

December 2021

Standard Instrument LEP Agritourism Amendment Order

Following the exhibition of the [explanation of intended effect](#) (EIE) in March-April 2021, the [draft Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2021 \(LEP Order\)](#) has been prepared which will amend the Standard Instrument LEP.

This is the first stage of rolling out the proposals in the EIE.

A summary of the submissions made to the EIE can be found in the [Submission and Survey Analysis Report](#).

What are the proposed changes?

Proposed changes in the LEP Order include

- new land use terms for 'agritourism', 'farm gate premises'¹ and 'farm experience premises'²
- changes to the definition of 'farm stay accommodation'
- optional clauses to be inserted into the Standard Instrument LEP for 'farm stay accommodation' and 'farm gate premises'
- transferring 'cellar door premises' to become a subset of 'farm gate premises'.

What are the benefits of the changes?

The changes will provide farmers with additional income sources to allow them to be more resilient. They will enable them to better recover from natural disasters and the economic impacts of the COVID-19 pandemic and provide opportunities for sustainable tourism outlined in regional plans.

What do the changes mean for councils?

Councils can now nominate to adopt the optional clauses and/or specify the land use zones to permit the new land uses in their LEPs and provide justification for their nominations.

Councils need to submit:

- preliminary responses to the [Standard Instrument LEP Agritourism nomination form](#) by **Friday 25 February 2022**. These responses will inform the drafting of amendments.
- final responses to the Standard Instrument LEP Agritourism Nomination and council minutes or a letter by **Thursday 31 March 2022**.

What happens next?

The department proposes to make the LEP Order in early 2022.

A state environmental planning policy to amend relevant LEPs without the need for a planning proposal is proposed to be made in mid-2022.

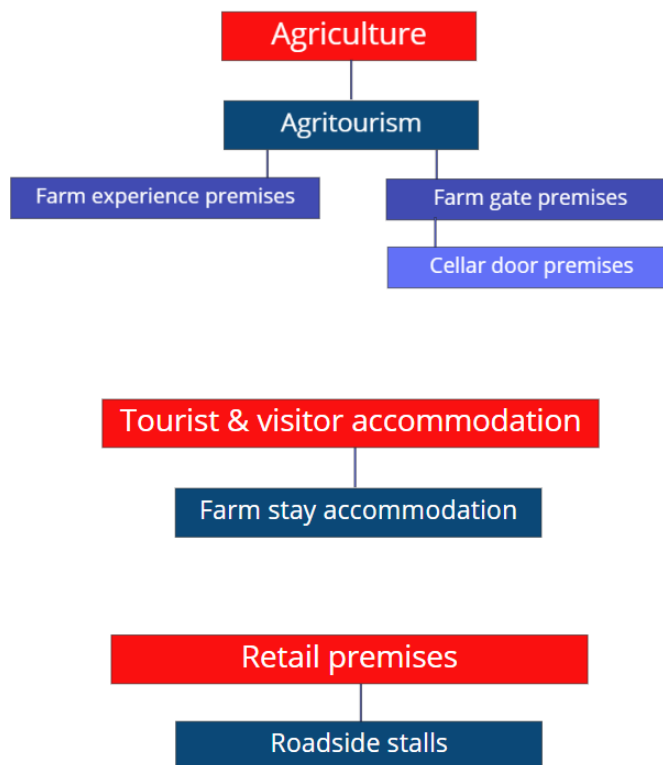
Agritourism permissibility

The LEP Order includes new agritourism land uses, as shown in Figure 1.

¹ Farm gate premises were previously identified as 'farm gate activities' in the EIE.

² Farm experience premises were previously identified as 'farm events' in the EIE

Figure 1: Hierarchy of land uses



Agritourism land use, farm gate premises and farm experience premises

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

They will not be automatically permissible where other subsets of agriculture, such as extensive agriculture or intensive plant agriculture, are permissible.

Councils wishing to allow agritourism, farm gate premises or farm experience premises in other zones can nominate these zones through the Standard Instrument LEP Agritourism Nomination.

Farm stay accommodation and roadside stalls

Farm stay accommodation and roadside stalls will remain under their existing parent terms and continue to be permitted where tourist and visitor accommodation and retail premises, respectively, are permitted, or where the use is specified as permissible in a land use zone under the relevant LEP.

Cellar door premises

Cellar door premises will continue to be permitted in land use zones in which they are currently permissible and will also be permitted where agriculture, agritourism or farm gate premises are permitted under the relevant LEP.

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Councils that wish to expand these land uses into other zones can nominate the relevant zones through the Standard Instrument LEP Agritourism Nomination.

Agritourism definitions

The table below details changes to the definitions of farm stay accommodation, farm experience premises and farm gate premises made in response to submissions received during exhibition of the EIE.

Table 1. Changes to definitions

Land use	Definition changes	Reason
Farm stay accommodation	Now includes moveable dwellings as defined in the SI LEP to facilitate small-scale camping on farms	<p>A response to council requests to clarify the type of camping allowed under the revised farm stay accommodation definition</p> <p>A section 68 approval under the <i>Local Government Act 1993</i> will be required to install a moveable dwelling on a farm unless the council's local approvals policy allows the activity without approval.</p>
Farm experience premises	<p>Farm events has been amended to farm experience premises</p> <p>Farm experience premises now include farm field days</p>	<p>The amendment to the term recognises guests will visit a farm to take part in tourist and recreational activities and to experience the features of the farm and farm life.</p> <p>Including farm field days is a response to submissions requesting specific activities be included in the definition.</p> <p>The department proposes to prepare model DCP clauses to assist councils where further parameters for farm experience premises are required.</p>
Farm gate premises	<p>Roadside stalls will remain as a form of retail premises and will not become a form of farm gate premises</p> <p>Clarifies that animal processing is not permitted as part of farm gate premises</p>	<p>This will ensure roadside stalls remain permissible in zones other than rural zones.</p> <p>Exempt development provisions are being prepared for roadside stalls in rural zones having regard to submissions received during the exhibition of the EIE.</p> <p>Animal processing has not been included as a form of agritourism as it has potentially significant impacts and less potential to generate tourism. The processing of other agricultural produce can be undertaken under the definition.</p>

Principal use of the land

Submissions received during the exhibition of the EIE requested the department clarify the meaning of land principally used as primary production for commercial purposes. The LEP Order will amend the existing definition of farm stay accommodation and include in the new definitions for farm gate premises and farm experience premises a requirement that these uses must be undertaken on land that is a primary production business as defined under the *Income Tax Assessment Act 1997 (Cth)*, or which is rated 'farmland' by the council under the *Local Government Act 1993*. This approach will give applicants two options to show their development will be on land used for commercial farming and not a hobby or recreational farm.³

For farm experience premises and farm gate premises, the relevant use must also be ancillary to the farm. Ancillary uses are explained in [Planning Circular](#) *How to characterise development*.

Optional clauses

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 have also been included in each clause to require both applicants and council officers to address the impacts of the development. Please note that under [LEP Practice Note PN 11-001](#) *Preparing LEPs using the Standard Instrument: standard clauses*, councils cannot add local clauses that can be addressed using the optional clauses.

The development standards in the optional clauses that have been amended in response to submissions to the EIE are detailed in the table below.

Table 2 Changes to development standards

Type of development	Standard in EIE	Amended standard	Reason
Farm stay accommodation building – maximum guests	3 times the number of bedrooms in clause 5.4(5) or another number nominated by council	3 times the number of bedrooms in clause 5.4(5) or 20 guests	This will provide a maximum cap on guests to ensure that farm stays are small scale. Councils can reduce the number of guests for a development through a condition of development consent.
Farm stay accommodation building – maximum gross floor area (GFA) for a building	75sqm or a number that council specifies (that is not more than 75sqm)	A number the council nominates which is greater than 60sqm	This will provide flexibility for councils to nominate an area that reflects their strategic planning. Councils can reduce the GFA for a development through a condition of development consent.

³ See [Taxation Ruling TR 97/11](#) Income tax: am I carrying on a business of primary production? and [section 515](#) of the *Local Government Act 1993*.

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Type of development	Standard in EIE	Amended standard	Reason
			Changes are proposed to the Codes SEPP to allow buildings for farm stay accommodation up to 60sqm as complying development.
Farm stay accommodation – GFA exclusion for dwellings	As above	The maximum GFA will not apply to a change of use of an existing dwelling.	This will allow a dwelling house which is larger than 60sqm to be converted into farm stay accommodation without the need for substantial work to limit its size.
Farm stay accommodation - maximum number of days for guests in a moveable dwelling	14 days	The maximum number of consecutive days guests can stay in moveable dwellings will be included in model conditions of consent.	The department will prepare model conditions of consent for farm stay accommodation, farm experience premises and farm gate premises that councils can choose to adopt. This will complement model conditions of consent currently being prepared for other types of development.
Farm stay accommodation - dwelling entitlement	Modify clause 2.6 to prevent the creation of a dwelling entitlement in relation to farm stay accommodation	Farm stay accommodation will be required to be on: <ul style="list-style-type: none"> (i) the same lot as an existing lawful dwelling house, or (ii) on a lot for which a minimum size is shown for a dwelling house on the council's Lot Size Map and the size of which is not less than the minimum size shown. 	This clause is intended to prevent the fragmentation of agricultural land.
Farm gate premises – maximum gross floor area	200sqm or the number council specifies in its LEP	A number council nominates which is no greater than 200sqm	Caps have been placed on the maximum floor area and number of guests for farm gate premises to ensure they remain small scale.

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Type of development	Standard in EIE	Amended standard	Reason
Farm gate premises - maximum number of guests	50 guests or the number council specifies in its LEP	A number council nominates which is no greater than 50 guests	Caps have been placed on the maximum floor area and number of guests for farm gate premises to ensure they remain small scale.

Poultry and pig farm setbacks

The amendment proposed in the EIE regarding setback requirements for poultry and pig farms has been included in the LEP Order.

The Order will amend clause 5.18 of the SI LEP to increase the setback requirements for poultry and pig farms permitted without consent, as proposed, to mitigate biosecurity risks.

However, most of the submissions received were not in favour of increasing the current limit of poultry farms permitted without consent to 10,000 birds. The submissions raised concerns about amenity and environmental impacts.

In response to these submissions, the department has proposed to not increase the development consent threshold for poultry farms from 1,000 to 10,000 birds.

More information

For more information on the changes you can:

- visit the [department's website](#)
- visit the [NSW planning portal](#).
- email the project team at agritourism@dpie.nsw.gov.au.



New South Wales

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021

under the

Environmental Planning and Assessment Act 1979

The following local environmental plan is made by the local plan-making authority under the *Environmental Planning and Assessment Act 1979*.

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Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Amendment of Standard Instrument (Local Environmental Plans) Order 2006

Land Use Table

Insert in appropriate order in Direction 5—

Agritourism;
Farm experience premises;
Farm gate premises;

Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

[1] Clause 5.4 Controls relating to miscellaneous permissible uses [compulsory]

Omit “*not less than 8*” from clause 5.4(8). Insert instead “*not less than 9*”.

**[2] Clause 5.18 Intensive livestock agriculture [compulsory if intensive livestock
agriculture permitted with consent]**

Omit clause 5.18(4)(b)(v). Insert instead—

- (v) for a poultry farm used for breeding poultry—within 5,000 metres of another poultry farm, or
- (vi) for a poultry farm not used for breeding poultry—
 - (A) within 5,000 metres of a poultry farm used for breeding poultry, or
 - (B) within 1,000 metres of a poultry farm not used for breeding poultry, or
- (vii) for a pig farm—within 3,000 metres of another pig farm.

[3] Clauses 5.23 and 5.24

Insert after clause 5.22—

5.23 Farm stay accommodation [optional]

- (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*]
- (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 [*insert number no less than 60*] 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*] 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*], 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 [optional]

- (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*]
- (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*] 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*] 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—

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- (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.

[4] Dictionary

Insert after the definition of *agriculture*, paragraph (d)—

- (e) agritourism.

[5] Dictionary

Omit the definition of *farm stay accommodation*.

Insert in alphabetical order—

agritourism means the following—

- (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*—see the definition of the term in this Dictionary.

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,

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Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

- (ii) farm tours,
- (iii) functions or conferences,
- (iv) farm field days.

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

farm gate premises—

- (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.

[6] Dictionary, definition of “cellar door premises”

Omit “*retail premises*” from the note. Insert instead “*farm gate premises*”.

[7] Dictionary, definition of “restaurant or cafe”

Insert “, but does not include a restaurant or cafe that is included as part of artisan food and drink industry or farm gate premises” after “provided”.

[8] Dictionary, definition of “retail premises”

Insert “farm gate premises,” before highway service centres”.

[9] Dictionary, definition of “retail premises”

Omit paragraph (b).