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Proposals for agritourism and agriculture development

The NSW Government is proposing reforms to the planning system to streamline approval of agritourism and small-scale agricultural development.

General

What is being proposed?

The NSW Government is proposing amendments to the NSW planning system to streamline the approval of agritourism development and small-scale agricultural development. An 'explanation of intended effect' (EIE) prepared by the department details the proposed changes.

The changes include:

- amending the existing definition for farm stay accommodation in the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) to support more farm stays
- introducing two new land use terms in the Standard Instrument for farm gate activities and farm events to enable these types of development to be established
- introducing new optional clauses for farm stay accommodation and farm gate activities that councils can choose to adopt in their local plans for development applications
- providing fast track exempt and complying development approval pathways for agritourism activities where certain development standards are met
- allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size, location and contemporary building standards
- allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey and other agricultural produce where certain development standards are met
- updating development standards for poultry farms and pig farms to align separation distances with recommended biosecurity standards
- clarifying terminology and approval pathways used for farm dams
- updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises
- updating and rationalising existing controls for stock containment lots to reflect current practice and ensure stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.
- providing an exempt development pathway for recreational beekeeping to improve certainty.

These changes are intended to reduce red tape and make it easier for farmers to get planning approval while managing environmental impacts.

What is exempt and complying development?

Exempt development is minor, low-impact development that can be undertaken without the need for planning or building approval, if the work complies with specified development standards.

Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a local council or a registered certifier. Complying development must also meet specified development standards.

What are the advantages of exempt and complying development?

There are several advantages for landowners in using exempt and complying development, including:

- consistent requirements are applied across NSW under exempt and complying development.
- building work or an activity can start quicker. For exempt development, if all development standards are met, you do not need to obtain a planning or building approval. For complying development, if all development standards are met, a complying development certificate can be issued by the local council or a registered certifier in as little as 20 days.
- If all development standards are met for exempt development, the development can proceed. If all development standards are met for complying development, the council or certifier must issue a complying development certificate.

For exempt and complying development, other than the development standards proposed in the EIE, is there anything else I would need to comply with?

In addition to the proposed development standards, the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has other requirements that you must meet. For example, to carry out complying development, the land use must be permissible in the zone. For both complying and exempt development, certain sensitive land is excluded. Building works must also be constructed in accordance with the National Construction Code. You can read more about exempt and complying development at planningportal.nsw.gov.au

There are also requirements under other legislation you may need to meet that are not related to the planning rules. For example, to serve food at a farm event you may have obligations under the *NSW Food Act 2003*.

Proposed changes for agritourism development

Why are these changes being proposed? Aren't these uses already occurring?

Research has shown there are several challenges facing farmers who want to set up an agritourism business. These challenges include the complexity and cost of obtaining planning approvals and variations in how the planning system is applied across regional NSW. In addition, existing land use terms are not always appropriate, especially for low-scale, low-impact activities.

The proposed changes would cater for small-scale agritourism uses, allowing landowners to start an agritourism business that has minimal impact without the time and expense of lodging a development application. If landowners want to expand these businesses in the future, beyond

what is permitted as exempt or complying development, the expansion would be subject to a detailed assessment as part of a development application.

As well as benefiting individual landowners, the reforms would help regional economies recover from drought, bushfires and the ongoing impact of COVID-19, and improve their resilience.

The reforms also deliver on several directions and actions in regional plans that sought to foster agritourism and enable opportunities for appropriate tourism development and associated land uses in local environmental plans.

Why are there so many development standards proposed for each agritourism activity?

As exempt and complying developments do not have the same assessment process as development applications, it is important to ensure that only development that is minor and low impact can use these development pathways.

The proposed development standards are intended to mitigate undesired impacts by limiting the land on which the activities can occur and the scale of the use, as well as managing impacts such as noise and potential disruption to neighbouring land uses.

Would I have to meet all the development standards for my proposal?

Yes. Your proposal would have to meet all the development standards for either exempt or complying development to use these approval pathways.

If your proposal does not meet all development standards, you could lodge a development application that council will assess on its merits.

Before lodging a development application, you should discuss your proposal with the council to ensure you understand what is required.

I have a hobby farm. Would these changes apply to me?

No. The new land use terms would only apply where the existing main use of the land is the production of agricultural/primary production goods for commercial purposes. The proposed changes are intended to make it easier for commercial producers to diversify their income stream, showcase their produce and allow people to connect with the source of their food and fibre. This is especially important during times when farming activities may not be possible, such as due to drought.

Could I do multiple agritourism developments on my property under these proposals?

Yes. You could have multiple developments occurring on your property at the same time if each of those developments has the necessary planning approval in place (or in the case of exempt development, meets all the required development standards). The new uses are intended to complement one another.

For example, you could have a small number of people staying at your property as farm stay accommodation and host occasional small functions as farm events.

Farm stay accommodation

Why are changes being proposed to the existing definition of farm stay accommodation?

Several changes are proposed to the existing definition to give more flexibility to farmers. These are to:

- expand the definition to include camping. Currently, even a small number of tents requires approval as a camping ground. This is unnecessarily restrictive as a small number of people camping is a low-impact activity.
- recognise that farming activities may fluctuate seasonally and to ensure agriculture continues to be the principal use of the land. The existing requirement to demonstrate that the farm stay accommodation is a 'secondary business' has required councils to consider matters (such as yearly turnover) that are not typically planning considerations and do not recognise that farming can be seasonal, especially in periods of drought.

Would the proposals allow me to build accommodation on my farm larger than the limits proposed in the EIE?

If you want to build accommodation on your property larger than the limits proposed in the EIE, you may need to seek approval for a different form of tourist and visitor accommodation, such as hotel or motel accommodation. This is because farm stay accommodation is intended to be only limited scale and low impact.

You would need to ensure the type of accommodation you want to build is permissible on your land and lodge a development application with the local council.

If you are considering a more intense form of accommodation than a farm stay, you should contact your local council.

How many tents could I put up on my property?

The proposal does not limit the number of tents that could be put on a property under any of the proposed development pathways. Instead, the changes seek to limit the number of people to a maximum of 20 at any one time.

This would provide some flexibility in the way a camp site can be set up, while ensuring the use remains low impact.

Farm gate activities

What kind of activities are farm gate activities? Would other activities not listed in the EIE be included?

Farm gate activities are low-impact activities that provide opportunities for landowners to showcase the agricultural produce on the land. The new definition would specifically include retail sales, a small restaurant or café, or tastings and workshops as farm gate activities, although this list is not intended to be exclusive. Other activities that meet the broader definition would also be permitted.

I would like to open a café on my property. Are there restrictions on the food that could be served?

The intention of the proposed definition for 'farm gate activities' is to provide producers with the opportunity to showcase food grown or produced on the land or in the surrounding area. This means any café or restaurant must be small in scale and predominantly serve food produced on site or on nearby farms.

Larger cafés or restaurants that serve a wider variety of food products are a different land use that must be permitted separately on the land and would require a development application.

Farm events

Would the proposed amendments allow me to host a wedding on my property?

Yes. The new land use term 'farm event' would permit weddings to be hosted on a property. It is proposed to permit functions (including weddings) of up to 50 people 10 times a year, or up to 30 people 52 times a year as exempt development as long as all the development standards are met.

A complying development pathway is proposed to allow some building works to facilitate these events.

Larger or more frequent weddings (or events that do not meet the development standards) would require a development application.

I want to be able to host functions for more than 50 people. Would the changes permit this?

Functions of more than 50 people would not be permitted under the proposals as exempt or complying development. If you wish to host functions for larger numbers of people, you would need to obtain development consent from your local council.

Proposed changes for agricultural development

Why are small-scale processing plants going to be permitted through a fast-track complying development pathway?

The department is considering ways to make it easier for farmers to undertake low-impact agricultural developments. Small-scale processing plants for meat, honey or dairy are proposed to be permitted as complying development to make it quicker and easier for farmers to obtain approvals for these types of developments. Development standards will ensure processing plants are small-scale and in the right locations so that neighbours and the environment are not impacted.

Why is the rebuilding of farm infrastructure going to be allowed as exempt development and not need any approval?

We want to help farmers rebuild after natural disasters such as the 2019-2020 bushfires. Allowing farm infrastructure such as farm buildings and grain bunkers to be rebuilt without approval will make it easier for farmers to recover. Farmers will need to comply with existing exempt development standards for these buildings, except those that would prevent the buildings from being rebuilt in the same location as exempt development, such as setbacks or height standards. The reconstructed building must have the same height and footprint as the previous building.

Why is the department considering increasing the setbacks required for rural dwellings from intensive agricultural developments?

Intensive agricultural developments such as pig farms, feedlots and poultry farms can have significant impacts on neighbouring properties, such as odour and noise. Increasing setbacks will prevent new houses being built close to these developments without proper consideration of the potential land-use conflict through a development application. The changes will only apply to new rural dwellings permitted as complying development.

Why are the provisions for temporary stock containment areas being updated?

Stakeholders have suggested that the provisions for stock containment areas could be simplified to make them easier to use. Some containment areas can have a negative impact on nearby areas because of their location due to runoff into waterways. The proposed changes will place restrictions on where stock containment areas can be located to minimise any impacts on the environment or neighbouring properties.

Why is the department updating provisions for farm dams?

Farm dams are essential to provide water for stock, fire protection and irrigation. We are considering ways to simplify the planning controls for farm dams and make them consistent across the state.

How are the provisions for small-scale poultry farms and pig farms being updated to safeguard biosecurity?

Currently, small-scale poultry farms and pig farms can be developed without consent provided they are a significant distance from other poultry and pig farms and meet other criteria. We are proposing to increase this separation distance to respond to concerns from stakeholders that the distance required between farms is too small and does not meet best-practice standards for biosecurity. Farms that are proposed to be located closer than these distances must seek approval by lodging a development application.

Why is the department introducing planning controls for recreational beekeeping?

The department is introducing planning provisions for recreational beekeeping to clarify that the activity does not require planning approval if done according to certain standards. Commercial beekeeping is already defined as a land-use in local environmental plans and is a type of extensive agriculture, but there has been confusion regarding whether recreational beekeeping requires planning approval.

Proposed rollout of the changes

Would I be able to use the exempt and complying development pathways straight away? What happens from here?

At this stage, we are seeking feedback on the proposals. Based on the feedback received, the details of the proposed changes may be amended.

The exempt and complying development pathways will be available once the new provisions commence.

Until that time, the existing requirements continue to apply.

Making a submission

I have concerns with some of the proposed standards for exempt and complying development. What should I do?

The purpose of exhibiting the EIE is to obtain feedback from the community and other stakeholders about the proposals. We will consider this feedback in finalising the proposals. If you support the proposals or have concerns, we also welcome your feedback.

You can provide feedback by:

- making a submission in writing, and/or
- completing the surveys, and/or
- providing general comments on an 'ideas wall'.

To submit your feedback, visit: planning.nsw.gov.au/agriculture-changes

I don't understand what is being proposed. Who can I contact?

If you have questions about the proposals, you can:

Email: information@planning.nsw.gov.au

Website: [Contact us via our online form](#)

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