

# **Submission in response to the proposed NSW agritourism and small-scale agriculture development planning changes**

April 2021

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the NSW Government's Explanation of Intended Effect for the proposed agritourism and small-scale agriculture development planning changes. LGNSW consulted with councils to help inform the content of this submission.

## Background to the local government role in agritourism

### The role of councils in tourism

Tourism is a priority for many local governments especially as it relates to promoting economic development and local jobs.

Councils engage in tourism in many ways and councils' direct tourism roles can include<sup>1</sup>:

- Tourism owner-operators such as caravan parks and camping areas;
- Marketing, promoting and capability building of many of the small to medium sized businesses in their areas;
- Owner/manager of visitor information centres;
- Creators/funders of destination marketing campaigns;
- Planning and delivering local events such as festivals, sporting and arts and culture;
- Assessing and monitoring tourism and accommodation developments and proposals;
- Investing in vital local infrastructure and its maintenance to support tourism such as parks, public spaces and amenities, rubbish collection, local roads and signage; and
- Consulting and engaging with local communities, business, community representatives and elected representatives on future development for their communities.

A 2016 survey of councils across Australia undertaken by the Australian Regional Tourism Network<sup>2</sup> revealed that:

- In 2015/16 local government contributed an estimated \$373m on the operation of visitor information centres, events, festivals, promotion, marketing and development of tourism;
- Two thirds of this spending was undertaken by councils located in regional and remote areas;
- 8/10 councils directly employ staff that have a tourism role, equating to 1672 FTE across Australia;
- 9/10 councils agreed that tourism offers economic development opportunities in their local areas;
- 8/10 councils have tourism actions and outcomes identified in their current long-term strategic plans; and
- 7/10 councils contribute financially to Regional Tourism Organisations.

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<sup>1</sup> Australian Local Government Association, *Submission to the Beyond Tourism 2020 Report*, February 2019

<sup>2</sup> Australian Regional Tourism Network and DBM Consultants, *Local Government and Tourism, The Contribution of Local Government to the Australian Tourism Industry*, January 2017

### **The role of councils in agriculture**

Councils acknowledge the significant contribution of agriculture to their local and regional economies and also to the national economy. Councils are also cognisant of the importance of agriculture in the fabric of their rural and regional communities, providing direct employment and employment through service industries and contributing to the lifestyle that draws many people to live in our rural areas.

Through the planning system, councils have a direct role in planning for and protecting agricultural land and balancing different or sometimes competing land use activities in their local government area (LGA). Councils also have a regulatory role in managing land use activities and complaints, and are mostly the first port of call for complaints triggered by land use conflicts.

Local government recognises the importance of protecting agricultural land. Councils are also mindful that any new policy or strategy to protect agricultural land should be an enabler for development and investment in agriculture, not a barrier.

## LGNSW position on the proposed amendments

### Current proposals

The NSW Government has published an Explanation of Intended Effect (EIE) for proposed amendments to support agritourism and small-scale agriculture development. The changes include proposed amendments to the Standard Instrument (Local Environmental Plans) Order 2006, State Environmental Planning Policy (Primary Production and Rural Development) 2019 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The EIE identifies amendments or new planning controls for:

1. Farm stay accommodation
2. Farm gate activities
3. Farm events
4. Other ancillary matters – generally non-core to tourism.

*These include proposed changes to small-processing plants, re-building farm infrastructure, stock containment areas, farm dams, biosecurity for poultry and pig farms, dwelling setbacks from intensive agriculture, and recreational beekeeping.*

The proposed amendments to definitions and new approval pathways for exempt and complying development are state-wide and would be imposed on all local government areas. In addition, the Department of Planning, Industry and Environment (DPIE) is also asking for expressions of interest from councils which may choose to adopt optional clauses into their Local Environmental Plan (LEP) that would introduce development standards councils can tailor to suit local conditions, where development would not satisfy requirements for exempt or complying development and would require a development application (DA).

## LGNSW position

One of the twelve fundamental principles of LGNSW, the overarching values that guide advocacy on behalf of the local government sector, sets our position on economic development. It states:

*Local government promotes local and regional economic development and employment growth.*

Councils are keen to support their farmers to diversify, maintain agricultural land in each LGA and attract tourists to boost local economic development. LGNSW recommends that to compliment any planning changes, the NSW Government should promote to councils the opportunities of agritourism and how agritourism supports farmers and the community.

However, LGNSW **does not** support a blanket expansion of development that is permissible as exempt and complying development.

LGNSW's fourth fundamental principle sets our position on planning processes. It states:

*Local government is best placed to lead and influence local and regional planning processes according to the needs and expectations of local communities.*

Furthermore, position 9.6 of the LGNSW Policy Platform states:

*LGNSW advocates for complying development to be limited to low risk or low impact development, with clearly defined parameters.<sup>3</sup>*

LGNSW advocates for a planning system that ensures the voice of local communities is heard through local government retaining control over the determination of locally appropriate development. It is a long-held position of the local government sector that local planning powers must not be overridden by State plans and policies.

While some councils may welcome the opportunity to streamline agritourism approval pathways in parts of their LGA to encourage economic development, for others there may be highly adverse impacts on environment, infrastructure, adjoining land uses and the local community. Exempt and complying development also precludes councils and communities determining important location and design consideration for development. The proposed changes amount to an intensification of use that could lead to increased amenity issues and councils have the option of addressing these through the development assessment pathway.

The EIE is proposing a one-size-fits-all approach to exempt and complying development across the state. While some kinds of land use may be low impact in some areas, in other contexts they will be high impact. The one-size-fits all approach removes the ability of councils and communities to plan for, consider and permit what's best for their communities, and disregards councils' strategic land use plans, including LEPs and Local Strategic Planning Statements, that are developed in consultation with their communities as a mandatory and important part of the state's planning system.

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<sup>3</sup> Local Government NSW, *Policy Platform*, April 2021, available at: [https://www.lgnsw.org.au/Public/Policy/Policy\\_Platform.aspx](https://www.lgnsw.org.au/Public/Policy/Policy_Platform.aspx)

As an example, the proposals would permit as **exempt development**:

- **Up to 20 people housed in caravans or campervans on a site every day** in environmental management, rural forestry, primary production and landscape zonings that currently permit farm stay accommodation with consent.
- **Restaurants and cafes with up to 50 guests at a time** in land that currently permits an agriculture land use (and complying development if a change of building use is required).

These are just two examples of the kinds of development intensification that may have severely adverse impacts if local government does not retain the ability to consider the appropriateness of the development for its local context. Some LGAs are already grappling with the impacts of congestion and land use conflicts that come from rapid increases in tourist numbers and these impacts may be exacerbated with these proposed changes. LGNSW considers the new draft provisions have gone too far and will result in outcomes incompatible with the desired future of agriculture and the use of rural land in some areas. As will be mentioned below, recent Service NSW research with farmers who run agritourism businesses shows that the majority are content with small-scale ventures and thus the proposed state-wide conditions could be scaled back.

If and when agritourism industries grow, councils want to ensure that the growth does not lead to poor planning and social outcomes as we have seen, for example, with the rapid proliferation of the Short Term Rental Accommodation (STRA) industry. LGNSW supports planning regulations which enable safe and sensible economic growth.

A fundamental role of a council is to determine the kinds and scale of development that is appropriate in each part of an LGA. While provisions in State Environmental Planning Policies may suit the specific needs of some parts of some LGAs, a one-size-fits-all approach to planning fails to recognise or account for the specific needs and local context of diverse communities. For example, there are different pressures facing coastal NSW communities compared with inland LGAs, where larger properties in central and western NSW may comfortably accommodate these proposed changes without adverse impacts, while they could be counterproductive in the more intensively-developed coastal fringe and other peri-urban locations.

Rather than imposing statewide exempt and complying agritourism development pathways for all council areas, the NSW Government should instead invite councils to opt-in parts or the whole of their LGA for these pathways where it is appropriate for the local context. This opt-in arrangement would ensure councils can opt out of the proposed amendments entirely where the council and community determine that the adverse impacts on the environment, amenity, infrastructure or adjoining land uses would be too great, and a development assessment pathway would be appropriate.

**Recommendation 1:** It is recommended the NSW Government not impose statewide exempt and complying agritourism development pathways for all councils, in recognition that a one-size-fits-all approach may have adverse impacts on local environment, amenity, infrastructure or adjoining land uses where the development is not appropriate for the local context.



**Recommendation 2:** The NSW Government should instead invite councils to opt-in parts or the whole of their LGA for these pathways where the council determines it is appropriate for the local context, via variations to the Exempt and Complying Development Codes SEPP.

**Recommendation 3:** In advance of inviting councils to opt-in, the NSW Government including DPIE, the NSW Small Business Commission, Service NSW and Destination NSW should together coordinate an information package specifically for councils that would highlight the benefits for agritourism and economic development and also how councils that opt-in can seek to remedy any potential adverse impacts.

## LGNSW Annual Conference Resolutions

Relevantly, councillors from across NSW have raised concerns with the operation of Exempt and Complying Development Codes through resolutions of the LGNSW Annual Conference. The 2021 resolutions, which inform this submission, include:

### **73 SEPP (Exempt and Complying Development Codes)**

*That Local Government NSW advocates to the NSW Government to amend the State Environmental Planning Policy (Exempt and Complying Development Codes) to provide more discretion for Councils to amend a SEPP when applying it in their Local Government Area.*

### **74 SEPP amendments to address farm shed loophole**

*That Local Government NSW requests the NSW Government to amend the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to ensure that large scale earthworks on rural properties cannot be undertaken without a full development assessment process to properly consider and condition potential environmental, social and traffic impacts.*

## Related LGNSW submission: NSW Agricultural Land Use Planning Strategy

In March 2021 LGNSW made a submission in response to the NSW Agricultural Land Use Planning Strategy Options Paper. The options paper was released as part of the newly appointed Agriculture Commissioner's investigation of a land use planning strategy to build on the Right to Farm Policy.

LGNSW positions in our submission to the Agriculture Commissioner, which are relevant to these proposed agritourism amendments, include:

- Councils have indicated their general support for improvements to the planning framework for agricultural land use across the state.
- A one-size-fits-all blanket approach to the policy framework will not work – local government needs a flexible approach to implementing planning controls relating to rural land protection, to ensure that responses are tailored to and proportionate to the local land use context.
- Councils are under-resourced in general, and this is particularly acute in rural and regional areas. The practical reality of this is that any new proposals that would require councils to take on additional responsibilities or tasks would need to be accompanied by more resources and support.

- Strategic objectives in regional, district and local plans to protect valuable agricultural land are often overridden by other priorities, particularly urban development and housing pressures.
- Councils recognise that mapping of State Significant Agricultural Land (SSAL) would provide valuable assistance to their planning and allow them to implement more specific local controls where necessary.
- The definition of significant agricultural land needs to allow for a variety of factors that may vary across NSW.
- Resolution of disputes between neighbours on agricultural land is often difficult and can involve significant time and resources. Councils would therefore welcome assistance to reduce land use conflicts and facilitate resolution of farming/residential disputes.
- Local government has a key role in managing land use conflict and greater consideration must be given to how local government could be supported in its regulatory role.
- LGNSW recommends that the Agriculture Commissioner implement a program of complementary measures to address land use conflict related to agricultural operations.
- Due to the diversity across NSW, LGNSW advocates that planning requirements need to be flexible and allow for local decision making in response to the local context and conditions. Further, planning must cater for the continued diversification and evolution of agricultural uses (for example, as producers continue to innovate and introduce 'value-adds' or niche on-farm enterprises). Too stringent application of controls and limited zoning will inhibit this diversity.
- Similarly, blanket state-wide approaches to planning provisions may present barriers to the establishment of agricultural uses and be inappropriate to local circumstances across NSW. However, at the same time, LGNSW recognises that certainty in the status of agricultural land and clarity around planning requirements such as buffer zones etc would assist agricultural businesses have the confidence to invest and set up in an area.

**Recommendation 4:** In recognition that a NSW Agricultural Commissioner has been appointed, and that a consultation process by the Commissioner is ongoing, that DPIE work in conjunction with the Commissioner to ensure any proposals are considered alongside planning for and implementation of the NSW Agricultural Land Use Planning Strategy.

## Research project and pilot

In 2018 and 2019, the NSW Government undertook an agritourism research and pilot project about farmers' experiences and needs in starting and running an agritourism business. The agritourism project was a partnership between Service NSW, the NSW Small Business Commission (NSWSBC), with support from DPIE. The continuing objective from the project is to make it easier for farmers to start, run and grow an agritourism business.

The three streams of the project were<sup>4</sup>:

1. Exploring regulatory reform of state planning regulations (i.e. the proposed planning changes to which this submission responds).
2. Business development support workshops offered to selected farmers in three local government pilot areas: Liverpool Plains, Queanbeyan-Palerang and Wollondilly (the pilot councils) via a series of workshops.
3. Service NSW mapping the experience of farmers, through a series of interviews trying to start, run and grow agritourism businesses to identify key pain points and potential solutions.

As part of this project, NSWSBC established a working group of government agencies and peak bodies. LGNSW was a member on this working group and attended the initial 'kick-off' meetings that the Small Business Commission ran with council staff in each of the three pilot LGAs. The meetings ensured council staff in both planning roles and tourism roles understood the project and were ready to assist farmers if they were to come to council with questions about starting a farm business. LGNSW was also invited to attend a combined regulatory mapping workshop with the three councils, where council staff documented the process for approving three different proposals in their LGAs: farm accommodation, roadside stalls, and farm tours.

Some of the findings from the Service NSW project mapping the experience of a small sample of 18 farmers include:

- Many agritourism businesses are very small
- Businesses typically develop over many years
- Some businesses have a somewhat unplanned start
- Almost half of the farm owners interviewed started the tourism side of their business because they were already voluntarily hosting people on their property or running visitor activities for free
- Most agritourism owners have little desire to grow their tourism business.

Councils have a key role in supporting economic development but limited resources to directly support businesses, including agritourism enterprises. The NSW Government could assist councils and businesses by funding business liaison officers in each council to act as a constructive entry point for farmers and others in the community who wish to establish businesses to discuss their ideas prior to seeking planning approval.

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

**Recommendation 5:** The NSW Government should support council staff (through an injection of funding, training and resources) to effectively support farm owners seeking approval for agritourism businesses, in recognition that farmers have limited time and resources to develop their tourism venture. The NSW Government should fund a business liaison officer in each NSW council to act as an entry point for farmers and other potential business owners to discuss their ideas with the council.

The research project also identified some barriers to diversifying into agritourism ventures, including:

- Regulatory compliance such as:
  - Insurances
  - Bushfire and biosecurity risk
  - Building standards
  - Access and road issues
  - Water and waste management
  - Food safety and responsible service of alcohol
  - Heritage
  - Business management (e.g. ABN and GST requirements, Fair Work requirements)
  - Marketing/promotion and technology
- Poor roads, internet and phone service affect some operators.
- Difficulty in managing the safety of visitors on working farms and around animals
- Uncertainty around required studies and requirements for submitting a DA.

The NSW Government, with industry and council collaboration, should develop codes and guides to assist operators to address and respond to regulatory and operational matters. Improved guidance and support would also address the potential for tourism businesses to partner or collaborate with farm businesses to increase destination desirability. As stated in the NSW Government's Right to Farm Policy Review, many industry and council participants have called for broader community awareness of accepted farm practices. Ongoing community awareness programs provided by the NSW Government would assist councils in their role of managing land use conflicts.

LGNSW would like to see more proactive and innovative solutions, outside of the planning system, to support farm diversification, based on the results of the pilot project undertaken in three local government areas. LGNSW also calls for the NSW Government to release more detailed information that can be shared with our member councils about that pilot project, its outcomes and broader sense of how the pilot project contributed to these planning proposals.

**Recommendation 6:** The NSW Government should commit to proactive and innovative solutions outside of the planning system, to support farm diversification. Due to the broad range of barriers reported by farmers in establishing agritourism businesses, the NSW Government should provide broader support including:

- workshops for farmers looking to establish an agritourism business,
- access to a tailored agritourism business concierge service through Service NSW, and
- guidance material which maps the range of requirements that farm tourism operators will need to meet.

**Recommendation 7:** The NSW Government publicly release detailed information on the agritourism pilot project, its outcomes, and how this project contributed to the planning proposals outlined in the EIE.

## Response to the proposed amendments

### Farm stay accommodation

The EIE proposes to:

- **Broaden the definition** of farm stay accommodation to include accommodation in a building and camping.
- **Permit as exempt development**, subject to certain conditions:
  - Change of use of an existing dwelling or part of a dwelling on rural zoned land for the purpose of farm stay accommodation
  - Use of land for farm stay accommodation in tents, caravans, campervans etc on rural zoned land for up to 20 persons at any one time for up to 14 days (so long as the use is permissible with consent under the council's LEP)
- **Permit as complying development**, subject to certain conditions:
  - Change of use of an existing building or manufactured home to farm stay accommodation on rural zoned land (conditions incl. a maximum of one dwelling per 15 hectares and a maximum of six dwellings per landholding)
  - Erection, alteration or addition to a building or manufactured home on rural zoned land for farm stay accommodation (conditions incl. maximum height of 6 metres. maximum one dwelling per 15 hectares, maximum of six dwellings per landholding).
- **Allow councils to opt-in for tailored development standards** for farm stay accommodation that does not meet the exempt and complying requirements.

As highlighted above, the EIE is proposing a one-size-fits-all approach to farm stay accommodation across the state, and LGNSW does not support this approach as detailed earlier in this submission.

Up to 20 people housed in caravans, campervans or tents on a site every day in environmental management, rural forestry, primary production and landscape zonings have the potential for serious impacts on local amenity, environment and infrastructure, particularly in areas already popular with tourists. Councils that have permitted farm stay accommodation *with consent* in their LEP have done so with the expectation that these potential impacts can be properly considered and evaluated through the development assessment pathway.

Certainly, some feedback from councils is positive about the benefits that can flow to a region from an increase in farm accommodation. Not only will the landowner experience income diversification of their business, but the surrounding region also has the potential to benefit from new off-season visitors. However, it is essential that the location and context must be appropriate and locally determined.

Broad expansion of exempt and complying development pathways also poses the risk for a significant increase in land use conflicts and disputes which councils are not resourced to investigate and regulate. Investigating the number of guests and duration of stay for camping and caravans is labour intensive and imposes added regulatory burden on councils that are already stretched. Council oversight of appropriate locations for farm stay accommodation through locally-approved plans and policies helps to minimise conflict and subsequently reduce the need for regulatory inspection and intervention.

Councils have approval, inspection and regulatory powers for camping and caravan parks under the *Local Government Act 1993* and *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*. Distinct from planning regulations, section 68 of the *Local Government Act* prohibits a person from operating a caravan park or camping ground without the prior approval of the council. The Regulation further sets a number of mandatory considerations for councils and conditions that should be met by the proponent. A breach of any of these conditions or an approval is an offence under the *Local Government Act*. An unchecked expansion of permissibility for camping and caravans may significantly increase the regulatory responsibilities for councils with no additional resources to meet these.

In terms of the proposal to broaden the definition of farm stay accommodation, LGNSW again supports councils being able to choose whether to adopt the broadened definition within their own LEPs. Council community consultation for strategic planning documents (such as LEPs and Local Strategic Planning Statements) was predicated on land uses encompassed with the existing definitions. While some councils may choose to adopt the new definition, for others the new land uses will run counter to community and strategic planning expectations and likely lead to an increase in land use conflict and adverse impacts.

Councils would also welcome more explanation on whether the farm stay definition applies to working farms, those that are currently in operation, are seasonally in operation and/or farms which are the secondary business. The proposal would also benefit from clarification as to how farm stay accommodation camping differs from the 'camping' land use which is separately defined.

Finally, more clarification is needed as to how the farm stay accommodation definition interacts with the Visitor and Tourism Accommodation definition and also how it interacts with Short Term Rental Accommodation (STRA) regulations which the State Government has recently announced.

**Recommendation 8:** That all proposed changes to farm stay permissibility be made opt-in for councils to apply to parts or all of their LGA and DPIE work with councils to enable the revised definition in their LEP only if councils want to adopt it.

**Recommendation 9:** That more clarification is provided on how the farm stay accommodation definition will interact with other planning controls including STRA regulations, and Camping and Visitor and Tourism Accommodation definitions.

## Farm gate activities

The EIE proposes to:

- **Introduce a new land use term** 'farm gate activities', which will sit under a new term 'agritourism', which will itself sit under the existing term 'agriculture' in the Standard Instrument LEP Order. 'Farm gate activities' will include:
  - Processing, packaging and sale of agricultural produce
  - A restaurant or café
  - Facilities for tastings, workshops, information or education for visitors for agricultural produce grown on the farm or grown predominantly 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.

These changes will mean that farm gate activities will initially be permissible in all LEPs wherever 'agriculture' is currently permissible.

- **Permit as exempt development**, subject to certain conditions:
  - use of land for farm gate activities on rural zoned land (conditions incl. standard hours, setbacks and location and maximum 50 guests at any one time)
  - change of use to a roadside stall on rural zoned land
  - erection of a roadside stall (conditions incl. must be permissible with consent under the LEP, maximum 8 square metre footprint, must be on private property and not adjacent to a classified road and one roadside stall per landholding).
- **Permit as complying development**, subject to certain conditions:
  - Change of use of an existing building to a farm gate premises on rural zoned land (conditions incl. max. 200 square metre footprint, max. 50 guests at any one time, setbacks, and water, sewerage and waste management requirements).
  - Erection, alteration or addition to a building for a farm gate activity on rural zoned land ((conditions incl. max. 200 square metre footprint, max. 50 guests at any one time, maximum height of 7 to 10m, setbacks, and water, sewerage and waste management requirements).
- **Allow councils to opt-in for tailored development standards** for farm gate activities that do not meet the exempt and complying requirements.

Again, the EIE is proposing a one-size-fits-all approach to farm gate activities across the state, which as stated earlier in this submission, LGNSW does not support. While a restaurant or café with up to 50 guests at any one time may be low impact in some areas, in other contexts this will have significant impacts on local amenity, environment, traffic and road safety in areas zoned for agricultural use. In addition, councils are concerned that when applied as a blanket state-wide provision what appears as support for farmers may end up with the perverse outcome of incentivising non-agricultural use of rural land.

LGNSW supports the addition of a new 'farm gate activities' term that would permit councils to, where appropriate, more nimbly allow for these small scale agritourism ventures. The NSW

Government's Right to Farm Policy Review refers to the submission by the River Riverina Joint Organisation of Councils which states that:

*the inclusion of the definition in the Standard Instrument LEP of 'Artisan food and drink industry' into the 'light industry' group term prevented the use in certain rural and environmental zonings across the state. In many instances it is appropriate for artisan food and beverage industries (such as a meadery or distillery) to be located in rural areas as a niche manufacturing and tourism activity that can provide an important value-add to on-farm primary production.*

The new definition addresses this issue by being available for agricultural land use, rather than industrial land use as per the artisan food and drink definition.

Nevertheless, councils and communities must retain control over when and where these activities are appropriate to occur. The benefit of a DA process is that council can consider the potential for conflict to occur when land uses such as tourism and agriculture combine. Similarly, the possibility for councils to opt-in to exempt and complying approval pathways for all or parts of their LGAs will mean local knowledge can help to avoid land use conflicts while appropriately encouraging and diversifying the economic development of agricultural regions.

LGNSW would support a mechanism for councils that permits them to retain the existing definition of agriculture for their LEPs, or alternatively permit them to opt-in for the revised definition of agriculture (encompassing farm gate activities) for their LGA where it is appropriate.

**Recommendation 10:** That all proposed changes to farm gate activity permissibility, and the application of the new definition, be made opt-in for councils to apply to parts or all of their LGA.



## Farm events

The EIE proposes to:

- **Introduce a new land use term** ‘farm events’, which will sit under a new term ‘agritourism’, which will itself sit under the existing term ‘agriculture’ in the Standard Instrument LEP Order.
  - ‘Farm events’ will permit events, tours, functions, conferences, fruit picking, horse riding and other similar experiences on land for which the principle use is the production of agricultural goods for commercial purposes.
  - The proposed new term will also enable farm events where the farm is currently not producing goods because of drought or similar events outside the landowner’s control.

These changes will mean that farm events will initially be permissible in all LEPs wherever ‘agriculture’ is currently permissible. Councils could then also permit farm events in any additional zones.

- **Permit as exempt development**, subject to certain conditions:
  - use of land for farm events on rural zoned land (conditions incl. standard hours, setbacks, maximum numbers of guests and event days per year)
- **Permit as complying development**, subject to certain conditions:
  - Change of use of an existing building to farm event premises on rural zoned land (conditions incl. standard hours, setbacks, maximum numbers of guests and event days per year)
  - Erection, alteration or addition to a farm event building (conditions incl. standard hours, setbacks, max. 200 square metre footprint, maximum height of 7 to 10m, maximum numbers of guests and event days per year)

Again, a one-size-fits-all approach to farm events across the state is not a planning approach that will be suitable for all local contexts. To avoid land use conflicts, and foreseeable impacts on local amenity, environment, congestion and infrastructure in areas zoned for agricultural use, it is important that councils are empowered to choose to opt-in to changes to farm event permissibility in their LGAs.

This imperative is supported by the diversity of views from councils on the proposed changes to allow farm events.. For example, one council cited examples where farmers had diversified under the current planning framework. This is because the council had amended its LEP to include ‘function centres’ as permissible with consent in RU1 zones and RU4 zones. On the other hand, another council viewed the changes as positive but argued that restricting events such as tours to 52 times a year or 50 people for an event does not allow for a return on investment for the marketing and promotion required to attract participants, and therefore farmers would likely need to pursue a DA.

LGNSW would support a mechanism for councils that permits them to retain the existing definition of agriculture for their LEPs, or alternatively permit them to opt-in for the revised definition of agriculture (encompassing farm events) for their LGA where it is appropriate.

LGNSW supports the proposal that councils can *choose* to permit farm events in additional zones. This is because some rural land which is not used as primary agricultural land may be ideal to be used for agritourism, for example hobby farms with a small selection of animals and

plants for guests to view. Some rural land holdings may too small for farming, but have alternative tourism use opportunities that can be linked to the agricultural theme.

**Recommendation 11:** That all proposed changes to farm event permissibility, and the applicability of the new definition, be made opt-in for councils to apply to parts or all of their LGA.

**Recommendation 12:** That DPIE conduct further consultation with councils on how the farm event definition may be applied and whether it will be useful for farm tourism operators.

## Small-scale agricultural development changes

The EIE also proposes changes to a variety of other agricultural activities which have been deemed 'small scale'. These are:

- i) Signs and verandahs
- ii) Small-scale processing plants
- iii) Rebuilding of farm infrastructure
- iv) Stock containment areas
- v) Farm dams
- vi) Biosecurity for poultry farms and pig farms
- vii) Rural dwelling setbacks for intensive livestock agriculture
- viii) Recreational Beekeeping

It is LGNSW's position, as emphasised throughout this submission, that councils should retain approval authority to determine what is locally appropriate. LGNSW further supports guidance, information sessions and other resources to assist councils and proponents understand the planning options available to them.

LGNSW refers DPIE to submissions from individual councils on these proposals, and requests that the above listed proposed changes to non-agritourism related agricultural activities warrant further consideration and consultation with councils by DPIE, with more detailed proposals for change. Councils will have feedback on specific setback distances and LGNSW, while not commenting on specifics, reiterates the integral role of buffers to guard against land use conflict in rural areas where agritourism is proposed to take place. DPIE should consult further about rural dwelling setbacks with the NSW Intensive Agriculture Consultative Committee which was established as part of the NSW Right to Farm Policy.

**Recommendation 13:** DPIE should provide more detailed proposals and justifications for agricultural planning amendments for activities deemed 'small scale', for consultation with councils and communities. Feedback about rural dwelling setbacks should also be sought from the NSW Intensive Agriculture Consultative Committee.

LGNSW has provided preliminary comment below on selected changes.

### Signs

Destination NSW and Transport for NSW (formerly Roads & Maritime Services) have an established Tourist Signposting policy for state roads. The State-wide Tourist Attraction Signposting Program has been operating since 1990. Responsibility for the policy and its implementation rests with the Tourist Attraction Signposting Assessment Committee (TASAC). It is recommended that DPIE consult with TASAC about any proposed changes to the permissibility of signs for agritourism ventures.

**Recommendation 14:** DPIE should consult with the NSW Tourist Attraction Signposting Assessment Committee (TASAC) before making any changes to permissibility of signs for agritourism ventures.

### **Farm dams**

The EIE proposes consolidating and simplifying planning terms and approval pathways for farm dams in the Standard Instrument LEP, the Primary Production and Rural Development SEPP, and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), but does not provide detail on how this might be done.

In LGNSW's view there do not appear to be any significant obstacles to building farm dams with capacity up to the Maximum Harvestable Rights limit (10% in the Central and Eastern Divisions of NSW), with licensing only required beyond that level.

There are important reasons for controls beyond that level as damming larger quantities of water on farms will deplete flows into town water storages (for which councils are frequently responsible), downstream irrigation and environmental flows.

In the absence of clear proposals and supporting evidence addressing potential adverse impacts, LGNSW is firmly of the view that it is not in community interests to relax existing regulation of farm dam approvals.

**Recommendation 15:** LGNSW is strongly opposed to the relaxation of existing regulation of farm dam approvals.

## Other relevant matters

### Surrounding issues potentially impacting agritourism

A member council has raised the issue that State Government should amend the Standard Instrument LEP provisions for home industries and home businesses to make those provisions more tailored for rural zones. The reforms could amend the Standard Instrument Local Order to enable councils to nominate different maximum floor areas for home industries and home businesses in rural areas to support this trend.

This is because the Standard Instrument currently does not enable councils to distinguish between home industries and businesses in urban areas and these businesses located in rural areas. In some rural areas, enabling a larger floor area would facilitate home businesses and industries that are suited to rural areas (e.g. a farrier business).

<p><b>Recommendation 16:</b> At the same time as the proposed amendments in the EIE, that the NSW Government should consider amendments to the Standard Instrument LEP provisions for home industries and home businesses to enable councils in rural and regional areas to nominate different maximum floor areas.</p>
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## Recommendations

In summary, LGNSW makes the following recommendations:

**Recommendation 1:** It is recommended that the NSW Government not impose statewide exempt and complying agritourism development pathways for all councils, in recognition that a one-size-fits-all approach may have adverse impacts on local environment, amenity, infrastructure or adjoining land uses where the development is not appropriate for the local context.

**Recommendation 2:** The NSW Government should instead invite councils to opt-in parts or the whole of their LGA for these pathways where the council determines it is appropriate for the local context, via variations to the Exempt and Complying Development Codes SEPP.

**Recommendation 3:** In advance of inviting councils to opt-in, the NSW Government including DPIE, the NSW Small Business Commission, Service NSW and Destination NSW should together coordinate an information package specifically for councils that would highlight the benefits for agritourism and economic development and also how councils that opt-in can seek to remedy any potential adverse impacts.

**Recommendation 4:** In recognition that a NSW Agricultural Commissioner has been appointed, and that a consultation process by the Commissioner is ongoing, that DPIE work in conjunction with the Commissioner to ensure any proposals are considered alongside planning for and implementation of the NSW Agricultural Land Use Planning Strategy.

**Recommendation 5:** The NSW Government should support council staff (through an injection of funding, training and resources) to effectively support farm owners seeking approval for agritourism businesses, in recognition that farmers have limited time and resources to develop their tourism venture. The NSW Government should fund a business liaison officer in each NSW council to act as an entry point for farmers and other potential business owners to discuss their ideas with the council.

**Recommendation 6:** The NSW Government should commit to proactive and innovative solutions outside of the planning system, to support farm diversification. Due to the broad range of barriers reported by farmers in establishing agritourism businesses, the NSW Government should provide broader support including:

- workshops for farmers looking to establish an agritourism business,
- access to a tailored agritourism business concierge service through Service NSW, and
- guidance material which maps the range of requirements that farm tourism operators will need to meet.

**Recommendation 7:** The NSW Government publicly release detailed information on the agritourism pilot project, its outcomes, and how this project contributed to the planning proposals outlined in the EIE.

**Recommendation 8:** That all proposed changes to farm stay permissibility be made opt-in for councils to apply to parts or all of their LGA and DPIE work with councils to enable the revised definition in their LEP only if councils want to adopt it.

**Recommendation 9:** That more clarification is provided on how the farm stay accommodation definition will interact with other planning controls including STRA regulations, and Camping and Visitor and Tourism Accommodation definitions.

**Recommendation 10:** That all proposed changes to farm gate activity permissibility, and the application of the new definition, be made opt-in for councils to apply to parts or all of their LGA.

**Recommendation 11:** That all proposed changes to farm event permissibility, and the applicability of the new definition, be made opt-in for councils to apply to parts or all of their LGA.

**Recommendation 12:** That DPIE conduct further consultation with councils on how the farm event definition may be applied and whether it will be useful for farm tourism operators.

**Recommendation 13:** DPIE should provide more detailed proposals and justifications for agricultural planning amendments for activities deemed 'small scale', for consultation with councils and communities. Feedback about rural dwelling setbacks should also be sought from the NSW Intensive Agriculture Consultative Committee.

**Recommendation 14:** DPIE should consult with the NSW Tourist Attraction Signposting Assessment Committee (TASAC) before making any changes to permissibility of signs for agritourism ventures.

**Recommendation 15:** LGNSW is strongly opposed to the relaxation of existing regulation of farm dam approvals.

**Recommendation 16:** At the same time as the proposed amendments in the EIE, that the NSW Government should consider amendments to the Standard Instrument LEP provisions for home industries and home businesses to enable councils in rural and regional areas to nominate different maximum floor areas.

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LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Senior Policy Officer at [elizabeth.robertson@lgnsw.org.au](mailto:elizabeth.robertson@lgnsw.org.au) or on 02 9242 4028.