



EXPLANATION OF INTENDED EFFECT

# Agritourism and small-scale agriculture development

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Proposed amendments to support farm businesses and regional economies

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## 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.

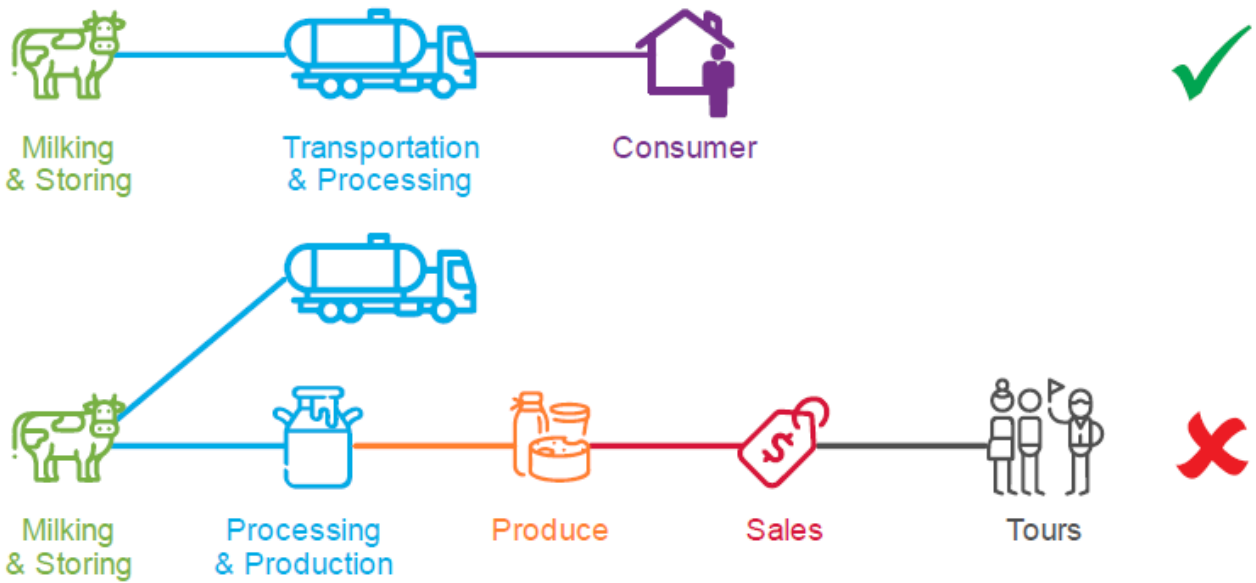
Figure 1 illustrates the variation between the permissibility of a traditional supply chain compared with agritourism activities, approval for which may vary for land with the same zoning in adjoining local government areas.

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.

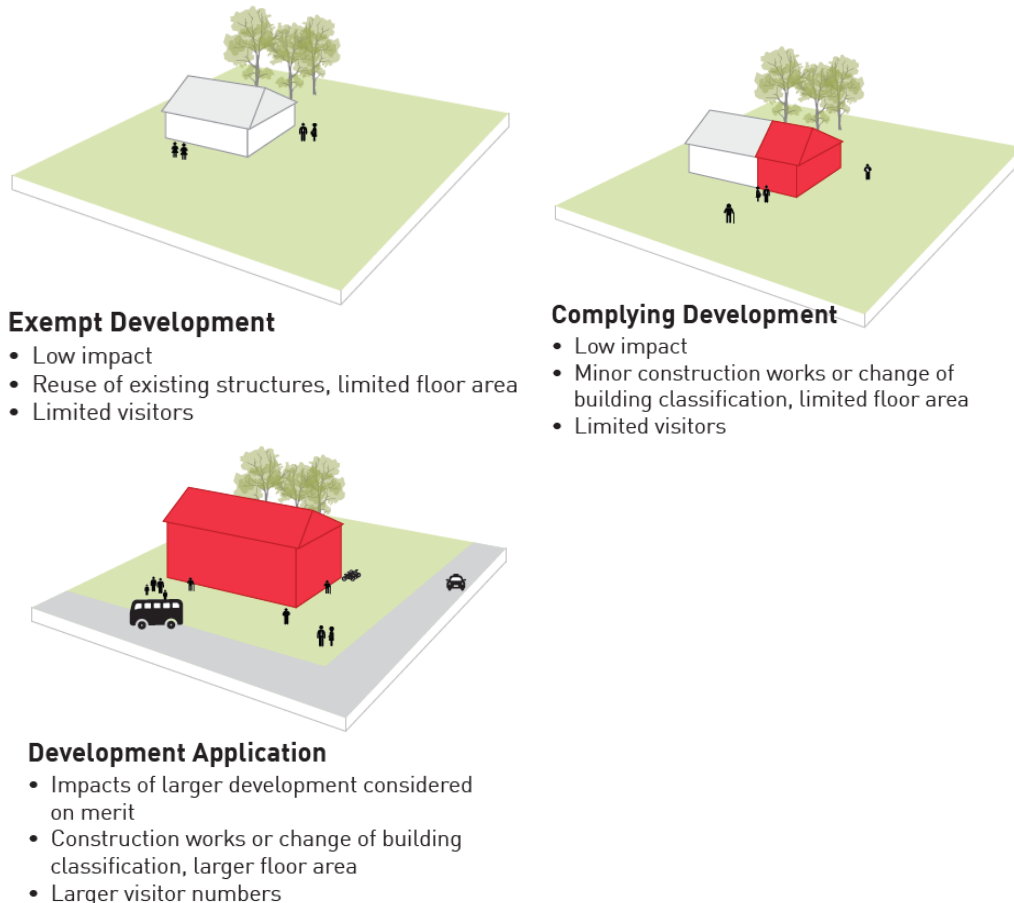
#### 3.1.1 Simplified planning pathways

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 or 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 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 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 or 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.

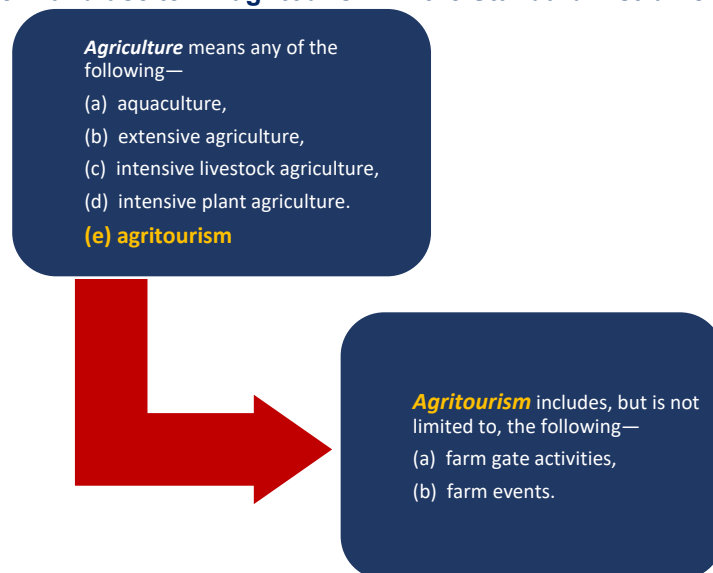
#### 3.3.1.2 Permissibility

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 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**

- 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 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 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 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 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 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 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 event

Are 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 event
 Are 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:
  - a) as complying development?
  - b) 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?
  - 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

#### 4.1.10 Recreational Beekeeping

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