

Technical Detail of Proposed Agritourism Amendments

New Land Use Terms-Definitions

The following are the new land use terms that will be inserted into Lithgow LEP dictionary by virtue of the Standard Instrument Dictionary. This is implemented by the SI Order and is not optional for Council.

Agritourism means—

- (a) farm gate premises,*
- (b) farm experience premises.*

Note— Agritourism is a type of agriculture—see the definition of the term in this Dictionary

Farm stay accommodation means a building or place—

- (a) on a farm —*
 - (i) that is a primary production business,*
 - or (ii) on land categorised as farmland under the Local Government Act 1995, section 515, and*
- (b) used to provide temporary accommodation to paying guests of the farm including in buildings or moveable dwellings.*

Note— Farm stay accommodation is a type of tourist and visitor accommodation

Farm experience premises means a building or place—

- (a) on a farm that is—*
 - (i) a primary production business, or*
 - (ii) on land categorised as farmland under the Local Government Act 1995, section 515, and*
- (b) that is ancillary to the farm, and*
- (c) that is used to provide visitors to the farm with small scale and low impact tourist or recreational services on a commercial basis including the following—*
 - (i) horse riding,*
 - (ii) farm tours,*
 - (iii) functions or conferences,*
 - (iv) farm field days.*

Note— Farm experience premises is a type of agritourism

Farm gate premises (previously called ‘farm gate activity’)—

- (a) means a building or place—*
 - (i) on a farm that is—*
 - (A) a primary production business, or*
 - (B) on land categorised as farmland under the Local Government Act 1995, section 515, and*
 - (ii) that is ancillary to the farm, and*
 - (iii) that is used to provide visitors to the farm with agricultural products predominantly from the farm or other farms in the region or with services or activities related to the products, including the following—*
 - (A) processing, packaging, and sale of the products, but not the processing of animals*
 - (B) a restaurant or cafe,*
 - (C) a facility for holding tastings or workshops, or providing information or education, related to the products, and (b) includes cellar door premises.*

Note— Farm gate premises is a type of agritourism—see the definition of the term in this Dictionary.

landholding means 1 or more lots of land that—

(a) are constituted or worked as a single property, and

(b) are contiguous or are separated only by a road or watercourse.

primary production business has the same meaning as in the Income Tax Assessment Act 1997 of the Commonwealth and includes a business that—

(a) was a primary production business, and

(b) has temporarily ceased to be a primary production business because of a natural disaster, including a drought, flood, or bush fire.

Agritourism and the subsets of this use, farm gate premises and farm experience premises will sit under the term of 'agriculture' and will be permissible in all land use zones where agriculture is permissible.

As the Lithgow LEP has not used the group term 'agriculture,' Council will need to decide in what zones to permit 'agritourism.'

Farm stay accommodation remains a subset of tourist and visitor accommodation. The changes to the definition clarify what is considered a "working farm" or primary production business.

The changes to this definition (as well as the new land use terms) clearly links these land uses types to farms used for primary production business, which is the underlying premise of both the definition criteria. This form of development is not intended to be carried out on land that is a 'hobby farm' or rural land that has the primary land use of rural residential/lifestyle development.

In reviewing the spatial distribution of Council's farmland and intensive farmland rating categories, it is apparent that there is a significant proportion of these properties where the primary land use is "rural residential/lifestyle" or "hobby farms" thereby not conforming to the requirements of Clause 515 of the Local Government Act in relation to farmland rating categorisation.

Using Council's farmland rating category, 'agritourism' land uses would be able to be considered on most rural properties within the LGA (Local Government Area). Clearly this is not the intent of the planning changes.

This anomaly could cause conflict in determining land use permissibility for agritourism land uses as proposed under the SI Order. For the intent of the planning changes for agritourism to be achieved, Council will need to undertake a review of its farmland rating category (in the 2022 calendar year) and ensure that the category is only applied to land where the dominant use is for farming as outlined in S. 515 of the LG Act, 1993.

In the meantime, Council will need to manage this potential conflict through providing more detailed controls within the Lithgow Development Control Plan (DCP) to ensure that agritourism is only developed on land where the dominant use is a primary production business.

Current land use permissibility

Currently, the Lithgow LEP permits extensive agriculture without consent in the following zones:

- RU1 Primary Production
- RU2 Rural Landscape
- R5 Large Lot Residential
- C3 Environmental Management

- C4 Environmental Living

Intensive livestock agriculture is permitted with consent in:

- RU1 Primary Production only

and Intensive plant agriculture (horticulture, turf farming, viticulture) is permitted with consent in:

- RU1 Primary Production
- R5 Large Lot Residential
- C3 Environmental Management and
- C4 Environmental Living

Farm stay accommodation is permitted with consent in:

- RU1 Primary Production
- RU2 Rural Landscape
- C4 Environmental Living

Farm stay accommodation in these zones is limited to 5 bedrooms under Clause 5.4 of LLEP2014.

Proposed land use permissibility

It is proposed to permit with consent ‘agritourism’ including its subset terms of ‘farm gate premises (including ‘cellar door premises’) and ‘farm experience premises’ in:

- RU1 Primary Production
- RU2 Rural Landscape

Farm stay accommodation will remain permitted with consent in:

- RU1 Primary Production
- RU2 Rural Landscape
- C4 Environmental Living

It is not proposed to enable ‘agritourism’ in the other zones where some forms of agriculture are permitted as intensification of land use in these areas is not appropriate due to either land use suitability/capability and/or inconsistency with land use objectives of the zones.

Optional Clauses

The SI Order has included two new optional Local Environmental Plan (LEP) clauses to address farm stay accommodation and farm gate premises. The optional clauses recognise the importance of local controls and have been prepared to allow councils to apply numerical standards that best fit their local strategic plans. Heads of consideration for development assessment have also been included in each clause to require both applicants and council officers to address the impacts of the development.

It is recommended that Council adopt the optional LEP clauses and include the local numerical standards as shown in **red text** within the clauses.

5.23 Farm Stay Accommodation

(1) *The objectives of this clause are—*

- (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for a primary production business, and*
- (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure, and adjoining land uses. (c) [set out other objectives of the clause – N/A]*

(2) *Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied that—*

(a) the maximum number of guests accommodated in bedrooms at any 1 time will not be more than the greater of—

- (i) 3 times the number of bedrooms permitted under clause 5.4(5), or
- (ii) 20 guests, and

(b) the gross floor area of a building used to accommodate guests will not be more than [number no less than 60 - 75] square metres, and

(c) the maximum number of guests accommodated in moveable dwellings on the landholding will not be more than [insert number no more than 20- 10] at any 1 time, and

(d) the maximum number of moveable dwellings used for the accommodation of guests will not be more than [insert number no more than 6 - 4], and

(e) all buildings or moveable dwellings used to accommodate guests will be—

- (i) on the same lot as an existing lawful dwelling house, or
- (ii) on a lot—

(A) for which a minimum size is shown for a dwelling house on the Lot Size Map, and

(B) the size of which is not less than the minimum size shown.

(3) Subclause (2)(b) does not apply if the development is the change of use of an existing dwelling to farm stay accommodation.

(4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—

(a) whether the development will result in noise or pollution that will have significant adverse impact on the following on or near the land—

- (i) residential accommodation,
- (ii) primary production operations,
- (iii) other land uses, and

(b) whether the development will have significant adverse impact on the following on or near the land—

- (i) the visual amenity, heritage, or scenic values,
- (ii) native or significant flora or fauna,
- (iii) water quality,
- (iv) traffic,
- (v) the safety of persons, and

(c) whether the development is on bush fire prone land or flood prone land, and (d) the suitability of the land for the proposed development, and (e) the compatibility of the development with nearby land uses.

5.24 Farm Gate Premises

(1) The objectives of this clause are—

(a) to allow for small scale tourism and related commercial uses on land used for primary production without adversely impacting the principal use of the land for primary production, and

(b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure, and adjoining land uses.

(c) [set out other objectives of the clause – N/A]

(2) Development consent must not be granted to development for the purposes of farm gate premises on a landholding unless the consent authority is satisfied that—

(a) the gross floor area of a building used for farm gate premises will not be more than [insert number no more than 200 -200] square metres, and

(b) the maximum number of persons that will be permitted on the landholding at any 1 time for the purposes of the farm gate premises will not be more [insert number not more than 50 - 50] persons.

(3) Development consent must not be granted to development for the purposes of farm gate premises on land unless the consent authority has considered—

(a) whether the development will result in noise or pollution that will have significant adverse impact on the following on or near the land—

- (i) residential accommodation,*
- (ii) primary production operations,*
- (iii) other land uses, and*

(b) whether the development will have significant adverse impact on the following on or near the land—

- (i) the visual amenity, heritage, or scenic values,*
- (ii) native or significant flora or fauna,*
- (iii) water quality,*
- (iv) traffic,*
- (v) the safety of persons, and*

(c) whether the development is on bush fire prone land or flood prone land, and

(d) the suitability of the land for the proposed development, and

(e) the compatibility of the development with nearby land uses.