located in an area of environmental constraint as indicated in Figure 1 showing environmental constraints and bush fire hazard.

Figure 1 Environmentally constrained land



The land use tables for the rural zones in Lithgow LEP 2014 were formulated having regard to the following context:

- Extent of environmental constraints and hazards.
- The absence of a key body of strategic work to address rural planning issues being the Rural and Rural Residential Strategy.
- The tourism policy settings at the time outlined in the Lithgow Destination Management Plan.

This led to the implementation of “**closed**” rural zones whereby a small group of permissible land uses were identified, and all other land uses prohibited as a means of managing environmental impact and conflicting land use.

This approach has created a planning barrier to many forms of agritourism and general tourism development types as evidenced in the Table 2.

Table 2 Extract of Lithgow land use matrix (relevant land uses)

Zone	Accommodation Uses						Commercial Uses						Agricultural Uses				
	T&VA	BA	B&B	FSA	HMA	SA	AF&D	CDP	F&D	FC	R/C	RS	AQ	EA	ILA	IPA	
RU1	X	X	✓	✓	X	X	X	✓	X	X	X	✓	✓	✓	✓	✓	
RU2	X	X	✓	✓	X	X	X	X	X	X	X	✓	✓	✓	X	X	
AF&D	Artisan Food & Drink Premises						FSA	Farm Stay Accommodation									
AQ	Aquaculture						HMA	Hotel or Motel Accommodation									
BA	Backpackers Accommodation						ILA	Intensive Livestock Agriculture									
B&B	Bed & Breakfast						IPA	Intensive Plant Agriculture									
CDP	Cellar Door Premises						R/C	Restaurant and Café									
EA	Extensive Agriculture						RS	Roadside Stalls									
F&D	Food & Drink Premises						SA	Serviced Apartments									
FC	Function Centre						T&VA	Tourist & Visitor Accommodation									
	Zone Not in LEP						✓	Permissible with Consent through LEP (Closed Zone)									
X	Prohibited through LEP						(✓)	Permissible with Consent through LEP (Open Zone)									

To assist in interpreting this table, please refer to Attachment 3 that provides the Standard Instrument Dictionary land use definitions for these land uses.

The proposed NSW government amendments would relieve these barriers for all rural lands where agriculture is currently permissible and where the **principal use of the land is the production of agricultural goods for commercial purposes**.

### Do the NSW government amendments go far enough?

There is a growing push from the community towards creating opportunities for nature/ experience-based tourism on rural lands where the principal use is **not** the production of agricultural goods for commercial purposes.

These are usually on the smaller landholdings primarily used as rural lifestyle development or hobby farms and include development types such as cabin accommodation, glamping, cafes, tours, weddings and markets or a combination of these.

This has been evidenced in planning enquiry particularly from areas such as Wolgan, Capertee, Kanimbla, and Megalong Valleys.

To permit these types of development, Council would need to amend Lithgow Local Environmental Plan 2014 as these uses do not conform to the current permissible land use definitions.

A comparison of how neighbouring and like local government areas permit these development types was undertaken with the results shown in Table 3.

**Table 3 Comparison land use matrix (relevant land uses)**

Council	Accommodation Uses							Commercial Uses			
	T&VA	BA	B&B	FSA	HMA	SA	ETF	AF&D	F&D	FC	R/C
<b>RU1</b>											
Lithgow	X	X	✓	✓	X	X	✓	X	X	X	X
Bathurst	(✓)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mid-Western	(✓)	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
Oberon	X	X	✓	✓	X	X	✓	X	X	✓	X
Blayney	X	X	✓	✓	X	X	✓	X	X	✓	✓
Cabonne	X	X	✓	✓	X	X	✓	X	X	✓	✓
Dubbo	✓	✓	✓	✓	X	X	✓	X	X	✓	✓
Cessnock											
Singleton	X	X	✓	✓	X	X	X	X	X	X	X
Maitland	X	X	✓	✓	X	X	X	X	X	X	X
Muswellbrook	✓	✓	✓	✓	✓	✓	X	X	X	✓	✓
Wingecarribee	X	X	✓	✓	X	X	✓	✓	X	X	X
Wollondilly	X	X	✓	✓	X	X	X	X	X	X	X
Hawkesbury	✓	✓	✓	✓	✓	✓	✓	X	✓	X	X
<b>RU2</b>											
Lithgow	X	X	✓	✓	X	X	✓	X	X	X	X
Bathurst	(✓)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mid-Western											
Oberon											
Blayney	X	X	✓	✓	X	X	✓	X	X	X	X
Cabonne	X	X	✓	✓	X	X	✓	X	X	X	✓
Dubbo	✓	✓	✓	✓	X	X	✓	X	X	X	X

<b>Cessnock</b>	(✓)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Singleton</b>	✓	X	✓	✓	X	X	✓	X	X	X	✓	
<b>Maitland</b>	X	X	✓	✓	X	X	✓	X	X	X	X	X
<b>Muswellbrook</b>												
<b>Wingecarribee</b>	X	X	✓	✓	X	X	✓	✓	X	✓	X	X
<b>Wollondilly</b>	X	X	✓	✓	X	X	X	X	X	X	X	X
<b>Hawkesbury</b>	X	X	✓	✓	X	X	✓	X	X	X	X	✓
<b>AF&amp;D</b>	Artisan Food & Drink Premises				<b>FSA</b>	Farm Stay Accommodation						
<b>BA</b>	Backpackers Accommodation				<b>HMA</b>	Hotel or Motel Accommodation						
<b>B&amp;B</b>	Bed & Breakfast				<b>R/C</b>	Restaurant and Café						
<b>ETF</b>	Eco-Tourism Facilities				<b>SA</b>	Serviced Apartments						
<b>F&amp;D</b>	Food & Drink Premises				<b>T&amp;VA</b>	Tourist & Visitor Accommodation						
<b>FC</b>	Function Centre											
	Zone Not in LEP				✓	Permissible with Consent through LEP (Closed Zone)						
<b>X</b>	Prohibited through LEP				(✓)	Permissible with Consent through LEP (Open Zone)						

Table 3 shows that Lithgow is comparable to a number of like LGA's in limiting the range of land uses in the rural zones. The exception to this is Bathurst Regional and Mid-Western Regional Councils that have used "open zones" to provide maximum flexibility.

It is important to note however, that a direct comparison does not take into account the degree of variability in social, economic, and environmental factors across LGA's.