

8.2 Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022

REPORT BY THE MANAGER, STRATEGIC PLANNING
TO 14 DECEMBER 2022 ORDINARY MEETING
GOV400098, LAN900033

RECOMMENDATION

That Council:

1. receive the report by the Manager, Strategic Planning on the Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022; and
2. endorse the following 'farm stay accommodation' and 'farm gate premises' clauses and objective to be inserted into the Mid-Western Regional Local Environmental Plan 2012:

Farm Stay Accommodation

(1) The objectives of this clause are as follows—

- (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,*
- (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.*

Additional Objective: cluster location of buildings to maintain principal use of 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 all buildings or manufactured homes used to accommodate guests on the landholding will be—

- (a) on the same lot as an existing lawful dwelling house, or*
- (b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.*

(3) Subclause (2) does not apply if the development is a 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 a 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 a significant adverse impact on the following on or near the land—*
 - (i) the visual amenity or 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 development, and*
- (e) the compatibility of the development with nearby land uses.*

Farm Gate Premises

- (1) The objectives of this clause are as follows—*
 - (a) to allow for tourism and related commercial uses on land used principally for primary production at a scale that does not adversely affect the principal use of the land for primary production,*
 - (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 land unless the consent authority has considered—*
 - (a) whether the development will result in noise or pollution that will have a 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 a significant adverse impact on the following on or near the land—*
 - (i) the visual amenity or 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 Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 (the Order) was published on the 6 October 2022 and will commence in early 2023. The Order contains two optional clauses for Council's consideration. The two optional clauses are 'farm stay accommodation' and 'farm gate premises'. The order also contains the additional land use definitions, discussed in the body of the report.

The staff recommendation is to include the optional clauses for 'farm stay accommodation' and 'farm gate premises' as it will provide staff with matters for consideration when assessing development applications. Further, the staff recommendation is to include an additional objective. The additional objective will encourage the clustering of the location of buildings to maintain principal use of land for primary production and minimise land use conflict.

'Farm gate premises' will be a subset of 'Agritourism' and will be permissible where Agriculture is permissible. Agriculture is permissible in the RU1 Primary Production and RU4 Primary Production Small Lots zones. The permissibility of 'farm stay accommodation' we remain the same.

The draft Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 was reported to Council for consideration in March 2022. The Order published in October 2022 differs to the draft, accordingly staff are reporting the matter to Council for consideration.

The main differences between the draft and published order is the removal of development standards (gross floor area for buildings, maximum guest's onsite) in the optional clauses and the change to the definition of farm stay accommodation.

Disclosure of Interest

Nil

Detailed report

BACKGROUND

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

Staff briefed Councillors in April 2021 and March 2022.

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 and State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Agritourism) 2022 were both published on the 6 October 2022.

The State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Agritourism) 2022 commenced on 1 December 2022 and will stipulate exempt and complying Agritourism development.

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 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.*

Camping ground means an area of land, with access to communal amenities, used for the short term placement of campervans, tents, annexes or other similar portable and lightweight temporary shelters for accommodation and includes a primitive camping ground but does not include—

(a) a caravan park, or

(b) farm stay accommodation.

Caravan park means an area of land, with access to communal amenities, used for the installation or placement of caravans, or caravans and other moveable dwellings, but does not include farm stay accommodation.

Commercial farm means a farm on which agriculture is undertaken that is—

(a) on land categorised as farmland under the Local Government Act 1993, section 515, or

(b) a primary production business within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth, or part of a primary production business, including a business that—

(i) was a primary production business, and

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

Farm experience premises means a building or place—

(a) on a commercial farm, and

(b) ancillary to the farm, and

(c) used to provide visitors to the farm, on a commercial basis, with small-scale and low-impact tourist or recreational activities, including the following, but not including motor sports—

(i) horse riding,

(ii) farm tours,

(iii) functions or conferences,

(iv) farm field days.

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

Farm gate premises—

(a) means a building or place—

(i) on a commercial farm, and

(ii) ancillary to the farm, and

(iii) used to provide visitors to the farm, on a commercial basis, with agricultural products predominantly from the farm, supplemented by products from 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) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,

(C) tastings or workshops,

(D) the provision of information or education related to the products, and

(b) includes cellar door premises.

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

Farm stay accommodation means a building or place—

(a) on a commercial farm, and

(b) ancillary to the farm, and

(c) 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 that term in this Dictionary.*

PROPOSED OPTIONAL CLAUSES

There are two optional clauses that Council has considered; Farm Stay Accommodation and Farm Gate Premises, as provided below. When considered previously (March 2022) these clauses contained development standards. The optional clauses no longer contain development standards. The two optional clauses are provided below:

5.24 Farm stay accommodation [optional]

(1) The objectives of this clause are as follows—

(a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,

(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.

Optional Objective: cluster location of buildings to maintain principal use of 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 all buildings or manufactured homes used to accommodate guests on the landholding will be—

(a) on the same lot as an existing lawful dwelling house, or

(b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.

(3) Subclause (2) does not apply if the development is a 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 a 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 a significant adverse impact on the following on or near the land—

- (i) the visual amenity or 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 development, and

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

Staff comment: It is the staff recommendation to adopt the proposed optional clause and additional objective 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 meet the minimum lot size or be on the same lot as a lawful dwelling. This provision is currently contained in Council's Development Control Plan 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.

5.25 Farm gate premises [optional]

(1) The objectives of this clause are as follows—

- (a) to allow for tourism and related commercial uses on land used principally for primary production at a scale that does not adversely affect the principal use of the land for primary production,*
- (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 land unless the consent authority has considered—

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

- (i) the visual amenity or 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 new farm gate premises land use will facilitate permissibility in both the RU1 Primary Production and RU4 zones. The inclusion of the optional clause will give staff specific matters for consideration during the assessment of a development application, rather than relying on a merit based assessment.

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' (including the optional objective) and 'farm gate premises' optional clauses will inform DPE's drafting to amend the Mid-Western LEP (without the need for Council to prepare a planning proposal). DPE are proposing the amendment will commence early 2023.

It should be noted, State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Agritourism) 2022, published on the 6 October 2022 commenced on the 1 December 2022. Council does not need to consider any items in relation to this legislation.

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 (the 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.

SARAH ARMSTRONG
MANAGER, STRATEGIC PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

28 November 2022

Attachments: 1. Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



New South Wales

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022

under the

Environmental Planning and Assessment Act 1979

MARGARET BEAZLEY, Governor

I, the Honourable Margaret Beazley AC KC, Governor of New South Wales, with the advice of the Executive Council, and under section 3.20 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 28th day of September 2022.

By Her Excellency's Command,

ANTHONY ROBERTS, MP
Minister for Planning

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 [NSW]

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022*.

2 Commencement

This Order commences on 1 December 2022.

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 [NSW]
Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

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

[1] Land Use Table

Insert in appropriate order in Direction 5—

- Agritourism;
- Farm experience premises;
- Farm gate premises;
- Primitive camping grounds;

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

Insert “in buildings” after “bedrooms” in clause 5.4(5).

[3] Clause 5.4(8)

Omit “*not less than 8*”. Insert instead “*not less than 9*”.

[4] 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 5km of another poultry farm, or
- (vi) for a poultry farm not used for breeding poultry—
 - (A) within 5km of a poultry farm used for breeding poultry, or
 - (B) within 1km of a poultry farm not used for breeding poultry, or
- (vii) for a pig farm—within 3km of another pig farm.

[5] Clauses 5.24 and 5.25

Insert at the end of Part 5—

5.24 Farm stay accommodation [optional]

- (1) The objectives of this clause are as follows—
 - (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,
 - (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.

Direction— Additional objectives may be included.

- (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 all buildings or manufactured homes used to accommodate guests on the landholding will be—
 - (a) on the same lot as an existing lawful dwelling house, or
 - (b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.

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

- (3) Subclause (2) does not apply if the development is a 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 a 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 a significant adverse impact on the following on or near the land—
 - (i) the visual amenity or 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 development, and
 - (e) the compatibility of the development with nearby land uses.

Direction— Additional development standards for farm stay accommodation may be included.

5.25 Farm gate premises [optional]

- (1) The objectives of this clause are as follows—
 - (a) to allow for tourism and related commercial uses on land used principally for primary production at a scale that does not adversely affect the principal use of the land for primary production,
 - (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.
- Direction—** Additional objectives may be included.
- (2) 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 a 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 a significant adverse impact on the following on or near the land—
 - (i) the visual amenity or heritage or scenic values,
 - (ii) native or significant flora or fauna,
 - (iii) water quality,
 - (iv) traffic,
 - (v) the safety of persons, and

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

- (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.

Direction— Additional development standards for farm gate premises may be included.

[6] Dictionary, definition of “agriculture”

Insert before paragraph (a)—

- (aaa) agritourism,

[7] Dictionary, definition of “artisan food and drink industry”

Omit paragraph (b). Insert instead—

- (b) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,

[8] Dictionary

Omit the definitions of *camping ground*, *caravan park* and *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 that term in this Dictionary.

camping ground means an area of land, with access to communal amenities, used for the short term placement of campervans, tents, annexes or other similar portable and lightweight temporary shelters for accommodation and includes a primitive camping ground but does not include—

- (a) a caravan park, or
- (b) farm stay accommodation.

caravan park means an area of land, with access to communal amenities, used for the installation or placement of caravans, or caravans and other moveable dwellings, but does not include farm stay accommodation.

commercial farm means a farm on which agriculture is undertaken that is—

- (a) on land categorised as farmland under the *Local Government Act 1993*, section 515, or
- (b) a primary production business within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth, or part of a primary production business, including a business that—
 - (i) was a primary production business, and
 - (ii) has temporarily ceased to be a primary production business because of a natural disaster, including a drought, flood or bush fire.

farm experience premises means a building or place—

- (a) on a commercial farm, and
- (b) ancillary to the farm, and

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- (c) used to provide visitors to the farm, on a commercial basis, with small-scale and low-impact tourist or recreational activities, including the following, but not including motor sports—
 - (i) horse riding,
 - (ii) farm tours,
 - (iii) functions or conferences,
 - (iv) farm field days.

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

farm gate premises—

- (a) means a building or place—
 - (i) on a commercial farm, and
 - (ii) ancillary to the farm, and
 - (iii) used to provide visitors to the farm, on a commercial basis, with agricultural products predominantly from the farm, supplemented by products from 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) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,
 - (C) tastings or workshops,
 - (D) the provision of information or education related to the products, and
- (b) includes cellar door premises.

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

farm stay accommodation means a building or place—

- (a) on a commercial farm, and
- (b) ancillary to the farm, and
- (c) 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 that term in this Dictionary.

landholding means an area of land—

- (a) constituted or worked as a single property, and
- (b) if comprising more than 1 lot—the lots are—
 - (i) contiguous, or
 - (ii) separated only by a road or watercourse.

manufactured home has the same meaning as in the *Local Government Act 1993*.

primitive camping ground means a camping ground approved under the *Local Government Act 1993*, Chapter 7, Part 1 as a primitive camping ground.

Note— Primitive camping ground is a type of **camping ground**—see the definition of that term in this Dictionary.

Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022 [NSW]
Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental
Plans) Order 2006

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

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

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

Omit “also provided”. Insert instead—

also provided, but does not include the preparation and serving of food and
drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

[11] Dictionary, definition of “retail premises”

Omit paragraph (b).

[12] Dictionary, definition of “retail premises”

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