

8.6 Draft Standard Instrument Local Environmental Plan Agritourism Amendment Order

REPORT BY THE MANAGER, STRATEGIC PLANNING
TO 16 MARCH 2022 ORDINARY MEETING
GOV400098, LAN900033

RECOMMENDATION

That Council:

1. receive the report by the Manager, Strategic Planning on the Draft Standard Instrument Local Environmental Plan Agritourism Amendment Order;
2. endorse the following 'farm stay accommodation' and 'farm gate premises' clauses to be inserted into the Mid-Western Regional Local Environmental Plan 2012:

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) to cluster the location of buildings to be used for farm stay accommodation to maintain the principal use of the land for primary production.

(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 75 square metres, and
- c) the maximum number of guests accommodated in moveable dwellings on the landholding will not be more than 8 at any 1 time, and
- d) the maximum number of moveable dwellings used for the accommodation of guests will not be more than 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

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.

(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 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 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.

Executive summary

The Department of Planning and Environment (DPE) has prepared the draft Standard Instrument Local Environmental Plan Agritourism Amendment Order 2021 (LEP Order). The proposed changes in the LEP Order include:

- new land use terms ‘agritourism’ and subsets of this use ‘farm gate premises’ (previously called ‘farm gate activity’) and ‘farm experience premises’
- changes to the ‘farm stay accommodation definition’

- optional clauses to be inserted into the Mid-Western Local Environmental Plan 2012 (Mid-Western LEP) for 'farm stay accommodation' and 'farm gate premises'
- transferring 'cellar door premises' to become a subset of 'farm gate premises'

The staff recommendation is to include the optional clauses for 'farm stay accommodation' and 'farm gate premises' with the stipulated development standards in the Mid-Western LEP. As a consequence of the LEP Order 'Agritourism' and subsets of this use 'farm gate premises' (previously called 'farm gate activity') and 'farm experience premises' will be permissible where Agriculture is permissible. Agriculture is permissible with consent in the RU1 Primary Production and RU4 Primary Production Small Lots zones, accordingly, 'Agritourism' and its subsets will be permissible with consent.

DPE proposes to finalise the changes in early 2022. A state environmental planning policy to amend the Mid-Western LEP, without the need for a Planning Proposal is proposed to be made in mid-2022. This is when the Mid-Western LEP amendments will come into effect.

Disclosure of Interest

Nil

Detailed report

BACKGROUND

The DPE exhibited an Explanation of Intended Effect (EIE) for proposed agritourism planning control changes in March-April 2021. Council made a submission during the exhibition period.

The Standard Instrument Local Environmental Plan Agritourism Amendment Order 2021 (LEP Order) is the first stage of rolling out the proposed planning control changes in the EIE.

CURRENT CONTROLS AND PERMISSIBILITY

The following 'farm stay accommodation' land use term and development standard stipulating the number of bedrooms, is within the Mid-Western LEP. The land use is permissible and development applications have been considered within the RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential and C3 Environmental Management.

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.

5.4 Controls relating to miscellaneous permissible uses

(5) Farm stay accommodation, if development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 5 bedrooms.

Section 6.4 of Council's Development Control Plan provides standards for tourist and visitor accommodation, this includes farm stay accommodation. The standards stipulate various matters, including, tourist and visitor accommodation must only be erected on land that meets the minimum lot size for the erection of a dwelling.

NEW LAND USE TERMS

The following are the new land use terms that will be inserted into the Dictionary of the Mid-Western LEP. The insertion of these land use terms is not optional.

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.

PROPOSED OPTIONAL CLAUSES

There are two optional clauses that Council has considered for; Farm Stay Accommodation and Farm Gate Premises, as provided below. Within these clauses, there are development standards Council is required to stipulate. These standards have been underlined and discussed in the table below.

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]*

(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*

Staff comment: the proposed optional clause provides objectives and considerations to ensure amenity is considered in the assessment of any development application for farm stay accommodation. Of particular assistance is the inclusion of the requirement for the land to have dwelling entitlement. As mentioned above, this provision is currently contained in the DCP and it would be beneficial for this requirement to have greater weight when contained within the Mid-Western LEP. This consideration will ensure there is not a proliferation of farm stay accommodation and unauthorised change of use to permanent dwellings within the rural areas.

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]*

(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—*
 - (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.*

Development standard Council is required to stipulate	Development standard proposed	Justification
Farm stay accommodation		
The objectives of this clause are— <u>[set out other objectives of the clause]</u>	To cluster the location of buildings to be used for farm stay accommodation to maintain the principal use of the land for primary production.	The spread of farm stay accommodation buildings across an agricultural property detrimentally impacts farm management practises onsite, it may also lead to negative impacts to adjoining agricultural pursuits.

		The objective has been included to ensure the principal use of the land for primary production is maintained.
Gross floor area of a building used to accommodate guests will not be more than <u>[insert number no less than 60] square metres</u>	The development standard of 75 square metres is proposed.	The 75 square metres is consistent with development approvals granted by Council previously. This standard is also consistent with what DPE outlined in the exhibited Explanation of Intended Effect.
Maximum number of guests accommodated in moveable dwellings on the landholding will not be more than <u>[insert number no more than 20] at any 1 time</u>	The development standard of 8 guests is proposed.	The development standard of 8 guests accommodated across a maximum of 4 moveable dwellings on a site, is considered to provide the landowner with an 'agritourism' opportunity resulting in an acceptable level of amenity impact on the locality.
Maximum number of moveable dwellings used for the accommodation of guests will not be more than <u>[insert number no more than 6]</u>	The development standard of 4 moveable dwellings is proposed.	Further, the total number of guests permitted onsite under this clause (the combination of buildings and moveable dwellings) is 28. This number of guests is generally consistent with what Council has considered previously.
Farm Gate Premises (includes, but not limited to, restaurant, café, facility holdings tastings or workshops etc.)		
Gross floor area of a building used for farm gate premises will not be more than <u>[insert number no more than 200] square metres</u>	The development standard of 200 square metres is proposed.	A landowner can erect a 200 square metre farm shed as exempt development. The visual impact of sheds of this scale are currently erected across the landscape. Accordingly, it is considered reasonable that this floor area be considered for the use as a farm gate premises. The size of recently approved cellar doors and restaurants varies, from 20 to 170 square metres.
Maximum number of persons that will be permitted on the landholding at any 1 time for	50 persons	Currently a merit based development assessment occurs for the consideration of

<p>the purposes of the farm gate premises will not be more <u>[insert number not more than 50]</u> persons</p>		<p>the maximum number of people permitted onsite.</p> <p>It should be noted, Council also utilises the ‘function centre’ definition in the rural zones. Accordingly if a landowners is wanting to establish a larger facility to be used for events catering for greater than 50 people, they could consider the suitability of the function centre land use for their proposal.</p>
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WHERE WILL AGRITOURISM LAND USES BE PERMISSIBLE

Agritourism, and the subsets of this use, ‘farm gate premises’ and ‘farm experience premises’ will sit under the parent term ‘agriculture’ and will be permissible where agriculture is permissible. ‘Agriculture’ is permissible with consent in the RU1 Primary Production and RU4 Primary Production Small Lots zones.

NEXT STEP

Council’s endorsement of the ‘farm stay accommodation’ and ‘farm gate premises’ optional clauses will inform DPE’s drafting of a State Environmental Planning Policy (SEPP) to amend the Mid-Western LEP (without the need for Council to prepare a planning proposal). DPE are proposing the make the SEPP mid-2022.

Community Plan implications

Theme	Building a Strong Local Economy
Goal	A prosperous and diversified economy
Strategy	Support the attraction and retention of a diverse range of businesses and industries

Strategic implications

Council Strategies

Not Applicable

Council Policies

The consideration and endorsement of the two optional clauses of ‘farm stay accommodation’ and ‘farm gate premises’ will not require any changes to relevant policies.

Legislation

The two optional clauses of ‘farm stay accommodation’ and ‘farm gate premises’ has been considered in accordance with the Standard Instrument Local Environmental Plan Agritourism Amendment Order (LEP Order).

The Mid-Western LEP will be updated in line with DPE’s reform timeframe.

Financial implications

Nil

Associated Risks

If Council were not to opt in for the inclusion of the two clauses 'farm stay accommodation' and 'farm gate premises' in the Mid-Western LEP, staff would not have the benefit of considering these clauses in the assessment of future development applications.

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17 February 2022

Attachments: Nil

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER