

Agritourism and small-scale agriculture development

This document answers your questions about changes to planning rules for agritourism and small-scale agriculture development

Overview

What is agritourism?

Agritourism is a tourism-related experience or product that connects agricultural products, people or places with visitors to a farm.

Agritourism allows farmers to showcase what's unique about their region, offers an additional source of income and gives people more reasons to visit rural and regional NSW.

How do the planning rules support agritourism?

The agritourism planning framework under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) makes it easier for farmers to use their land for agritourism to complement their existing businesses without a development application. Larger agritourism operations can apply for planning approval from the local council to ensure impacts are managed.

Simplified planning rules are intended to help landowners add value to their existing agricultural businesses with additional income streams and encourage the next generation to farm the land.

This also supports the resilience and recovery of regional and rural communities from natural disasters and unexpected events.

Before the agritourism policy, there were no clear land uses and no streamlined approval pathways to easily allow agritourism activities such as 'pick your own fruit' on rural zoned land.

What is the agritourism policy?

The agritourism policy provides land uses for on-farm activities under exempt and complying development if they meet specified development standards. This means landowners can set up agritourism businesses without the complexity and cost of obtaining approval of a development application.

Landowners can run activities on their farms more easily, including farm experiences, on-farm accommodation, cellar doors, cafes, retreats, roadside stalls, fruit picking and hosting small events such as weddings.

When did the agritourism policy start?

The agritourism policy began on 1 December 2022.

Updates have been made to council local environmental plans (LEPs) to expand the zones in which agritourism land uses can be undertaken by the [State Environmental Planning Policy Amendment \(Agritourism\) 2023](#).

Planning rules for agritourism

What are the planning rules for agritourism?

There are land uses for on-farm activities that can be carried out as exempt or complying development, or under a development application.

The land uses are:

- **Farm gate premises** – where visitors interact with produce from the farm, such as fruit picking, sales, tastings, workshops and cafes.
- **Farm experience premises** – where visitors can experience life on a farm including tours, horse riding, weddings, functions and retreats.
- **Farm stay accommodation** – where visitors can stay in buildings or moveable dwellings, including tents and caravans, on a farm.

You can read the full definitions in the [Standard Instrument – Principal Local Environmental Plan 2006](#) and they are replicated in all Standard Instrument LEPs.

These land uses can only be undertaken on a commercial farm and must be ancillary (secondary) to the farm. A commercial farm means a farm on which agriculture is undertaken that is on land categorised as farmland under the *Local Government Act 1993* by the local council, or that is a primary production business under the *Income Tax Assessment Act 1997 (Cth)*. It also includes a business that was a primary production business and has temporarily ceased to be a primary production business because of a natural disaster, including a drought, flood or bush fire.

What are farm gate premises?

Farm gate premises are a way for landowners to showcase the agricultural produce of the land. This may include setting up a building or place to sell agricultural products such as a small restaurant or café, pick-your-own produce or running tastings and workshops. Other activities that meet the definition for farm gate premises can also be undertaken.

What are farm experience premises?

Farm experience premises allow a farmer to provide small scale and low impact tourist and recreational activities and events on their farm to visitors to experience the farm and farm life. They can include farm tours, school visits, retreats, weddings, conferences, horse riding and farm field days. Other activities that meet the definition for farm experience premises can also be undertaken.

What is farm stay accommodation?

Farm stay accommodation includes erecting tents and having caravans or campervans on your land, changing the use of residential accommodation to farm stay accommodation, erecting a new

building or modifying an existing building to provide temporary accommodation to paying guests of the farm.

Farmers can also install a deck or other platform for glamping tents or cooking shelters for camping.

How does the policy help me?

The agritourism land uses allow innovative agritourism activities on farms.

Rather than having to get a development application, landowners can set up agritourism businesses with either fast-tracked approval (through complying development) or no planning or building approval (through exempt development) if they meet the requirements set out in the policy.

- **Exempt development** is minor, low-impact development that can be undertaken without planning or building approval if the work meets specified development standards and general requirements.
- **Complying development** is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by the council or a registered certifier. Complying development must also meet specified development standards and general requirements.

If your development cannot meet the general requirements or development standards for exempt or complying development, you will need to lodge a development application with your council. Council is the best source for advice on whether you can lodge a development application and what information you need to provide. General information about development applications is also available at planningportal.nsw.gov.au.

What matters do I need to consider in my council area?

Land requirements

Farm stay accommodation, farm experience premises, farm gate premises and roadside stalls can be carried out as exempt or complying development in these zones in the council's LEP:

- RU1 (Primary Production)
- RU2 (Rural Landscape)
- RU4 (Primary Production Small Lots).

For exempt development, in addition to these zones, farm stay accommodation, farm experience premises and farm gate premises can be carried out in other zones where development for 'agritourism', 'extensive agriculture', 'intensive livestock agriculture' or 'intensive plant agriculture' is permitted with consent or without consent under the council's LEP.

To carry out complying development, the land use – for example, farm gate premises – must also be permissible with consent in the zone. This permissibility is set out in the council's LEP.

Permissibility is also important for development applications. Farm experience premises and farm gate premises are permissible with consent in RU1, RU2 and RU4 zones under each Standard Instrument LEP. They are also permissible with consent in other zones where 'agriculture',

'agritourism' or the specific land use, 'farm experience premises' or 'farm gate premises', is permitted with consent, unless the use is specifically prohibited in the zone. Farm stay accommodation is permitted with consent where 'tourist and visitor accommodation' or 'farm stay accommodation' is permitted with consent, unless the use is specifically prohibited in the zone.

Certain sensitive land is excluded from complying and exempt development, such as critical habitat, floodway areas, special areas in certain drinking water catchments and significantly contaminated land.

You can read more about exempt and complying development at planningportal.nsw.gov.au.

Development standards

The development standards for exempt and complying development include the maximum number of guests or visitors, operating hours, minimum setbacks to neighbours and waterways, the maximum size and number of buildings, and requirements for waste management, access to the property and car parking. The development standards for development applications are set out in the council's LEP and development control plan (DCP).

Other requirements

To undertake any building work for agritourism, the work must be constructed in accordance with the Building Code of Australia.

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

Where do I find the full planning rules?

You can find the definitions for agritourism activities in the *Standard Instrument – Principal Local Environmental Plan 2006* and Standard Instrument LEPs.

You can find the exempt development rules in Part 1 and Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The complying development rules are in Part 1, Part 9 and Schedule 11 of the Codes SEPP. Part 13A of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* contains further requirements regarding compliance with fire safety standards for farm stay accommodation.

You can find your council's LEP on the NSW Legislation website. The council's DCP is available on its website.

I am already operating an agritourism business. How does the agritourism policy affect me?

In certain circumstances, businesses that were operating lawfully before the agritourism policy commenced can continue to operate and do not need to meet the requirements of the policy.

Existing agritourism operations are considered to be lawfully operating if:

- the business is operating under a valid development consent or approval and complies with any conditions of that consent or approval

- the use is exempt development and complies with the requirements and development standards for that development
- the use is an ancillary development to another lawful use of the land and that other use has development consent or approval or does not require approval.

An ancillary use is a use that is secondary to the main purpose of the land and is not an independent land use in its own right. Ancillary uses may be relevant when a development involves multiple components on the same land.

If you are unsure whether you are operating lawfully, contact your council.

What type of agritourism is pick-your-own produce?

Pick-your-own produce activities may be undertaken as a farm gate premises if they involve providing agricultural products, or services or activities, on a commercial basis, related to agricultural products from the farm or other farms in the region. Pick-your-own activities can be undertaken as exempt development if the relevant development standards are met.

I have a hobby farm. Do the changes apply to me?

No. The land use terms for farm stay accommodation, farm experience premises and farm gate premises only apply where the main use of the land is the production of agricultural goods for commercial purposes.

A key objective of the agritourism policy is to ensure primary production remains the principal use of farmland and the policy has been developed to achieve that objective. This includes by allowing agritourism only on a commercial farm on which agriculture is undertaken.

How do I demonstrate I have a commercial farm?

A farmer can demonstrate they have a commercial farm in one of two ways. They can demonstrate their farm has been categorised as farmland by the council under the *Local Government Act 1993* or that they have a primary production business as defined under the *Income Tax Assessment Act 1997 (Cth)*.

You can check your council annual rate notice to find out the categorisation of your land under the *Local Government Act* or the council can confirm the categorisation.

A person can apply for a private tax ruling under Division 359 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* as to whether or not they are carrying on a business for primary production under the *Income Tax Assessment Act*.

Could I set up multiple agritourism activities on my property?

Yes. You could set up multiple activities on your property provided each activity has the necessary planning approval in place (or in the case of exempt development, meets all the required development standards and general requirements). The agritourism land uses are intended to complement one another.

For example, you could have people staying at your property in farm stay accommodation and also allow visitors to buy produce from farm gate premises.

Can I earn more income from my agritourism proposal than from my agricultural business?

The agritourism land uses have been designed to complement agricultural production rather than detract from it. It is important to retain agricultural uses of farmland now and into the future.

While you could earn more income from your agritourism business than your primary production business, particularly during periods of drought or other temporary reasons outside your control, you must continue to have a commercial farm to run your agritourism business and the agritourism activities must be ancillary (secondary) to the farm.

Do I need approval to use my rural workers' dwelling for farm stay accommodation?

If a rural workers' dwelling on your land is an approved development, you can change the use to farm stay accommodation without further planning or building approval (exempt development). You must not contravene any of the conditions of the development consent that applies to the land.

Once the farm stay accommodation is no longer needed – for example at the end of school holidays – you can change the use of the building back to a rural workers' dwelling as exempt development. You will need to comply with the requirements of the development consent that was issued for the rural workers' dwelling.

This recognises agriculture can be seasonal and allows farmers flexibility in using existing buildings on their land.

Do I need to comply with the *Local Government Act 1993* to have camping on my farm?

You may need approval from the local council under the *Local Government Act 1993* (section 68) to install tents or caravans on your farm. You may also need an approval under this Act to connect facilities to reticulated sewage disposal systems or to install a standalone system. The council can advise you on the approvals that are required.

There are some requirements in the Local Government (*Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings*) Regulation 2021 (Regulation) that apply to camping and caravanning as farm stay accommodation. This includes clauses 77-82 which relate to obtaining a section 68 approval to install tents and caravans.

Other provisions of the Regulation that apply to caravan parks, camping grounds and manufactured home estates do not apply to camping and caravanning undertaken as farm stay accommodation.

Can manufactured homes or relocatable homes be used or installed for farm stay accommodation?

Certain development can be undertaken in a manufactured home under exempt and complying development. An existing manufactured home on a farm can be converted to farm stay accommodation as exempt development. Alterations and additions to an existing manufactured home can be undertaken as complying development. Standards apply to each type of development.

A relocatable home can also be converted to farm stay accommodation as exempt development and alterations and additions can be made to a relocatable home as complying development if the relocatable home constitutes a manufactured home.

Manufactured home is defined to mean ‘a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling –

- (a) that comprises one or more major sections, and
- (b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the *Road Transport Act 2013*,

and includes any associated structures that form part of the dwelling.’

Example: a prefabricated studio made off-site would be considered a manufactured home and could not be installed on-site as exempt or complying development. If the manufactured home was already lawfully on-site, its use could be converted to farm stay accommodation as exempt development, or it could be altered or added to as complying development for farm stay accommodation.

To install a manufactured home or relocatable home on a farm, the landowner would need to seek the council’s approval under the *Local Government Act 1993* and may need to lodge a development application with the council if the land use requires development consent under the local environmental plan.

Find out more about approvals needed to install a relocatable home in Planning System Circular PS 21-016 on the department’s [website](#).

Do I need to register farm stay accommodation on the Short-Term Rental Accommodation Register?

No. Farm stay accommodation is not required to be registered on the Short-Term Rental Accommodation (STRA) register, however any building used for farm stay accommodation must comply with the relevant requirements of the [Fire Safety Standard for STRA](#).

What is the Agritourism and Farm Stay Accommodation Exempt and Complying Development Map?

The Agritourism and Farm Stay Accommodation Exempt and Complying Development Map sets out areas where the agritourism provisions under exempt and complying development do not apply. The map currently only identifies certain Special Areas in the Hunter region and the provisions therefore do not apply to these areas. The map is available on the [NSW Planning Portal](#) (see p2).

Can agritourism be undertaken as exempt or complying development in equivalent land use zones?

Some councils have local environmental plans that pre-date the use of standard zones and land uses (‘pre-existing LEPs’). For example, they might have a ‘6B General Rural’ zone that permits ‘rural tourist facilities’ in certain areas rather than the ‘RU1 Primary Production’ zone that permits ‘farm stay accommodation’. Farm experience premises, farm gate premises, farm stay accommodation

and roadside stalls could be carried out as exempt or complying development on land that is zoned under a pre-existing LEP where:

- (a) the relevant zone is equivalent to the RU1 (Primary Production), RU2 (Rural Landscape) or RU4 (Primary Production Small Lots) zones. That is, the relevant zone in a pre-existing LEP is one in which equivalent land uses are permitted to those shown opposite the relevant RU1, RU2 or RU4 zone in the table to [clause 1.6](#) of the Codes SEPP
- (b) for complying development, the proposed land use is permitted with consent on the land under the LEP in accordance with [clause 1.18\(1\)\(b\)](#) of the Codes SEPP, and
- (c) the proposed development meets the development standards and general requirements that apply to exempt and complying development.

Small-scale agriculture changes

Why have the provisions for temporary stock containment areas been updated?

Stakeholders 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 changes placed restrictions on where stock containment areas can be located to minimise any impacts on the environment or neighbouring properties.

Under the updated controls, temporary stock containment areas are not allowed (without development consent):

- in environmentally sensitive areas
- in, or within 100m, of a special area within the meaning of the *Water NSW Act 2014*
- within 100m of a natural watercourse
- within 500m of a residential zone or residential accommodation on adjacent land.

Why was the rebuilding of farm buildings allowed as exempt development?

We want to help farmers rebuild farm buildings after natural disasters such as the most recent floods affecting northern NSW. Allowing farm infrastructure such as farm buildings and grain bunkers to be rebuilt without the need for approval made it easier for farmers to recover. Farmers need to comply with any existing conditions of development consent for these buildings. The reconstructed building must have the same height and footprint as the previous building.

Why were the provisions for small-scale poultry farms and pig farms updated to safeguard biosecurity?

We increased the distance between poultry and pig farms 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 with their council.

Under the new changes, poultry farms with less than 1,000 birds can be developed without consent, as long as they are not within 1km of another poultry farm (instead of 500m). Poultry farms used for the breeding of poultry must also be 5km away from other poultry farms, and vice versa. Pig farms with less than 20 breeding sows or less than 200 pigs can now be developed without consent only if they are not within 3km of another pig farm.

Did the department ask for feedback on the policy?

In March-April 2021, we exhibited an explanation of intended effect about the agritourism and small-scale agriculture development proposals. The document detailed the proposed changes and asked the public to provide feedback through a series of questions. In addition, an 'ideas wall' and two surveys were also provided to capture feedback in various forms.

During the exhibition period, we received 239 submissions, 234 survey responses and 151 comments on the ideas wall. Read the [submissions report](#).

Feedback from the exhibition and further engagement with stakeholders informed the development of the final policy.

Further information

- Email: information@planning.nsw.gov.au
- Website: [contact us via our online form](#)