

Wentworth Shire Council submits the following comments in response to the exhibition of the **Explanation of Intended Effect paper for Agritourism and small-scale agriculture development – Proposed amendments to support farm businesses and regional economies.**

1. Farm Stay Accommodation definition – Council supports the proposed amendment to the definition of farm stay accommodation in the Standard Instrument LEP Order. Council also supports the proposed approval pathways for farm stay accommodation.
 - a. Council supports the proposed setbacks to pig farms, intensive livestock, forestry and mines for exempt and complying development.
 - b. Farm Stay Accommodation should not be prohibited on land that does not contain a dwelling entitlement as the definition includes tents, caravans or similar for accommodation.
 - c. Consideration for including this land use term in the E4 Environmental Living zone.
2. Farm Gate Activities – Council supports the proposed amendment to include a new land use term in the Standard Instrument LEP Order for farm gate activities. Given the diversity of agricultural land and enterprises state wide, Council supports the flexibility in the definition of Agritourism to include, but not being limited to, farm gate activities and farm events. Council also supports the proposed approval pathways for farm gate activities.
 - a. Setback requirements may need to be considered on the basis of the classification of the road.
 - b. For exempt and complying development perhaps consideration should be given to the size of the stall and the operating hours?
3. Farm Events – Council supports the proposed amendment to include a new land use term in the Standard Instrument LEP Order for farm events. Council also supports the proposed approval pathways for farm events.
 - a. Is it necessary to create a new land use term for destination weddings when both the farm stay and farm events would cover this use?
 - b. Consideration for including this land use term in the E4 Environmental Living zone.
4. Additional proposed changes relating to agritourism – Council supports the proposed amendments outlined under Section 3.5 of the EIE for Agritourism and small-scale agriculture development.
 - a. Council submits that both permanent and temporary stock containment yards (does not include intensive livestock agriculture feedlot containment yards) be permitted without consent.
 - b. Council submits that farm dams (where required for water supply for stock and domestic use, fire protection and irrigation) be permitted without consent.

Call for expression of interest from local councils

Wentworth Shire Council would like to adopt the new optional clauses for farm stay accommodation and farm gate activities. The zones to we would like to allow for new farm events and farm gate activities include:

- RU1 Primary Production

- E4 Environmental Living

Council nominate Michele Bos to be the contact to liaise with the Department regarding the implementation of the optional clauses. The contact details are below:

Michele Bos

Strategic Development Officer

M T W T F

X ✓ ✓ ✓ X

**WENTWORTH
SHIRE COUNCIL**

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2 April 2021

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/ Madam,

**Explanation of Intended Effect (Agritourism)–
Canterbury Bankstown Council Submission**

Thank you for the opportunity to comment on the Explanation of Intended Effect in relation to agritourism and small-scale agriculture development.

Following a review, Council raises the following issues for consideration:

Issue 1: The proposed amendments to the Codes SEPP should reflect Council's current requirements in relation to recreational beekeeping.

- The Explanation of Intended Effect (page 31) proposes to permit recreational beekeeping as exempt development.
- Council's Local Orders Policy currently contains requirements in relation to recreational beekeeping. A copy of the requirements is attached.
- The proposed amendments to the Codes SEPP are inconsistent with key requirements under Council's Local Orders Policy as outlined below.

Council's Local Orders Policy	Proposed Amendments to the Codes SEPP
Only docile strains of bees should be kept.	No requirement
Maximum 2 hives	Must not consist of more than: <ul style="list-style-type: none"> • 2 hives for lots up to 300m², • 4 hives for lots 300m² to 1,000m², • 8 hives for lots above 1,000m², • no limit for lots in a rural zone.
Hives should not be located within the vicinity of schools, child care centres, hospitals or other public facilities.	Must not contain any hive within 1m of any lot boundary, or within 3m of any boundary adjoining a public reserve, childcare centre, health services facility, educational establishment or community facility.



The keeping of bees in unit and townhouse developments is not permitted.	No requirement
A suitable barrier must be erected close to the landing board to force flight paths above two metres.	No requirement
A permanent water source suitable for bees should be established within close proximity to the hive.	No requirement
The hive is not within nine metres of any neighbouring swimming pool.	No requirement
Beekeepers are encouraged to increase and update their knowledge by attending training and/or belonging to a beekeeping association.	No requirement

- It is requested that the proposed amendments to the Codes SEPP reflect Council's current requirements to ensure that the keeping of bees does not adversely affect nearby residents and other sensitive land uses, particularly in urban areas where residential blocks are small.

The proposed amendments to the Codes SEPP should also limit the keeping of bees to dwelling houses and dual occupancies that provide appropriately sized private rear yards.

Issue 2: Council is not proposing to adopt the new optional clauses for farm stay accommodation and farm gate activities.

It is noted that the Department of Planning, Industry and Environment is asking Council to consider whether to adopt the new optional clauses for farm stay accommodation and farm gate activities. At this point in time, Council is not proposing to adopt the optional clauses as the land uses are not permitted in the rural zone within the Canterbury Bankstown Local Government Area.

If you have any enquiries, please contact Council officer Mauricio Tapia on 9707 9923.

Yours sincerely

Mitchell Noble
Manager Spatial Planning



ATTACHMENT–Extract of the Canterbury Bankstown Local Orders Policy

The Local Orders Policy is available for viewing on Council's website at:

<https://www.cbcity.nsw.gov.au/council/policies-and-codes>

Order 18 (18) – The Keeping of Bees

Objectives:

- To ensure the satisfactory care and management of domestic honey bees *Apis mellifera* in the Canterbury-Bankstown Local Government Area;
- To ensure that the welfare of bees remains a priority;
- To ensure that the keeping of bees does not adversely affect nearby residents or property; and
- To ensure that the keeping of bees does not affect the surrounding environment.
- To ensure that the owners keeping bees comply with the relevant government legislation and regulations.

Criteria:

1. All beekeepers must be registered with the NSW Department of Primary Industries (NSW DPI) and must comply with the *Apiaries Act 1985*.
2. All beehives must be identified by branding all brood boxes with their registration number.
3. Beekeepers must notify the NSW DPI within 24 hours if they become aware that their hive/s are infected with a disease.
4. The aims, objectives and husbandry procedures as defined in the Beekeeping Code of Practice must be complied with.
5. Complaints about beehives are to be directed to the Director-General of the NSW DPI.

6. Residential Areas

In urban areas, where residential blocks are small, no more than two hives is permitted, and then only when the following circumstances prevail:

- a) Only docile strains of bees should be kept;
- b) Beekeeper must obtain permission from the owners of private lands or from the authority of government controlled lands before placing beehives on such lands;
- c) Hives should not be located within the vicinity schools, child care centres, hospitals or other public facilities;
- d) A suitable barrier must be erected close to the landing board to force flight paths above two metres;
- e) Beehives should not be positioned in the front yard of houses.
- f) Swarming must be controlled. This may be achieved by re-queening regularly with a reduced swarming strain, population control or temporarily splitting into smaller hives.
- g) A permanent water source suitable for bees should be established within close proximity to the hive;



- h) The hive is not within nine metres of any neighbouring swimming pool;
- i) Hive/s are regularly monitored for signs of disease;; and
- j) The keeping of bees in unit and townhouse developments is not permitted.

Note – Beekeepers are encouraged to increase and update their knowledge by attending training and/or belonging to a beekeeping association. In order to keep more than two hives, development consent is required.

7. Wild Hives

- a) Wild hives must be controlled. Any person having a wild hive on their property must consult NSW Agriculture for advice.
- b) A wild hive is described as feral bees not in a domesticated situation and not kept within a bee frame or a beekeeper's box.



7 April 2021

Mr Marcus Ray
Group Deputy Secretary, Planning & Assessment
Department of Planning, Industry and Environment

Via email: information@planning.nsw.gov.au

Our Ref: FP85

Dear Mr Ray,

Proposed amendments to support agritourism and other small scale agricultural activities

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for proposed reforms to the planning system to facilitate and streamline the approval of agritourism development and small scale agricultural development.

The comments provided herein have regard to the framework provided by Council's Community Strategic Plan, Local Strategic Planning Statement (LSPS) made 6 March 2020 and Rural Strategy adopted by Council in October 2019. The submission itself however, has not been reported to the elected Council given the deadline for submission and the need for further information to be made available for Council to make an informed decision on whether or not to opt in for certain proposed changes.

It is noted that the proposed changes seek to make it easier for farmers to diversify their income from farming businesses whilst maintaining primary production as the principal use. It is understood that across the State, farmers have faced a number of challenges including bushfires and the economic impacts of the COVID-19 pandemic and the Government is seeking to support the recovery and resilience of regional communities and farming by growing emerging industries that are supplementary to agriculture.

Council's LSPS contains planning priorities that seek to retain and manage the Shire's rural productive capacity and encourage support activities and tourism in rural areas. These priorities and related actions have informed the comprehensive review of Council's Local Environmental Plan which was exhibited by Council in July 2020. This draft LEP proposes a number of changes to the land uses and controls in Council's rural areas to support and grow agricultural and tourism activities.

Within this context, the overall intent of proposed changes outlined in the EIE is supported and appreciated in-principle, noting the alignment with Council policies for retaining and managing productive capacity and measures taken thus far to support local growers, tourism and provision of produce direct to the public.

Having reviewed the EIE, it is requested that further consideration be given to the following key matters of relevance to the Hills Shire:

- Suitability of proposed changes in the metropolitan rural context
- Need for more clarity in proposed definitions
- Permissibility and proposed optional clauses
- Proposed exempt and complying development pathways
- Insufficient detail on farm dam changes
- Call for expressions of interest

Suitability of proposed changes in metropolitan rural context

The focus of the reforms appears to be on regional businesses and economies where farming operations are clearly of a different scale and intensity in comparison to the operations found in the Hills Shire. However it is noted that the proposed changes will apply across the State, including metropolitan rural areas, by introducing new exempt and complying development pathways and amending and introducing new land use terms in all Standard Instrument LEPs. Therefore consideration is needed of the suitability of proposed changes at the local level. It is not clear from the material provided whether sufficient thought has been given to how the proposed changes will work in practical terms for smaller farming operations in locations such as the Hills Shire.

The activities in the rural area of The Hills range from rural living to agriculture, sand mining, tourism and recreation. Most rural production is contained within two clusters of Middle Dural to Glenorie and Maroota and covers activities including poultry farms, nurseries and fruit and vegetable production. The contribution of rural industries is significant with an economic output of \$303.3m in 2017-2018 (agriculture, forestry and fishing and mining). Cut flowers and nurseries account for 76% of the total value of agricultural production in the Shire with the Hills being NSW's top producer of cut flowers and second highest contributor to the state's nursery industry.

Most rural agricultural activity is found in the RU1 Primary Production zone and the RU6 Rural Transition zone where the average lots sizes are in the order of 7.7 hectares and 2.4 hectares respectively. The RU2 Rural Landscape zone (average lot size of 7.3 hectares excluding larger Crown lands) supports fewer productive uses and is more characterised by its landscape, biodiversity and scenic qualities. A copy of the Rural Strategy is attached for your information and provides an understanding of the characteristics of the Shire's rural area.

Whilst any changes that facilitate the productive capacity of the Shire's rural economy and encourage tourism in rural areas are supported, the lot sizes of the Shire's rural area may limit uptake and suitability of some of the opportunities intended to diversify income such as farm stay accommodation and farm events. Of more relevance to the Hills Shire is the need for agricultural production to evolve and become more efficient through technological advances which is being seen in the Shire with greater reliance on automation and increased use of greenhouses and intensive horticulture.

Given the foregoing framework for agricultural production in the Hills, it is requested that further consideration be given to an approach that distinguishes between the rural parts of regional NSW and the rural areas on the metropolitan fringe. A more nuanced response may be needed that is cognisant of the different scale and intensity of rural activities and the complexities of preserving and managing the range of rural values and characteristics in locations such as the Hills Shire.

Clarity of definitions

It is noted that the EIE proposes the following new land use terms which will be permitted wherever agriculture is currently permitted and in any additional zones to be nominated by Council:

- Agritourism (as a subset of agriculture)
- Farm gate activities (as a subset of agritourism)
- Farm events (as a subset of agritourism)

It is also proposed that the definition of farm stay accommodation be amended and expanded to include the opportunity for camping as well as stays in buildings. Under the EIE this land use term would continue to be permissible with consent wherever currently permitted under Councils' LEPs.

For the new sub-terms of farm gate activities and farm events and the amended definition of farm stay accommodation, it is indicated that the definition will make clear that the principal use of the land must be

the production of agricultural goods for commercial purposes and will also enable activities and events when the farm is not producing goods because of drought or similar events outside the landowners control.

The intent to allow farms to diversify and add value where needed is supported as it has the potential to reduce challenges faced by agricultural industries and also facilitate economic growth and employment opportunities in the Shire. The EIE indicates that the changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses; however it is not clear as to how this will be prevented.

The new term farm gate activities is quite broad, encompassing restaurants and cafes, processing, packaging and sale of produce and facilities for tasting, workshops, information or education. The overlap of this term with current land use terms including roadside stall and cellar door premises could prove confusing for applicants and during assessment of proposals. Consideration could be given to broadening existing definitions, for example, reviewing cellar door premises to refer to other similar activities (not just wineries). It is requested that should all three definitions be introduced, they be supported by very clear guidelines and rules to ensure it is only used and applied for genuine farming operations. This will assist councils in any necessary compliance investigations for exempt development and also assessment of any development applications.

Permissibility and proposed optional clauses

Under the proposals contained in the EIE, farm stay accommodation would continue to be permitted with consent in the following rural zones in the Hills Shire: RU1 Primary Production, RU2 Rural Landscape and RU6 Transition zones. Noting the term is a subset of the group term 'tourist and visitor accommodation', it would also be mandated as a permitted use in the SP3 Tourist zone (which currently applies to Wisemans Ferry location in the Hills Shire) and the B2 Local Centre zone.

Given the B2 zone applies across the town, village and transit centres in the urban parts of the Shire it is suggested that whilst the current changes are being considered, it may be worth also reviewing whether it is suitable to continue to mandate this use as permitted in the B2 Local centre zone.

For farm gate activities and farm events, the proposals under the EIE would see these made permissible initially only in the RU1 Primary Production zone. Whilst agricultural sub-terms are permitted in the RU2 Rural Landscape and RU6 Transition zone under the Hills LEP 2019, the group term of agriculture is prohibited. Notwithstanding the potential benefits of supporting local farmers and tourism, in order for Council to consider whether it is appropriate to allow for the new land use terms in these zones, more information is needed on how the scale and intensity will be managed and any potential impacts mitigated.

The proposed optional clauses Councils could choose to include in their LEPs to assist consideration of the impacts of farm stay accommodation and farm gate activities are noted.

For farm stay accommodation, it is not clear from the material provided why the number of people accommodated would be three times the number of bedrooms allowed under clause 5.4(5) and why such a provision is considered necessary if the number of bedrooms is already limited under clause 5.4(5). Likewise, the provision relating to a maximum floor area of any new building of 75m² is not clear. Clarification should be provided whether this allows for a number of buildings, each of which are 75m², or only one single building.

Similarly for farm gate activities, the proposed development standards of a maximum floor area of 200m² and maximum 50 people (or higher numbers specified by a Council in their LEP) has not been adequately explained and it is difficult to ascertain whether this scale is suitable in the Shire's context. Greater flexibility should be provided to enable tailoring of the criteria to local circumstances. The rationale behind the proposed development standards for both land uses requires more explanation before the suitability of the clauses for the Hills Shire can be determined.

Proposed exempt and complying development pathways

The EIE does not clearly articulate the zones or locations where the proposed new approval pathways would apply. Clarity is required on whether it is intended for all rural zones or only certain rural zones. Again, it would appear that new exempt and complying development pathways and associated development standards are predicated on regional economies.

The scale of some of the activities (for example exempt development that allows a maximum of 50 guests at any one time for farm gate activities) is well beyond what would be considered to be a low scale exempt or complying development in a metropolitan rural location. The scale of the exempt and complying activities should be reduced to ensure compatibility with the rural area and to ensure that character is maintained and impacts minimised. Consideration could also be given to whether it would be appropriate to include a minimum lot size requirement to better regulate where this could occur as exempt development. The development standards outlined (for example maximum one dwelling per 15 hectares for change of use of an existing building or a new building for farm stay accommodation) would suggest a minimum lot size of at least 20 hectares is envisaged.

Whilst a range of environmental, bushfire and flooding constraints may well preclude the uptake of exempt or complying development pathways, it is considered that the scale of the activities proposed is such that a development application should be required, along with adequate consideration of traffic impacts, waste water impacts and health impacts in regard to food production etc.

Whilst the intent of allowing small scale processing plants as complying development is understood, the outlined development standards are clearly aimed at regional NSW, rather than a metropolitan Council area. The appropriateness of allowing this use as complying development is questioned, noting the processing of food would typically require more detailed assessment by way of a development application process.

Insufficient detail on farm dam changes

Minimal details are provided with respect to changes to farm dams, apart for indicating that terminology requires clarification and consistency. It is suggested that Water NSW and Dam Safety NSW be included in discussions on changes to the planning framework for this land use. Further, it is likely that the Water Management Act 2000 and Dams Safety Act 2015 would also require amendment if changes are contemplated to the Standard Instrument LEP.

Call for expression of interest

The EIE includes a call for expressions of interest by Councils on whether or not they wish to adopt the optional clauses for farms stay accommodation and farm gate activities and to identify the zones in which they wish to allow for the new farm events and farm gate activities. Noting the broad alignment with strategic objectives, please consider this letter an expression of interest for Council to have the opportunity to consider incorporating these changes in its Local Environmental Plan, once drafts of the proposed definitions and optional clauses are available for the elected Council to formally consider.

At this stage, the proposals contained in the Explanation of Intended Effect have not been formally considered by Council given the need for further clarification and refinements as outlined in this submission. To facilitate a formal decision of Council on whether to 'opt in' to changes to its Local Environmental Plan it is requested that, following your review of submissions and further development of draft amendments, further advice and details be provided. This approach would be similar to how the new LEP clause for Natural Disasters was notified to Councils. Once final drafting is completed, it is requested that sufficient time be provided to enable reporting to Council.

Should you have any enquiries in regard to this submission please do not hesitate to contact Janelle Atkins Principal Planner on 9843 0266.

Yours faithfully



Nicholas Carlton
MANAGER – FORWARD PLANNING

RURAL STRATEGY

The Hills Shire Council | October 2019



THE HILLS
Sydney's Garden Shire



The *Rural Strategy 2019* was adopted by Council on 22 October 2019, Minute No.565.

This document represents the collaboration of information from a number of sources, including NSW Government plans and policies, and plans and policies of The Hills Shire Council.

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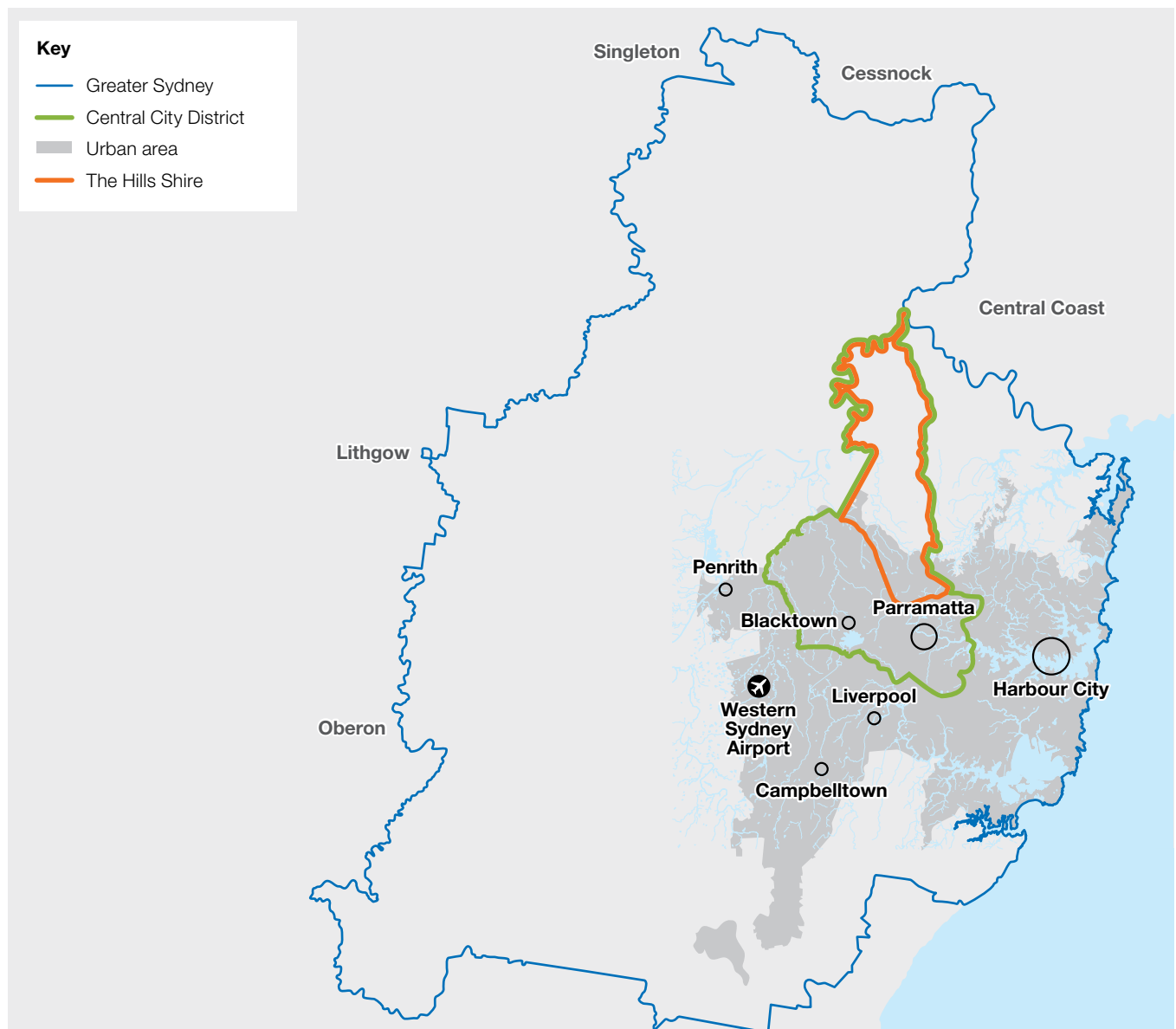
Disclaimer

Every reasonable effort has been made to ensure that this document is correct at the time of printing. The Hills Shire Council disclaims all liability in respect of the consequences of anything done or omitted to be done in reliance upon any part of this document. The maps provided in this document are general in nature and should not be relied upon. This document is subject to change without notice.

The Hills Shire is a local government area (LGA) in the north west of Greater Sydney, around 30 kilometres from Sydney CBD. Spanning 38,500 hectares, it forms part of the Central City District, along with the Blacktown, Cumberland and City of Parramatta LGAs. The Shire includes land between Baulkham Hills and West Pennant Hills in the south, to Wisemans Ferry in the north.

The Hills Shire was home to approximately 162,500 people in 2016. We are planning for an 80 per cent increase in population by 2036, with the population of 290,900 people needing a mix of housing, access to services, shopping and public transport, and opportunities to connect with each other, with nature and with the rest of Greater Sydney.

While connected to the Central River City, centred around Parramatta, The Hills has strong links to the Eastern Harbour City and will grow connections to the future Western Parkland City and the Aerotropolis around the planned Western Sydney International Airport.





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Executive summary

The rural lands of The Hills Shire have long been integral to its identity as the 'Garden Shire'. From its early years providing fruit for the burgeoning Sydney colony, the Shire's rural area continues to provide fresh produce and building materials to Greater Sydney. The Shire's rural villages offer a desirable alternative to urban living within easy reach of established strategic centres.

The Hills has more than 27,600 hectares of rural zoned land, making up 70 per cent of the local government area (LGA). The Shire is the only LGA in the Central City District that contains land in the Metropolitan Rural Area, which is defined by the Greater Sydney Commission as being outside the established and planned urban area and is used for a range of rural and lifestyle purposes.

Expected population growth across the Shire to 2036 and increases in density of the Shire's urban areas will place pressure on rural lands, especially land at the edge of the rural area. This Strategy considers priorities and actions to manage land use conflict, enhance rural productivity, grow a viable tourism sector and services that support rural industries, and plan for any growth in rural villages to be sympathetic to each village's local character.

To protect, manage and enhance the Shire's rural land, we have identified existing opportunities and constraints through our land use planning and decision-making framework. All approaches must preserve the rural values and characteristics that are important to the community for the enjoyment of future generations.

We have developed this *Rural Strategy 2019* around four planning priorities that are reflected in the planning priorities of our Local Strategic Planning Statement, *Hills Future 2036*. These priorities are:

- **manage and protect the rural-urban interface** through the establishment of an Urban Growth Boundary and by working with partners on a framework that discourages seniors' housing developments in the rural area
- **renew and create great places and facilitate housing in the right locations**, taking a place-based planning approach that involves the community in defining the future of rural villages, including in the rural villages of Kenthurst, Annangrove and Glenorie
- **retain and manage the Shire's rural productive capacity** by focusing on intensive horticulture, rural connections and sensible development in rural villages
- **encourage support activities and tourism in rural areas**, to optimise the area's economic potential.

The *Rural Strategy 2019* provides an overall strategic context for management and protection of the Shire's rural land. It also supports the commitments in our Community Strategic Plan, as expressed in the Hills Shire Plan, as well as the objectives of the higher-level *Central City District Plan* and *Greater Sydney Region Plan*.



INTRODUCTION

The *Rural Strategy 2019* focuses on the 70 per cent of The Hills Shire which is in the Metropolitan Rural Area – the land that is the green backdrop to the urban area of north west Sydney.

It builds on the 2003 *Rural Lands Strategy*, which was independently reviewed in 2005. It has also been prepared within the context of the *Greater Sydney Region Plan*, *Central City District Plan* and *Future Transport 2056*.



Purpose

The *Rural Strategy 2019* establishes the basis for strategic planning of rural lands in the Shire to 2036. It informs the planning priorities and five-year actions contained in *Hills Future 2036*, our Local Strategic Planning Statement. It provides additional detail about how we will manage the unique rural area so that the community can enjoy and benefit from it now and well into the future.

To shape exceptional living, working and leisure places where expected growth brings vibrancy, diversity, liveability and prosperity for the Hills.

Vision – Hills Future 2036

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Achieving the vision will require collaboration with, and commitment from, all stakeholders including the community, the NSW Government, business and development industry to provide the housing and infrastructure needed for new communities.

Our aim is to create a Shire in which the rural area is valued and protected, so that it can contribute to the local economy and provide green open spaces for residents and the wider Central River City to enjoy. We will encourage residents and the wider community to visit The Hills rural area to appreciate its scenery and tourist facilities.

The *Rural Strategy 2019* addresses issues identified by The Hills community – that green spaces and nature are valued, and that the community should be active and healthy with a keen sense of community involvement.

Developing the Strategy

This *Rural Strategy 2019* complements the Hills Shire Plan, including the Community Strategic Plan, and will contribute to the themes of shaping growth, building a vibrant community and prosperous economy, valuing our surroundings and proactive leadership.

The Strategy was informed by an understanding of the broader strategic context, prevailing trends, and likely demands on the Shire's rural lands, including the rural and urban interface, as well as likely economic opportunities in rural areas.

In developing the Strategy we:

- reviewed NSW Government policies including the *Greater Sydney Region Plan* and *Central City District Plan*
- reviewed the *Rural Lands Strategy 2003* to confirm work undertaken and determine any outstanding matters
- forecast population growth and assessed likely implications for managing and protecting rural land
- reviewed the productivity of rural industries
- reviewed existing zoned rural land including the potential for appropriate expansion of rural villages.

Additional documents supporting this Strategy and *Hills Future 2036* are available from www.thehills.nsw.gov.au



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STRATEGIC CONTEXT

Understanding the strategic context ensures effective implementation of priorities and actions.

We have a legislative obligation to implement the objectives and vision of NSW Government strategic directions and other policies, as well as an obligation to The Hills community to create a place where people want to live, work and play.



2. STRATEGIC CONTEXT

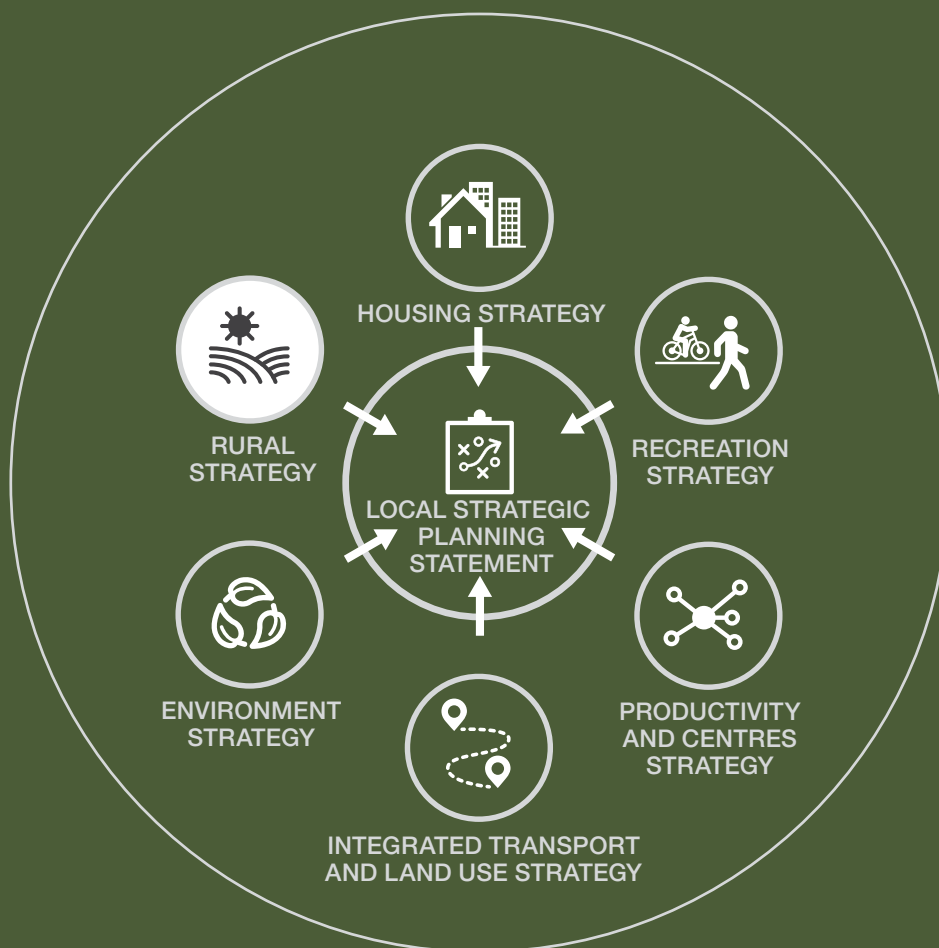
Figure 1: Links to the region and district plans



Hills Future 2036

communicates how we will address the priorities and actions of the Region Plan and District Plan at a local level. It is supported by background strategies, including this one, undertaken in key areas to provide the vision for the future of The Hills Shire.

Figure 2: Hills Future 2036 and supporting strategies



We have reviewed the State and local strategic planning framework and recognise that The Hills Shire will be integral in Greater Sydney and will feature places for people, accessible and walkable neighbourhoods and a diverse supply of new housing. The key documents in this framework are:

State level

- *Greater Sydney Region Plan*
- *Central City District Plan*
- State planning instruments
- North West Rail Link Corridor Strategy.

Local level

- *Hills Future 2036*
- Hills Shire Plan, including the Community Strategic Plan
- The previous Hills Local Strategy
- The Hills Corridor Strategy
- Local planning instruments.



THE HILLS SHIRE'S RURAL LANDS

The *Greater Sydney Region Plan* recognises the importance of the Metropolitan Rural Area as a location where agricultural production, processing and sales contribute to prosperity.

Making up 70 per cent of the Hills Shire, this land is rich in biodiversity, scenic and productive qualities. Its proximity to Greater Sydney facilitates the efficient provision of fresh produce and construction materials.

Activities undertaken in the rural area range from agriculture, mining and forestry; to tourism and recreation. Most rural production within the Shire is found within the RU1 Primary Production and RU6 Transition zones. While the RU2 Rural Landscape zone supports fewer productive uses, it has distinctive landscapes and high biodiversity value.

Rural uses within the Shire are largely contained within two distinct clusters – Middle Dural to Glenorie and Maroota – and cover a range of activities including fruit and vegetable production, poultry, the operation of nurseries, and grazing of animals.

The Hills is the highest contributor to the state's cut flower industry, and second highest to the state's nursery industry. Extractive industries are located in Maroota in the north of the Shire and produce sand and materials for the construction and landscape supply industries. The combined economic output of rural industries (agriculture, forestry and fishing, and mining) in 2017–18 was \$303.3 million, which accounted for approximately 1.5 per cent of the total economic output of the Hills Shire.

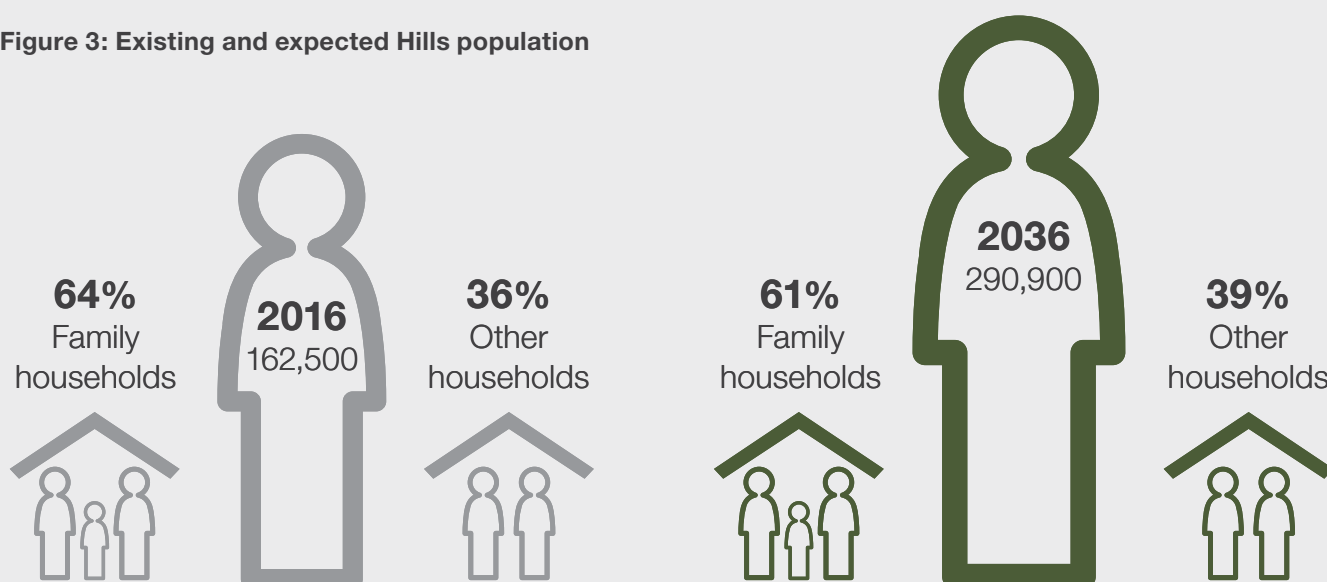
Beyond production, the rural areas contribute to The Hills Shire's diverse mix of housing. Development in rural areas including secondary dwellings and rural cluster subdivisions provides an alternative to city living; rural villages offer the opportunity for a rural lifestyle at the same time as being close to services.

Despite having sufficient capacity within existing urban areas to accommodate expected growth to 2036 and beyond, we continue to receive proposals to increase dwelling capacity in and adjacent to the rural area. The past several years have seen an increase in seniors' housing developments along the urban fringe, due to cheaper land and the attraction of living within quieter rural areas.

Growth in The Hills 2016 to 2036

POPULATION

Figure 3: Existing and expected Hills population



Source: NSW Department of Planning, Industry and Environment population forecast

In 2016, the rural areas of The Hills were home to around 15,500 people, making up approximately 10 per cent of residents Hills residents. By 2036, the rural population is projected to be around 17,400 and will account for around six per cent of the Shire's total population. This reduced proportion of the wider Hills population will be a result of focused growth in existing urban areas.

As is the case across the Shire, the population of the rural area is getting older, with the average age of residents just under 45 in rural suburbs, higher than the average age of 38 for residents of the Shire. Between 2011 and 2016, the proportion of people aged 70 to 84 increased across the rural area, particularly in Glenhaven and Annangrove-Nelson-Maraylya.

This shifting demographic increases pressure for residential subdivision as older residents seek to capitalise on their real estate assets to support their retirement. The differential in age may be attributed to the development of seniors' housing at the interface between the rural and urban areas, especially within Glenhaven, where the average age is 53, some 15 years older than the Shire average.

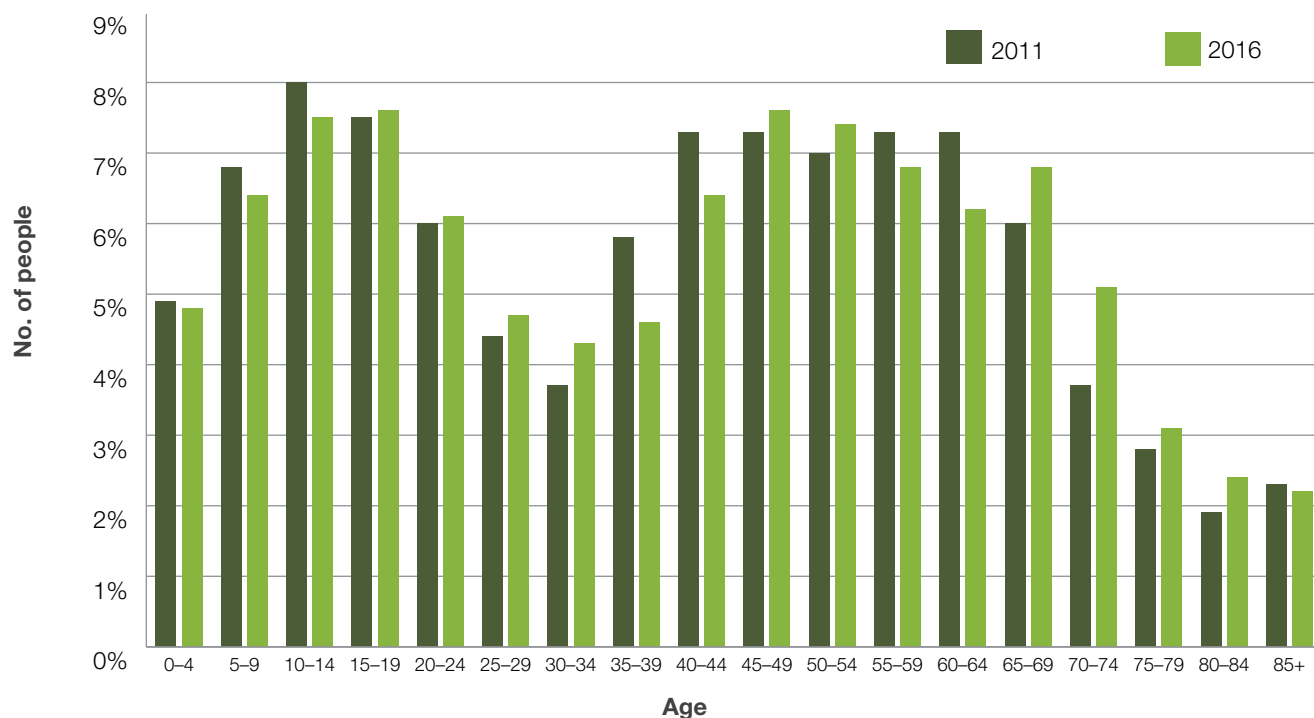
Population of The Hills rural area

2016: 15,500

2036: 17,400



Figure 4: Age structure of rural areas in the Hills Shire 2011–2016



Source: profile.id 2019

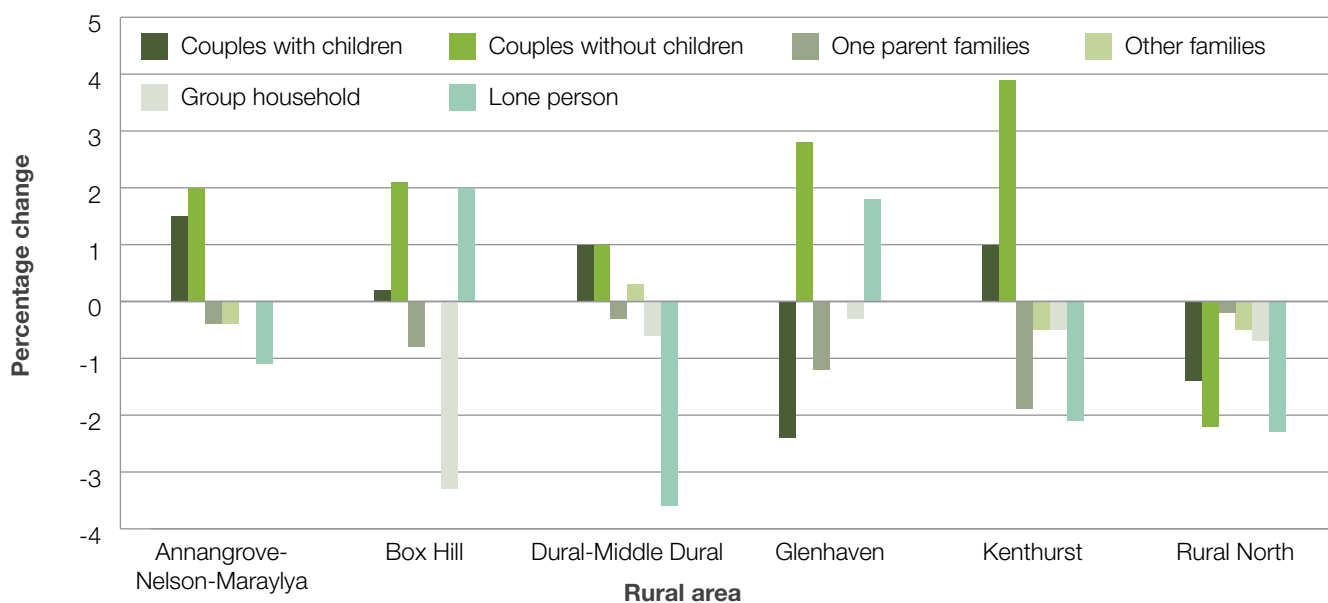
Household structures within the rural area are also changing. Shire-wide, the only household type to grow between 2011 and 2016 was couples with children (1.1 per cent); in the rural area there was minimal growth, or a decline, in this type of household. The exception to this was Annangrove-Nelson-Maraylya, which experienced a 1.5 per cent rise in couples with children households.

Notable increases in household types in the rural area were ‘couples without children’ and within selected areas, ‘single person households’. This may be attributed to the growing number of retirees moving into rural suburbs.

Significantly, the only household type to decrease in the rural area between 2011 and 2016 was the one-parent family. This may reflect the fact that house prices in The Hills are higher than both the Greater Sydney and NSW averages, limiting affordability.

3. THE HILLS SHIRE'S RURAL LANDS

Figure 5: Percentage change in household composition within rural areas in the Hills Shire 2011–2016



Source: profile.id 2016

People living in the rural areas on average earn lower incomes than the Shire average, with a greater proportion of the rural population earning a weekly wage of between \$0 and \$999 per week. By contrast, the rural area also hosts a greater proportion of Hills residents earning \$3,000 or more per week.

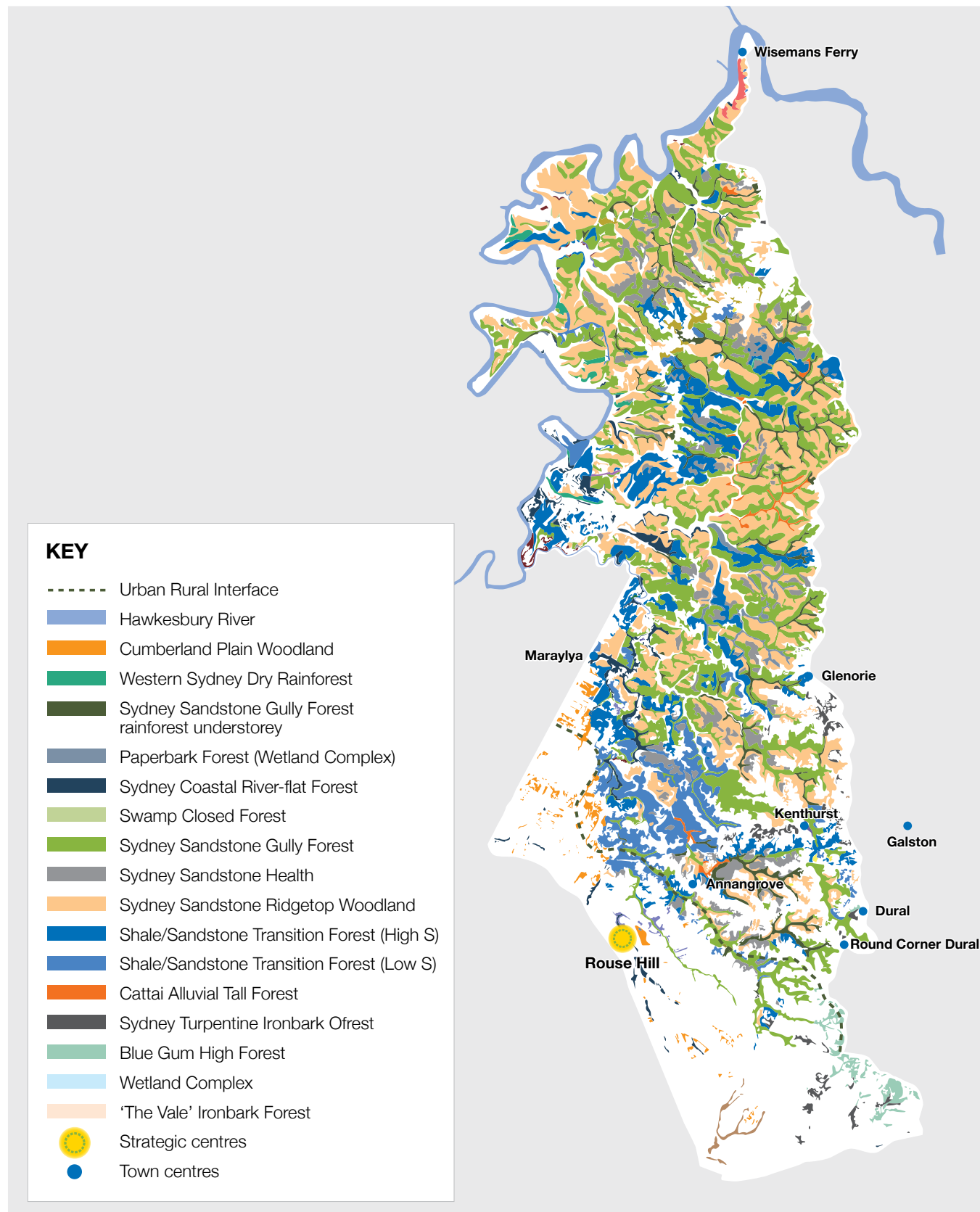
Environment

Many environmental factors and features influence the Shire's rural lands. Although these elements combine to constrain development, they are intrinsic to the identity and function of the Shire within Greater Sydney. They provide a green, open and natural backdrop to the urban area of Greater Sydney.

The Hills Shire is home to a variety of vegetation, some of which is widespread and some, such as Blue Gum High Forest, Cumberland Plain Woodland and Shale-Sandstone Transition Forest, which is critically endangered.



Figure 6: Vegetation communities within The Hills Shire



3. THE HILLS SHIRE’S RURAL LANDS

Given the heavily vegetated nature of the rural area, bushfire risk is high. This risk limits the potential uses of this land.

Most of the rural area is constrained in some form, with limited amounts of productive land available. Rural land that is relatively unconstrained is already in use. In the long term, land in the north of the Shire currently used for extractive purposes will be rehabilitated and, depending on the resulting condition of the land, may be able to be used for productive agricultural purposes.

Protection and management of the environmental values of rural land is a challenge that requires careful planning and proactive leadership. These challenges are outlined further in the *Environment Strategy 2019*.

“

Bushfire risk in the Shire’s rural area is managed through land use controls that limit growth in these areas.”

.....



Figure 7: Bushfire risk within The Hills Shire

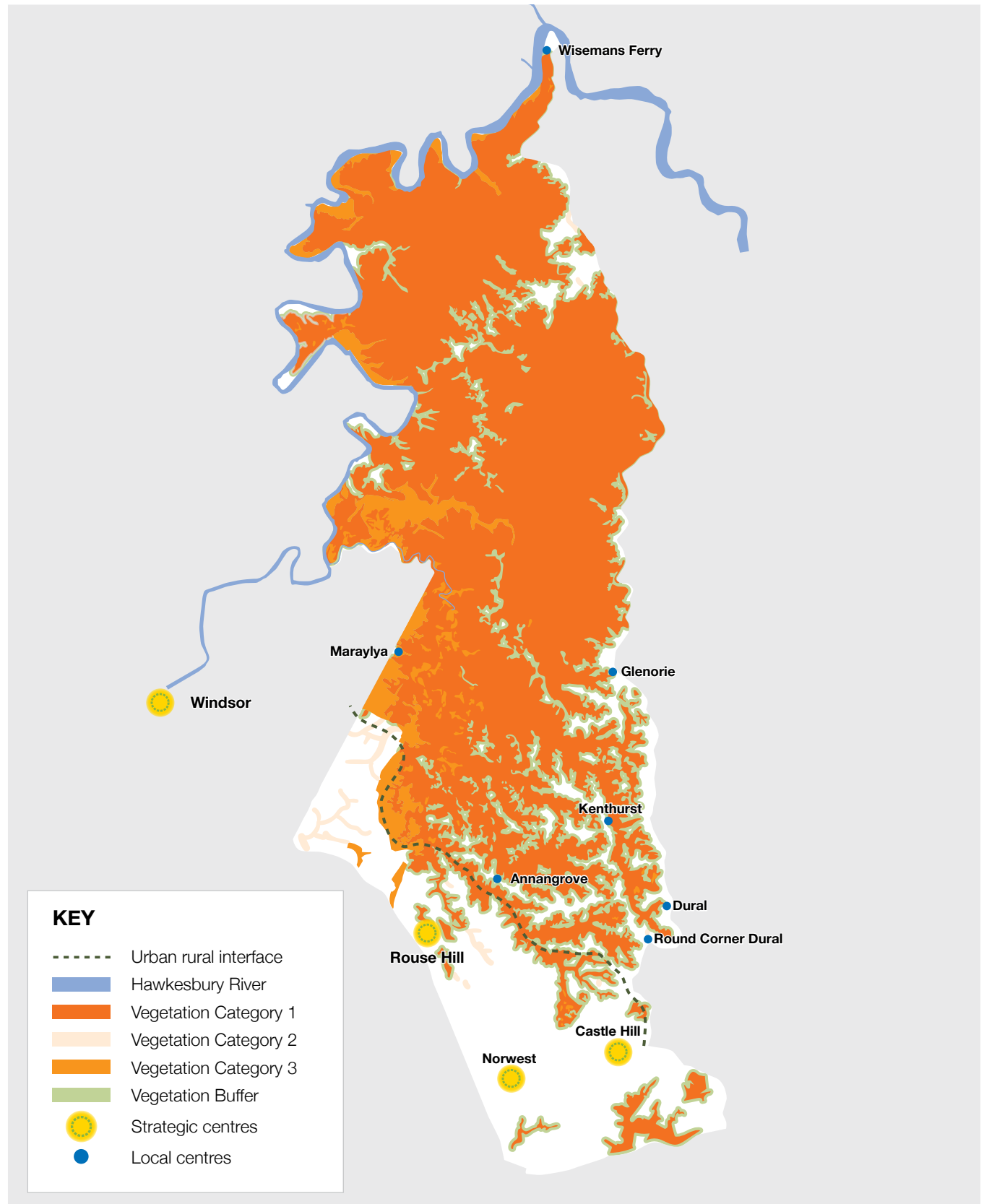
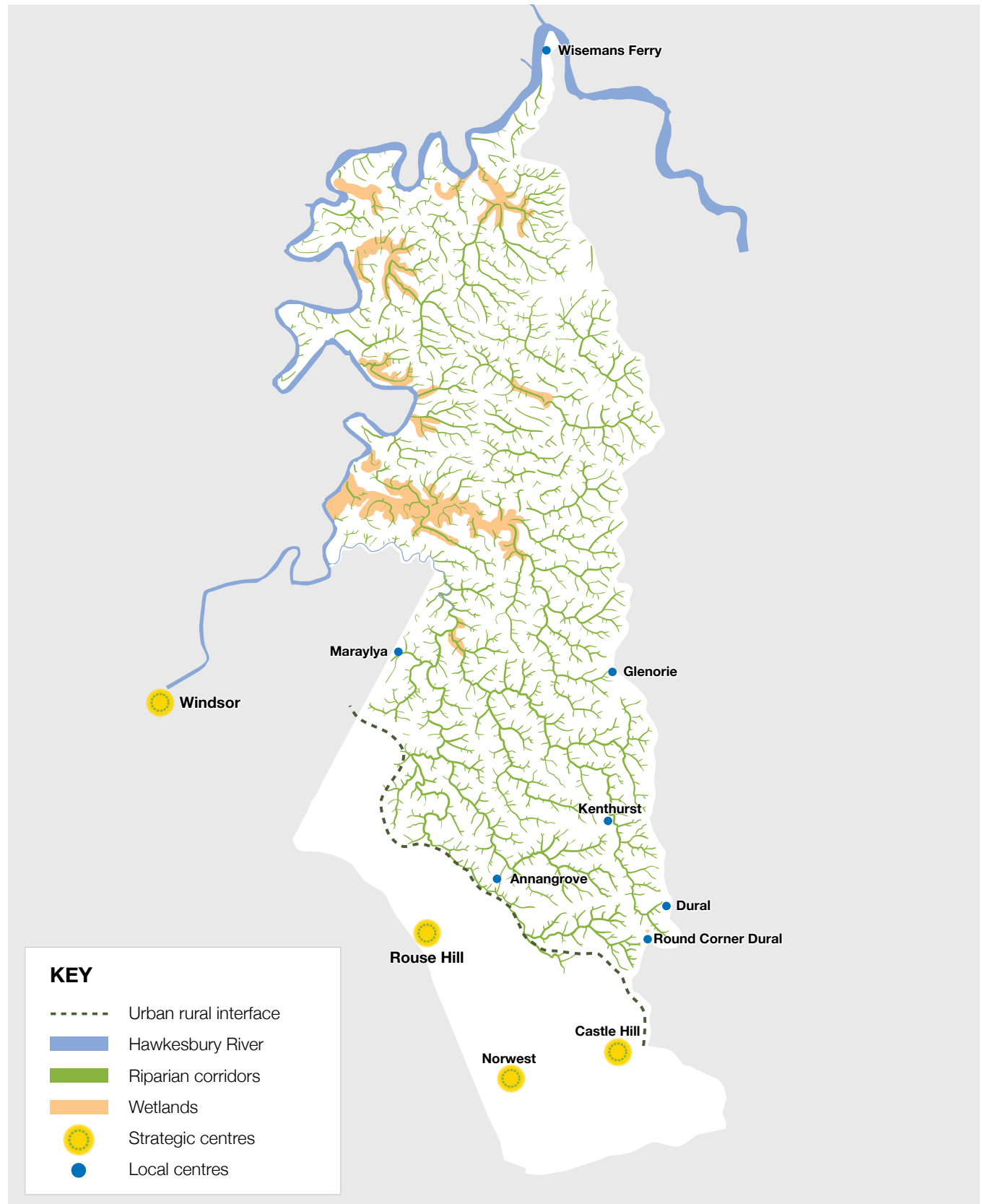


Figure 8: Riparian areas within The Hills rural lands



Managing growth and local character

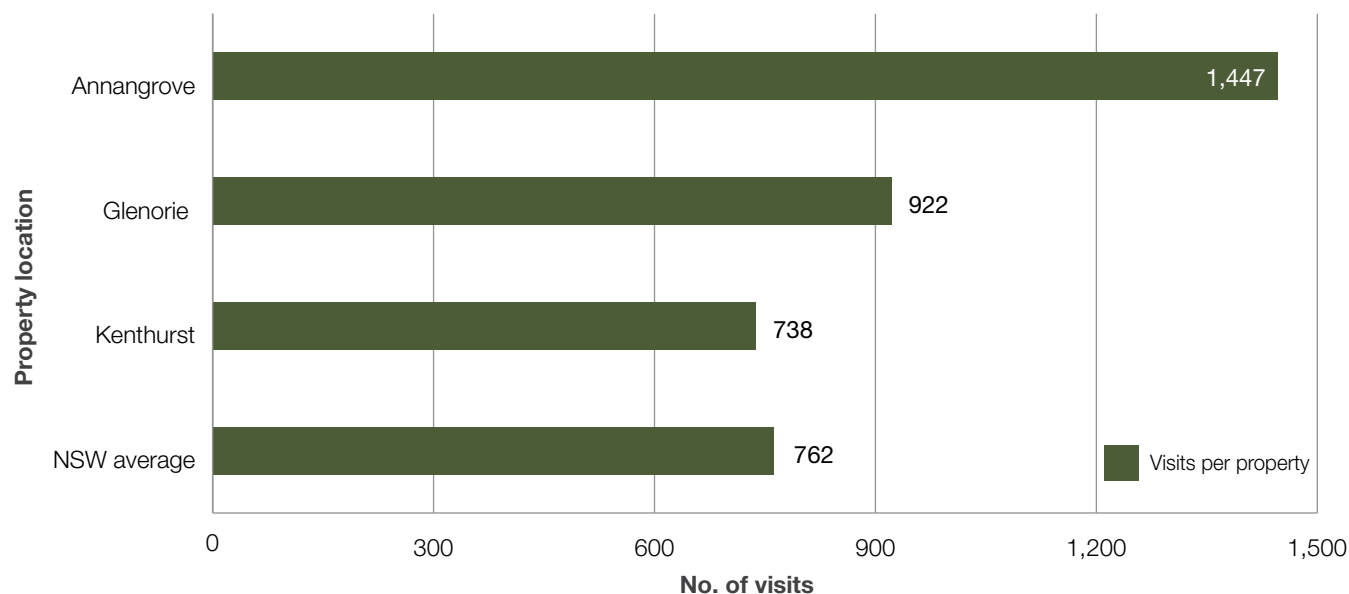
Over the last 10 to 15 years, the urban edge has crept north, with otherwise productive rural land rezoned to urban uses and subsequent housing development in the release areas of Box Hill and North Kellyville. This has reduced the availability of suitable land for rural activities, which is forcing agriculture into areas of marginal value, impacted by steep topography, high bushfire risk and the inability to remove vegetation due to the presence of endangered ecological communities in particular areas.

As an example, suburbs like Annangrove on the urban-rural fringe see high rates of housing interest as people seek a semi-rural lifestyle close to the strategic centres of Rouse Hill and Castle Hill.

Rural residential uses conflict with productive land uses, particularly with the increasing scale and intensity of agricultural businesses. Many who seek a rural lifestyle for its open and undeveloped character often have unrealistic expectations in regards to the realities of productive rural uses, for example noise, odour, dust and the 24-hour nature of rural activities.

The resulting land use conflict could further reduce rural productivity as farmers seek to avoid risk. In response, the NSW Government has introduced 'right to farm' legislation that seeks to limit land use conflict and support farming businesses as long as they employ management practices as defined in the legislation.

Figure 9: Number of online visits per property advertised



Source: www.realestate.com.au

3. THE HILLS SHIRE'S RURAL LANDS



Aged care facility in Glenhaven
Source: Nearmap July 2016

As noted earlier, there are new seniors' housing developments at the edge of the rural area, particularly in Glenhaven and Dural. Usually seniors' housing providers look for access to urban services; however, providers are attracted to land at the urban-rural interface due to cost. This type of development is restricted to land that adjoins an urban zone. Assessment pathways mean Council has little power to curtail the cumulative effects of piecemeal seniors' housing developments that gradually shift the urban edge and decrease the size and aesthetic qualities of the rural area.

This incremental development creates higher density and greater levels of site coverage than are normally allowed in rural areas, detrimentally affecting the performance of infrastructure. Issues also arise due to the incompatibility between the scale and density of these developments and the prevailing open and undeveloped character of the rural area. The last decade has seen approximately one third of all seniors' housing developments applied for within the rural area (RU6 Transition zone) under the State Environmental Planning Policy (Housing for seniors and people with a disability) 2004, particularly in Glenhaven and Dural.



Rural villages

Rural villages such as Kenthurst and Glenorie offer a quieter and more open setting. These villages serve as a focal point for the surrounding rural land, providing services such as a supermarket, primary school, medical facilities and recreational space. These villages are in most cases physically defined and constrained by environmental and scenic features that limit potential for growth.

Our previous *Rural Lands Strategy* identified a limited growth option for rural villages that would manage expansion while preserving and promoting rural enterprises. A limited amount of rural residential development provides some housing capacity, while retaining the existing mix of rural uses including agriculture, home businesses and tourism.

Although the rural population is not growing as quickly as the urban population, some growth is occurring. Beyond seniors' housing developments, most growth is concentrated around rural villages. Therefore, any future growth must be sympathetic to the desired character of these villages, and must be managed sensibly and efficiently.

Outside of rural villages, the *Rural Lands Strategy* and planning framework facilitated moderate residential growth in rural areas through rural cluster subdivisions, dual occupancies and secondary dwellings. Rural cluster subdivision controls will continue to enable limited development in rural areas while protecting valuable vegetation.



Rural cluster subdivision controls

enable limited development and protect valuable vegetation

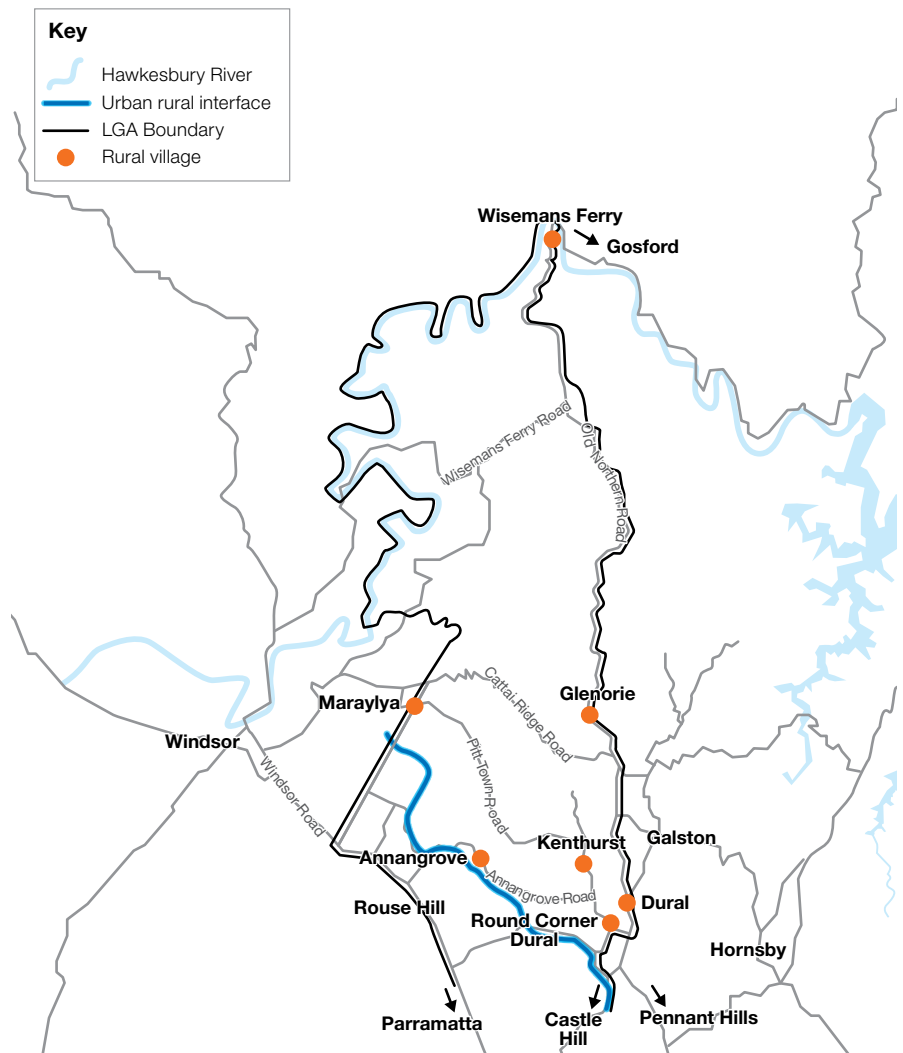
Rural lifestyle living

The Hills includes large acreage lots that accommodate large homes close to Castle Hill and Rouse Hill. This style of living is not widely available within Greater Sydney, and is desirable among certain sections of the market.

These areas have largely been zoned RU6 Transition under *The Hills Local Environmental Plan 2012* (Hills LEP) as this zone provides a transition or buffer between urban areas and the environmental characteristics of the RU2 Rural Landscape zone. The RU6 zone has also been used to avoid potential land use conflict between rural residential development and agriculture.

As a result, the RU6 Transition zone has developed an identifiable character, which, if properly defined and enforced, will assist in the management of the rural-urban interface and the renewal of rural villages.

Figure 10: Rural villages



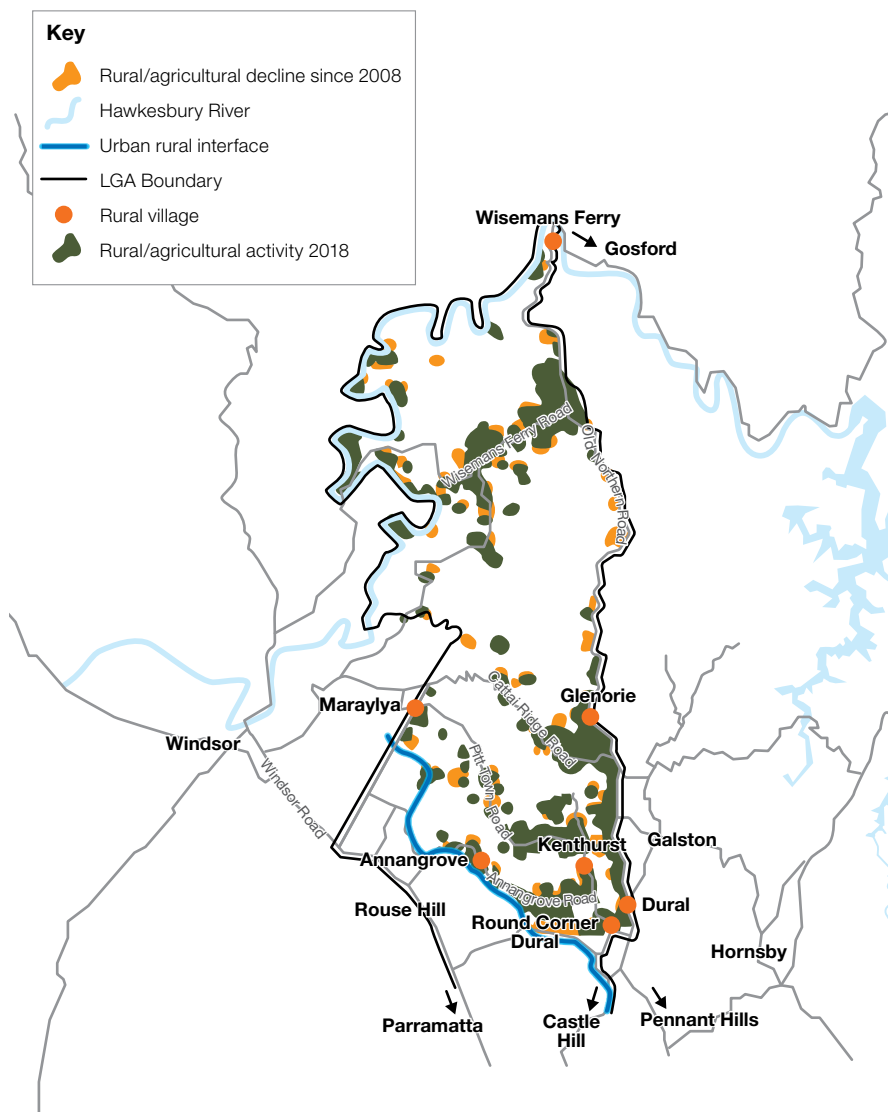
Economy

Rural uses within the Shire are largely contained within Middle Dural to Glenorie and Maroota. They cover fruit and vegetable production, poultry, nurseries and a small amount of livestock. The Hills contributes heavily to the State's cut-flower and nursery industries. Extractive industries are located in Maroota in the north of the Shire and produce sand and materials for the construction and landscaping industries.

The combined economic output of rural industries in 2017–18 was \$303.3 million. This accounted for approximately 1.5 per cent of the total economic output of The Hills Shire. Between 2012–13 and 2017–18, mining grew while the agriculture, forestry and fishing sector declined.

In physical terms, the amount of land occupied by orchards and market gardens is decreasing. Reasons for this decline include economic changes following the global financial crisis in 2008, an increase in seniors' housing on productive agricultural land, and losses resulting from the development of land in greenfield areas at the rural-urban interface. There is also a move towards intensive horticulture, utilising greenhouse and hydroponics facilities rather than requiring the use of soil for agricultural production.

Figure 11: Rural/agricultural activity decline 2008–2018

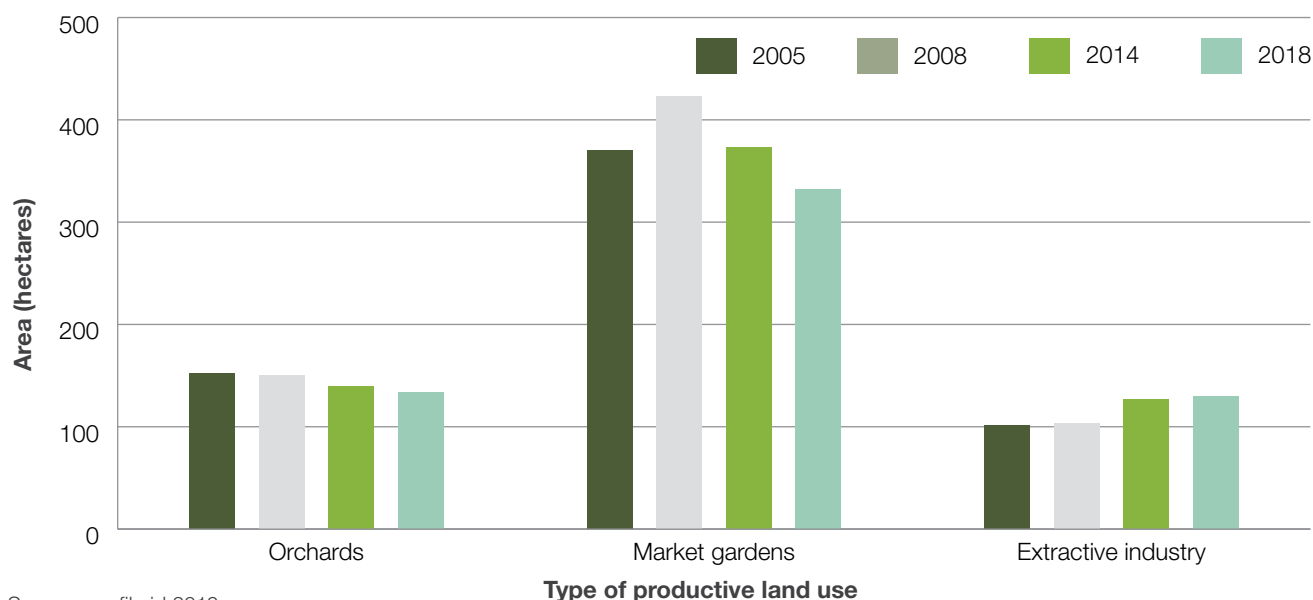


Land used for extractive industries has increased, reflecting the need for construction materials to satisfy the demands of Sydney's construction industry.

Viewing this decline in the amount of land used for agriculture in isolation does not reflect the change to intensive horticulture, which has seen the Shire's agricultural output increase over the last decade. This is also reflected in growing employment levels in the agricultural sector.

3. THE HILLS SHIRE'S RURAL LANDS

Figure 12: Land used for rural/agricultural activities

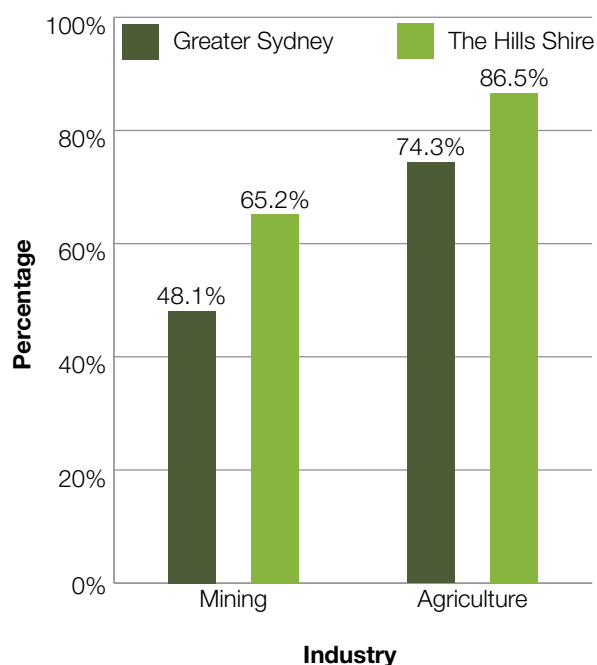


Source: profile.id 2016

Despite a reduction in productive land area and the challenges of fragmented land ownership, agriculture in the Shire is evolving and becoming more efficient through technological advances. Greater reliance on data and automation are delivering more and better-quality produce. This means a change in employee roles and the part of the production in which they are employed, rather than a loss of jobs. These advances are evidenced by the increased use of greenhouses and intensive horticulture.

Most agricultural and extractive output from the Shire's rural areas is sold locally – within the Shire and Greater Sydney Region.

Figure 13: Proportion of output sold locally 2018



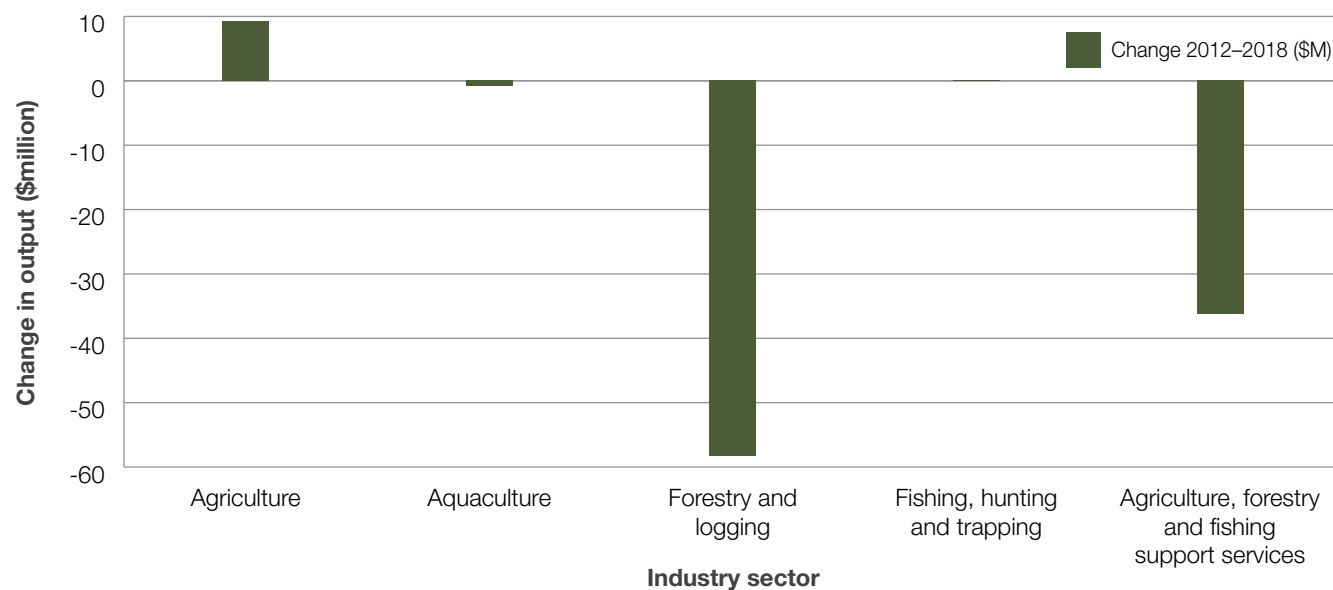
Source: profile.id 2018



Agriculture

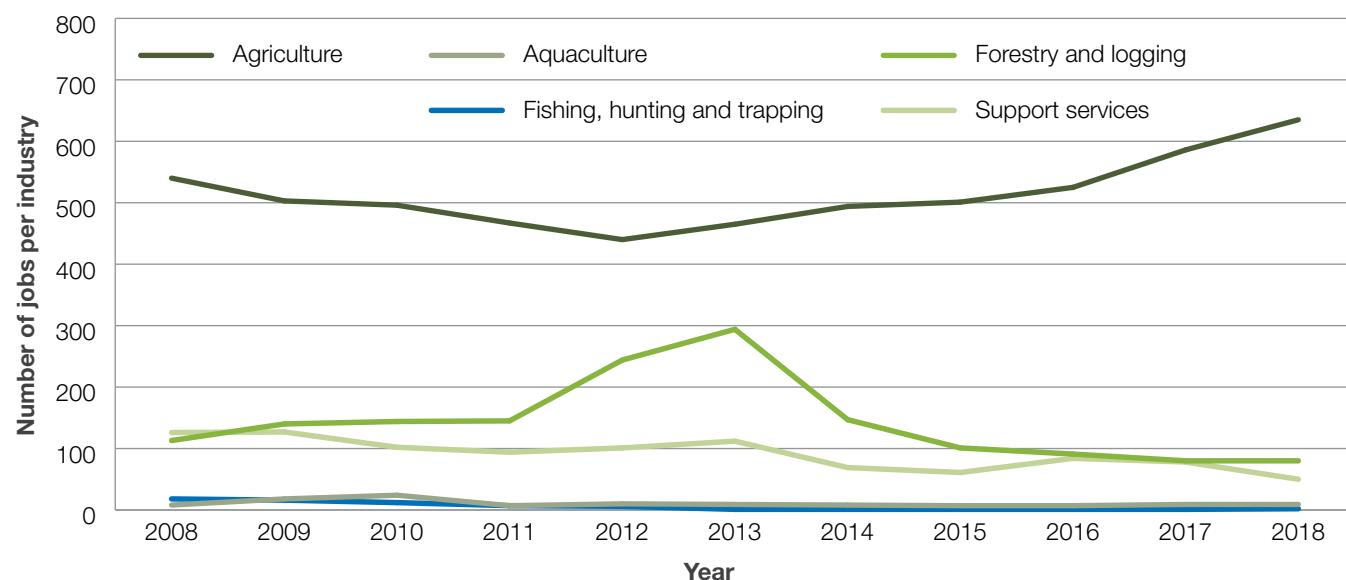
The agriculture industry in The Hills has actually grown in terms of output and number of jobs since 2012.

Figure 14: Change in output (\$million) in agriculture, forestry and fishing sector in The Hills 2012–18



Source: profile.id 2018

Figure 15: Breakdown of jobs in agriculture, forestry and fishing sector 2006–18



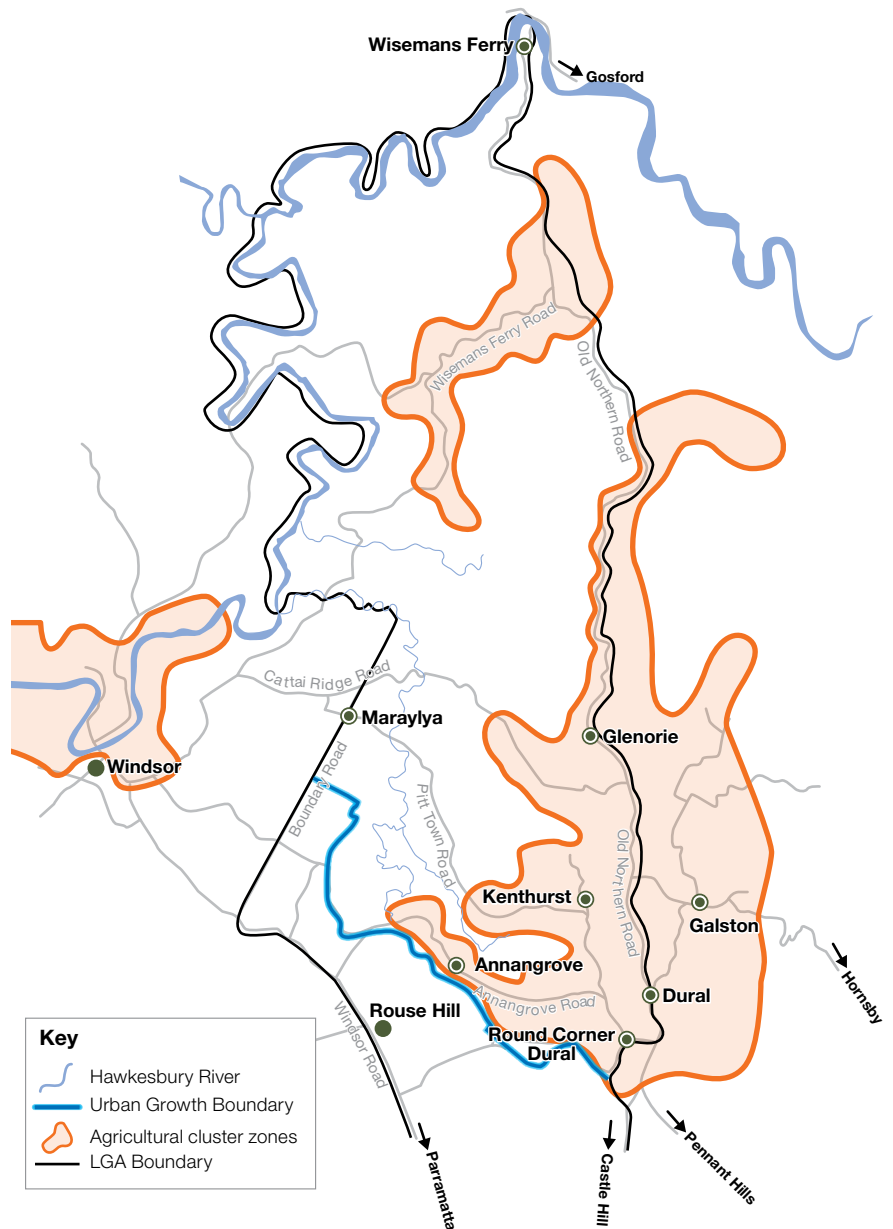
Source: profile.id 2016

3. THE HILLS SHIRE'S RURAL LANDS

Two large agricultural clusters around Wisemans Ferry Road in Maroota in the north of the Shire, and along a large part of the eastern boundary around Middle Dural, Galston and Arcadia (also forming part of Hornsby LGA) focus on horticulture (growing vegetables and tree fruits such as nectarines and peaches).

The most valuable economic contributors are cut flowers and nurseries, which account for approximately three quarters of the total value of agricultural production in the Shire. The Hills is NSW's number one producer of cut flowers, providing 21 per cent of the State's cut flowers, and second highest contributor to nursery-related production. Mushrooms and stone fruit production are the next highest individual contributors to the Shire's agricultural economy.

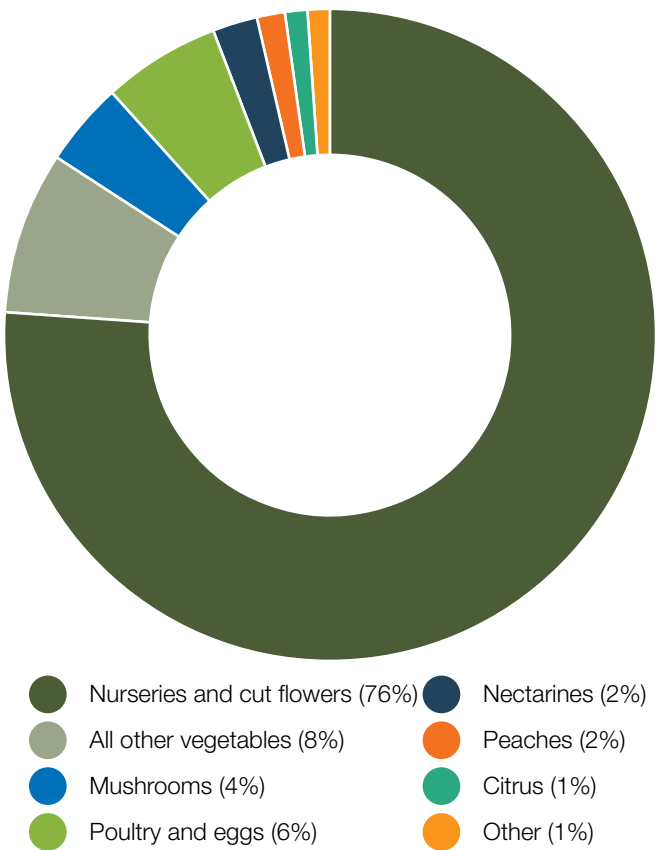
Figure 16: Agricultural clusters – north west Sydney



Source: Combined Hills Shire land use data and Ag Econ Plus report 2017



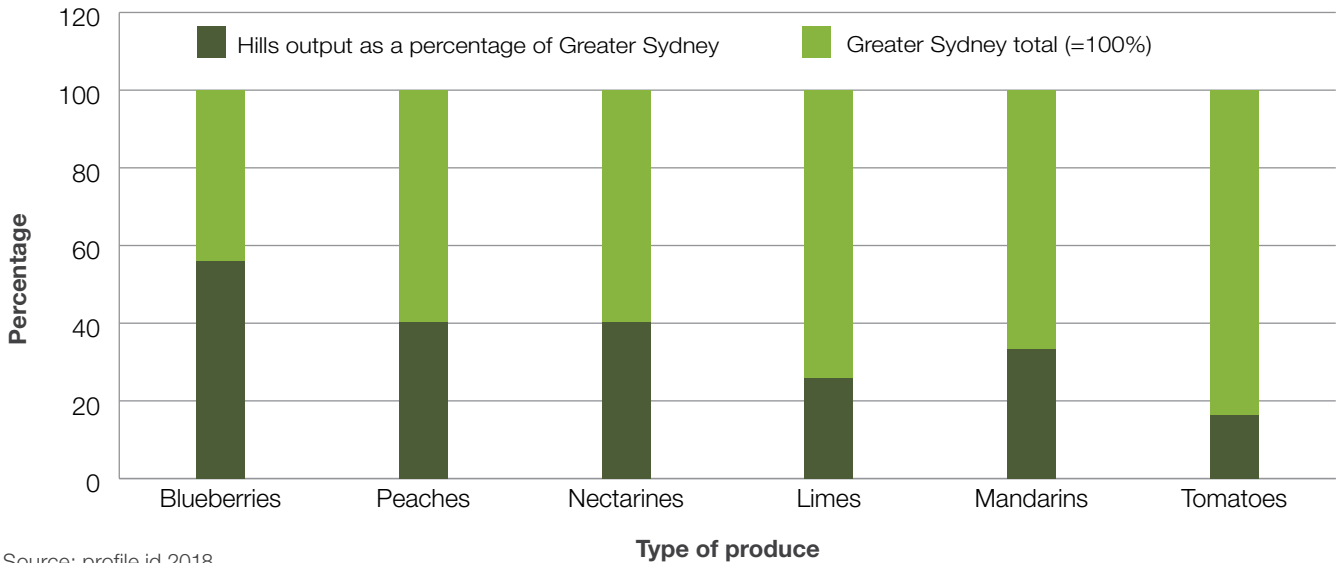
Figure 17: Agricultural production in The Hills Shire 2015–16



The Shire also contributes to Greater Sydney’s agricultural production. For example, blueberry production in The Hills accounts for less than one per cent of the value of agricultural produce of the Shire, yet contributes more than 50 per cent of the overall production of blueberries in Greater Sydney. Similarly, The Hills contributed approximately 40 per cent of the output of Greater Sydney’s peaches and nectarines in 2015–16.

Source: profile.id 2018

Figure 18: Top contributors to Greater Sydney agricultural produce value 2015–16



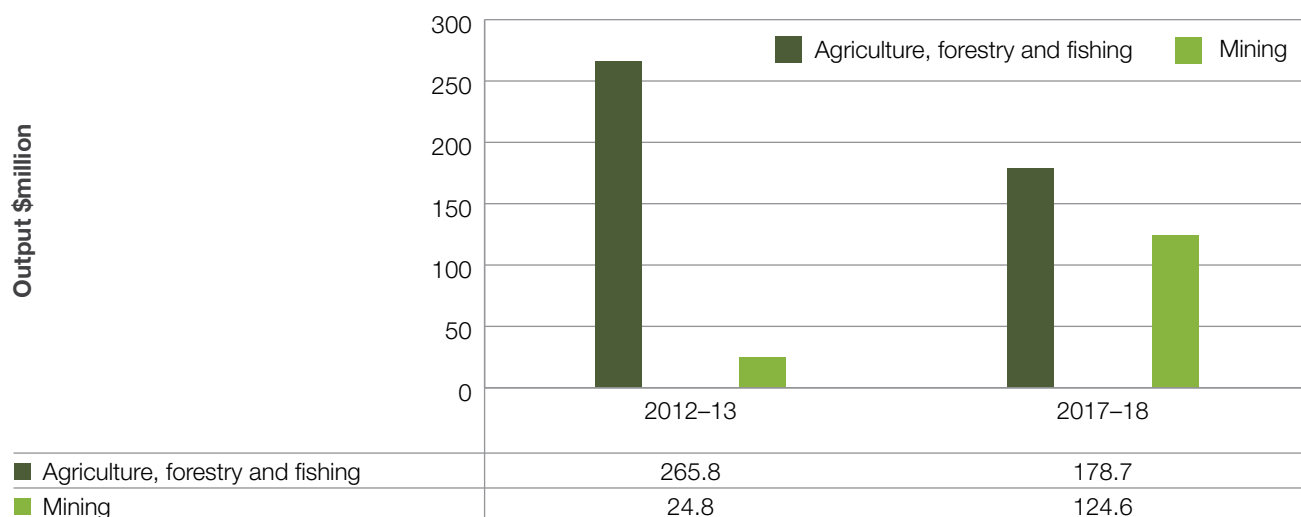
Source: profile.id 2018

Mining

Growth in mining can be attributed to the increase in construction in Sydney, as extractive industries supply raw materials for building and construction. While this benefits the local mining industry, market fluctuations in the construction sector have potential to negatively impact extractive industries.

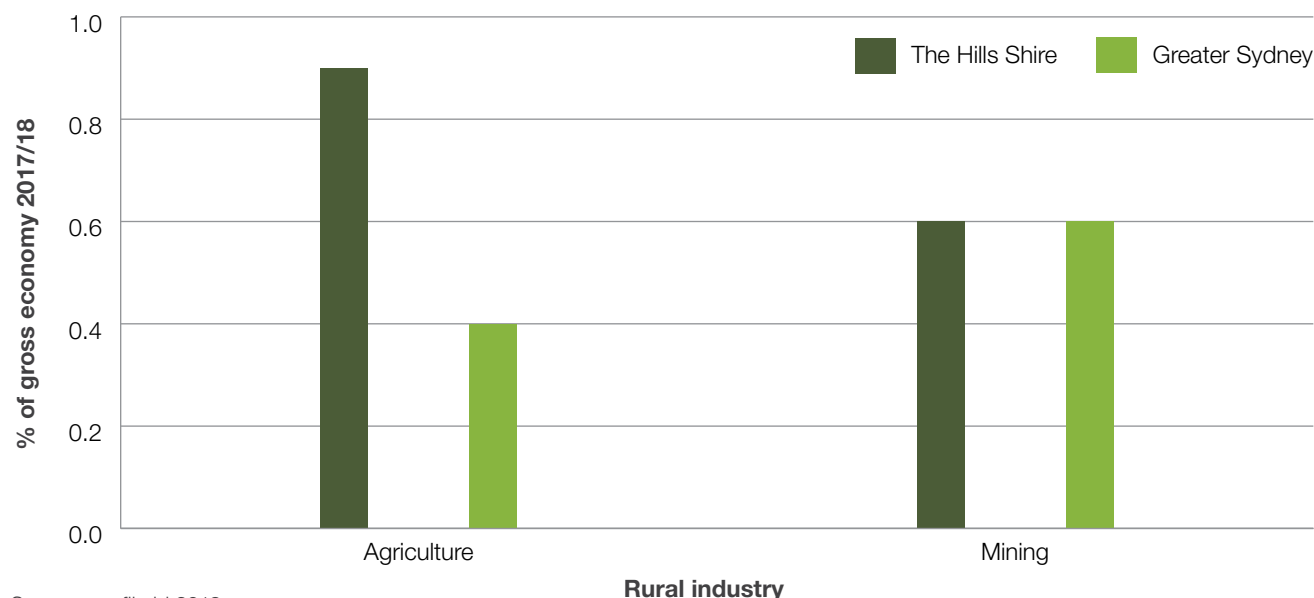
Figure 20 shows that the mining industry contributes the same amount to the Shire's local economy as it does to Greater Sydney's. Agriculture, however, contributes more than double the proportion to the local economy as it does to the Greater Sydney economy, indicating its significance to the Shire.

Figure 19: Economic output for major rural industries in the Hills



Source: profile.id 2018

Figure 20: Percentage of rural industry output compared to Greater Sydney 2017-18



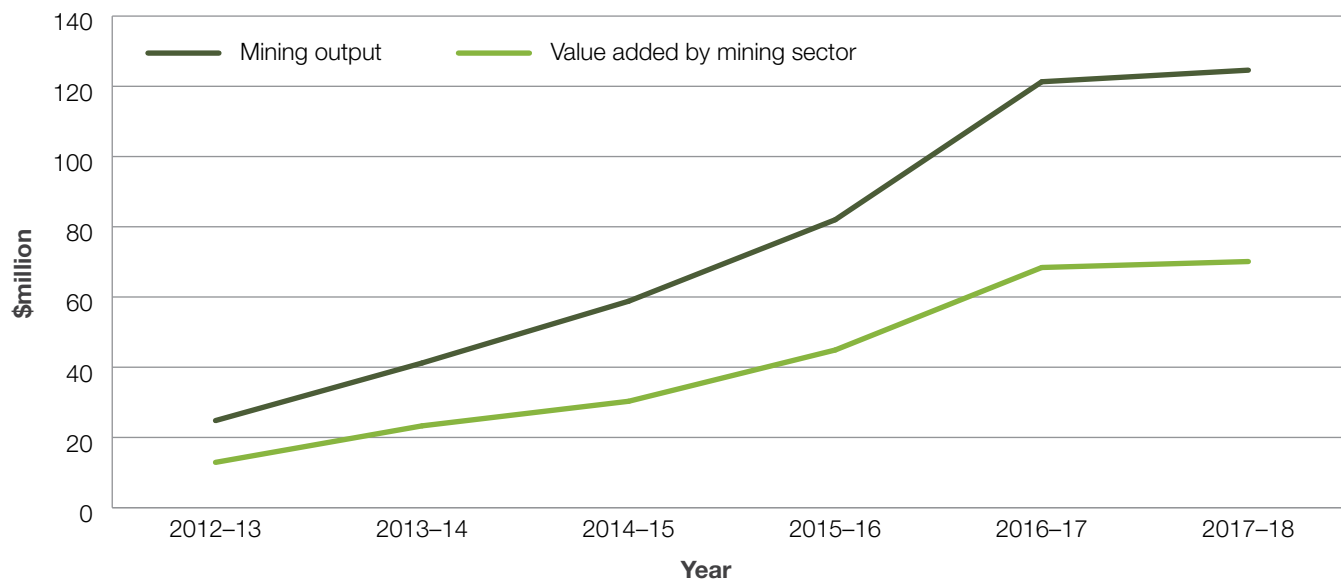
Source: profile.id 2018



Between 2012–13 and 2017–18, mining output increased five-fold, and mining’s value-added contribution increased by almost five and a half times (from

contributing \$12.9 million to The Hills economy in 2012, to \$70.1 million in 2018).

Figure 21: Mining output (\$ value) and value-added contribution to The Hills economy 2012–18

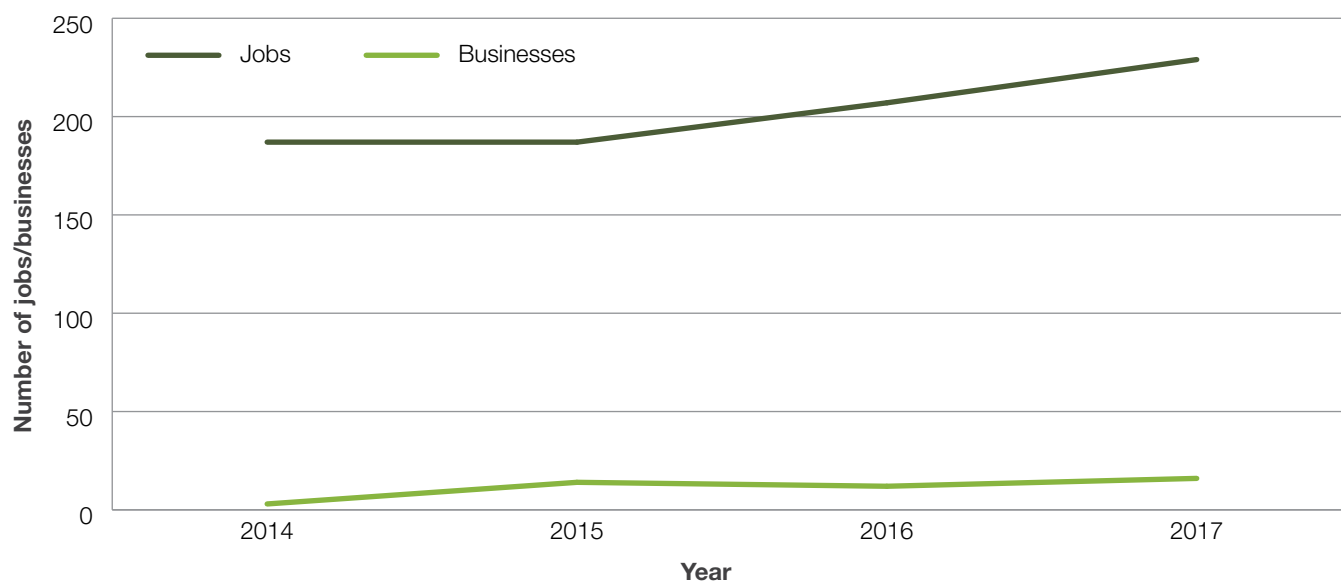


Source: profile.id 2018

Employment opportunities in the mining industry in the rural north of the Shire are concentrated in the RU1 Primary Production zone along Wisemans Ferry Road

in Maroota. The number of mining jobs has increased, as has the number of mining businesses, from three in 2014 to 21 in 2017.

Figure 22: Number of jobs and businesses in the mining industry 2014–17



Source: profile.id 2018

Tourism and rural support services

Tourism and services that support rural industries are significant contributors to the functioning of the rural area and the rural economy's success. Tourism added around \$235 million to the Shire's economy in 2017–18, and comprises more than 10 per cent of local employment — well above the average for NSW (see Figure 24).

Figure 25 shows that the value of tourism to the overall local economy has increased steadily over in the last few years.

Major components of the Shire's tourism industry are located in or based around the Shire's rural area. Farm-gate sales, farmers' markets, eco-tourist facilities, and recreation on the Hawkesbury River combine to offer a rural experience on Sydney's doorstep. Notable tourist facilities and destinations include Riverside Oaks Golf Resort in Cattai and Wisemans Ferry at the northernmost point of the Shire.

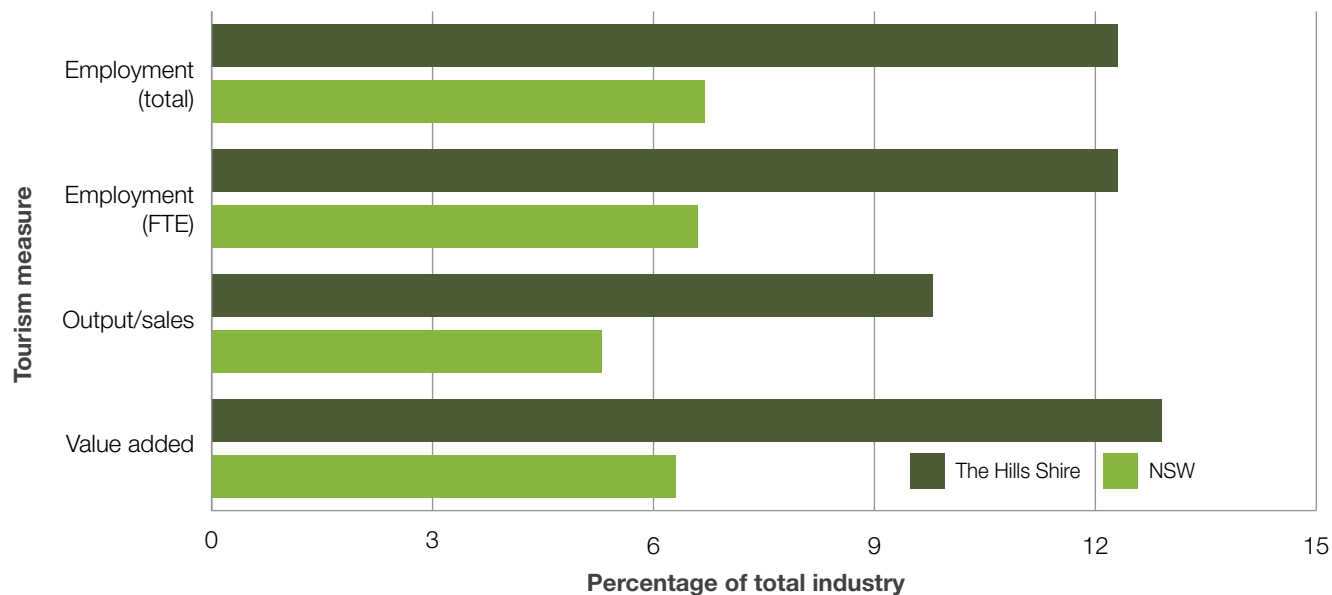
The proportion of international visitors is growing, and, in general, these visitors stay for around 33 days on average and travel to the Shire to visit family. By contrast, domestic overnight stays and day trips are decreasing.



Tourism added around \$235 million to the Shire's economy in 2017–18.”

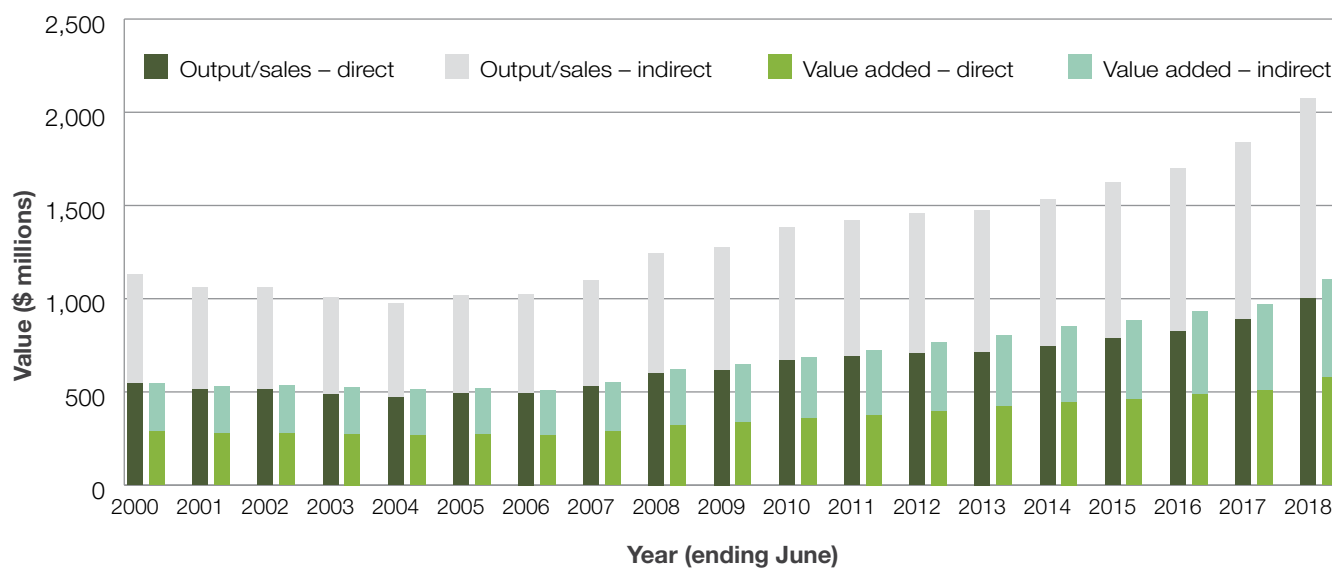


Figure 24: Value of tourism and hospitality to The Hills and NSW economies 2017-18



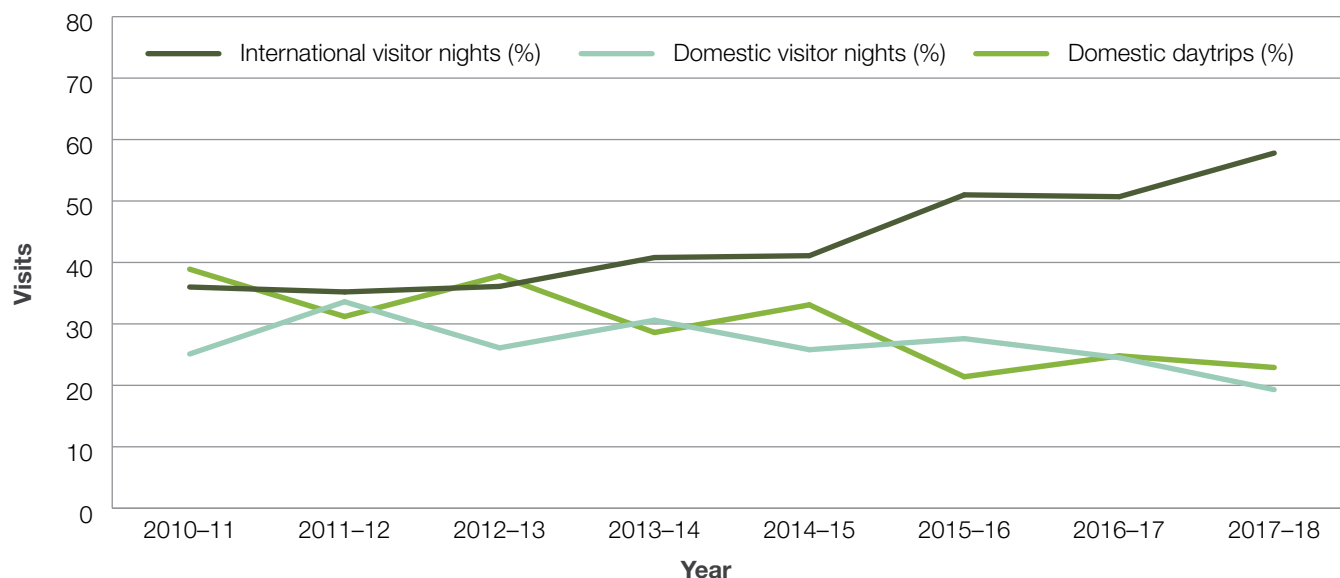
Source: profile.id 2019

Figure 25: Value of tourism and hospitality to The Hills Shire



Source: profile.id 2019

Figure 26: Tourist visits to The Hills Shire



Source: profile.id 2019

A portion of Wisemans Ferry was zoned SP3 Tourism in 2012. As yet, this specialised zoning has not translated to increased tourist activity as private ownership and land fragmentation prevent access to the river.

Along most of the Hawkesbury River foreshore within the Shire, land is in private ownership. While this enables the proliferation of private water-ski enterprises in some areas, it largely prevents public access to the waterfront.

Water quality also affects water-based tourism along the Hawkesbury River. Water quality is affected by aquatic life, temperature, flow rate and what takes place on land within the wider catchment. Increased run-off from residences, farms and industries, as well as treated effluent from sewage treatment plants combine to detrimentally affect water quality.

Physical attributes of the rural area also pose challenges for the growth of tourism. In particular, steep topography and vegetation cover render some parts of the Shire inaccessible to people or are at high risk of bushfire.

Minimal local road connections and scant public transport access also limit visitation to tourist destinations in the rural and northern extremities of the Shire. Travelling by public transport from Castle Hill to Wisemans Ferry for example, will require up to 2.5 hours

and will require changing bus routes or transport modes to get there. Frequency is also poor – currently Transport for NSW indicates just two opportunities to undertake this trip each day.

The Hills Shire lends itself to eco-tourism, with a small number of eco-tourism providers offering boutique accommodation in scenic areas.

Rural support services

Equally important to the growth of the rural economy is the ability of services that support rural industries to be located near productive areas. Rural industries and rural supplies provide opportunities for farming equipment to be repaired or maintained; or for goods or materials used in farming and primary industry production to be purchased. They also provide some opportunities for local employment.

Currently access to these services is limited, since rural supplies businesses are not permissible within the RU6 Transition zone, and rural industries businesses are not permissible in the RU1 Primary Production zone. Rural industries towards the north of the Shire may benefit in future from a rural services hub that would cater for these requirements.







4

PLANNING PRIORITIES

This section outlines our priorities for rural lands and how we will achieve these priorities. The planning priorities will guide how we will manage the unique rural area so that the community can enjoy and benefit from it now and well into the future. The priorities are:

- manage and protect the rural-urban interface
- plan for housing in the right locations and renew and create great places
- retain and manage the Shire's rural productive capacity
- encourage support activities and tourism in rural areas.



Manage and protect the rural-urban interface

This relates to Planning Priority 16 in *Hills Future 2036*.

Rationale

Our previous Rural Lands Strategy outlined a growth management philosophy to balance growth with protection of rural land. With the exception of NSW Government-led planning for growth area precincts and a small number of other developments, we have generally limited urban development to the Shire's existing urban area.

Given the significant amount of existing residential zoned land available, there is no need to convert rural or environmental zoned land to residential uses.

The Greater Sydney Region Plan states that urban development should be limited to the urban area (Strategy 29.2), and that "rural-residential development is not an economic value of the Metropolitan Rural Area".

To support this, we will implement an urban growth boundary, largely based on the formal boundary between the metropolitan urban and metropolitan rural areas. The boundary will protect rural lands for productive uses and scenic values, avoiding levels of development more suited to urban areas.

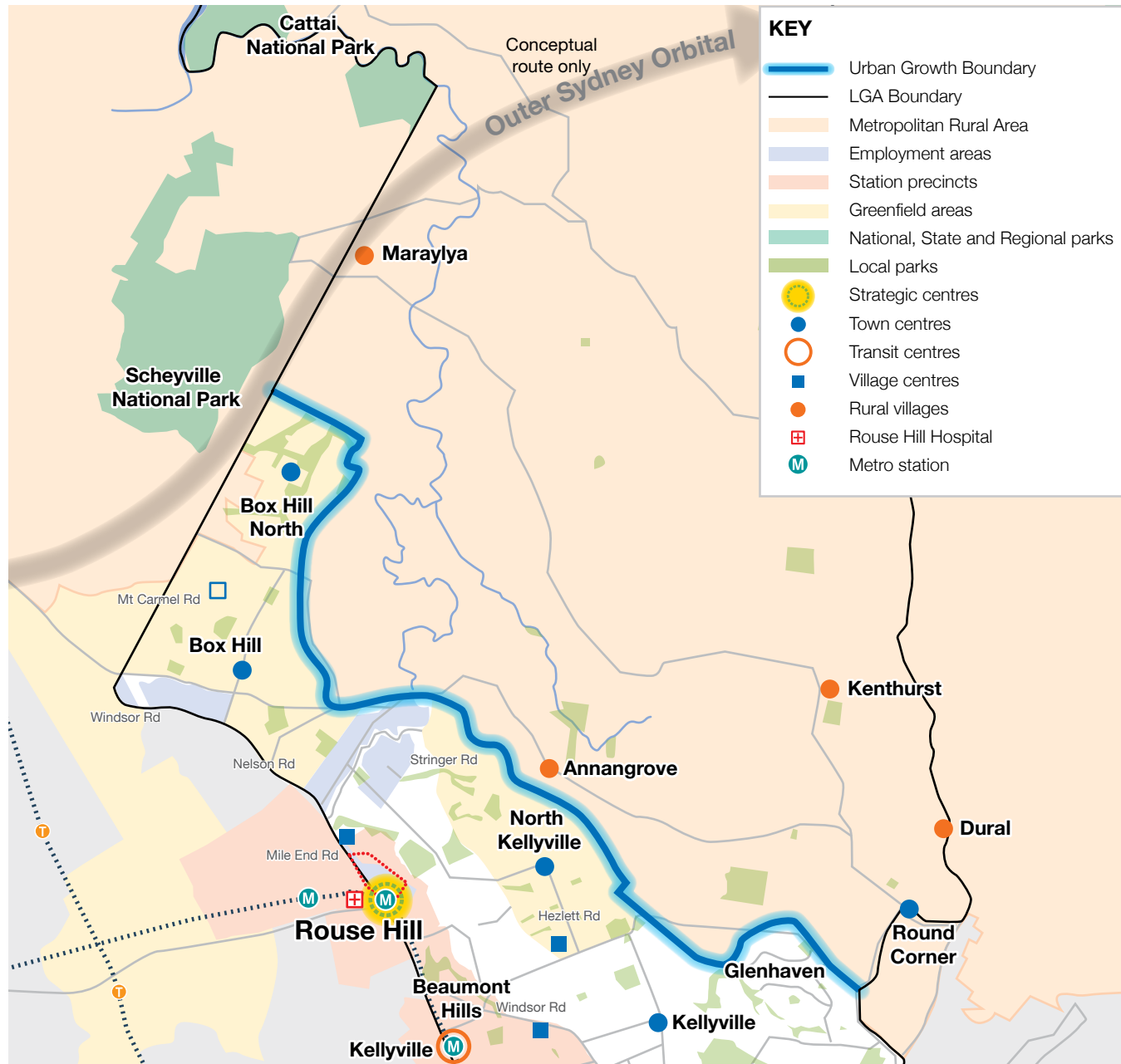
An urban growth boundary will:

- respond to directions within the region and district plans to protect the Metropolitan Rural Area
- reinforce the existing land use zoning system
- assist in reducing pressure on environmentally sensitive lands within the rural area
- refocus on the scenic and productive values of the Shire's rural lands
- signal to property speculators that the rural area is valued for its productive and scenic qualities, and is not urban land in-waiting
- give property owners in rural areas greater certainty about the future of their land.

Future reviews of the *Greater Sydney Region Plan* may identify the need for additional urban areas as part of a structured and carefully planned approach to managing the long-term growth of Sydney. If this occurs, we will work with the NSW Government to select appropriate areas for consideration.



Figure 27: Urban Growth Boundary



Secondary dwellings and seniors' housing

Making planning controls for secondary dwellings and seniors' housing clearer and easier to understand for land on the rural-urban fringe will reduce pressure on rural land and lead to an appropriate level of development.

We are reviewing secondary dwelling controls for rural land use zones. Residents with more modest established homes in rural areas have indicated a desire to see the permissible floor space of secondary dwellings increase from the current limit of 60 square metres. Rural sites present fewer constraints in relation to the siting of a secondary dwelling. Larger land areas mean that both the principal and the secondary dwelling benefit from private open space and fewer negative impacts such as overlooking or overshadowing within the site and to adjoining sites.

In circumstances where the potential for negative impact is low, a secondary dwelling might be supported with a floor area larger than 60 square metres, regardless of the size of the principal dwelling.

We are working with the Greater Sydney Commission and other stakeholders in relation to seniors' housing developments under the *State Environmental Planning Policy (Housing for seniors and people with a disability) 2004*. Rural locations are not appropriate for older people

who require ready access to services, particularly for medical and health-related needs. Lower levels of public transport in rural areas also limit easy movement around the community.

A revised approach to Site Compatibility Certificates under this SEPP could reduce the instances of inappropriate levels of development at the rural-urban interface.

Council will:

- Implement an urban growth boundary that largely follows the boundary of the RU6 Transition zone.
- Not support planning proposals or development applications seeking to intensify urban land uses above the urban growth boundary.

Actions

- Apply the outcomes of Greater Sydney Commission working group in relation to seniors' housing in the rural area.



Plan for housing in the right locations and renew and create great places

This relates to planning priorities 7 and 9 in *Hills Future 2036*.

Rationale

Place-based planning will facilitate limited, sympathetic residential and commercial growth in rural villages, helping them to renew as vibrant and welcoming places while maintaining their character.

Place-based planning examines locations in their entirety – land use, function, look and feel, design of buildings, environment – and plans and manages them as places for people rather than simply locations. It takes into account an area's existing character as well as its desired future character, which in large part is informed by its community.

Community involvement lends legitimacy and weight to any policy outcomes and inevitably serves to increase community confidence with the planning system.

Rural villages

Place-based planning requires any application for the expansion of rural villages to fit within criteria developed in consultation with the potentially affected communities.

In addition to satisfying criteria identified by the community, future proposals for the expansion of rural villages would be required to satisfy the criteria listed in Table 1, with an emphasis on infrastructure provision, environmental protection and avoiding bushfire risk.

Coordinated village expansion and renewal will be limited on fragmented land. Consolidated larger lots create scope to plan on a wider scale rather than on a site-by-site basis. This also allows more efficient infrastructure provision, especially for services such as drinking water and electricity.

Local character

The Department of Planning, Industry and Environment is considering character overlays as an option within Standard Instrument Local Environmental Plan (LEP) mapping to protect areas of exceptional local character. Mapped overlay areas could be linked to character statements or area-specific development control plans, bestowing greater weight on the desired future character of these areas. Given the importance of maintaining the rural character of The Hills, character overlays may be useful to the planning for the renewal of rural villages.

We will consult with the community to formulate a local character statement for the RU6 Transition zone, especially in Annangrove, Glenorie and Kenthurst. This statement will link to mapped character overlays in The Hills LEP and will inform place-based planning.

We require additional zone objectives and a review of permissible uses to further recognise the rural and scenic character of the RU6 Transition zone, and the need for land uses and intensity of development to be compatible with this character. The features of this area are significant enough to warrant specific objectives that promote land uses compatible with the scenic landscape and dominant rural residential character.

Table 1: Planning proposal criteria for rural village expansion

Criteria	New proposals must demonstrate
1. Infrastructure provision	Timely provision of utilities, transport, open space and communication infrastructure
2. Access	Access to a range of transport options that allow efficient travel between homes, jobs and services
3. Housing diversity	Provision of a range of housing types
4. Employment lands	Provision of employment opportunities or access to employment areas
5. Avoidance of risks	Land use conflicts are avoided and safe evacuation routes are available (flood and bushfire)
6. Natural resources	Responsible use of natural resources and minimisation of development footprint
7. Environmental protection	Protection and enhancement of biodiversity, air quality, heritage and waterways
8. Quality and equity in services	Access to health, education and other essential services

Preliminary investigation areas

The rural villages of Kenthurst, Annangrove and Glenorie would benefit from revitalisation and a modest amount of residential and commercial growth. Following a place-based and consultative approach, the preliminary investigation areas as detailed on the following pages will be examined further.

All preliminary investigation areas are confined to the RU6 Rural Transition zone and are located on land that is relatively free from constraints such as sensitive vegetation, steeply sloping land and creek lines.

Defining the scope for the limited expansion of rural villages presents opportunities for us to maintain the character of the villages and articulate a desired future character.

These three rural villages already contain a number of essential services (Table 2).



We have a very significant rural-urban interface that requires our intervention and our protection.”

Mayor of The Hills Shire, Dr Michelle Byrne



Table 2: Preliminary assessment of provision of essential services in rural villages

Service	Annangrove	Kenthurst	Glenorie
Primary education	✓	✓	✓
Secondary education	✗	✗	✗
Post office	✗	✓	✓
Rural fire station	✓	✓	✓
Medical centre	✓	✓	✓
Community facility	✓	✓	✓
			(Hornsby)
Sporting field	✓	✓	✓
			(Hornsby)
Petrol station	✓	✓	✗
			(DA under assessment)
Reticulated water	✓	✓	✓
Reticulated sewerage	✗	✗	✓
Cafe or restaurant	✓	✓	✓
Grocer	✓	✓	✓

We have identified locations that could potentially support increased residential growth in Kenthurst, Annangrove and Glenorie. A greater degree of housing diversity may appeal to a wider variety of potential residents, and may provide housing options for younger people or families who would like to remain in the area yet cannot afford a larger home, or downsizers seeking a more manageable property in the same area. Young professionals and families are increasingly leaving the rural area of the Shire; there are a variety of reasons for this, however high median house prices and limited choice are contributing factors.

The consultation process to develop a character statement for the RU6 Transition Zone will also clarify the priorities that communities within and around rural villages have for the renewal and limited growth of these places. These priorities will inform the place-based development criteria that any proposal to expand these villages would be required to satisfy. Any proposal to change planning controls in these areas would need to include a holistic plan for the entire area, not just a few less-constrained sites.

Glenorie

Glenorie village on Old Northern Road straddles The Hills and Hornsby LGAs. Residents benefit from a full-sized supermarket and other specialty retailers, a medical centre and pharmacy, post office and rural fire station. We will collaborate with Hornsby Council regarding growth in Glenorie, due to the location of important social infrastructure within the Hornsby LGA.

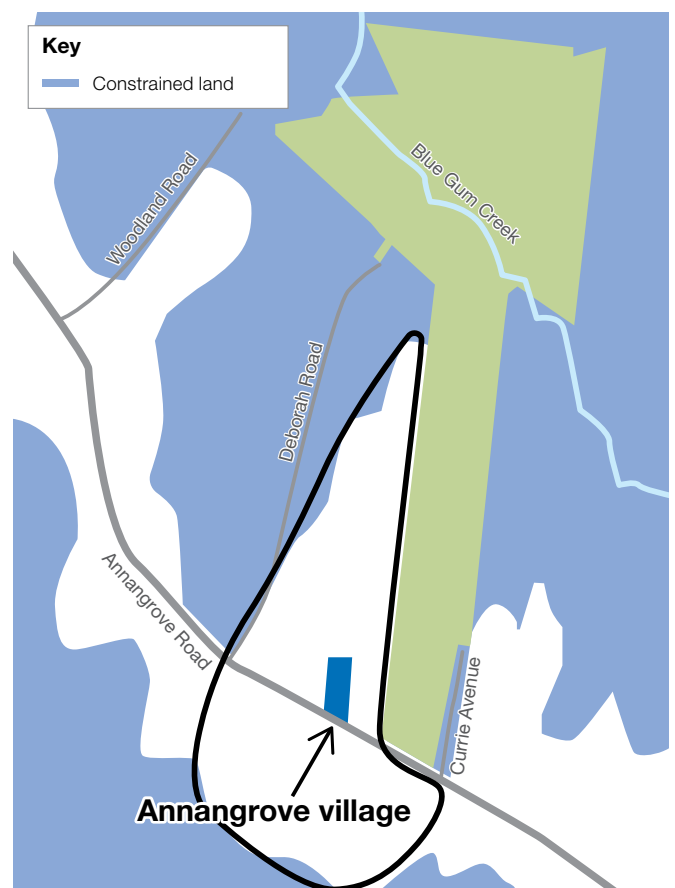
Figure 28: Preliminary investigation area – Glenorie village



Annangrove

The small commercial centre of Annangrove on Annangrove Road lies mid-way between Kenthurst and Box Hill. While no residential zoned land surrounds the centre, it provides nearby rural residents with a grocer, butcher, bottle shop, petrol station, cafe and restaurant. The Imam Hasan Islamic Centre is located between the commercial centre and Annangrove Park, with Sydney Plant Market on the southern side of Annangrove Road.

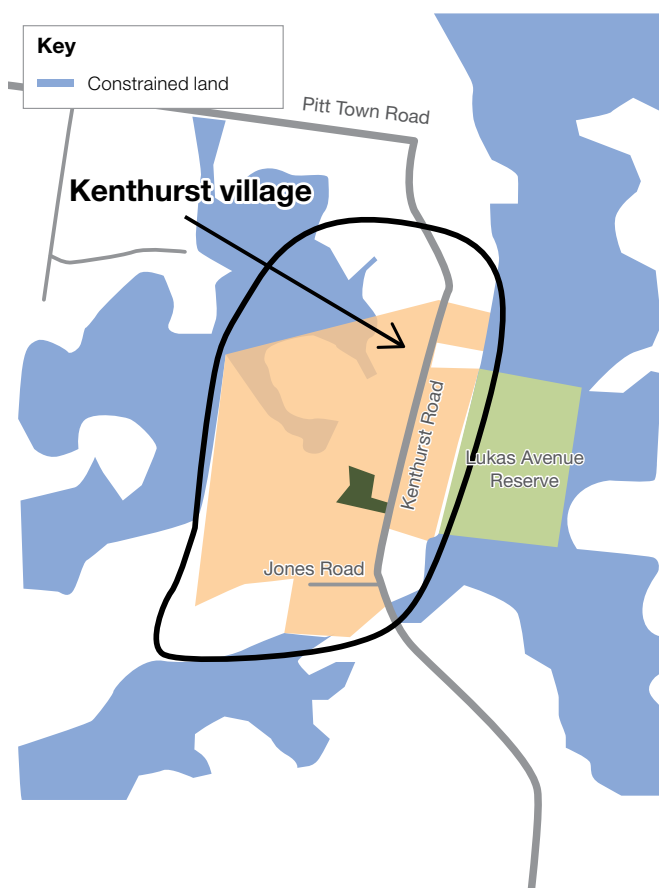
Figure 29: Preliminary investigation area – Annangrove village



Kenthurst

Kenthurst is on Kenthurst Road and consists of a small commercial area, low-density residential zoned land, large residential lots on the western side of Kenthurst Road and Lukas Avenue Reserve. There is also a seniors' living complex at the southern end of the village.

Figure 30: Preliminary investigation area – Kenthurst village



Council will:

- Limit residential growth to within the existing and planned residential zoned areas below the urban growth boundary.
- Work with the community to extend local character mapping to identified areas of significant local character, and develop local character statements to guide development in these areas.

Actions

- Investigate opportunities for limited residential expansion in rural villages in line with the criteria recommended in the *Rural Strategy 2019*.

“

A greater degree of housing diversity may appeal to a wider variety of potential residents.”

Retain and manage the Shire's rural productive capacity

This relates to Planning Priority 4 in *Hills Future 2036*.

Rationale

Increasing the intensity and efficiency of productive rural industries and improving rural connectivity will allow operators to grow their businesses.

Certainty surrounding the protection of these lands will encourage growth in the agricultural and extractive industries sectors, providing greater levels of assurance around the future uses of the land.

Intensive horticulture

Horticulture in The Hills is moving towards more intensive modes of production such as hydroponics within greenhouses, as there is limited supply of productive agricultural land within the Shire. To assist in this evolution, we will review site coverage and hours of operation controls for agricultural land in the Hills Development Control Plan (DCP). This may enable agricultural operators to maximise their efficiency in instances where the surrounding uses are similar and where it is not likely to have an adverse noise impact.

Given this shift in focus, intensive horticulture activity in the Shire could benefit by forging links with Western Sydney University's Greenhouse Research Education Training Facility at its Hawkesbury Campus. This facility aims to "help Australian growers tap into the latest research and practices within greenhouse crop production to make their operations more efficient, and meet the increased demand for fresh food that can be delivered quickly to markets." (Western Sydney University)

Partnering with tertiary institutions to explore best-practice in intensive horticulture will increase our capacity to facilitate the best land use outcomes for this industry. It may also enable local rural businesses to introduce new technologies and practices with confidence.

Our *Economic Growth Plan* outlined in the *Productivity and Centres Strategy 2019* will target key rural industries and articulate how greater regional connectivity will be able to assist in the growth and development of existing businesses as well as attracting new businesses to the Shire.

Council actively assists small business and will extend this to rural businesses. By identifying trends within agricultural production such as modular farming and vertical greenhouses and determining where these new methods could be most appropriate, we will be able to attract new operators to base their operations within the Shire.

Example of intensive plant production in greenhouse



Source: Western Sydney University 2018



Rural connectivity

The size of the Shire and relatively small number of road and public transport connections within the rural area poses supply chain challenges for producers in the agricultural and mining industries. This limited connectivity reduces the opportunities to expand into new markets, curtailing the growth prospects of rural businesses.

Producers must be able get their products to market quickly and efficiently, and have opportunities to expand into new markets. Currently, geographical constraints limit the supply of agricultural produce and extractive materials to destinations to the south, east and west of the Shire. Coupled with higher density urban areas and increases in congestion, better ways of accessing markets and distribution points are essential.

We are seeking clarity surrounding the location of the Outer Sydney Orbital between north west Sydney and the Central Coast. The Orbital would also provide a direct road and freight link to the Central Coast and the future Western Sydney International Airport, creating potential for new market opportunities and greater supply chain efficiencies. *Future Transport 2056* identifies the north west Sydney to Central Coast section of the orbital as a visionary initiative for investigation beyond 20 years; however, we believe this is of such strategic importance that investigations should be brought forward.

New ways of farming

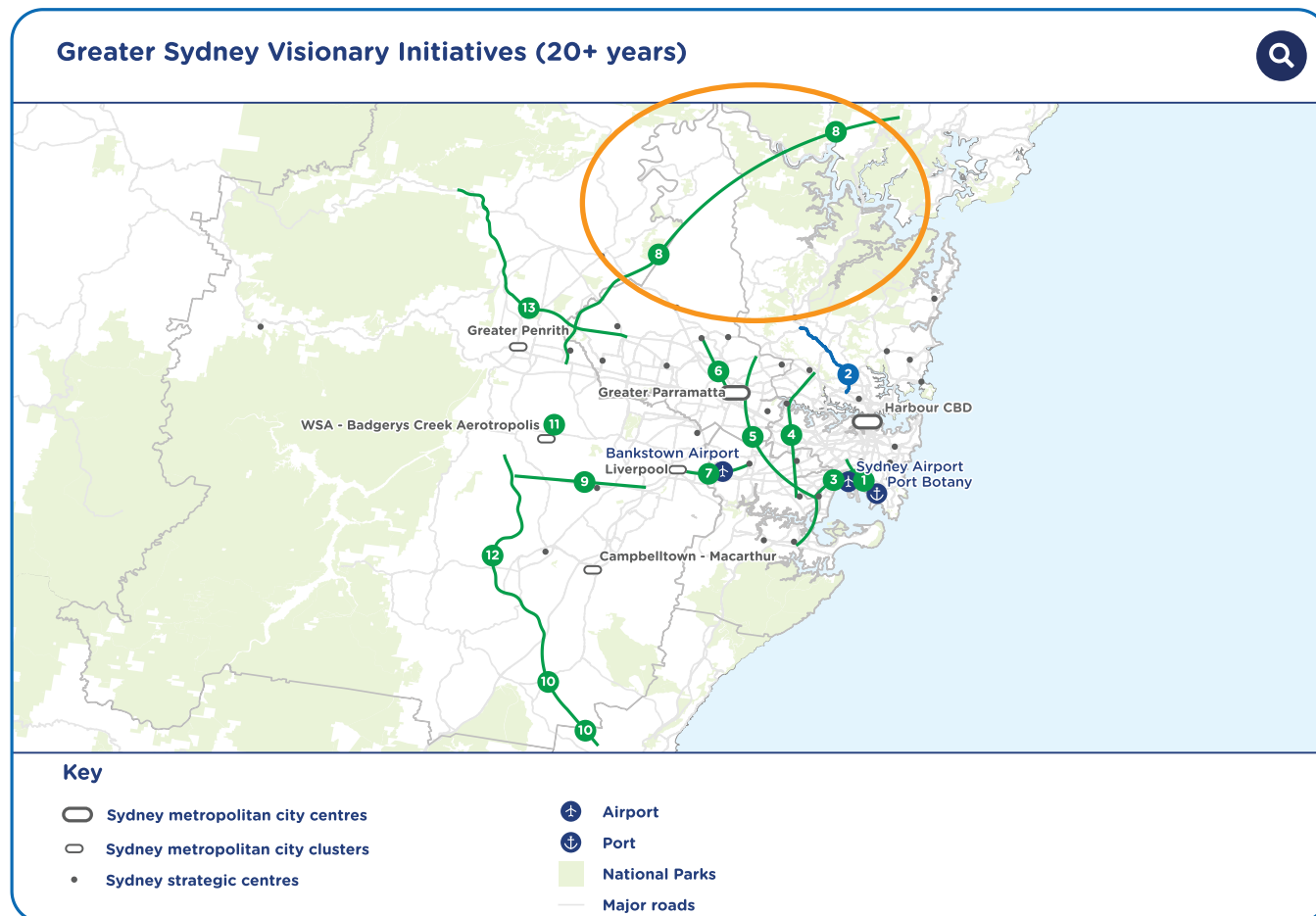


Source: Modular Farms Co. 2019



Limited connectivity reduces the opportunities to expand into new markets.”

Figure 31: Greater Sydney visionary initiatives (20+ years) – Outer Sydney Orbital

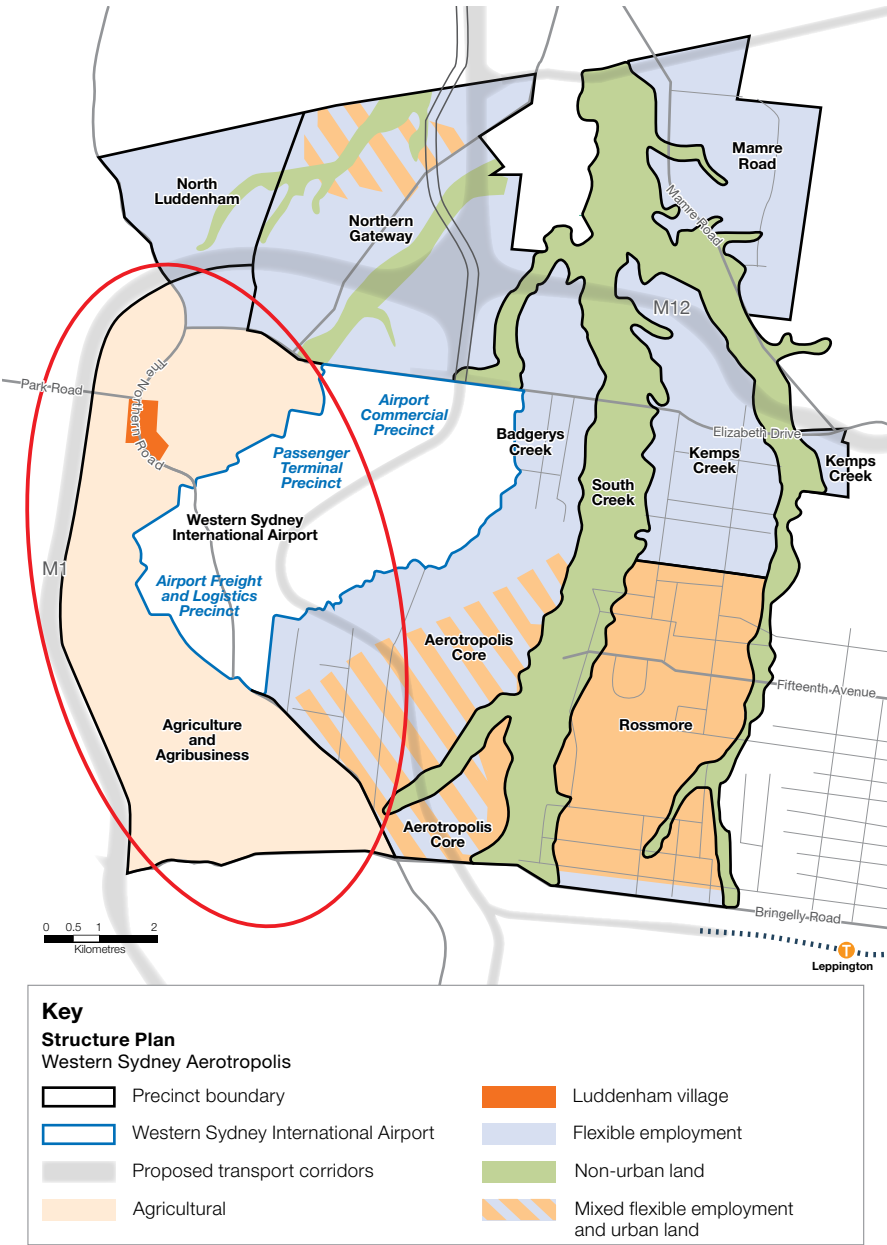


Source: *Future Transport 2056*

In addition, certainty surrounding the Outer Sydney Orbital alignment will assist in the Shire's rural productive industries alongside the planned future agriculture and agribusiness precinct within the Western Sydney Aerotropolis (Figure 31).



Figure 32: Western Sydney International Airport Stage 1 Plan – Structure Plan



Source: NSW Department of Planning and Environment 2018

Rural residential development and village expansion

Rural residential development contributes to housing diversity in the Shire, although environmental, social and financial costs are often higher in rural areas compared to urban residential areas and must be managed to avoid conflicts with productive rural and environmental uses.

Future rural residential development or village expansion needs to consider the efficient and sensitive provision of services and infrastructure and minimise impacts on rural production and environmental values. Where this is not possible, rural residential development will not be considered. The criteria in Table 1 would need to be satisfied in order to allow further rural residential development.

Rural cluster subdivision will continue to facilitate limited rural residential development within the RU2 Rural Landscape and RU6 Transition zones in conjunction with protecting environmentally sensitive lands.

Recent amendments to the Standard Instrument LEP include a clause 5.16 that seeks to “minimise potential land use conflict between existing and proposed development on land in the rural, residential or environment protection zones concerned (particularly between residential land uses and other rural land uses)”.

4. PLANNING PRIORITIES

This clause enables Council to consider “whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development”. It opens some opportunity to identify the importance of productive rural land uses and will be considered for inclusion as part of the Hills LEP.

Limiting residential development in rural areas retains productive rural land remains for agriculture and provides certainty to rural landowners and producers.

Council will:

- Protect productive agricultural lands across the Shire from land uses that may create land use conflict.
- Forge links between The Hills Shire producers and Western Sydney University’s Greenhouse Research Education Training Facility at Hawkesbury and encourage intensification of horticulture activity, including hydroponics and greenhouses.
- Encourage better ways to access markets and distribution points to benefit agricultural and extractive materials producers.
- Work with the NSW Government to preserve land for, and build, the section of the Outer Sydney Orbital between north west Sydney and the Central Coast to open new markets and supply chain efficiencies for agricultural and extractive industries.

Actions

- Review our planning controls and permissible uses in rural zones to minimise land use conflict and maintain desired character.
- Investigate using the optional Standard Instrument Local Environmental Plan clause 5.16 to ensure consideration of existing rural uses when assessing applications for rural subdivision and dwellings.



Encourage support activities and tourism in rural areas

This relates to Planning Priority 5 in *Hills Future 2036*.

Rationale

Tourism

The Shire's rural landscape and Hawkesbury River foreshore provide opportunities to develop tourism, particularly caravan parks, campgrounds, and bed and breakfast, farm-stay and eco-tourism accommodation and facilities in appropriate locations. The existing SP3 specialist tourist zone could form part of the way forward in growing the tourist economy. Improvements and expansions of public wharves along the Hawkesbury River could also help to revitalise tourism along the foreshore.

While farmers' markets are typically found in urban areas where they can reach a larger number of customers, productive rural lands are vital in their survival. The ability to locate these markets close to where the goods are produced ensures efficiencies in the supply chain.

Encouraging tourist facilities to comply with recognised national guidelines for eco-tourism and to become certified eco-tourist providers will not only boost the local profile of these facilities, but contribute to sustainable development outcomes in sensitive environmental areas.

Our *Economic Growth Plan* will focus on tourism. The marketing and development of tourism opportunities requires ongoing collaboration with numerous stakeholders including other levels of government, adjacent local councils – Hawkesbury and Hornsby – and chambers of commerce.

Rural support activities

Recent changes to the Standard Instrument Local Environmental Plan allow small-scale intensive livestock agriculture in appropriate rural areas without development consent. Small farms that can accommodate relatively low numbers of livestock (cattle, sheep, goats, pigs or poultry) can operate under this clause. We will work further to identify areas within the

RU1 Primary Production zone where these uses could take place as part of our *Economic Growth Plan*.

To provide adequate support services for rural industries, we will review the permissibility of *rural supplies* and *rural industries* uses in the RU1 and RU6 zones. In addition, we will work with stakeholders to investigate the feasibility of and potential locations for a future rural services hub in the north of the Shire. Identification of a preferred centralised location for these uses provides certainty to potential services that support rural industries as well as potential rural industry operators and producers.

Council will:

- Value the contribution that rural industries make to Greater Sydney's economy and protect productive agricultural land from development pressures, particularly along the rural-urban fringe.
- Discourage planning proposals which seek to rezone viable agricultural land for residential purposes.
- Investigate ways to grow tourism in the Shire.

Actions

- Identify potential locations for a rural services hub in the Shire's north.
- Review planning controls and permissible uses in rural zones to facilitate land uses that will support and serve rural industries and encourage tourism in appropriate locations.

Future work

- Investigate aligning planning controls for eco-tourism facilities to guidelines for eco-certification.
- Investigate potential for appropriate expansion of or improvements to public wharves along Hawkesbury River.
- Increase collaboration with Hawkesbury and Hornsby councils in the promotion and marketing of recreation on the Hawkesbury River.



IMPLEMENTATION, MONITORING AND REVIEW

Implementation and delivery

The actions within this Strategy will be implemented in accordance with the Implementation Plan supporting *Hills Future 2036*.

Stakeholders

Stakeholders who will help us to deliver the actions include:

- residents
- developers, local businesses and chambers of commerce
- surrounding local councils
- State agencies including the Greater Sydney Commission, Department of Planning, Industry and Environment, NSW Environment Protection Authority and Transport for NSW.

Planning instrument

The *Rural Strategy 2019* flags a number of potential changes to planning controls following further investigations. It is anticipated that any identified changes will be completed by the next five-year review.

Proposed amendments that do not warrant further investigations will be included in the pending review of the Hills LEP, intended to be completed before June 2020.

Monitoring and review

The *Rural Strategy 2019* will be monitored annually and a report made to Council to inform future review programs. We expect to review, exhibit and re-adopt the Strategy every five years so it best reflects community concerns and aspirations as well as best practice in land use planning for responsible rural lands management.

References

Ag Econ Plus Consulting: *Values of the Metropolitan Rural Area of the Greater Sydney Region*, February 2017

Australian Bureau of Statistics <https://www.abs.gov.au/>

Department of Planning, Industry and Environment

- 2016 NSW State and Local Government Area Population Projections
- *Western Sydney Aerotropolis Stage 1 Plan* August 2018
- *Draft North West Subregional Strategy* 2006

Greater Sydney Region Plan March 2018

Central City District Plan March 2018

Nearmap <http://maps.au.nearmap.com/>

profile.id <https://profile.id.com.au/the-hills>

Realestate.com <https://www.realestate.com.au/neighbourhoods>

Transport for NSW

- *Future Transport 2056*
- Trip Planner

Western Sydney University

- The Health of the River System https://www.westernsydney.edu.au/harwest/harwest/the_health_of_the_river_system
- Greenhouse Research Education Training Facility https://www.westernsydney.edu.au/research/centralised_research_facilities/greenhouse_facility



The Hills Shire Council



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During business hours (8am – 4.30pm Mon – Fri)



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If you do not speak English and need an interpreter,
please contact the Translating and Interpreting Service
on 131 450 and ask them to call Council on 9843 0555.

Anita Skinner

From: noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>
Sent: Thursday, 8 April 2021 3:03 PM
To: Anita Skinner
Cc: DPE PS ePlanning Exhibitions Mailbox
Subject: Webform submission from: Planning Amendments for Agriculture

Follow Up Flag: Follow up
Flag Status: Flagged

Submitted on Thu, 08/04/2021 - 15:02

Submitted by: Anonymous

Submitted values are:

Submission Type

I am submitting on behalf of my organisation

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Dicker

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I would like my submission to remain confidential

No

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Suburb/Town & Postcode

Blayney NSW 2799

Submission

To whom it may concern, please find below points for consideration;

New definition of 'farm stay accommodation'

- It would be beneficial if DPIE can consult on the final wording of the proposed new definition of 'farm stay accommodation' noting only 4 dots points providing guidance on the general direction the new definition is included in the EIE,
- It may also be beneficial to consider including for clarification that farm stay accommodation could be used by rural workers at times (including intermittent and seasonal workers),
- It may also be beneficial to consider including for clarification that farm stay accommodation could be used on a short term basis by construction and/or mining contractors (Blayney is about to have 4 years of heightened construction activity, by 3 state significant developments (1 potential new mine, 1 mine expansion and a wind farm) and it would be beneficial to clarify if this is appropriate (we think it is) .

Development Standards

- Development Standards (in particular for exempt as there is no occupation certificate because no change of use) for a dwelling (BCA class 1a) going to short term accommodation (BCA class 1b) results in additional smoke alarm requirements under 3.7.5.4 of Building Code of Australia,
- Waste management focuses on solid waste, there is not great detail and requirement for s68 Local Government Act approvals, in particular an effluent systems ability to cater for an additional 20 persons (although only originally designed for a house with 6 people). Would be beneficial to require an approval to operate off Council for effluent system prior to farm stay accommodation use commencing
- There is no reference to minimum amount of water required, nor any reference or requirement for a Water Quality Assurance Program to be in place
- Flood Prone land is not an exclusion and maybe should be.

Use of Caravans, Campervans and Tents

- The operational requirement of “at any one time on the landholding for up to 14 days” is this in succession?, per month, per year?
- “unoccupied caravans, campervans and tents are not to remain on the land after 24 hours” Is this once a guest leaves that within 24 hours the land owner has to put the caravan back in the shed?
- I note the 20 person maximum, however there needs to be a maximum number of; Caravans, Campervans and Tents allowed, maybe 6? (you technically could end up with 20 caravans on a property with 1 person in each) I do not think it is the intent of this legislation is to cripple caravan parks, but facilitate low impact accommodation in a rural setting.
- I note many Councils require new buildings, dwellings and dual occupancies to be within a distance of the existing dwelling, I don't agree with it though, why cant new buildings be anywhere on the property (setbacks from neighbouring property boundaries are more important)
- There is no background on where the one dwelling per 15 hectares comes from? (I note though the size limitation of 60 sqm), I would prefer it read “six x 60sqm new buildings or three x 120 sqm new buildings” as an this would enable better 2 bedroom buildings (targeting and accommodating for families).

Setbacks and location

- A minimum setback for exempt and complying should be 50m from a property boundary.
- P12 states “side setback of the existing dwelling on the land or 200 metres, whichever is less”. This should be altered to say a minimum setback of 50m, there are many existing house which are 10m off a property boundary, why would then allow potentially another 6 new buildings to be located 10m away from an active farm, say a broad cropping operation, which when harvesting will create significant land use conflict. If you want less than 50m, lodge a DA.

Thanks Mark

Mark Dicker
Director Planning & Environmental Services
Blayney Shire Council

I agree to the above statement

Yes

Anita Skinner

From: noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 12 April 2021 2:57 PM
To: Anita Skinner
Cc: DPE PS ePlanning Exhibitions Mailbox
Subject: Webform submission from: Planning Amendments for Agriculture

Follow Up Flag: Follow up
Flag Status: Flagged

Submitted on Mon, 12/04/2021 - 14:57

Submitted by: Anonymous

Submitted values are:

Submission Type

By ticking this box, I confirm I am a representative of my council and agree to be contacted by the department about incorporating certain clauses in to our LEP.

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I would like my submission to remain confidential

No

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Submission

To whom it may concern,

Further to my earlier submission, I have thought of another issue which needs to be considered by implementation of these proposed changes.

I note many rural land holdings are old and are formed by ownership of multiple allotments. It is noted a lot can be sold at any time.

If development under these proposed changes allows 'farm stay accomodation', essentially multiple farm stay buildings could end up on multiple lots. What would stop someone selling a lot or lots which each contain a farm stay building on it to multiple different people? In effect by default creating significant rural fragmentation and potential for wide spread land use conflict to neighbouring properties.

Would there be a requirement under these changes for all lots in the holding to be consolidated where the lot size is less than the Minimum Lot Size for a dwelling required in the relevant LEP? Consolidation could be unnecessarily onerous (expensive) and prevent the development from happening, however how do you address the issue?

I do not think a condition of consent could be applied as part of the CDC to prevent sale of a specific lot/s and I do not think a note on the title could also be used, legal advice may be required.

Thanks Mark

I agree to the above statement

Yes

Anita Skinner

From: noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 12 April 2021 10:58 PM
To: Anita Skinner
Cc: DPE PS ePlanning Exhibitions Mailbox
Subject: Webform submission from: Planning Amendments for Agriculture

Follow Up Flag: Follow up
Flag Status: Flagged

Submitted on Mon, 12/04/2021 - 22:58

Submitted by: Anonymous

Submitted values are:

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By ticking this box, I confirm I am a representative of my council and agree to be contacted by the department about incorporating certain clauses in to our LEP.

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Submission

The proposed changes are generally in line with recommendations set out in our recent Rural Land Review

I agree to the above statement

Yes

Anita Skinner

From: noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>
Sent: Tuesday, 13 April 2021 4:46 PM
To: Anita Skinner
Cc: DPE PS ePlanning Exhibitions Mailbox
Subject: Webform submission from: Planning Amendments for Agriculture

Follow Up Flag: Follow up
Flag Status: Flagged

Submitted on Tue, 13/04/2021 - 16:46

Submitted by: Anonymous

Submitted values are:

Submission Type

By ticking this box, I confirm I am a representative of my council and agree to be contacted by the department about incorporating certain clauses in to our LEP.

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Submission

Proposed Amendments: Agritourism and small scale agriculture development
Feedback from Yass Valley Council:

Farmstay Accommodation

♣ The requirement for effluent management for Farmstay Accommodation need to be strengthened: "if human waste storage devices are proposed, these devices must not be emptied on sites without reticulated sewerage." Encouraging camping etc in areas which are not connected to an effluent disposal system has the potential to create a public health problem, particularly if located near or in a catchment to a waterway/ shallow groundwater table.

♣ Yass Valley has concerns that these exempt Farmstay Accommodation provisions may be used for accommodation for FIFO tradespeople working on nearby State Significant Projects e.g. Wind and Solar Farms, road construction. It will also fall back to

Councils to regulate these camping/caravan areas to ensure they are not used for long term accommodation. Accommodation shortages are currently being experienced in Yass Valley, on top of housing affordability issues within the region.

♣ There are many lots of rural zoned land without a dwelling entitlement that owners could argue are used as 'working farms' e.g. if they are used to graze cattle. Farm stay accommodation should only be permissible if the lot has a dwelling entitlement.

♣ In terms of requiring farm stay accommodation to be clustered together (or within 300 metres from the existing dwelling), this may be appropriate in maximising farm infrastructure and security. It may also allow any existing eluent system's to be utilised, although there is no guarantee they systems will have capacity.

Note: The RFS have or are in the process of amending Bushfire Prone Land mapping across the state to include grasslands. As such this will prevent Farm Stay Accommodation proposed as Exempt Development occurring on a large proportion of rural zoned land in NSW.

Farm Events

♣ Setbacks for Farm Event's should specify 1,000 metres from the nearest existing dwelling house not on the same property. If a landowner has agreed to host a farm event on their property, it should be at their discretion how far it is held from their own dwelling.

♣ The proposed requirement that written advice must be obtained from a water utility if water supply or sewerage services are to be provided for a Farm Event premises, yet is silent on the requirements for any on-site sewerage management system (OSSM's). The vast majority of rural zoned land cannot be serviced by reticulated water or sewer and relies on rainwater tanks, bores and OSSM's.

♣ Farm Events – operational requirements should include a requirement to obtain a Liquor License if applicable.

I agree to the above statement

Yes



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

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Agritourism and small scale agriculture development: Proposed amendments to support farm businesses and regional economies

Council's Response

1.0 Background

Over a third of the Kiama Municipality is zoned for Primary Production or Rural Landscape. The net value of agriculture exports from Kiama is \$26M per annum.

Kiama has a strong history in agriculture, however recent industry adjustments have changed the viability of traditional farming businesses. New farm based enterprises have the potential to grow the local economy however any reform in this sector needs to ensure the long term protection of agricultural land as a resource for food and fibre production.

The agriculture sector is susceptible to a relatively high level of risk rising from:

- economic factors such as global markets, trade, inflation and transportation disruptions,
- production factors such as access to resources, changes in energy and water prices, production costs, profits, production process failures and labour disruptions,
- environmental factors such as resource depletion, pollution and natural/man-made disasters,
- governance issues such as regulatory environment and sovereign risk, and
- to a lesser extent, societal challenges such as community attitudes towards development, pressure groups and public liability claims.

2.0 Kiama Local Strategic Planning Statement 2020

Last year, Council adopted its Local Strategic Planning Statement 2020 to set a 20-year plan, integrating land use, transport and infrastructure planning. The Kiama LSPS 2020 aligns with the Directions set out in the Illawarra-Shoalhaven Regional Plan and sets the land use framework for Kiama Municipality's economic, social and environmental land use needs over the next 20 years. It addresses the planning and development issues of strategic significance to the community through planning priorities and actions, spatial land use direction and guidance.

The LSPS is guided by five (5) themes:

Theme 1: Manage sustainable growth

Theme 2: Develop a diverse and resilient economy

Theme 3: Protect rural landscapes

Theme 4: Mitigate and adapt to climate change and protect our environment

Theme 5: Foster vibrant and accessible places

Theme 3 of the LSPS seeks to protect rural landscapes within the Municipality and contains two (2) Planning Priorities and seven (7) associated actions:

Planning Priority 8: Protect viable agriculture and agricultural lands

- Lobby State Government to finalise the Agricultural Lands Mapping project, as identified by the Illawarra-Shoalhaven Regional Plan, to ensure the earliest possible completion of this project, particularly for the Kiama Municipality.
- Following completion of the Agricultural Lands Mapping project, review rural zonings of the Kiama Local Environmental Plan (LEP) 2011 to ensure agricultural lands are appropriately zoned.
- Review land use tables of rural zonings in the Kiama LEP 2011 to ensure appropriate mix of uses permitted in rural zones, balancing environmental outcomes.
- Work with the Illawarra-Shoalhaven Joint Organisation and neighbouring Council to lobby State Government to make changes to Standard Industry LEP and other relevant environmental planning instruments to facilitate the protection of agricultural lands

- Continue to participate in the Sydney Per-Urban Network (SPUN) of Councils and/or other similar collaborations.
- Develop a contemporary Rural Landuse Strategy to foster and promote viable agriculture.

Planning Priority 9: Protect scenic rural landscapes.

- Investigate opportunities to introduce planning controls to protect scenic rural landscapes.

These planning priorities reflect the Municipality's aspirations for agriculture to be valued as a viable contributor to the Municipality's economy rather than just for its scenic qualities. This is a viable option due to our favourable climate and strategic connectivity to domestic and international markets.

We need to be very careful about the types and mix of agricultural and/or ancillary uses that are permitted in our rural zones. The introduction of uses that fundamentally shift the market value of important agricultural lands (such as rural residential and some tourism uses) should be avoided. As should introducing smaller rural lot sizes that have the potential to impact on production capacity, land values and business viability. Consideration of different land tenure arrangements may be appropriate to support new farming enterprises.

It is acknowledged that the agriculture sector is susceptible to a relatively high level of risk rising from:

- economic factors such as global markets, trade, inflation and transportation disruptions,
- production factors such as access to resources, changes in energy and water prices, production costs, profits, production process failures and labour disruptions,
- environmental factors such as resource depletion, pollution and natural/man-made disasters,
- governance issues such as regulatory environment and sovereign risk, and
- to a lesser extent, societal challenges such as community attitudes towards development, pressure groups and public liability claims.

3.0 Exhibited Explanation of Intended Effects

The general intent of the proposed changes, to support agritourism and small-scale agricultural development, aligns with Kiama Municipal Council's desire to see economic opportunities from farm diversification and value-adding of agricultural products.

It is important that farmers are supported in the development of local agri-business that supplies the local food economy, encourages agritourism and facilitates a closer connection between producers and consumers of food.

However, Council believes the State's new draft provisions have gone too far and will result in outcomes incompatible with the desired future of agriculture and the use of rural land in the Kiama Municipality.

Use of a one-size fits all planning solution to problems faced by agriculture in other parts of the state will not develop outcomes reflective of the unique features that make the Kiama Municipality such a desirable place to work and live.

What appears as support for farmers will only incentivise non-agricultural use of rural land. The planning system must find ways to accommodate the different pressures that coastal NSW communities face compared with western councils. It is therefore recommended that the Government clearly define what is meant by the term 'farm' and consider ensuring that any amendments apply to those properties only where certified primary production is occurring. For example, the landowner or tenant may be required to hold 'primary production' status from the ATO.

Larger properties in central and western NSW may comfortably accommodate these proposed changes without adverse impacts but they will be counterproductive in the more intensively developed coastal fringe.

Whilst additional land use definitions and development standards may benefit agriculture in other areas of the state, the reality for coastal areas is quite the opposite.

The planning system intends to protect agricultural land and secure it as a resource for food production. Enabling farm stay accommodation, farm gate activities and farm events as mostly exempt or complying development, has the potential incentivise accommodation in a landscape where property sizes are significantly less than the Minimum Lot Size.

Likewise, events as the principal use of rural land could subjugate agriculture to an ancillary use. This is particularly the case in the Kiama Municipality where high land values, housing shortages and a strong demand for tourist accommodation will only encourage landholders to invest to these land use activities to the detriment of agriculture.

No clear direction has been provided as to how an assessment will be made that the existing principle use of the land is for production of agricultural/primary production goods for commercial purposes.

The current requirement for farm stay accommodation to only occur on a working farm helps prevent this land use being used to develop dwellings on rural land for non-agricultural purposes. Clear guidelines designed to protect the predominantly agricultural use of land will be essential if this amendment is continued with.

As property statistics show, 50% of rural properties are less than 3 hectares, and very few are Farmland rated, meaning that the majority of properties are utilised for lifestyle purposes, not to undertake legitimate agricultural activities. Guidelines must ensure that any additional accommodation must be related to the agricultural use of land, and limited to properties not less than 10 hectares.

The Department of Primary Industries (DPI) website states that these changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses; however, the proposed changes will actually provide these development opportunities for rural landholders irrespective of current land use.

Whilst the proposed changes could benefit some legitimate agricultural producers, the weakening of the standard definition for 'farm stay accommodation' and the minimal or non-existence requirements for agriculture to be associated with the other uses means that 'hobby farmers' and other rural landholders not actually farming will be able to carry out these developments with little scrutiny.

The proposed changes will also generate further land use conflicts in rural areas given the large number of rural lots in the Kiama Municipality and the proposed setback exemptions that would enable agritourism development to take place in close proximity to intensive agriculture. This is because existing dwellings are often already in close proximity to such developments as a result of the small property sizes in the LGA.

Allowing up to 52 farm event days a year; allowing a 500 square metre footprint for all buildings used for farm gate activities and farm events; accommodating up to 6 x 60m² dwellings for agritourism as complying development and 14 day camping stays as exempt development is excessive and will drive up the price of rural land, diminish its productive capacity and create a substantial compliance burden for councils.

4.0 Farm Stay Accommodation

The lack of new definition is a concern. Councillors would recall that during the Tang Court Hearing the Commissioner ruled that a working farm was not required to be in place before the commencement of the farm stay accommodation. The wording of the EIE alludes to the need for a working farm to be further reduced. The concern is that the 'agri' will be lost to accommodate the 'tourism'.

It is also concerning that, for all intended purposes, someone could create a caravan park on a rural property without the need for development consent from Council. The exempt requirements for *farm stay accommodation* to occur in tents, caravans etc. does not limit the

number of tents, caravans etc. While the tenancy period is limited to 14 days, the EIE does not include any requirements to limit the cumulative numbers of days per year.

It would appear that the intent of these amendments are to allow temporary, small, ad hoc, campsites to occur, presumably in conjunction with *farm events* (i.e. weddings etc.). However, the proposed amendments do create a loophole for caravan parks to occur.

The EIE makes no reference to the need to obtain approval under the *Local Government Act 1993* to operate a caravan park or campsite. Section 68 of the *Local Government Act 1993* prescribes that 'approval' from Council is required to operate a caravan park or campsite. In many instances, when an activity is defined as exempt development for the purposes of the *Environmental Planning and Assessment Act 1979 (the Act)* specific reference is made to reinforce that approval under different legislation is required. A good example of this is the exemption for approval under the Act for footpath dining. The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* outlines that while a DA is not required approval under the provisions of the *Roads Act 1993* is still required.

This potential loophole needs to be clarified.

The EIE asks the following questions in regards to the proposed farm stay accommodation amendments:

1. *Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?*

Council Response: No comments.

2. *Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?*

Council Response: Farm stay accommodation should only be permissible in conjunction with a rural dwelling.

3. *For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?*

Council Response: The Kiama Development Control Plan (DCP) 2020 requires farm stay accommodation to be clustered within 100m of existing dwellings on site. Farm stay accommodation, approved as complying development, should not have a more relaxed clustering requirement, 300m is too generous.

4. *Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.*

Council Response: The current Standard Instrument definition limits farm stay accommodation to a building or place, with the total number of rooms to be limited by the operation of clause 5.4. If the definition is to be expanded to allow for numerous buildings or places to be used for farm stay accommodation that councils should have the ability to limit the number of buildings per hectare etc.

5.0 Farm Gate Activities

The proposed definition could allow for restaurants and cafes to be approved by Private Certifiers throughout our rural areas. As the majority of our rural properties are larger than 10 hectares these buildings could be 10 metres tall (potentially 3 storeys) and up to 200 square metres each.

This is fairly significant development within our rural areas which are renowned for their scenic qualities. It will also be extremely difficult to monitor/police the requirement for *farm gate activities* to 'predominantly' sell produce grown on the farm or in the 'surrounding area'.

It is suggested that the definition should be amended to ensure that restaurant/café can only occur if the processing etc. is also occurring. This approach was taken when the State introduced *artisan food and drink industries* into the Standard Instrument.

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,*
- (b) a restaurant or cafe,*
- (c) facilities for holding tastings, tours or workshops.*

While a restaurant or café can also occur under this definition it has to be done so in conjunction with the manufacturing of food or drink.

Alternatively, the Complying Development option list above should not proceed. This will ensure that Council retains some level of control over the erection of large commercial/tourist structures in our rural landscapes.

The EIE outlines that when amending the Standard Instrument that both *farm gate activities* and *farm events* will automatically become permissible wherever *agriculture* is permissible.

It is noted that the Department are asking councils to consider whether to adopt the new optional clauses for farm stay accommodation and farm gate activities and identify the zones in which they wish to allow the new farm events and farm gate activities land uses.

Council considers the 'Opt In' methodology to be an efficient way of bringing any proposed amendments into local environmental plans.

When preparing the 2011 LEP Council elected to only make some of the sub-types of agriculture permissible and not the parent definition. This means that when the amendment occurs to the Standard Instrument that the new *agritourism* definition, and associated sub-definitions, will be prohibited within the Kiama Municipality. It is not expressly stated by the EIE how the new *agritourism* definition, and associated sub-definitions, will be introduced into the exempt and complying development pathways. It is assumed that amendments will be made to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (CODE SEPP)*. If this is the case *agritourism* will not be permitted as complying development within the Kiama Municipality, due to the provisions of clause 1.18 of the CODE SEPP. It is assumed that the specific Exempt Development Codes, under Part 2 of the CODE SEPP, will ensure that a development needs to be permissible under the provisions of the relevant EPI to be considered exempt development.

Kiama Municipal Council is likely to 'Opt In'. However, as the new uses will not be immediately permissible within the Municipality we are keen to ensure that any amendments reflect the current strategic land use policies already adopted by Council. This will likely occur following the preparation and adoption of the contemporary Rural Landuse Strategy, identified by the Kiama LSPS 2020.

The EIE asks the following questions in regards to the proposed farm gate activities amendments:

5. *How far do you think a roadside stall should be setback from the road?*

Council response: The question being asked should be: "how close to the road should roadside stalls be"? When does a roadside stall stop being on the roadside? The current definition for roadside makes no reference for the need for the stall to be on the roadside. Rather than imposing a minimum setback requirement, a maximum setback should be imposed.

6. *What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?*

Council response: As outlined above, Council considers it inappropriate to include new/alterd etc. farm gate activity buildings in the complying development pathway.

6.0 Farm Events

While the hours of operation and number of events/guests are reasonable, for exempt and complying development, this new definition will again allow for large/tall buildings to be approved on rural properties by Private Certifiers.

The EIE asks the following questions in regards to the proposed farm events amendments:

7. *The proposed maximum number of people and events per day for exempt and complying development are:*

- a. *52 event days per year and up to 30 guests per event, or*
- b. *10 event days per year and up to 50 guests per event Are these appropriate?*

Council Response: These limits are considered appropriate but should be an upper limit. Any intensification on these limits would lead to increased amenity issues and should be addressed through the Development assessment pathway.

8. *What events, if any, do you think should be excluded from the definition of farm events?*

Council Response: The development standards contained in the EIE will ensure that farm events are of a minor and temporary nature. The size of these events will safeguard the amenity of the neighbouring properties and the agricultural viability of the land. No specific events need to be excluded.

9. *Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.*

- a. *RU1*
- b. *RU2*
- c. *RU4 zones*
- d. *Other zones (please specify)*

Council Response: For the purposes of the planning system, define 'destination weddings'. Weddings are a type of event and therefore either fall under the proposed farm event definition or are an event listed under the current *function centre* definition

10. *Should the department prepare a model clause for destination weddings which councils can choose to adopt?*

Council Response: Council agrees with the proposal of establishing a model clause and offering individual Council's to 'opt in'. Individual LGAs that have significant rural land face common rural amenity issues. However, they can also face a considerable amount of variability in the community's opinions and sentiment in setting local land use planning policy. A standardised framework across NSW may become too simplified and too easy to circumvent for compliance.

11. *Is there any rural land or areas in which agritourism activities should not be permitted? If yes, why?*

Council Response: As outlined above, Council will consider were to permit agritourism activities following the completion of its Rural Landuse Strategy and following a review of the implications of these new activities once full definitions etc. have been furnished.

7.0 Small-scale Processing Facilities

This proposal is generally supported. The proposed setbacks align with the thresholds for designated development.

Clarification is needed regarding the size of any structures that could be erected under this proposal.

The EIE asks the following questions in regards to the proposed small-scale processing facilities amendments:

12. Should any other agricultural produce industries be complying development? What standards should apply?

Council Response: No

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

Council Response: Council has no position on this matter.

14. Should any additional standards be included?

Council Response: Council has no position on this matter.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a. as complying development?*
- b. through the standard DA process?*

Council Response: Council has no position on this matter.

8.0 Rebuilding of farm infrastructure

The EIE asks the following questions in regards to the proposed rebuilding of farm infrastructure amendments:

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

Council Response: Rebuilding rural infrastructure in the same location that is subject to flooding or that results in a threat to dwellings (i.e. rebuilding existing combustible class 10 structures within 10m of dwellings in bushfire prone areas) would not seem wise.

17. Should any additional standards be included?

Council Response: No

9.0 Stock Containment Areas

The EIE asks the following questions in regards to the proposed stock containment areas amendments:

18. What type of permanent infrastructure should be permitted for stock containment areas?

Council Response: No concerns raised.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

Council Response: No concerns raised.

10.0 Farm Dams

The EIE asks the following questions in regards to the farm dam amendments:

20. *How could we simplify planning provisions for farm dams?*

Council Response: Under the Kiama LEP Farm Dams are a type of *water storage facility*.

water storage facility means a dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment.

Farm dams, or *water storage facilities*, are only permissible with consent with our RU1 Primary Production and RU2 Rural Landscape zones. Providing a sub-definition for farm dams, as opposed to larger dams, could be appropriate.

Some Councils have provided provisions in their LEPs to make farm dams exempt development if they have a maximum capacity of 1 mega litre and a maximum wall height of 1m (refer to Schedule 2 of *Cooma-Monaro Local Environmental Plan 2013*).

11.0 Biosecurity

The EIE asks the following questions in regards to the proposed biosecurity amendments:

21. *Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?*

22. *Should any additional standards be included?*

Council Response: No concerns raised.

12.0 Rural Dwelling Setbacks from intensive agriculture

The EIE asks the following questions in regards to the proposed rural dwelling setbacks from intensive agriculture amendments:

23. *Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?*

24. *From which point should the setbacks be measured?*

- a. *From the proposed or existing intensive agricultural use*
- b. *From the property boundary shared with land used for intensive agriculture*
- c. *A combination of the above*

Council Response: No concerns raised.

13.0 Recreational Beekeeping

The EIE asks the following questions in regards to the proposed recreational beekeeping amendments:

25. *Are the proposed development standards appropriate and are any additional standards needed?*

Council Response: No concerns raised.

How to contact Council

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Monday to Friday (excluding public holidays)



KIAMA MUNICIPAL COUNCIL
your council, your community

Agritourism and small-scale agriculture development: Proposed amendments to support farm businesses and regional economies

Kempsey Shire Council supports the intent of the proposed changes. We are expressing our interest in taking part in the future changes. We reserve the right to not proceed if the later detail around exempt and complying development codes are not considered suitable in the Kempsey context. We have a keen interest in minimising impacts on existing uses and maintaining an appropriate scale of activities permitted as exempt or complying.

Comments have been made on each of the proposed amendments and Council has responded to the consultation questions.

3.2 Farm Stay Accommodation

Current SI definition

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.

Note—

See clause 5.4 for controls relating to the number of bedrooms.

Farm stay accommodation is a type of ***tourist and visitor accommodation***—see the definition of that term in this Dictionary.

Proposed SI definition

- Remove reference to working farm & secondary business
- Replace with existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes to ensure a farm stay supplements an existing commercial farming business
- Enable farm stay accommodation on a farm that is currently not producing goods because of drought or similar events outside the landowner's control
- Include accommodation in a building and camping (camping currently not included under definition).
- Amend definitions of camping ground and caravan park to exclude tents, campervans & caravans erected on land for the purposes of farm stay accommodation.
- Intended to facilitate small-scale camping being undertaken on a farm as exempt development
- Section 94 contributions?
- If a change of use is proposed, will the 'Use of land' provisions apply also?
- No requirements are provided regarding access. If a new access is proposed, approval is required or prohibit new access being installed from the public road.
- No setbacks from adjoining dwellings have been included.

Exempt development

Change of use of an existing dwelling or part of a dwelling

- How do these provisions fit into the SEPP (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021?
- Will a timeframe limitation be included for the period of occupancy?

- Waste management
 - How will waste water (blackwater) be managed?
- Fire safety
 - New fire safety standard measures are being introduced via the SEPP (Affordable Rental Housing) 2009 for Short-term rental accommodation. These fire safety standards provisions should also apply in this instance.

Use of land for farm stay accommodation

- Operational requirements
 - Is a register to be kept advise number of persons at any one time & the length of stay.
 - Does the site need to be included on the proposed STRA Register
- Location and size
 - To meet the proposed definition of Farm stay accommodation much of this use will occur on rural zoned land. As this development cannot occur on land that is bush fire prone land, it rules out the majority of rural farming land in the Kempsey LGA.
- Waste management
 - As much of this use will occur on rural zoned land which is not serviced by reticulated sewerage but On-Site Sewage Management systems (OSMS). OSMS should be included.

Complying Development

Change of use of an existing dwelling or manufactured home

- Bush fire prone land and flood control lots
 - As farm stay accommodation is a type of tourist and visitor accommodation, and tourist accommodation is identified as a 'special fire protection purpose' under the provisions of 100B of the *Rural Fires Act 1997* and therefore requires a bush fire safety authority, complying development cannot be carried out on much of the rural zoned land in the Kempsey LGA as it is bushfire prone land.

Erection, alteration or addition to a building or manufactured home

- Use, location and size
 - The erection of a dual occupancy, secondary dwelling on RU1, RU2, RU4 & R5 land under Kempsey LEP is required to be within 100m of each other. By permitting a new building or manufactured home for farm stay accommodation within 300m of the existing dwelling alters the intent of this standard. Can this distance be varied?
 - The term 'dwelling' should not be utilised. A dwelling is a type of *residential accommodation* which does not include tourist & visitor accommodation.
- Waste management
 - How will waste water (blackwater) be managed?

Development Application

- Will the property be required to be registered on the STRA register?
- A timeframe for new buildings or manufactured homes should be included, similar to tents, caravans, campervans or other similar portable and light weight temporary shelters.

3.3 Farm gate activities

Proposed definition:

Farm gate activities includes

- a. the processing, packaging and sale of agricultural produce, or
- b. a restaurant or café or
- c. facilities for the holding of tastings, workshops or providing information or education to visitors

for agricultural produce grown on the farm or predominantly grown in the surrounding area.

- The terminology 'predominantly grown in the surrounding area' is quite broad and is likely to be abused. This terminology does not make it clear that the principal use of the land must be the production of agricultural goods for commercial premises.
- Section 94 contributions?
- If a change of use is proposed, will the 'Use of land' provisions apply also?

Exempt development

Use of land for farm gate activities

- Setbacks
 - No setback from adjoining dwellings has been included
- Site location and access
 - If a new access is proposed, approval is required or prohibit new access being installed from the public road.
- Maximum guests
 - A maximum number of 50 guests can generate a number of vehicles. On-site parking should required
- Waste management
 - Are amenities required to be provided for guests

Change of use to a roadside stall

- If no existing conditions are in place for hours of operation reliance is made on Clause 2.20B of the Codes SEPP. The hours of operation within clause 2.20B are different to the proposed 'farm gate activities' hours of operation. As a *roadside stall* is a subset of *farm gate activities* the hours of operation should be the same.
- Clause 2.20B of the Codes SEPP needs to be amended to remove *roadside stall*.
- If no existing condition for car parking, vehicular movement, traffic generation, loading, waste management and landscaping are in place, how will these be addressed?
- Does the use of land for farm gate activities provisions apply in addition to the change of use provisions?
- All of the site access and parking provisions for the *Erection of a roadside stall* should also apply to the change of use to a roadside stall

Erection of a roadside stall

- Building use, location and size
 - No setbacks from boundaries or adjoining dwellings provided
- Site access and parking
 - Verge is to be graded – to what standard?

- Why have the *Note: Approval from the roads authority is required for any new access driveway* when the development must use an existing access point to a road?

Complying Development

Change of use of an existing building

- Setbacks
 - Will 50m setback from fence or otherwise marked property boundary achieve adequate APZs
- Waste Management
 - How will waste water (blackwater) be managed?

Erection, alteration or addition to a building for a farm gate activity

- Setbacks
 - Will 50m setback from fence or otherwise marked property boundary achieve adequate APZs
- Waste Management
 - How will waste water (blackwater) be managed?

Development Application

- The permissible floor area should align with what is permitted under exempt or complying

3.4 Farm events

Agriculture -> Agritourism -> Farm events

Exempt development

Use of rural zoned land

- Setbacks
 - If any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation gate (?????) activity may have the same setback
- Waste Management
 - How will waste water (blackwater) be managed?
- Parking needs to be provided on-site
- Comply with Council road setback provisions

Complying Development

Change of use of an existing building to farm event premises

- Waste Management
 - How will waste water (blackwater) be managed?
- Parking needs to be provided on-site
- Neighbours to be notified of event
- Comply with Council road setback provisions

Erection, alteration or addition to a farm event building

- Waste Management

- How will waste water (blackwater) be managed?
- Parking needs to be provided on-site
- Comply with Council road setback provisions

3.5 Additional proposed changes relating to agritourism

Bush fire prone land

- Clause 1.19A of the Codes SEPP does not apply to non-habitable detached development that is more than 6m from any dwelling house.
 - What if the building is for farm gate activities or farm events and therefore non-habitable, will it be allowed on BAL-40 or BAL-FZ land?

Business identification signs

- Signs are to be wholly within the property boundary and only on the site that the farm stay accommodation, farm gate activities and farm event use is occurring.
- 2 signs per landholding is sufficient
- Need to have size limit on signage

Free standing signs

- Must not impede with clear sight distance of 250 metres to an approaching vehicle along the road or comply with the sight distance requirements of Austroads Part 3, Table 5.5
- Free standing signs can create trip hazards for pedestrians
- Should not be additional to the Business Identification Signs. Needs to one or the other.

3.6 Small-scale processing plants

- Should not operate on Sunday
- How is waste managed?
- Can they have employees that don't reside on the property?
- Number of employees should be capped
- Parking to be provided on-site
- Can a retail space be provided?

Consultation questions

3.2.2 Farm stay accommodation

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
All setbacks should be in accordance with current regulations for each use.
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?
No, but provisions will need to be made for waste water (blackwater) is managed.
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?
Yes, Council should be able to determine the separation distance to ensure it aligns with Strategic Planning of the area.
4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.
No comment

3.3.2 Farm gate activities

5. How far do you think a roadside stall should be setback from the road?
The roadside stall needs to be wholly within the property boundary and setback at least 3m from the site boundary.
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?
 - *Setbacks from adjoining dwellings*
 - *Management of waste water*
 - *Onsite carparking*
 - *Hours of operation for complying development*
 - *Restriction on development if similar development within a certain proximity*
 - *Food safety provisions*

3.4.2 Farm events

7. The proposed maximum number of people and events per day for exempt and complying development are:
 - a) 52 event days per year and up to 30 guests per event, or
 - b) 10 event days per year and up to 50 guests per event

Are these appropriate?

52 event days per year with up to 30 guests per event should require a DA.

10 event days per year with up to 50 guests per event is suitable as exempt or complying development.

8. What events, if any, do you think should be excluded from the definition of farm events?

Field day, festival, music festival, outdoor entertainment facility, markets

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.

- a) RU1
- b) RU2
- c) RU4 zones
- d) Other zones (please specify)

Destination weddings need to be clearly defined and what is permitted as part of them.

If it is intended for destination weddings to be large events then the RU1, RU2 and RU4 zones would be sufficient.

If it is proposed to enable weddings to be held on land under the Farm events provisions, then the limitation on the number of guests for exempt or complying development would likely result in DAs being required. If these types of 'large scale events' can be addressed under another clause then this may reduce the requirement for a DA.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

Yes

11. Is there any rural and or areas in which agritourism activities should not be permitted? If yes, why?

RU5 Village. These are predominately small parcels of land and this type of business may not be compatible with the existing character or strategic direction of the village. Produce would not necessarily be grown on these small parcels.

RU3 Forestry. Does not comply with the objectives of the zone.

3.6.2 Small-scale processing plants

12. Should any other agricultural produce industries be complying development? What standards should apply?

Wineries, distilleries, cheese & butter factories.

Standards on operating hours, gross floor area of processing plant, size of retail space/cellar door, number of employees, on-site carparking

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

Aligns with other types, but don't understand why beef is only 100 carcasses per annum.

14. Should any additional standards be included?

Sunday operation could create conflict with adjoining landowners

How is waste managed, e.g. waste water, carcasses, etc

Number of employees should be capped

On-site parking required

Limit on maximum floor area of processing plant & retail space if permitted

Noise and odour need to be addressed

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a) As complying development?
- b) Through the standard DA process?

These should remain as designated development as the scale of processing is significantly larger than the proposed small-scale processing plant provisions.

3.7.2 Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

No.

- *Building provisions may need to be amended to comply with flood planning controls.*
- *All current exempt development standards in the Codes Sepp 2.32 need to be retained*

17. Should any additional standards be included?

- *Flood planning controls*

3.8.2 Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?

None as the proposed amendments relate to the construction of stock containment areas to temporarily contain livestock to assist during and immediately after natural disasters. If infrastructure is required for routine animal husbandry purposes, the Codes SEPP provides exempt provisions for Stock holding yards not used for sale of stock

19. What type of permanent infrastructure should not be permitted for stock containment areas?

Refer above.

3.9.2 Farm dams

20. How could we simplify planning provisions for farm dams?

A consistent approach to the development and expansion of farm dams is required. Alignment with NSW Industry & Investment PrimeFact 781 needs to be considered. Exempt development could be granted provided a licence from NSW Office of Water is not required & perhaps complying development if a licence is required.

3.10.2 Biosecurity for poultry farms and pig farms

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

No. Consent should be required to ensure alignment with best practice and industries standards is sufficient and conflict with adjoining land uses does not occur.

22. Should any additional standards be included?
No

3.11.2 Rural dwelling setbacks from intensive livestock agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?
Yes. Rural dwellings should be setback 1,000m from any existing or proposed pig farm, feedlot or poultry farm and 500m from any existing or proposed other intensive livestock agriculture development.

24. From which point should the setbacks be measured?

- a) From the proposed ore existing intensive agricultural use
- b) Form the property boundary shared with land used for intensive agriculture
- c) A combination of the above
- c) A combination of A and B*

3.12.2 Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?

- *Should hives be restricted to A docile strain of bees particularly in residential zones*
- *As residential lots become smaller is the 1m within any lot boundary sufficient buffer from the adjoining dwelling?*
- *Water must be provided for the bees on the property on which the hives are located*
- *Proposed changes to number of hives:*
 - *2 hives for lots up to 500m²*
 - *4 hives for lots 500m² to 1000m²*
 - *6 hives for lots above 1000m²*
 - *No limit for lots in a rural zone*



16 April 2021

Dept. Planning, Industry & Environment
PO Box 1226
NEWCASTLE NSW 2300

Contact: Iain Rush
Our Ref: DOC2021/016921
Your Ref: Agritourism Planning Reforms

By email: hunter@planning.nsw.gov.au

Dear Sir/Madam

Submission, Agritourism and Small-scale Agriculture Planning Reforms

Thank you for the opportunity to provide comment on the Department of Planning, Industry and Environment's (DPIE) proposed agritourism and small-scale agriculture planning reforms. While we support DPIE's commitment to enable opportunities for farmers to diversify their source of income, we note the absence of background information and evidence to support some of the proposed reforms.

We believe evidence is crucial to help 'weigh up' the advantages and disadvantages of the proposed reforms, consider anticipated take-up and quantify the impact of the reforms on servicing, the environment and the economy. Above all, it is important that DPIE consider whether the reforms will actually give rise to significant time and cost savings for farmers, and if so, whether these savings are worth lowering the 'assessment bar' for certain activities.

If DPIE decide to pursue the proposed reforms, we strongly recommend the final legislation is clearly articulated toward 'small scale' agritourism, i.e. development with minimal impacts. In this regard, we are concerned that some of the proposed reforms are likely to have more significant impacts and reduce opportunities for councils to identify issues and prevent them before they become a major problem. For example:

- On-site Sewage Management Systems (OSMS) being used for something they are not designed or capable of managing;
- development encroaching on OSMS infrastructure and operation;
- development occurring without appropriate consideration for increased water supply or wastewater management;
- amenity conflicts, due to noise and odour;
- required upgrades to ensure compliance with the National Construction Code (NCC) and planning for bushfire requirements; and
- substandard fit-outs of food and drink premises.

We are concerned that the proposed reforms may require councils to address these issues retrospectively, potentially resulting in considerable additional cost for farmers.

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Our specific concerns are provided under the following headings.

Repurposing dwellings for farm stay accommodation

Our concern relates to the proposed reform to permit, as exempt development, a change of use of an existing dwelling (or part of an existing dwelling) for farm stay accommodation. We are of the view that this reform is inappropriate for the following reasons:

- The proposed reform would introduce additional loading on the land holding's septic system. Capping the number of guests at two per bedroom may have substantial implications for the type and capacity of OSMS (refer below).
- Existing dwellings have not been designed to be used as tourist accommodation. Ordinarily, larger asset protection zones would be considered if tourists are residing on the site as occupants are not familiar with the local roads and require assistance or time to make their evacuation plan in the event of a natural disaster.
- Similarly, the use of Class 1 buildings for tourist accommodation may not satisfy the NCC in terms of smoke alarms, disabled access provisions, etc.

Capacity and age of on-site sewage management systems

Our concern relates to the level of development and activities that would be permitted without a development application to consider and regulate OSMS. Due to the increased likelihood of public exposure to systems used for a commercial purpose (as opposed to residential purpose only), OSMS may pose a greater risk and thus require a higher level of oversight. In order to do so, councils need to be aware of and have the ability to update our registers to reflect this and plan for monitoring and compliance programs.

It is likely that many of the activities proposed to be permitted without a development application will not come to our attention. As a result, the protection of existing OSMS as well as the sizing of OSMS for developments will not be adequately addressed. This will give rise to long term issues, including underperforming OSMS.

If councils don't have an opportunity prior to the development occurring, such issues are often only detected at the point of system failure, or via Council's monitoring and compliance program, at which time the resolution is complex and costly, and risks to public health and the environment have already been introduced.

The majority of farm properties affected by these reforms will not be serviced and such the proposed reforms may give rise to increased risk of encroachment and/or overloading of existing systems not originally designed and approved for the changed use or new development introduced.

In addition, we note that systems currently in use may be aged and designed/approved to lesser standards historically and thus prone to suffering deterioration or failure should significant changes to hydraulic loads occur. For example, older systems were commonly designed on the basis of proposed occupancy, not necessarily the maximum capacity of the associated dwelling. Such systems were also not commonly designed to cope with modern appliances, such as washing machines, dishwashers, spa baths, etc.

Some protection must be afforded to prevent encroachment and ensure suitability of OSMS. Consideration should include:

- The recognition that OSMS is a key site constraint that must be thoroughly considered and addressed in planning of any proposal in the same manner as other key site constraints and considerations, e.g. bushfire and flooding.
- A requirement that any proposal demonstrates that it will not encroach on any OSMS, as approved. This should include the stipulation of minimum buffer distances in line with Australian Standard 1547. Setback distances that are relevant would include buildings/houses, surface water, including man made drains & dams, recreational areas, retaining walls, etc. that may be introduced.
- Where introducing public to the site (i.e. camping, restaurants, events, etc.), the requirement to establish and maintain physical barriers around approved effluent disposal areas where surface irrigation has been approved for use if not already in place. (e.g. a fence or landscaping, or other practical means). This is important to keep the public away from direct contact with treated effluent.
- The requirement to review and address the suitability of any existing systems where the intended use of an existing building is proposed to change (e.g. residential to commercial accommodation) to ensure that the system meets both the current day standards and can cope with any additional hydraulic load as a result of the change in use.
- The requirement to demonstrate that any wastewater generated in connection with proposed facilities can be suitably and sustainably managed within the site as a whole.
- Suitable provision is made for camping facilities including toilets, showers, washing, cooking amenities and sewage dump points for RV's cassettes and the like.
- Noting provision is made on Page 12 under the heading 'services' for the written advice from a water authority if water supply or sewage services is to be provided by a water authority, similar provision should be made for approval by a council under s.68 of the *Local Government Act 1993* for any alteration to an existing OSMS, or the installation of a new system.

Impacts relating to noise

Our concern relates to noise from an open air/outdoor entertainment venue, noting that outdoor noise is significantly more difficult to contain than indoor noise. Effective methods of managing noise in outdoor situations might include:

- limiting the hours of operation of events, including starting and finishing times and the duration of each event;
- limiting the number or frequency of events that occur within each calendar year; and/or
- imposing minimum distances from sensitive receivers.

The proposed reforms should differentiate between indoor and outdoor events and quiet entertainment as opposed to live music/band/concerts. The type of noise produced, or the type of event should influence noise controls. For example, a small wedding ceremony with quiet background music will have significantly less potential for impact than a wedding reception with live music on an outdoor stage. Noise generated from wedding receptions with live music are far more difficult to contain. As a result it may be appropriate to:

- stipulate that the reception must not start until later in the day and finish earlier at night;
- make allowance for activities of longer duration, e.g. if longer than 5 hours, reduce the finish time accordingly;

- limit this type of activity to a small number per year, e.g. 5 to 10; and
- apply minimum buffer distances.

Intensive Agriculture

Our concern relates to the proposal to increase the maximum number of birds (from 1,000 to 10,000) that may be contained on a poultry farm without development consent. While the increase in setback from other poultry farms is noted, there is nevertheless potential for odour impacts on neighbouring residential properties. Again, we are concerned that the proposed reforms will reduce opportunities for councils to identify and prevent potential odour impacts and apply a condition requiring, for example, an *Operational Plan*, which would include procedures and practices for many activities, including spent litter/dead bird management, noise, etc.

The EIE also states that 'development consent is not required for pig farms with fewer than 20 breeding sows, or fewer than 200 pigs (of which fewer than 20 may be breeding sows) but only if they are not within 3,000 metres of another pig farm'. This too has the potential for odour and noise due to farm activities and truck movements.

Existing agriculture and farming activities must be protected from encroachment and conflict arising from complaints. It is our view that some of the proposed reforms have the potential to intensify land use conflict and the potential for complaints, specifically amenity complaints from those farms participating in agritourism. The cumulative impact on the community beyond a single farm should be considered. If multiple farms engage in agritourism in an area the frequency and impacts are likely to be compounded.

A response to the specific questions listed in the EIE is enclosed.

Again, we appreciate the opportunity to provide feedback to DPIE on the proposed agritourism reforms. If you require any further information, please do not hesitate to contact Council's Senior Strategic Planner, Mr Iain Rush, on telephone 02 4993 4155.

Yours faithfully



Keren Brown
Principal Strategic Planner

Encl.

Enclosure 1: Responses to EIE Questions

Farm stay accommodation – amendment to existing definition

1. Recommend inclusion of setback from quarries in addition to mines. An appropriate setback is also required to vineyards (due to spray drift) and visually significant areas of the LGA.
2. Farm stay accommodation should only be permitted on land that benefits from a dwelling entitlement. Also recommend a control to restrict the number of campers, scale of camping area and duration of stay. Recommend a control in relation to waste management.
3. Support clustering of sensitive land uses and recommend maximum setback of 200 metres from principal dwelling house.
4. Recommend dwelling entitlement and minimum lot size of 10 hectares as this aligns with the standards contained in the *Cessnock Local Environmental Plan 2011*.

Farm Gate Activities

5. Recommend minimum road setback of 25m for roadside stalls. Additionally, development must not be located adjacent to a classified road. Additional controls should be included to mitigate traffic impacts, including controls to address inappropriate sight distance, noting that there will be no recourse for a council to relocate a farm gate activity under the proposed reforms.
6. Additional standards for exempt and complying development – with regard to operational requirements, reduce hours of operation - Sat 8:00am – 2:00pm and Sunday 9:00am to 1:00pm to reduce potential land use conflict. Additional parking to be provided within the allotment to prevent obstruction to the roadway or verge and to facilitate lawful parking.

Farm Events

7. For complying development, 52 event days per year and up to 50 guests per event. For exempt development, 12 event days per year and up to 75 guests per event.
8. Weddings would benefit from a separate definition or a subcategory of farm event land use in order to appropriately separate intensified use which often results in increased amenity impacts and safety concerns.

Council has also received several complaints in relation to horse riding establishments due to traffic movements. These complaints have been further compounded with queuing on classified (single lane) roads to sites with no formal intersection or dedicated turning bays and slow vehicle movements due to towing horse floats particularly for temporary events such as competition days etc. These types of events may not necessarily be appropriate as exempt development as a traffic management plan and intersection upgrades are generally required.

9. Use of rural land for the purposes of a wedding venue should require development consent on the basis of fire safety, amenity impacts, traffic considerations, waste management etc. Such farm events could be considered in the RU1 Primary Production Zone, RU2 Rural Landscape Zone and RU4 Primary Production Small Lots Zone.
10. A model clause should be introduced for ease of adoption that encompasses considerations such as fire safety, amenity impacts, traffic considerations, waste management etc.
11. The scale of a Farm Event would benefit from being considered in the RU4 zone to ensure the dominant agricultural land use is legitimately maintained and to minimise conflicting land uses within this zone in the case of farm events neighbouring land used solely for occupied agricultural purposes.

Small-Scale Processing Plants

12. No comment
13. No comment
14. No comment
15. No comment

Rebuilding of farm infrastructure

16. Yes, however concerns arise whereby flood or bushfire mapping may change over time and therefore a building footprint not previously mapped as flood affected when a structure was first built now be indeed flood affected. This is particularly the case on rural lands where structures can be of a significant age.
17. Definition of natural disaster should be included for clarity (i.e. declared by which agency, such as the State Government).

Stock containment areas

18. Fencing, loading facilities (ramps/races/crashes), water supply (pumps), feed containment unit (such as a grain silo) however these can be lesser in permissible size due to the temporary nature of their required use.
19. Feed containment unit (such as a grain silo) of significant size and permanent in nature.

Farm dams

20. Ensure consistency and ease of understanding of language used across the relevant Acts and Regulations to ensure appropriate implementation across the State.

Biosecurity for poultry farms and pig farms

21. No comment

22. No comment

Rural dwelling setbacks from intensive livestock agriculture

23. No comment

24. Recommendation for the point from which setbacks are to be measured is C (a combination of from the proposed or existing intensive agricultural use and from the property boundary shared with the land used for intensive agriculture).

Recreational beekeeping

25. Review the commercial purpose clause on the basis of the production of the specified hives being in excess of potential personal consumption for the average person.

As a single hive can produce 20-30kg of honey per harvest season (<https://blog.flowersacrosssydney.com.au/beekeeping-guide-beginners/>), there may be a need for keepers to pass on excess stock/supply of honey produced. Provisions could be included to ensure any commercial sale was via wholesale or retail on the basis of appointment. Further to this, there could be the ability to erect a roadside stall as exempt development for the sale of honey produced on the subject property. This could put the recreational beekeeping provisions and the farm gate activity provisions in direct conflict with each other.



PORT STEPHENS COUNCIL

NSW Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Sir/Madam,

RE: Submission on proposed Agri-tourism and small scale agriculture planning reforms

Thank you for the opportunity to provide input on the proposed amendments to the Standard Instrument (Local Environmental Plans) Order 2006, State Environmental Planning Policy (Primary Production and Rural Development) 2019 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The agricultural sector is an important economic and social contributor to the Port Stephens Local Government Area (LGA). Port Stephens Council supports the intent of the reforms which will help the agricultural industry to diversify its economic base and facilitate niche commercial, tourist and recreation uses that complement agricultural industries.

The policy intent of the reforms is reflected in the Port Stephens Local Strategic Planning Statement (LSPS) which includes an action to 'review local plans to encourage niche commercial/tourist and recreation activities that compliment and promote agricultural industries'.

The proposed amendments will make it easier to establish small-scale agri-tourism development and other small-scale agricultural activities to occur on land where the primary use of the land is for agriculture. The reforms should look at including rural land that is not necessarily being used primarily for agriculture. Supporting agri-tourism and associated activities will strengthen our rural community and build resilience. In recent years, rural communities have faced challenges from extreme weather events, land fragmentation and pressure from new urban development. The economic impacts of COVID-19 have included travel and trade restrictions, cancellation of regional events and the temporary closure of local businesses. COVID-19 has changed the way our economy functions, including rural economies.

The Standard Instrument contains controls that limit the size of home industries and home businesses to a floor area of no more than 50m². While this is appropriate for an urban environment, it is limiting to the types of home business and home industries that are suited to land zoned for rural purposes where lot sizes are much larger. The reforms should consider amending Standard Instrument clauses 5.4(2) and (3) so that councils

PORT STEPHENS COUNCIL

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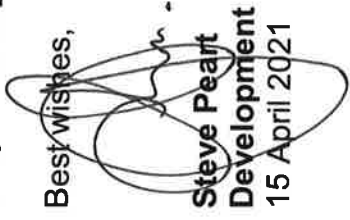
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can provide different floor areas for home business and home industries in rural areas (as opposed to urban areas) to help people in rural areas establish viable home businesses that are compatible with agricultural land uses.

For any further information, please contact Emily Riley, Strategic Planner on 4988 0386 or by email at Emily.riley@portstephens.nsw.gov.au

Best wishes,

A handwritten signature in black ink, appearing to read 'Steve Peart', is written over the printed name and title.

Steve Peart

Development Services Group Manager

15 April 2021

16 April 2021

Jim Betts
Secretary
Department of Planning, Infrastructure and Environment
GPO Box 5341
SYDNEY NSW 2001

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Subject: Proposed planning amendments for Agriculture

Dear Mr Betts

Council refers to the proposed planning amendments for agritourism and small-scale agriculture development. Council has reviewed the proposed amendments and is generally supportive, noting that it goes great lengths to support the diversification of rural industries in accordance with the *Central West and Orana Regional Plan* and the *Forbes Local Strategic Planning Statement*.

The following comments are made for consideration in finalising the proposed amendments:

Farm Events

Council is generally supportive of the new farm events framework. However, Council suggests the following additions and amendments:

- Increase the limit of exempt events to 150 people, or alternatively a ratio per size of lot. For large landholdings the impact of 150 people remains minimal and also allows events to be more financially viable;
- Additional requirements for the supply of appropriate amenities (toilets); and
- Allow councils to 'Opt In' for Function Centres to be Permissible with Consent in rural zones, should this not already be in the case in their LEP. This should be part of process to adopt this plan as per the additional clause for Farm Gate activities.

Farm Gate Activities and Road Side Stalls

Council is supportive of the changes for Farm Gate Activities and Road Side Stalls. However, Council would seek that the requirement which limits the use to items sold on the farm be amended to allow locally made products such as art and products made at neighbouring farms to also be sold at the store. This would allow multiple farmers to come together to host one stall, allowing it to always be staffed and be more financially viable.

Recreational Beekeeping

Further clarification should be provided regarding the difference between recreational and commercial beekeeping to help inform the proposed exempt development provisions. Council's suggestion is that this definition should relate to whether beekeeping is the primary use of the land.

Thank you for giving Council the opportunity to provide comment on the proposed amendments to agriculture. Should you require clarification in relation to Forbes Shire Council's comments, please contact Eliza Noakes, Town Planner, on 6850 2300 (Option 1).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Steve Loane', written in a cursive style.

Steve Loane
GENERAL MANAGER



AGRITOURISM AND SMALL-SCALE AGRICULTURAL DEVELOPMENT

To Whom it May Concern

Lockhart Shire Council would like to submit an Expression of Interest (EOI) in making changes to our Local Environmental Plan (LEP) as proposed by the NSW Government to include agritourism and small-scale agricultural development.

These amendments will streamline the approval of agritourism development and small-scale agricultural development as the changes intend to reduce red tape and make it easier for farmers to get planning approval while managing environmental impacts.

Lockhart Shire Council believes that the proposed changes will help:

- NSW farmers and farming communities by providing opportunities to diversify.
- By adding economic value and activity to the communities in which farmers live.
- Support recovery and resilience of regional communities and farming by growing emerging industries that are supplementary to, or based on, agriculture.
- Support Regional NSW which has faced many challenges including prolonged drought, land fragmentation and declining terms of trade. Last year in particular, farming communities have had to deal with unprecedented bushfires and economic impacts arising from COVID-19 including travel and trade restrictions, cancellation of regional events, and temporary closure of local businesses.

Zones within the Lockhart Local Environmental Plan 2012 that permit agriculture are:

▪ RU1 Primary Production

The increased flexibility for on-farm and rural activities is consistent with objectives and actions of the Lockhart Shire Council Local Strategic Planning Statement (LSPS). By adopting these provisions, we will ensure our rural areas have the flexibility to diversify and increase productivity as well as the potential to increase tourism and visitor economy offerings. Adopting a State-led provision also ensures Lockhart Shire is consistent with the broader NSW planning provisions, reducing complexity and inconsistency across the State.

Yours faithfully

Michael Peisley
Manager Planning and Building Services

Planning Amendments for Agriculture

Council Submission

Acknowledgement to Country

Byron Shire Council recognises the traditional owners of this land, the Bundjalung of Byron Bay, Arakwal people, the Widjabal people, the Minjungbul people and the wider Bundjalung Nation.

We recognise that the most enduring and relevant legacy Indigenous people offer is their understanding of the significance of land and their local, deep commitment to place.



Overview

While Byron Shire Council acknowledges the Department's intention to facilitate emerging industries that are supplementary to, or based on, agriculture, we have significant concerns regarding the proposals as outlined in the current Expression of Intended Effects.

The proposal misses the key point – if the intent is to support farmers, measures need to provide for increased productivity of rural land; ideally facilitating innovative ways of farming that keep farmers on the land.

In the Byron context, and we suspect for many other coastal Councils, the measures as proposed will have a direct result of increasing rural land values, making land more expensive and less accessible for farming.

Increasing tourism does not address productivity. As an example, allowing cabins for tourist use may provide some income for a farmer. If, however, those same cabins were for start-up farmers or farm workers, there is still an income stream for the farmer, but the occupants directly assist in the productivity of the farm.

Council cannot support the proposed amendments in their current form and request significant revision of the proposed changes. Should the legalisation amendments proceed as proposed, Council will seek to 'opt out' of their application.

Byron Shire Council, as with our neighbouring local government areas, is well advanced in land use planning measures to protect important farmland and ways to support our important agricultural sector.

Our good quality agricultural land (regionally- and state-significant) is protected under a RU1 Primary Production Zoning and generally a 40ha minimum subdivision lot size.

Our historic settlement pattern, however, does not reflect a traditional farming pattern.

Of a total of approx. 2,750 lots within rural zones:

- only 8% are 40ha or larger;
- 70% are less than 10ha; and
- 61% are less than 6ha.

This presents significant challenges for real primary production, particularly when considering the more recent (and apparently ongoing) significant increase in land values in the local area.

'One size fits all' planning provisions may well support farming on larger properties in central and western parts of NSW, but farming issues in Byron Shire, and in many of our adjoining and nearby Council areas, require far more nuanced local solutions.

Providing opportunities for supplementary farm income is positive, but the changes proposed must ensure that such activities are genuinely supplementary and that they provide the potential to increase farm productivity. Our primary concern with the current proposals is that what is intended as support for farmers will only incentivise non-farming pursuits in our rural lands.

The ability from farmers to diversify income must be strongly linked to maintaining primary production on the land as the principal use. The provisions as currently suggested are not strong enough in that respect.

We strongly believe that any planning changes must be based on a clear and workable definition of what constitutes a 'working farm' and must be developed locally to suit and address local circumstances.

There also needs greater definition of what lands might be suitable for agritourism uses, in respect to the potential for land use conflict and environmental impacts associated with access, wastewater and transport.

The scope of the changes proposed, particularly relating to exempt and complying development, will result in a wide range of uses and activities for which there will be no, or extremely little, environmental assessment.

Exempt development, in particular, should only be used for activities that will clearly be of low to no environmental impacts.

From a reading of the document, we are concerned that there are a number of proposed uses and activities that have strong potential for environment and social impact, and we would suggest a serious review of this part of the proposal.

Comments

Farm stay accommodation

Definition

The current farm stay definition is quite clear and unambiguous:

*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*** (my emphasis)

The suggested replacement for this definition unnecessarily complicates the use, by replacing *working farm* with *the existing principal use of the land must be the production of agricultural/ primary production goods for commercial purposes*.

It would be more beneficial to provide a description of what is a working farm; e.g. linking to primary production status through either rating or taxation systems.

Over 60% of rural properties in the Shire are less than 5ha in area, with very few ‘farmland rated’. The changes as proposed would provide for farm stay on these ‘hobby farms’, which does not appear to be the intent.

The proposed definition change to allow camping as farm stay and allowing this to be exempt development raises issues associated with biodiversity impacts, land use conflict and effluent disposal. The development standards currently proposed do not adequately address these issues.

Permissibility

Exempt & complying development

The proposed development standards raise issues of compliance. Exempt development relies on ‘self-assessment’, which works well when operators maintain compliance.

In the Byron context, with a relatively densely populated rural area, we anticipate ongoing requests from neighbours around compliance with ‘numbers’, of people, setbacks, etc.

Council’s role, therefore, will be reactive only, as there will be no opportunity for review of potential impacts before they occur.

There are also no opportunities for Council to collect application fees or the like which could offset compliance costs.

There is also potential for water quality impacts associated with camping and/ or cabins located close to local waterways. In the Byron Shire context, our rural areas contain numerous smaller catchments, many with steep slopes, which are more densely populated than other rural areas throughout the State. Adding additional people to the catchments on a regular basis will require close consideration of waste water management and disposal, which cannot be assessed for exempt development.

Unregulated camping is also likely to include dogs, raising the potential for local biodiversity impacts.

In terms of specifics, the proposal to allow boundary setbacks equal to the setback of an existing dwelling has potential for land use conflict where there is no consideration of the proximity of adjoining dwellings.

Issues around land use conflict are best managed locally.

In relation to a change of use of an existing dwelling, there should be a development standard to ensure that human waste is appropriately managed, in the absence of reticulated sewerage service, by an existing on-site system operating in accordance with a current approval.

Development application – optional clause

Council currently allows up to 12 bedrooms for farm stay accommodation depending on lot size (cl. 5.4 & Byron DCP). The optional clause would allow three times that number.

Council would not be interested in adopting the optional clause unless that component could be removed.

Consultation questions

1. *Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?*

The setbacks to the land uses listed above are unlikely to be relevant to the Byron context, where none of those uses currently occur or are very unlikely to occur in the future.

The setback to adjoining properties is much more relevant, particularly where an existing dwelling has a setback less than the 250m suggested [*Note. In the Byron case, there will be very few existing dwellings in the rural area with a setback to boundary anywhere near 250m*]. As suggested above, a local approach to potential land use conflict would be more productive.

2. *Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?*

Definitely yes. To do otherwise would create a significant increase in ad hoc rural tourist accommodation that bears no relationship to farming activities on the land (including no host residing on the property).

3. *For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300m (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?*

Yes. Council's DCP currently requires that accommodation is to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart.

4. *Should there be different development standards for farm stay accommodation based on land size or location?*

Council's current standards are based on land size, with the permitted number of bedrooms linked to lot area, up to a maximum of 12 bedrooms.

However, rather than only linking to land area, provisions are required that enable a determination of the suitability of the site; which is much more than just lot size.

Our experience is that there is significant complexity and difference across the shire in terms of suitability, which goes to one of our key points that a 'one size fits all' approach has no possibility of achieving positive results for all Shires.

Councils must be allowed to create a more nuanced approach, based on local circumstances.

Farm gate activities

Definition

The introduction of this new definition will cause confusion. Existing definitions, like industrial retail outlet (associated with rural industry), artisan food and drink industry, are available to allow the activities discussed.

A significant issue with the definition as proposed is that it allows the activities if associated with agricultural produce grown on the farm **or predominantly grown in the surrounding area** (my emphasis).

This is another example where, in the local circumstances of smaller rural lots, this change will significantly incentivise non-farming pursuits in our rural lands.

At the very least, any change to allow these activities must be directly linked to real farming on the lot.

Permissibility

The changes as proposed would allow a significant increase in the scale of rural use with no Council input or assessment.

For example, it would be possible to change the use of an existing lawful dwelling to a restaurant/ café (part of new definition) as Complying Development, which could then be used for farm gate activities as an exempt activity, with up to 50 guests at any one time, 7am to 7pm six days per week and 9am to 6pm on Sundays.

The limit of 50 guests is only 'at one time', so could allow for multiple restaurant 'sittings' during the weekends – a regular occurrence in Byron restaurants.

In the Byron context, this example is real – we have history of such activities undertaken with no consent.

Such activities would generate a range of environmental and social issues; but under the changes proposed, Council would have no role in assessing impacts.

Additionally, none of the proposed development standards deal with wastewater, traffic or amenity issues, all of which have significant potential for amenity impacts.

If the proposed use only needs to link to agricultural produce **predominantly grown in the surrounding area**, this will absolutely provide a direct incentive for non-farming pursuits for individual sites, all without any Council overview, assessment or control.

Again, in a densely populated rural area, such as exists in Byron Shire and many neighbouring coastal Shires, this will generate significant compliance/ enforcement demands, with no ability for Council to recoup costs for such work.

It will also incentivize commercial uses over farming uses, particularly for smaller rural lots.

Consultation questions

5. *How far do you think a roadside stall should be setback from the road?*

Once more, a ‘one size fits all’ solution will not work for this question. Traffic safety is critical, and road types, alignments and standards vary markedly across the Shire, let alone across the State.

6. *What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?*

As highlighted above, the exempt and complying provisions as proposed allow a scale of development that has potential for significant environment and social impacts, with no opportunity for the local Council to assess.

Additional development standards will not address this problem.

Farm events

We have worked over the last two years to address rural events, resulting in a recent change to the Byron LEP to provide an approval pathway for rural function centres.

The key lesson from this work is that it is quite difficult to find the correct balance between allowing flexibility for farmers and rural land holders and protecting the rural amenity for residents.

Again, the Byron context, and that of many neighbouring coastal councils, is characterized by relatively densely populated rural areas with predominantly smaller holdings.

Our work highlighted that two key important factors are the suitability of proposed sites and the management of events.

In terms of suitability, we started with the idea of identifying appropriate development standards, such as setback etc, which could address noise and disturbance. What became abundantly clear was the variability of the local landscape, where topography and vegetation are key determinants of how far noise might travel.

It was simply not possible to determine a single setback/ buffer standard that would ‘work’ across all parts of the Shire.

If a ‘one size fits all’ will clearly not work at our Shire level, how can it be expected to work across the State.

The other key component relates to management of events, and we see nothing in the proposed provisions that will address this.

Similar to our comment on farm gate activities, the provisions as proposed will allow a significant scale of activity over which Council will have no oversight, let alone control, with no opportunity to assess environmental / social impacts before they occur.

We strongly oppose the proposed changes relating to farm events, and would request that we be allowed to continue with the controls recently adopted in the Byron LEP, which were the result of detailed local community engagement and input.

In terms of specifics, the hours allowed for operating rural events as exempt development will result in amenity impacts – up to 11pm through the week and midnight on Fridays and Saturdays is too late.

Additional proposed changes

Council has no position on the remaining proposals.

A handwritten signature in black ink, appearing to read 'S. Burt'.

Shannon Burt

Director, Sustainable Environment & Economy.



19 April 2021

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Submitted via planning portal: planningportal.nsw.gov.au/draftplans/exhibition/agriculture-changes

Dear Sir/Madam

Agritourism and Small-Scale Agriculture Planning Reforms - Explanation of Intended Effect

Thank you for the opportunity to comment on the *Agritourism and Small-Scale Agriculture Planning Reforms* Explanation of Intended Effect (EIE).

We understand that the intent of the reforms is to provide farmers with opportunities to diversify income from farming while maintaining primary production as a principal land use and to simplify approvals for no and low impact agricultural activities.

We further note that the Department of Planning, Industry and Environment (DPIE) is seeking an expression of interest from Councils who may wish to adopt optional LEP clauses as outlined in the EIE for farm stay accommodation, farm events and farm activities.

The comments contained in this letter are officer-level comments only as the matter has not been reported to the elected Council for a formal view or resolution.

1. Expression of Interest

Based on our review of the EIE, the proposed Agritourism LEP clauses may have merit. Council has recently exhibited a draft Rural Lands Strategy and some of the proposed Agritourism reforms align with principles in the strategy to facilitate value-adding uses and tourism on land where primary production occurs. However, more detail on the proposed clauses is required to fully assess the implications and form a position.

We may wish to opt in when the final legislation is drafted and would appreciate being contacted by the department about incorporating certain clauses into our LEP. A minimum six-week opt-in period would also be required to enable a report to Council seeking a formal resolution.

2. Agritourism

Planning Approach

Consistent with Objective 29 of the *Greater Sydney Regional Plan* and actions in the *North District Plan*, Council's draft Rural Lands Strategy has taken a place-based approach to shape the future of Hornsby's rural lands. Conversely, the proposed Agritourism reforms employ a state-wide blanket approach that does not distinguish between peri-urban areas and rural areas in Regional NSW. Low impact rural land uses are defined by development type and operational limits rather than identifying places where such land uses are appropriate and cumulative impacts are not considered.

Hornsby Council supports farming, retaining primary production and enhancing opportunities to diversify farming incomes and a local strategic approach to deliver targeted environmental, social and economic outcomes. Any land use reforms in the Sydney peri-urban area where rural land use conflict is potentially

greater should be based on place, local plans and policies as well as consistency with the approaches and directions established for the Metropolitan Rural Areas in the *Greater Sydney Regional Plan* and relevant District Plans.

Principal Land Use

The proposed Agritourism reforms are limited to rural land where agriculture is the principal land use. It is unclear how this would be established. A definition of 'principal land use' and requirements for documentation for exempt or complying development and any development application is vital within the proposed legislative amendments.

Operational Compliance

There is concern that operational compliance with the proposed Agritourism activity limits will be an ongoing issue, especially in peri-urban rural areas where land holdings are smaller, neighbours are nearby, and visitor accommodation demand likely to be higher.

As the reforms will be introduced through state-wide rather than local controls, how is State government intending to manage Exempt development standards compliance and operational compliance with regards to visitor number limits, days per year limits, people camping limits, waste disposal, on-site sewage management systems etc? Will owner/operators be required to keep records and report?

Are additional local resources planned if Councils are expected to manage compliance?

Consequential Land Use Restrictions

There may be potential for Agritourism to become a sensitive land use that constrains nearby primary production growth and intensification. The reforms do not consider how subsequent (but not yet proposed) agricultural use and expansion on adjoining or nearby properties should be managed once an Agritourism development is established and operating.

The reforms may need to expand to include rural activities on adjacent properties to manage potential land use conflicts and ensure an Agritourism does not diminish the future expansion or viability of primary production nearby.

3. Proposed Code SEPP Amendments

Amendments to the Codes SEPP are proposed to allow small-scale processing plants associated with agricultural produce industries that process meat, honey and dairy as complying development. Hornsby supports value adding to supplement farming incomes, however a place-based approach and local controls are critical in peri-urban areas where land use conflict and unforeseen adverse impacts are potentially greater. However, Council has consistently raised concerns with State Government policies overriding local controls.

Concern is raised with further state-wide provisions proposed by the Code SEPP Amendments which employ a state-wide blanket approach. Councils are best placed to identify areas where small scale rural processing is appropriate and apply local controls.

Once again, thank you for the opportunity to comment on the *Agritourism and Small-Scale Agriculture Planning Reforms* Explanation of Intended Effect (EIE). Should you require any clarification in relation to any of the matters raised, please contact Debra Clydsdale, Team Leader on 9847 6729 during business hours.

Yours faithfully



Katherine Vickery
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19 April 2021

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Please address all communications
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Group Deputy Secretary, Planning & Assessment
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PARRAMATTA NSW 2150

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Dear Marcus

Planning Amendments for Agriculture - Submission

Council has considered the proposed amendments to the NSW planning system to help the diversification of rural lands. At its meeting held on 15 April it was resolved to make a formal submission. This submission is attached.

Council also wishes to 'Opt In' to amend the Tweed Local Environmental Plan 2014 to include the provisions identified in the Explanation of Intended Effect, and also to request the Department clearly define what they consider to be a "Farm".

Please note that Council also resolved to forward a submission to Local Government NSW.

If you wish to explore any of the matters raised in this submission please contact Council's Director of Planning and Regulation, Vince Connell on 02 6670 2423 or via email: vconnell@tweed.nsw.gov.au

Yours faithfully

Troy Green PSM
GENERAL MANAGER

Agritourism and small-scale agriculture development:
Proposed amendments to support farm businesses and
regional economies

Council Response

April 2021

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1 Background

Rural land in the Tweed serves a range of functions and values including farming, environmental protection, tourism, rural industries and rural housing. In recent decades, continual pressure to change land uses and develop rural land has seen a noticeable transition in how it is being used, leading to conflict and uncertainty about the future of rural land.

Research conducted by NSW Government on the importance of Small Business identified that the Tweed local government area as having the third highest number of small businesses in regional NSW. Tweed Shire Council is very aware of the significant contribution that small business plays in employment and the economic wellbeing of the local area.

The economy of the Tweed is in a process of maturing and diversifying. This is in response to high population growth over the past 15 to 20 years.

In particular there is significant growth in:

- Cafes / restaurants;
- Tourist accommodation, and
- Food and beverage processing.

Intertwined with the growth of these industries is a refocusing of traditional agricultural industries which are diversifying into areas such as:

- On-farm accommodation;
- On-farm food and beverage processing;
- On farm cafes;
- On farm restaurants;
- Micro-breweries, and
- Artisan distilleries.

Two significant points to establish from this are:

1. Some new businesses to the area have purchased agricultural land to locate their business. Part of this business decision is to use the natural and green appeal of the Tweed as it can provide a marketing focus. These businesses are primarily not existing farmers re-branding or re-tooling their existing agricultural practices.
2. All of these new businesses in some way directly contribute towards the local tourism economy.

The Tweed suffers from a scarcity of large business investing into the region. Nearly all of the recent economic growth can be attributed to small business. Council's Land and Economic Development Unit specifically market and promote the green and environmental nature of the Tweed as a lifestyle choice for new businesses. Please refer to Council's [Business Investment Guide](#) and [The Tweed Business Portal](#).

Local government is often the first point of contact for new and expanding businesses proposals in the local area. However, local government is limited in the support and incentives that they can offer. This is often due to limited resources and limited areas of administrative responsibility.

It is imperative that NSW State Government work collaboratively with local government to maximise the government's investment into economic development in local economies. For example, the recently developed *NSW Food and Beverage Strategy* has limited to no effectiveness in the Tweed. Firstly, it is primarily focused on large scale producers not Small Medium Enterprises (SMEs). Secondly, it reflects an overarching focus that can be found in many similar state government strategies in that they focus primarily on Sydney and not regional NSW.

This prevents the strategy from being effective in the development of any policies that encourage regional growth through innovation, diversification and value adding of agricultural businesses/farms.

To best achieve this it is important that the incentives and grants are appropriately matched to the size and relevant industries within the local economies. This is important as different local economies across regional NSW are in different stages in the economic cycle, including population growth/decline, specific industry growth, disaster management and recovery and dominant industry/sector closures.

When small business go through the development application process, developer contributions can sometimes amount up to 50% of the total establishment cost of setting up their new business. In most cases this money needs to be paid before they can commence trading. Several years ago Council identified the imposition that this played on small business and developed the *Business Investment Policy*. This policy offers a suite of incentives with the most popular incentive is the payment of developer contributions over a six year period.

The state government is in a position that they can develop a more streamlined open and accessible system for small business to make developer contributions. This should consider including financial incentives for eligible small businesses to ease the upfront costs of developer contributions.

2 Tweed Rural Lands Strategy

Last year Council adopted its Rural Land Strategy 2020 - 2036 (RLS) to consider these changes and their impact on traditional farming, rural communities and associated industries, and to develop a strategy for the future of rural land in the Tweed. The strategy establishes a contemporary policy to guide the use and development of rural land, balancing its inherent capacity and suitability for specific uses, while considering economic, social, ecological and political outcomes.

The RLS was drafted in consultation with the community over a number of years.

The RLS is guided by nine Key Policy Directions:

Policy Direction 1: Encourage sustainable agricultural production and protect agricultural land;

- Policy Direction 2:** Protect and improve environmental values and respond to natural hazards;
- Policy Direction 3:** Support economic development;
- Policy Direction 4:** Grow rural tourism;
- Policy Direction 5:** Greater diversity of rural housing;
- Policy Direction 6:** Council requirements are transparent and planning procedures streamlined where possible;
- Policy Direction 7:** An informed, connected and resilient community;
- Policy Direction 8:** Promote more sustainable landuse practices, and
- Policy Direction 9:** Extractive industries are protected and landuse conflict minimised.

The RLS develops each policy direction into more than 140 prioritised implementation actions. Actions that are relevant to the questions arising from the Expression of Intended Effects document are discussed in more detail below.

3 Sustainable agriculture

The general intent of the proposed changes, to support agritourism and small-scale agricultural development, aligns with Tweed Shire Council's desire to see economic opportunities from farm diversification and value-adding of agricultural products. This is articulated in the *Tweed Sustainable Agriculture Strategy 2016* and the RLS.

It is important that farmers are supported in the development of local agri-business that supplies the local food economy, encourages agritourism and facilitates a closer connection between producers and consumers of food.

However, Council believes the State's new draft provisions have gone too far and will result in outcomes incompatible with the desired future of agriculture and the use of rural land in the Tweed Local Government Area.

Use of a one-size fits all planning solution to problems faced by agriculture in other parts of the state will not develop outcomes reflective of the unique features that make the Tweed such a desirable place to work and live.

What appears as support for farmers will only incentivise non-agricultural use of rural land. The planning system must find ways to accommodate the different pressures that coastal NSW communities face compared with western councils. It is therefore recommended that the Government clearly define what is meant by the term 'farm' and consider ensuring that any amendments apply to those properties only where certified primary production is occurring. For example, the landowner or tenant may be required to hold 'primary production' status from the ATO.

Larger properties in central and western NSW may comfortably accommodate these proposed changes without adverse impacts but they will be counterproductive in the more intensively developed coastal fringe.

Whilst additional land use definitions and development standards may benefit agriculture in other areas of the state, the reality for coastal areas is quite the opposite. Rural Tweed consists of over 6316 allotments in the RU1 Primary Production and RU2 Rural Landscape zones. Approximately 68% of rural lots are less than 10ha, and only 15% of RU2 allotments are above the minimum lot size of 40ha. This means there is potential for this kind of land

use to dominate already fragmented and rural areas, increasing land use conflict, diminishing opportunities for primary production and creating negative environmental and scenic impacts.

The planning system intends to protect agricultural land and secure it as a resource for food production. Enabling farm stay accommodation, farm gate activities and farm events as mostly exempt or complying development, has the potential incentivise accommodation in a landscape where property sizes are significantly less than the Minimum Lot Size.

Likewise, events as the principal use of rural land could subjugate agriculture to an ancillary use. This is particularly the case in the Tweed LGA and northern NSW where high land values, housing shortages and a strong demand for tourist accommodation will only encourage landholders to invest to these land use activities to the detriment of agriculture.

No clear direction has been provided as to how an assessment will be made that the existing principle use of the land is for production of agricultural/primary production goods for commercial purposes.

The current requirement for farm stay accommodation to only occur on a working farm helps prevent this land use being used to develop dwellings on rural land for non-agricultural purposes. Clear guidelines designed to protect the predominantly agricultural use of land will be essential if this amendment is continued with.

As property statistics show, 50% of rural properties are less than 3 hectares, and very few are Farmland rated, meaning that the majority of properties are utilised for lifestyle purposes, not to undertake legitimate agricultural activities. Guidelines must ensure that any additional accommodation must be related to the agricultural use of land, and limited to properties not less than 10 hectares.

The Department of Primary Industries (DPI) website states that these changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses; however, the proposed changes will actually provide these development opportunities for rural landholders irrespective of current land use.

Whilst the proposed changes could benefit some legitimate agricultural producers, the weakening of the standard definition for 'farm stay accommodation' and the minimal or non-existence requirements for agriculture to be associated with the other uses means that 'hobby farmers' and other rural landholders not actually farming will be able to carry out these developments with little scrutiny.

The proposed changes will also generate further land use conflicts in rural areas given the large number of rural lots in the Tweed LGA and the proposed setback exemptions that would enable agritourism development to take place in close proximity to intensive agriculture. This is because existing dwellings are often already in close proximity to such developments as a result of the small property sizes in the LGA.

Allowing up to 52 farm event days a year; allowing a 500 square metre footprint for all buildings used for farm gate activities and farm events; accommodating up to 6 x 60m² dwellings for agritourism as complying development and 14 day camping stays as exempt development is excessive and will drive up the price of rural land, diminish its productive capacity and create a substantial compliance burden for councils.

Farm stay accommodation

The proposed changes to the Farm stay definition in the LEP¹ will enable any rural landholder to carry out various forms of farm stay development as complying development without Council or community consideration of the impacts. Any rural landholder would be able to argue that cattle grazing their land is the principal use for commercial purposes, whilst not generating any significant income or profit, and enable them to carry out this development.

The proposed development standards are excessive for the Tweed LGA situation. Allowing up to six dwellings (up to 60 square metres each) on a landholding (one dwelling per 15 hectares) as complying development prevents a council from considering the environmental and cumulative impacts of the development and increase land use conflict with other rural land users. With the high housing demand and limited capacity for compliance it would be difficult to prevent these structures being used as permanent dwellings.

Furthermore the proposed definition change to allow camping as farm stay accommodation and allowing this to be exempt development will generate land use conflict and create issues with effluent disposal and non-compliance of the development standards proposed.

Farm gate activities and farm events

The proposed changes would allow restaurants, cafes, processing facilities, distilleries, etc without development consent if it meets the development standards. These standards could be met however there is no consideration of how non-compliance would be managed. This would apply to all rural land and the landholder would not necessarily be required to be carrying out agricultural activities. The only caveat being 'for agricultural produce grown on the farm or predominantly grown in the surrounding area'.

The proposed changes to allow for a maximum 200 square metre footprint for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events as complying development on a lot is excessive for the Tweed LGA and is not proportionate to the patron limits being proposed for such developments i.e. up to 50 people.

These changes will be counter intuitive in the Tweed, making rural land more attractive to development that is not agriculture-based and will render agriculture an ancillary or superficial use.

4 Farm stay accommodation

4.1 Question 1.

"Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?"

This question leads to the wider issue of rural buffers.

¹ The department proposes to remove the references to working farm and include a requirement that the existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes and enable farm stay accommodation on a farm that is currently not producing goods because of drought or similar events outside the landowner's control.

It is important to ensure that there is appropriate buffering. In particular from uses such as residential and farm stay accommodation. Extractive Industries, particularly hard rock quarrying and water extraction, in the Tweed have historically represented a potential for local antagonism amongst local residents. Particularly resulting from such externalities as blasting, noise, dust and heavy vehicle movements.

It is also important to ensure that any buffering will safeguard permissible agricultural land uses from an increasing pressure from other permissible rural land uses.

The RLS identifies several specific actions in relation to rural buffers.

Policy Direction 1: Encourage sustainable agricultural production and protect agricultural land				
No.	Theme	Action	Implementation outcome	Delivery partners and key responsibility
1	DCP – Rural Land	Amend Tweed DCP 2008 to include a new section on rural land which provides guidelines, controls, objectives and principles for effective and appropriate planning, development and management of rural land.	Core information relating to the planning, development and management of rural land is readily accessible. Objectives and principles are established for the future planning and management of rural land, and guidance provided on access to information on best practice.	<ul style="list-style-type: none"> • Council • DPIE • Rural industry groups • Government agencies • Rural community
2	Buffers – DCP	Buffers between potentially conflicting landuses and environmentally sensitive land (including high environmental value land as defined in the North Coast Regional Plan 2036) are identified, and planning provisions established to minimise potential for conflict between owners of land within and adjoining rural zoned land.	Buffers between potentially conflicting landuses, and environmentally sensitive land are identified and planning provisions established to minimise potential for conflict between owners of land within and adjoining rural and non-rural zoned land.	<ul style="list-style-type: none"> • Council • DPIE • Sugar cane industry • Agricultural and development industry representatives • OEH
3	Buffers – Map	Prepare a 'trigger map' which identifies areas of potential landuse conflict for establishment of buffers. Criteria established for definition and management of appropriate buffers, their location and dimensions.	Trigger map and assessment criteria for buffer zones in all rural and environmental land, especially adjoining sugar cane land incorporated into the new buffers section of the DCP	<ul style="list-style-type: none"> • Council • DPIE • Sugar cane industry • Development industry representatives
4	Zoning – RU1	Review the ability to zone all cane growing land RU1 Primary Production.	All cane growing land is protected for agricultural purposes.	<ul style="list-style-type: none"> • Council • Sugar cane industry
5	Zoning – RU4	Investigate the applicability of the RU4 Primary Production Small Lots zone and creation of small lot primary production areas.	Small area properties utilised for agricultural purposes are appropriately zoned where this will not lead to scattered zoning of isolated properties.	<ul style="list-style-type: none"> • Council
6	Zoning – RU6	Review the opportunity to apply the RU6 Transition zone as a means of providing a transition between rural landuses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental values.	The RU6 Transition zone is considered for special circumstances where areas between potentially conflicting landuses are identified and appropriate landuses prescribed to minimise the likelihood of future landuse conflict.	<ul style="list-style-type: none"> • Council • DPIE

4.2 Question 2.

“Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?”

Yes. The minimum lot size (MLS) is one mechanism to manage the density of development and associated impacts. To allow short or long stay accommodation, dwellings or tourism development regardless of lot size, or legality, overrides the need to manage growth and development, especially in shires such as Tweed where the majority of properties consist of a single allotment which is substantially less than the MLS.

While supportive of innovation, diversification and value-adding, cumulative impacts must be managed, a matter not well addressed through the exempt and complying pathways.

Compounding this issue would be the potential for a property to also accommodate a second dwelling, either in the form of a Secondary Dwelling, or Dual Occupancy (Detached), again, the cumulative impact of small properties not dedicated to use for agricultural purposes could be significant in the Tweed.

Below is an extract from Council’s RLS which identifies actions which propose increased flexibility for tourist and visitor accommodation as well as tourism based land uses generally in rural zones in the Tweed.

Policy Direction 4: Grow rural tourism				
No.	Theme	Action	Implementation outcome	Delivery partners and key responsibility
62	RU1 and RU2 zones increased flexibility	Review and investigate amending the range of permissible with consent landuses in the RU1 and RU2 zones in Tweed LEP 2014.	A greater diversity of landuses are made permissible with consent in Tweed LEP 2014, including small rural and related commercial and retail development. Innovation, value-adding and diversification of landuses consistent with the objectives of the zone, and planning provisions are supported. Potentially incompatible landuses are listed as prohibited in the LEP.	<ul style="list-style-type: none"> • Council • DPIE
63	RU1 and RU2 zones increased flexibility	Investigate amending RU1 and RU2 zone objectives to ensure that the intention of providing greater flexibility with certainty of desirable and compatible development outcomes is clear and considered during assessment of planning proposals or development applications.	Objectives of the RU1 and RU2 zones reflect the desired outcomes and future of the zones which include greater flexibility but with certainty about the potential site specific and cumulative impacts of development.	<ul style="list-style-type: none"> • Council • DPIE
64	RU1 and RU2 zones increased flexibility	Prepare local planning provisions, guidelines, development principles and standards to ensure that development is consistent with the objectives of the zone, character and scenic amenity of the locality and that environmental values and productive or potentially productive agricultural land are protected.	Planning provisions provide assurance that development is consistent with the objectives of the zone, does not adversely impact local character, scenic amenity, or diminish environmental values and productive or potentially productive agricultural land.	<ul style="list-style-type: none"> • Council • DPIE
65	Rural tourism – definition	Amend Tweed LEP 2014 to include an additional local provision which supports and defines rural tourism development.	Rural tourism is defined and related to planning provisions.	<ul style="list-style-type: none"> • Council
66	Tourist and visitor accommodation	Review options to amend Tweed LEP 2014 to permit a range of "tourist and visitor accommodation" in the RU1 and RU2 zones.	Opportunities for greater diversity of compatible landuses integrated within a rural, environmental and scenic landscape.	<ul style="list-style-type: none"> • Council • DPIE

4.3 Question 3.

"For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?"

No. It is considered that another form of control should be used to establish suitable separation from incompatible and uses. Council has identified that the use of the RU6 Transition zone might be a potential alternative.

The critical issue is whether a better planning outcome is achieved, and as such separation distances is less of an issue than finding the right place for additional dwellings.

6	Zoning – RU6	Review the opportunity to apply the RU6 Transition zone as a means of providing a transition between rural landuses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental values.	The RU6 Transition zone is considered for special circumstances where areas between potentially conflicting landuses are identified and appropriate landuses prescribed to minimise the likelihood of future landuse conflict.	<ul style="list-style-type: none"> • Council • DPIE
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4.4 Question 4.

“Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.”

No. Residential development is residential development, whether used for temporary or permanent accommodation. While property sizes are larger away from the coast, impacts will be similar, just more diffuse the larger the property.

Council proposes an investigation of the use of the RU6 zone as a method of regulating the interface between potentially incompatible land uses.

Clear guidelines will be essential to ensure that in small coastal catchments such as the Tweed, development controls are customised to local requirements and the sensitivity of the landscape to change.

6	Zoning – RU6	Review the opportunity to apply the RU6 Transition zone as a means of providing a transition between rural landuses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental values.	The RU6 Transition zone is considered for special circumstances where areas between potentially conflicting landuses are identified and appropriate landuses prescribed to minimise the likelihood of future landuse conflict.	<ul style="list-style-type: none"> • Council • DPIE
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5 Farm gate activities

5.1 Question 5.

“How far do you think a roadside stall should be setback from the road?”

Although the RLS does not specifically address the issue of setbacks it recommends that there should be set of development standards which must be met prior to roadside stalls achieving exempt status.

Traffic safety is paramount, with sufficient view lines and off road parking to accommodate customers.

52	Roadside stalls	Amend Tweed LEP 2014 by listing roadside stalls which are less than 8 square metres in size as exempt development in the RU1 Primary Production and RU2 Rural Landscape zones, subject to certain standards.	Subject to compliance with certain criteria to be developed in accord with the requirements of the RMS, including road safety, small scale roadside stalls are classified as exempt development.	<ul style="list-style-type: none"> • Council • RMS • Rural producers • Tweed Tourism Company
53	Roadside stalls	Amend Tweed DCP 2008 to provide development standards for exempt roadside stalls.	Development standards for the making of small scale roadside stalls exempt development prepared and applied	<ul style="list-style-type: none"> • Council • RMS • Rural producers
54	Roadside stalls	A roadside stalls map and interactive web page on Council's website be developed in accordance with Council resolution of 17 April 2012.	Residents and visitors to rural Tweed are aware of the location of roadside stalls, and planning provisions support well located and designed stalls which promote locally produced rural produce.	<ul style="list-style-type: none"> • Council • RMS • Rural producers • Tweed Tourism Company

5.2 Question 6.

“What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?”

As outlined above, Council's RLS has identified the following actions relating to roadside stalls.

52	Roadside stalls	Amend Tweed LEP 2014 by listing roadside stalls which are less than 8 square metres in size as exempt development in the RU1 Primary Production and RU2 Rural Landscape zones, subject to certain standards.	Subject to compliance with certain criteria to be developed in accord with the requirements of the RMS, including road safety, small scale roadside stalls are classified as exempt development.	<ul style="list-style-type: none"> • Council • RMS • Rural producers • Tweed Tourism Company
53	Roadside stalls	Amend Tweed DCP 2008 to provide development standards for exempt roadside stalls.	Development standards for the making of small scale roadside stalls exempt development prepared and applied	<ul style="list-style-type: none"> • Council • RMS • Rural producers
54	Roadside stalls	A roadside stalls map and interactive web page on Council's website be developed in accordance with Council resolution of 17 April 2012.	Residents and visitors to rural Tweed are aware of the location of roadside stalls, and planning provisions support well located and designed stalls which promote locally produced rural produce.	<ul style="list-style-type: none"> • Council • RMS • Rural producers • Tweed Tourism Company

6 Farm events

6.1 Question 7.

“The proposed maximum number of people and events per day for exempt and complying development are:

- 52 event days per year and up to 30 guests per event, or*
- 10 event days per year and up to 50 guests per event”*

These limits are considered appropriate but should be an upper limit. Any intensification on these limits would lead to increased amenity issues and should be addressed through the Development assessment pathway. However, how the destination wedding event market works any less than these amounts will limit the viability for operators to run such events. These limits cater to a boutique style of event which focuses on the high end of the event market.

Complaints around parking and excess noise are the main issues Council experiences with compliance of farm events. In particular noise from amplified music. It is proposed that these amenity issues should be addressed through buffering and limitations on hours of operation. In particular specifying the setback distance from any type of accommodation.

Council's RLS has identified several actions which consider changes which support farm events.

Policy Direction 3: Support economic development				
No.	Theme	Action	Implementation outcome	Delivery partners and key responsibility
55	Function centres	Investigate the implications of making function centres permissible with consent in the RU1 and RU2 zones.	If supported by the findings of an investigation of impact that function centres are made permissible with consent in the RU1 and RU2 zones.	• Council
56	Function centres	If supported by the findings of an investigation into the impact of making function centres permissible with consent in the RU1 and RU2 zones, that Tweed DCP 2008 be amended to provide appropriate objectives, guidelines and development requirements in accordance with the findings of the investigation.	Function centres which comply with development standards and planning provisions of Tweed LEP 2014 and Tweed DCP 2008 support a diversification of landuses.	• Council
75	Small Rural Based Events	Investigate opportunities to support small rural-based events such as 'opera in the caldera' or equestrian events etc.	Temporary use of land for small events is supported in well located and designed locations.	• Tweed Tourism Company • Council • Rural landowners • Entrepreneurs
76	Wedding functions	Prepare guidelines and planning provisions for the operation of wedding functions in rural areas.	Certainty in the location and operation of wedding functions in rural areas.	• Council • DPIE • Local community

6.2 Question 8.

"What events, if any, do you think should be excluded from the definition of farm events?"

Any changes to include farm events as exempt or complying development should include provisions to safeguard the amenity of neighbouring properties rather than excluding specific types of events. As outlined in RLS Action 76, Council proposes that this would be best managed through a set of guidelines and planning provisions.

6.3 Question 9.

"Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection."

a) RU1

b) RU2

c) *RU4 zones*

d) *Other zones (please specify)*

RU1 Primary Production should remain a zone with the predominant use as a source of agricultural produce; weddings are not considered compatible with this zone.

Alternative zones such as RU2 Rural Landscape and environmental zones might be more appropriate, depending on conditions relating to the location, timing, operation, management and enforcement of proposals.

6.4 Question 10.

“Should the department prepare a model clause for destination weddings which councils can choose to adopt?”

Council agrees with the proposal of establishing a model clause and offering individual Council's to 'opt in'. Individual LGAs that have significant rural land face common rural amenity issues. However, they can also face a considerable amount of variability in the community's opinions and sentiment in setting local land use planning policy. A standardised framework across NSW may become too simplified and too easy to circumvent for compliance.

6.5 Question 11.

“Is there any rural land or areas in which agritourism activities should not be permitted?”

Please refer to the comments made in section 3 above.

Policy Direction 4: Grow rural tourism				
No.	Theme	Action	Implementation outcome	Delivery partners and key responsibility
62	RU1 and RU2 zones increased flexibility	Review and investigate amending the range of permissible with consent landuses in the RU1 and RU2 zones in Tweed LEP 2014.	<p>A greater diversity of landuses are made permissible with consent in Tweed LEP 2014, including small rural and related commercial and retail development.</p> <p>Innovation, value-adding and diversification of landuses consistent with the objectives of the zone, and planning provisions are supported.</p> <p>Potentially incompatible landuses are listed as prohibited in the LEP.</p>	<ul style="list-style-type: none"> • Council • DPIE

67	Restaurants and cafes – RU1 zone	Investigate amending Tweed LEP 2014 to make 'restaurants and cafes' permissible with consent within the RU1 Primary Production zone.	Opportunities for well designed and located rural development value-adding to locally produced rural produce.	<ul style="list-style-type: none"> • Council • DPIE • Rural producers
68	Restaurants and cafes – RU1 zone	Pending the findings of Action 67, prepare local provisions to ensure that development of 'restaurants and cafes' in the RU1 Primary Production zone is consistent with the objectives of the zone, character and scenic amenity of the locality and that environmental values and productive or potentially productive agricultural land are protected.	Guidelines and planning provisions provide clarity in relation to the function, design and location of 'restaurants and cafes' in the RU1 Primary Production zone.	<ul style="list-style-type: none"> • Council • DPIE • Rural producers

7 Small scale processing plants

7.1 Question 12.

“Should any other agricultural produce industries be complying development? What standards should apply?”

The Tweed is seeing an increased interest from rural land owners to establish on-farm food and drink processing facilities. This has included distilleries, breweries, cheese processing etc. Also farm based food and drink premises (Café / restaurant / heat and serve) have also increased in popularity. These developments can become far more focused on their tourism components rather than on farm production. This shift should not be considered as a temporary measure to assist farm productions, but rather a fundamental shift in demand for rural land uses.

Policy Direction 4: Grow rural tourism				
No.	Theme	Action	Implementation outcome	Delivery partners and key responsibility
62	RU1 and RU2 zones increased flexibility	Review and investigate amending the range of permissible with consent landuses in the RU1 and RU2 zones in Tweed LEP 2014.	<p>A greater diversity of landuses are made permissible with consent in Tweed LEP 2014, including small rural and related commercial and retail development.</p> <p>Innovation, value-adding and diversification of landuses consistent with the objectives of the zone, and planning provisions are supported.</p> <p>Potentially incompatible landuses are listed as prohibited in the LEP.</p>	<ul style="list-style-type: none"> • Council • DPIE
67	Restaurants and cafes – RU1 zone	Investigate amending Tweed LEP 2014 to make 'restaurants and cafes' permissible with consent within the RU1 Primary Production zone.	Opportunities for well designed and located rural development value-adding to locally produced rural produce.	<ul style="list-style-type: none"> • Council • DPIE • Rural producers
68	Restaurants and cafes – RU1 zone	Pending the findings of Action 67, prepare local provisions to ensure that development of 'restaurants and cafes' in the RU1 Primary Production zone is consistent with the objectives of the zone, character and scenic amenity of the locality and that environmental values and productive or potentially productive agricultural land are protected.	Guidelines and planning provisions provide clarity in relation to the function, design and location of 'restaurants and cafes' in the RU1 Primary Production zone.	<ul style="list-style-type: none"> • Council • DPIE • Rural producers

7.2 Question 13.

“Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?”

Council has no position on this matter.

7.3 Question 14.

Should any additional standards be included?

Council has no position on this matter.

7.4 Question 15.

Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a) as complying development?*
- b) through the standard DA process?*

Council has no position on this matter.

8 Rebuilding of farm infrastructure

8.1 Question 16.

Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

The Tweed is particularly susceptible to flooding. Rebuilding rural infrastructure in the same location that is subject to flooding would not seem wise.

8.2 Question 17.

Should any additional standards be included?

No.

9 Stock containment areas

9.1 Question 18.

What type of permanent infrastructure should be permitted for stock containment areas?

Council has no position on this matter.

9.2 Question 19.

What type of permanent infrastructure should not be permitted for stock containment areas?

Council has no position on this matter.

10 Farm dams

10.1 Question 20.

How could we simplify planning provisions for farm dams?

Council has no position on this matter.

11 Biosecurity for poultry and pig farms

11.1 Question 21.

Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

Council has no position on this matter.

11.2 Question 22.

Should any additional standards be included?

Council has no position on this matter.

12 Rural dwelling setbacks from intensive agriculture

12.1 Question 23.

Should the setbacks for rural dwellings be increased from its current requirement to be 250metres from the boundary (when done as complying development)?

As previously outlined Council's RLS proposes the use of RU6 as a method of regulating the interface between potentially incompatible land uses.

6	Zoning – RU6	Review the opportunity to apply the RU6 Transition zone as a means of providing a transition between rural landuses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental values.	The RU6 Transition zone is considered for special circumstances where areas between potentially conflicting landuses are identified and appropriate landuses prescribed to minimise the likelihood of future landuse conflict.	<ul style="list-style-type: none"> • Council • DPIE
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12.2 Question 24.

From which point should the setbacks be measured?

- From the proposed or existing intensive agricultural use*
- From the property boundary shared with land used for intensive agriculture*

c) *A combination of the above*

Refer to Question 23 above.

13 Recreational Beekeeping

13.1 Question 25.

Are the proposed development standards appropriate and are any additional standards needed?

Council has no position on this matter.

14 Council 'opt in'

We are asking councils to consider whether to adopt the new optional clauses for farm stay accommodation and farm gate activities and identify the zones in which they wish to allow the new farm events and farm gate activities land uses.

Councils can submit their interest in making changes to their LEP, as well as a suitable contact who we can work with to implement the proposed changes.

Council considers the 'Opt In' methodology to be an efficient way of bringing any proposed amendments into local environmental plans.

Tweed Shire Council is likely to 'Opt In'. However, we are keen to ensure that any amendments reflect the current strategic land use policies already adopted by Council.



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Consultation Questions

Each of the proposed 'agritourism' and small scale agricultural developments are accompanied by consultation questions for Council's response. The questions and recommended responses are below;

4.1 Consultation Questions

4.1.1 Farm stay accommodation

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?

Yes – this is consistent with the document "Living and Working in Rural Areas – A Handbook for managing land use conflict issues on the NSW North Coast" with the exception of piggeries, where the proposed setback is increased which is considered more appropriate than the 500m distance recommended in the handbook.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

Yes – this will prevent the future change of use, either with, or without consent occurring. In Tenterfield Shire this will not likely be an issue as the majority of land parcels have a dwelling entitlement under current LEP provisions.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

Not necessarily, provided other setbacks can be achieved.

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

No

4.1.2 Farm gate activities

5. How far do you think a roadside stall should be setback from the road?

Should be flexible to allow for various site constraints but not interfere with traffic movement/visibility coming off and on to the public road.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

For both exempt and complying, consideration needs to be made of potential traffic impacts, particularly on gravel roads which may have a low maintenance schedule – many in Tenterfield Shire only maintained 2-3 yearly. Excess traffic transporting up to 50 persons to these sites with unlimited events per year has the potential to damage roads with no contribution from the farm gate activity operator, leaving Council to manage any impacts on the road which previously saw minimal traffic.

Site Location and Access – site must have an approved access under s138 of the Roads Act from the public road in to the site, including an existing access.

Adequate on site amenities to be provided in accordance with numbers expected – approved under a Section 68 LGA by Council.

4.1.3 Farm events

7. The proposed maximum number of people and events per day for exempt and complying development are:

- a) 52 event days per year and up to 30 guests per event, or
- b) 10 event days per year and up to 50 guests per event

Are these appropriate?

Concerns over numbers of guests and frequency and potential impact on rural roads as for Farm Gate Activities.

8. What events, if any, do you think should be excluded from the definition of farm events?

Any event incorporating the use of motorized vehicles or motor bikes to be excluded eg. 4WD or motorcross activities – these would normally be defined as 'recreational facility (outdoor)' allowance for farm machinery displays and demonstration would be acceptable.

Any event proposing live or amplified music as the main component of the event.
Eg festivals

9. Should changes be made to the planning system to facilitate destination weddings under a development application?

Yes – to allow for one-off weddings on private property – not as a 'function centre'

If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.

- a) RU1
- b) RU2
- c) RU4 zones
- d) Other zones (please specify)

No issues with this currently. Tenterfield LEP only has RU1 Zone where this would apply – development permitted with consent.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

Yes

11. Is there any rural land or areas in which agritourism activities should not be permitted?

No –the development standards proposed already exclude some activities on bushfire prone land, which would be the main concern for tourist accommodation activities.

4.1.4 Small scale processing plants (complying development only)

12. Should any other agricultural produce industries be complying development? What standards should apply?

No

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

Yes

14. Should any additional standards be included?

Yes – should be reference to access and transport standards

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

a) as complying development? Yes

b) through the standard DA process? Yes

4.1.5 Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

Yes

17. Should any additional standards be included?

No

4.1.6 Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?

Shade structures

19. What type of permanent infrastructure should not be permitted for stock containment areas?

4.1.7 Farm dams

20.How could we simplify planning provisions for farm dams?

Have them all approved by Water NSW

4.1.8 Biosecurity for poultry and pig farms

21.Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

Yes

22.Should any additional standards be included?

No

4.1.9 Rural dwelling setbacks from intensive agriculture

23.Should the setbacks for rural dwellings be increased from its current requirement to be 250metres from the boundary (when done as complying development)?

Yes – should align with the Handbook recommendations below

Table 6: Recommended minimum buffers (metres) for primary industries

(NB: The desirable buffer in the circumstances will be the separation distance and conflict avoidance strategy that protects: community amenity, environmental assets, the carrying out of legitimate rural activities in rural areas and the use of important natural resources.)

	Residential areas & urban development	Rural dwellings	Education facilities & pre-schools	Rural tourist accommodation	Watercourses & wetlands	Bores & wells	Potable water supply/ catchment	Property boundary	Roads
Piggeries ¹ Housing & waste storage	1000	500	1000	500	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Feedlots ² Yards & waste storage	1000	500	1000	1000	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Poultry ³ Sheds & waste storage	1000	500	1000	500	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Dairies ⁴ Sheds & waste storage	500	250	250	250	100	SSD	800	100	100
Waste utilisation area	500	250	250	250	100	SSD	800	20	20
Rabbits ⁵ Wet shed, ponds & irrig.	300	150	150	150	100	SSD	800	50	50
Dry shed	120	60	120	60	100	SSD	800	20	20
Other intensive livestock operations ⁶	500	300	500	300	100	SSD	800	100	100
Grazing of stock	50	50	50	50	BMP	SSD	BMP	NAI	BMP
Sugar cane, cropping & horticulture	300	200	200	200	BMP	SSD	BMP	NAI	BMP
Greenhouse & controlled environment horticulture	200	200	200	200	50	SSD	SSD	50	50
Macadamia de-husking	300	300	300	300	50	SSD	SSD	50	50
Forestry & plantations	SSD	SSD	SSD	SSD	STRC	SSD	SSD	BMP	STRC
Bananas	150	150	150	150	BMP	SSD	SSD	BMP	BMP
Turf farms ⁸	300	200	200	200	50	SSD	SSD	BMP	SSD
Rural industries (incl. feed mills and sawmills)	1000	500	500	500	50	SSD	SSD	SSD	50
Abattoirs	1000	1000	1000	1000	100	SSD	800	100	100
Potentially hazardous or offensive industry	1000	1000	1000	1000	100	SSD	800	100	100
Mining, petroleum, production & extractive industries	500 1000*	500 1000*	500 1000*	500 1000*	SSD	SSD	SSD	SSD	SSD

* Recommended minimum buffer distance for operations involving blasting.

24. From which point should the setbacks be measured?

a) From the proposed or existing intensive agricultural use - **No**

b) From the property boundary shared with land used for intensive agriculture **Yes**

c) A combination of the above

4.1.10 Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?

Acceptable.

Councillor B Petrie provided the following suggestions re Council's submission on the above:

- 1) Not being able to do it in bushfire prone land would defeat the purpose of their intention as most of Tenterfield and indeed NSW is defined as being bushfire prone and as such would be precluded from Agritourism

Rather, it should be able to be done with appropriate safeguards in place. A better way would be to enable a land owner to obtain RFS approval for their intended land site. Such approval would ensure for example, safe access and exit points and an evacuation point.

- 2) No camping with 200 metres of a water way is both impractical and could never be policed. Rather, it would be better to say that there can be no permanent structures within the flood area.
- 3) It should be ensured that Agritourism activity is limited to primary producers only, not hobby farmers and there needs to be suitable distances between where these activities are held and other properties.



Our ref: ECM_7244209

19 April 2021

Agritourism and small-scale agriculture development planning amendments Team
NSW Department of Planning, Industry and Environment

Submission lodged via DPIE Have Your Say website

Dear Sir/Madam

Submission regarding the Explanation of Intended Effect for Agritourism and Small-Scale Agriculture Development

Please find enclosed a submission on the Explanation of Intended Effect for the proposed planning amendments currently on exhibition until 19 April 2021. This submission has been prepared by Council staff on behalf of Coffs Harbour City Council.

Council thanks the NSW Government for the opportunity to provide input into development of the amendment package. The attached submission contains a number of matters which Council requests are taken into consideration during development of the package.

For further information please contact me on 02 6648 4660.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Sharon Smith', is written over a light blue wavy line.

Sharon Smith
Section Leader, Local Planning

Encl.

EXPLANATION OF INTENDED EFFECT FOR AGRITOURISM AND SMALL-SCALE AGRICULTURE DEVELOPMENT

Submission by Coffs Harbour City Council

19 April 2021

This submission has been prepared by staff of Coffs Harbour City Council (Council) in response to exhibition of the Explanation of Intended Effect (EIE) for the *Agritourism and small-scale agriculture development* package. This submission has been prepared following review of the published EIE and Frequently Asked Questions.

A. GENERAL COMMENTS

Council makes the following general comments about the proposed initiatives and planning framework amendments outlined in the EIE:

- Council is broadly supportive of measures to increase opportunities for the development of agritourism and small-scale agricultural development in order to support diversification of farm incomes and the economy in rural parts of the Coffs Harbour City Council local government area (CHCC LGA). This is evident in Policy Direction 2 of the Coffs Harbour Local Growth Management Strategy which is to 'Support Rural Economic Development'. Actions within the Strategy designed to achieve this direction include enabling appropriately scaled artisan food and drink industries and function centres in rural areas, supported by guidelines to minimise amenity impacts from such uses. Whilst supportive of increasing opportunities for rural economic development (including agritourism), Council is concerned that some of the proposed amendments have potential to create adverse, unintended development outcomes and impacts.
- It is Council's view that the agritourism elements of this amendment package (and in particular, the exempt and complying development provisions) do not adequately account for the varying nature of agriculture, rural land use, lot sizes and tourism that exists across the State. Council is concerned that the provisions allowing agritourism development as exempt and complying development have significant potential for adverse, unintended impacts in more densely settled regional areas of the State, such as the CHCC LGA, where 72% of its rural land used for 'rural living' purposes. The prevalence of smaller rural lot used primarily for rural living and hobby farming in areas like CHCC LGA, as well as the high demand for tourist and residential accommodation in many coastal areas, presents the risk of a range of undesirable outcomes including increasing land use conflict, a reduction in agricultural use of rural land, adverse impacts on rural landscape character, increased traffic on rural roads and increased impacts on biodiversity and watercourses. Increasing the risk of land use conflict would seem to be in contradiction with the NSW Right to Farm Policy which specifically seeks to use the planning system to minimise the risk of land use conflict.
- Council is generally supportive of measures to simplify assessment and approval pathways for development that are truly low-impact however, Council is concerned that the criteria for exempt and complying development proposed to apply to various types of development

(farm stay accommodation, farm-gate activities and farm events) are insufficient to account for the potential impacts of these types of development.

- Council is concerned about the potential ramifications for local government in resourcing the regulation of some of the forms of development that will be able to be undertaken as exempt and complying development, principally farm stay accommodation, events and cafes/restaurants.
- Council is concerned that the package will encourage non-agricultural investment and use of rural land at the expense of agricultural investment and production. In areas like the CHCC LGA, the demand for tourism accommodation and non-agricultural uses of rural land means these types of development may be more lucrative than farming.
- Council notes that the package is intended to restrict farm stay accommodation, farm activities and farm events to land that is used principally for primary production. However, despite this intention, Council believes there is a risk that the exempt development opportunities in the package will result in development on small, rural lifestyle lots (that do not have any primary production) due to misinterpretation of the provisions by owners.
- None of the provisions in the EIE require avoidance of development or impacts on good quality (important) agricultural land. Protection of productive agricultural lands is a Direction of the North Coast Regional Plan 2036.

B. SPECIFIC COMMENTS

Council makes the following comments about specific aspects of the initiatives and proposed amendments contained within the EIE:

1. Farm stay accommodation

- It is noted that the definition of farm stay accommodation is proposed to be amended to require that the principal use of the land must be for primary production however, no details are provided as to how this will be regulated or proven. Council is concerned that this requirement will be difficult to regulate, particularly where development is able to be undertaken using exempt and complying provisions. The ambiguity of this criteria means there is a risk that owners of smaller, rural lifestyle properties (i.e. non-working farms) may utilise these provisions to develop accommodation on their land.
- Council is concerned that the exempt development provisions that allow farm stay accommodation may be used to establish permanent dwellings on land under the guise of the dwellings being for farm stay accommodation. Given the current acute shortage of rental accommodation in CHCC LGA (and many other LGAs) this is seen as an entirely likely outcome. The option to utilise caravans provides further scope for misuse of these provisions.
- Council is generally supportive of the proposal to allow farm stay accommodation to occur in tents and caravans however, it is considered that the proposed changes may prompt some rural land owners to set up camping grounds without approval whilst claiming it is farm stay accommodation. Regulation of this matter will fall to Councils which is likely to require significant time and resources.

- The exempt and complying development criteria are considered to be wholly insufficient to manage (or exclude) development that has significant potential to create environmental impacts, land use conflict and impacts on genuine agricultural land and productivity.
- The proposed exempt and complying development provisions include no provisions for management and disposal of effluent on site, access roads and parking, water supply or electricity and lighting. On-site management and disposal of effluent is an important consideration for accommodating visitors on un-serviced land and needs to be regulated.
- The provisions allow up to 20 persons in tents, caravans or campervans or at any one time for up to 14 days potentially year round is not considered to be low impact development or appropriate use of rural land. Furthermore, it is not clear whether sufficient consideration has been given to cumulative impacts.
- Council is concerned that farm stay accommodation developed through exempt and complying development pathways will be difficult and time-consuming for Council to regulate. This includes regulation of changes of use of buildings and whether buildings are being used for tourist or permanent accommodation. The controls do not incorporate a requirement for operators to maintain records of numbers of guests and their duration of stay, which would prove a building is used for tourist accommodation rather than permanent residential use. In relation to this, the proposed complying development provisions for farm stay accommodation in existing buildings or dwellings and new buildings or dwellings do not appear to provide time limits for guests.

2. Farm events

- Council is currently progressing an amendment to Coffs Harbour Local Environmental Plan 2013 (CH LEP 2013) that includes a proposal to make 'rural functions centres' permitted with consent in Zone RU2. Council would like more information about the types of events and activities that will be possible under the 'farm events' provisions. If the farm events provisions in this package will enable development similar to what Council is proposing, Council will need to reconsider or revise its planning proposal.
- It is not clear how the exempt and complying development provisions that specify a maximum number of events per year and maximum number of guests per event were established. Council would like more detail on how these limits were established and how they will avoid adverse impacts and land use conflict.
- The exempt and complying development provisions do not include any criteria for road standards, parking provision or effluent management. These are all important considerations for events catering to a significant number of patrons.
- The proposed exempt development criteria include a requirement for a 1,000m setback from any dwellings where amplification is involved, but this is not included in the complying development provisions.

3. Farm-gate activities

- Allow restaurants or cafes that can accommodate up to 50 patrons to establish on rural properties as exempt development is considered to present significant risk of adverse impacts.
- The exempt and complying provisions relating to farm-gate activities do not provide sufficient criteria to ensure that cafes and restaurants are fit for purpose and will not have adverse environmental impacts. The provisions do not include criteria for a number of important aspects including; food premises fit-out and operation, potable water supply, effluent management, toilets, parking and disabled access.

4. Farm dams

- Council is generally supportive of the intention to make terminology concerning dams more consistent across various environmental planning instruments and statutes, and consideration being given to implementing a consistent approval process. Council would like to have the opportunity to comment on any proposed changes once they are drafted.
- Coffs Harbour Local Environmental Plan 2013 currently requires development consent for water storage facilities (which includes dams) in rural zones. Council would object to any proposal to allow dams to be built on third (or higher) order watercourses without consent.

5. Rebuilding of farm infrastructure

- Council has concerns that these provisions will allow farm buildings to be rebuilt where they should not have been built in the first place. A recent example in the CHCC LGA concerns chemical mixing sheds, farm machinery and poly tunnels/igloos that were washed away at Upper Corindi during a significant local flood event in February 2021. Allowing rebuilding of these buildings on what is clearly flood prone land does not account for the natural hazard and will reinstate the vulnerability of this farm infrastructure.

6. Opt-in provisions

- Due to the absence of detail about the proposed opt-in clauses in the EIE Council does not propose to opt-in to any provisions at this stage. Council would welcome the provision of more detail of the opt-in provisions to enable proper consideration of this option.

7. Setback requirements for rural dwellings

- Council is supportive of the proposal to increase the required setback from intensive livestock agriculture for dwellings developed under Part 3A of the Codes SEPP. However, Council recommends that setbacks to intensive plant agriculture also be increased above 250 metres. Studies carried out by Council on intensive plant agriculture in CHCC LGA have shown spray drift can affect properties that are located more than 250 metres away from intensive plant agriculture and hence, a greater buffer or separation distance is warranted.

C. CONCLUSION/SUMMARY

In summary, Coffs Harbour City Council's comments on the proposed amendment package as outlined in the EIE are as follows:

- Council recognises the economic opportunities and benefits of farm-based tourism and is broadly supportive of measures to increase opportunities for the development of agritourism and small-scale agricultural development in order to support diversification of farm incomes and the economy of rural and regional areas. However, any planning framework that provides additional development opportunities and streamlined approval pathways must include proper consideration of potential impacts and unintended consequences.
- Council has concerns about many of the proposed amendments in the EIE. Council considers that much of the development proposed to be able to be undertaken as exempt or complying development is not low-impact and that the package does not adequately consider the potential for undesirable outcomes. Similarly, the exempt and complying development criteria appear generally inadequate to manage impacts or preclude inappropriate development.
- The package fails to account for the significant variation in rural land use, lot size and demand for accommodation and tourism development that exist in different parts of the State. Council is concerned that the package has significant potential to create a proliferation of inappropriate development on rural land which will create environmental impacts and land use conflict.
- The package is at risk of facilitating development on smaller, non-working rural properties with the attendant impacts that this will bring.
- The ability to develop farm stay accommodation as exempt development is likely to result in the establishment of unlawful residential accommodation and camping grounds.
- Council is very concerned that regulation of development carried out under these provisions (whether lawful or not) will present a significant problem and resource burden for Council.
- In light of the concerns expressed in this submission, Council requests that this amendment package is held in abeyance until further consultation is carried out with local government across NSW.

Enquiries Brooke Davey
Our Ref Cooma Office
Your Ref Agritourism and small-scale agriculture Development - EIE

19 April 2021

Department of Planning, Industry and Environment
Lodged via website

Dear Sir/Madam

Snowy Monaro response to Agritourism and small-scale agriculture development

Thank you for the opportunity to provide comment on the Department of Planning, Industry and Environment proposed changes relating to agritourism and small-scale agriculture. Council welcomes many of the proposed changes outlined in the Explanation of Intended Effects (EIE).

Council's Strategic Planning Team have reviewed the EIE and have provided responses specifically in relation to Part 4 of the EIE. Some additional comments and questions have also been included for consideration.

Council would appreciate the opportunity to discuss with the Department how our current LEPs (Bombala LEP 2012, Cooma-Monaro LEP 2013 and Snowy River LEP 2013) can be amended with the assistance of the Department.

Should you have any queries regarding this application please contact Council's Strategic Planning Department on 1300 345 345.

Yours faithfully



Brooke Davey

Senior Strategic Land Use Planner

Response to Consultation Questions

4.1.1 Farm stay accommodation

Council is supportive of the proposed changes to the farm stay definition. It is imperative that the definition ensures that the principal use of the land remains primary production. We would contend that it is a planning matter to ensure that any accommodation use is subordinate to the primary production use of the land and to meet the objectives of the zone. We specifically support the ability to utilise existing structures which is positive for resource use but also maintaining a rural character.

Consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?

It is suggested that setbacks to all intensive livestock agriculture land uses should be 1000m. There would not appear to be a significant difference between a feedlot and a dairy (restricted) and therefore these uses should have the same requirements. It is noted that any intensive use is likely to have similar odour and operational impacts. For consistency and ease of use all intensive livestock agriculture uses should be maintained at 1000m.

It is suggested that intensive plant agriculture, forestry, mines and extractive industries railway lines and rural industries should be increased to 500m to build in some additional protection for existing lawful uses considering these standards are to be utilised for exempt provisions.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

It is considered that there should be a consistent approach, irrespective of the development pathway (exempt, complying or development application) as to whether the land enjoys a dwelling entitlement. It is preferable that a landholding enjoys a dwelling entitlement and also that a dwelling is constructed to ensure the appropriate management of the use, particularly in the RU1 Primary Production Zone.

It is possible that permitting farm stay as exempt development where the land does not enjoy a dwelling entitlement may cause development applications for ancillary 'managers residence' which sets an undesirable precedent.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

Consistent with Council's proposed approach to secondary dwellings in rural areas (subject to proposed clause 5.5), and intention for dual occupancy in rural areas, new buildings or manufactured homes for farm stay accommodation 200m is proposed to cluster sensitive development and to prevent the sterilisation of rural land (on-site and surrounding).

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

N/A

Areas for further clarification in relation to farm stay accommodation

- How are amenities facilities proposed to be managed in the case of exempt camping/caravan/campervan proposals?
 - Do the exempt provisions permit the construction of an amenities block for the use of tents/caravans/campervans?
 - Is this considered a primitive camping ground for the purposes of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*?
 - A note below the development standards should be added alerting proponents that they need to obtain a Section 68 approval under the *Local Government Act 1993* for on-site sewage management and or an approval under the LG Regulation for primitive camping ground. Very few rural areas are likely to be connected to reticulated sewerage systems.
- Clarification on any clashes with the miscellaneous provisions provided for in Clause 5.4 of the LEP relating to farm stay accommodation.
- Where seeking development consent for farm stay accommodation comprising tents/caravans/campervans will the number of people be regulated through a clause 5.4 provision?
- Where exempt change of use of an existing dwelling occurs where the dwelling exceeds 300m² and can accommodate 12 people or more, a change in classification is triggered from Class 1a to Class 3, requiring fire safety works. Whilst 1.16(b) of the Exempt and Complying codes may cover this, it may be simpler to apply limitations on the dwelling size and capacity.
- The document is silent on front boundary setbacks for erection of farm stay accommodation as complying development. It is recommended that the requirement be any new structures are constructed behind the existing dwelling line or 100m from front boundary (or consideration given to lot area or zone to determine appropriate setbacks).
- The document is also silent on landscaping requirements and character/materials which we consider may lead to poor outcomes, e.g. ATCO style structures.

4.1.2 Farm gate activities

Council is supportive of the introduction of this proposed land use which will fill an existing gap in definitions in the Standard Instrument. As suggested in the EIE, it is imperative that the definition ensures that the principal use of the land is for commercial agricultural production.

Consultation questions

5. How far do you think a roadside stall should be setback from the road?

Given the definition “place or temporary structure” and nature of a roadside stall (i.e. easy access from passers by), they could be permitted quite close to the front boundary.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

The EIE proposes existing and proposed buildings farm gate activities structures are permitted to occupy 200m² and 500m² total footprint. This is considered too large and would occupy a significant proportion of a 4000m² site. Consideration should be given to limiting to 200m² total footprint for 4000m² to 10ha allotments. Acknowledging that there are some productive commercial agricultural pursuits suited to smaller lots, it is considered that balance may be tipped in terms of which becomes the dominant use of the site.

Setbacks from all boundaries are to be considered. Consideration could be given to setbacks based on lot area or zone.

Operational requirements must be considered for complying farm gate activities. Suggested farm gate activities hours of operation could be 8.00am to 9.00pm Sunday to Thursday and 8.00am to 10pm Friday and Saturday.

Formalised car parking requirements. It is suggested that 15 car parks should be required (including disabled car parking) to accommodate 50 people noting that public transport is generally not an option in rural areas. Car parks should be suitably finished and delineated.

Landscaping, character and materials should be areas for applicants to satisfy.

Areas for further clarification in relation to farm gate activities

- It is noted that the proposed definition refers to “predominantly grown in the surrounding area” which is open to interpretation. From Council’s perspective, it is preferable to have a very clear and unambiguous definition, especially when considering an exempt development pathway from a compliance/enforcement perspective.
- Exempt roadside stalls parking proposed to be accommodated on verge. This proposed requirement does not stipulate that cars leave in a forward direction, however cars parking on site are required to leave in a forward direction. This approach seems inconsistent. It is preferred that all car parking should be located entirely on the site and leaving in a forward direction.
- Consideration could be given to allow for a complying development pathway for cellar doors given that the use is quite similar to ‘farm gate activities’.

4.1.3 Farm events

Council is supportive of the proposed introduction of the farm events definition. The addition of this development will assist Council’s and proponents in identifying a suitable definition without relying on function centre or Clause 2.8, noting case law on this clause. Council is supportive of the complying development pathway allowing the re-use of unused buildings.

Consultation questions

7. The proposed maximum number of people and events per day for exempt and complying development are:

a) 52 event days per year and up to 30 guests per event, or

b) 10 event days per year and up to 50 guests per event

Are these appropriate?

The proposed event days and guests numbers are considered suitable for low impact exempt and complying development pathways. Any larger or more frequent events should be subject to a development application which considers the specific noise, traffic, waste, servicing and other impacts of the proposal.

8. What events, if any, do you think should be excluded from the definition of farm events?

N/A

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.

a) RU1

b) RU2

c) RU4 zones

d) Other zones (please specify)

It is unclear why destination wedding have been singled out, how they are different to any other type of function (i.e. baptism, funeral, wake) and why they would require separate provisions, especially under a DA. If farm events are permissible (and this includes weddings) then an application for a wedding venue would be able to be assessed on its merits.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

N/A, we see no apparent need for a destination wedding definition or clause.

11. Is there any rural land or areas in which agritourism activities should not be permitted?

It is suggested the RU3 Forestry Zone, RU5 Village Zone would be inappropriate. Consideration should be given to prohibiting farm events on severe, extreme and catastrophic bushfire days.

Areas for further clarification in relation to farm events

- The EIE proposes existing and proposed buildings farm gate activities structures are permitted to occupy 200m² and 500m² total footprint. This is considered too large and would occupy a significant proportion of a 4000m² site. Consideration should be given to limiting to 200m² total footprint for 4000m² to 10ha allotments. Acknowledging that there are some productive commercial agricultural pursuits suited to smaller lots, it is considered that balance may be tipped in terms of which becomes the dominant use of the site.
- Setback of 1000m is supported for amplified voice/music. The other setback provisions as written aren't overly clear. However, a 50m setback from property boundaries for exempt or complying development otherwise is not considered adequate, 100m may be more appropriate. Less may be suitable only when a development application has been submitted, supported by acoustic reports.
- For notification for neighbours of an event, it should be clarified what 1 week means, consider writing 7 days.

4.1.4 Small scale processing plants

Consultation questions

12. Should any other agricultural produce industries be complying development? What standards should apply?

While animal processing is not considered an agricultural produce industry, it is considered that almost any other agricultural produce industry of a small scale, with appropriate development standards could be considered complying development. Standards for consideration should be around waste and traffic impacts. Processing meat and dairy are considered to be more high impact as opposed to processing seeds, fruits, vegetables, for example.

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

This would permit roughly 19 animals to be processed per week. This seems reasonable where waste is able to be managed appropriately.

14. Should any additional standards be included?

Standards for consideration should centre on waste, odour and traffic impacts.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

a) as complying development?

b) through the standard DA process?

No, the locational criteria identified for livestock processing facilities are considered appropriate to manage the risk of these uses in constrained locations.

Areas for further clarification in relation to small scale processing plants

- It is unclear why 4,000 carcasses for pork is appropriate as opposed to 1,000 lamb carcasses.
- Are proponents able to process more than one type of animal (i.e. is it an 'and' or 'or').
- Are these provisions able to apply to a mobile processing facility?
- Increased setback to watercourses i.e. 500m.

4.1.5 Rebuilding of farm infrastructure**Consultation questions***16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?*

These provisions are supported.

17. Should any additional standards be included?

N/A

4.1.6 Stock containment areas**Consultation questions***18. What type of permanent infrastructure should be permitted for stock containment areas?*

Infrastructure such as fences, troughs for feeding and watering and associated infrastructure should be permitted. Provision for shelter and shade should also be permitted.

*19. What type of permanent infrastructure should not be permitted for stock containment areas?***Areas for further clarification in relation to stock containment areas**

- Minimum area requirements for stock should be stipulated (i.e. density).
- Increased setback to watercourses i.e. 500m
- Free draining substrate and gentle slope.

4.1.7 Farm dams**Consultation questions***20. How could we simplify planning provisions for farm dams?*

It is suggested that farm dams up to a certain threshold, and where relevant setbacks can be achieved are able to be constructed without consent or be exempt development. It is suggested that 1ML capacity and 100m setbacks to all boundaries may be suitable. These provisions could be inserted under Part 5 of the Standard Instrument.

4.1.8 Biosecurity for poultry and pig farms

Consultation questions

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

Council is not the expert in animal biosecurity matters and would defer to the experts in this instance. However, Council does have concerns in relation to increasing the number of birds to 10,000 as exempt development.

22. Should any additional standards be included?

The locational conditions for 10,000 birds to be located 100m from a natural watercourse are inadequate given the high nutrient load associated with any intensive livestock use, particularly chickens (sheds, composting stockpiles, dead animal composting). The exempt provisions do not require any capture of stormwater runoff/sedimentation ponds/erosion management.

Groundwater contamination may also occur where shallow aquifers exist. The exempt provisions also do not exclude these types of uses within a drinking water catchment or a floodplain which is considered necessary for proposals that have very little oversight.

Landscaping/vegetative buffers to manage visual impact and nutrient load in the form of vegetative buffers are also not addressed.

Best practice guidance material produced by DPI should be referenced in clause 5.18 for all intensive livestock uses, including poultry.

General comments in relation to increasing poultry numbers to 10,000

Despite the biosecurity justification, Council has concerns in relation to the potential amenity impacts 10,000 birds could have on surrounding dwellings or residential land and on the environment.

Depending on the specific landscape features and location of a locality, the required 500m setback to a dwelling or residential land may not be suitable in all situations to satisfactorily ameliorate adverse impacts. This should be considered on a site by site merit assessment through the development assessment process.

Clarification should be provided whether the exemption covers the construction of the any associated infrastructure (sheds, packing sheds).

4.1.9 Rural dwelling setbacks from intensive agriculture

Consultation questions

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?

It is recommended that this distance be increased to a minimum of 500m so as to protect the existing intensive/mining/rural industries.

24. From which point should the setbacks be measured?

a) From the proposed or existing intensive agricultural use

b) From the property boundary shared with land used for intensive agriculture

c) A combination of the above

The setbacks should be measured from the property boundary to ensure the greatest protection is provided to the existing land use. It is preferable to apply more caution to these situations due to the known reverse amenity impacts and land use conflicts dwellings can have on existing lawful intensive livestock uses.

4.1.10 Recreational Beekeeping

Consultation questions

25. Are the proposed development standards appropriate and are any additional standards needed?

The inclusion of recreational beekeeping as 'development' appears to be overreach. This could result in a situation where a proponent could be undertaking recreational beekeeping and require development consent (for non-compliance with a development standard); however a commercial bee-keeper could be doing the exact same and not require consent because 'extensive agriculture' is permitted without consent and there are no planning restrictions on undertaking the use. This is a situation which could arise in the RU1, E4, E3, R5 zones within the Snowy Monaro region.

General comments

Access

Legal, unencumbered access must be able to be provided for all proposed exempt developments.

Insertion into land use tables where 'agriculture' is permissible with consent

We are keen to understand how the automatic insertion of the proposed land uses would work in a rural zone where aquaculture, intensive livestock agriculture and intensive plant agriculture are all permitted with consent and extensive agriculture is permitted without consent, meaning that the parent term 'agriculture' does not appear in the land use table.

Insertion into E3 Environmental Management Zone

Council is interested in how farm gate activities and farm events can be implemented in areas where the E3 Environmental Management Zone applies. Within the Snowy Monaro region, Council considers these areas suitable locations to permit farm gate activities and farm events to compliment the exiting land uses, particularly at Crackenback given its location on the Alpine Way. This area already has a concentration of artisan, hand made products and tourist and visitor accommodation and the addition of these land uses would consolidate this area.

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta
NSW 2124

Dear Sir/Madam

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for *Agritourism and small-scale agricultural development* released by Department of Planning, Industry and Environment in March 2021.

- Background

Lismore City Council (LCC) is predominately a rural LGA with 85% of land being zoned RU1 Primary Production. Productive agriculture and the associated emerging industries of agribusiness, agri-technology and food processing are a key driver of Lismore's economy. Protecting the natural resource base upon which these industries depend is critical.

Similarly, Council's Economic Development Strategy *Innovate Lismore 2024* recognises the potential growth in opportunities for economic development in the emerging nature-based and agri-tourism sectors. Interest in developing this sector is reflected by the high number of queries Council receives from rural landowners who wish to diversify their operations into artisan food and drink, holding weddings and events on their rural properties and offering services such as day spas and tourist accommodation.

For these reasons, the changes proposed in the EIE have the potential to significantly impact the permissible land uses in the LCC rural area. Council planners continually grapple with finding the appropriate balance between enabling small scale tourism development and the need to protect regional and State significant farmland. Both objectives need not be incompatible and mutually exclusive. Council's existing planning framework that governs rural tourist development reflects the balance that the community and Council has adopted thus far.

- Existing planning controls

In 2018 Council introduced a new Lismore Local Environmental Plan (LEP) Clause 6.11 *Rural and nature based tourism development* to enable small scale tourism accommodation which was accompanied by a new Development Control Plan Chapter 4 (Rural tourist Accommodation). The objectives of the LEP Clause put a substantial emphasis on any development being 'small scale' which is defined as 'a scale that is small enough to be generally managed and operated by the principal owner living on the property'. These changes were aimed at facilitating rural tourism accommodation that did not meet the restrictive LEP definition of 'farm-stay accommodation' or did not comply with the lengthy LEP Clause 5.13 governing 'eco-tourist facilities'.

More recent changes to Council's existing planning framework governing small scale rural tourist development were supported by Council in March 2021 when a Planning Proposal was recommended for a Gateway determination. This Planning Proposal, which has now been withdrawn pending DPIE's changes as mooted in the EIE, sought to provide an approval pathway

in Zone RU1 Primary Production for land uses such as Artisan Food and Drink Industry, Recreation Facility (indoor) limited to a 'health studio' or similar, and Function Centre (for the holding of events such as weddings and corporate retreats).

Additionally, changes to Lismore's DCP Chapter 4 were also supported which outline more detailed planning controls to limit the scale of development and frequency of events to manage amenity impacts.

- Council's position

Council supports some elements of the EIE proposal with regard to introducing more specific land use definitions that aim to respond to market demand for weddings and events and artisan food and drink premises in rural areas.

However, the exempt and complying development provisions for farm stay accommodation, farm gate activities and farm events do not propose sufficient regulation for these developments. Issues such as the potential for land use conflict, noise, traffic generation, and road upgrades and consideration of community views are matters Council should assess through the DA process.

In addition, Council is responsible for the financial burden of taking enforcement action in cases of non-compliance with State Government exempt and complying development standards. The cost shifting burden that Council must deal with in compliance is compounded by revenue from developer contributions being foregone for development allowed under the Codes SEPP 2008.

Specific comments regarding the proposed definitions are outlined in the proceeding sections of this submission.

- Farm stay accommodation

It is acknowledged that changes to the definition of Farm Stay Accommodation to include camping (in tents, campervans or caravans) recognises that this type of temporary development is occurring in an unregulated manner given the growth and popularity of accommodation websites such as You.Camp.

While the planning system should continually respond to current and emerging trends, Council would prefer to assess development applications for Farm Stay Accommodation albeit with new controls inserted in the DCP to regulate the number of persons allowed at any one time for a maximum number of days in a tent / caravan / campervan.

Council does not agree with the draft model LEP Clause that suggests the number of people accommodated in a building be 3 times the number of bedrooms permitted under Clause 5.4, which would increase the number allowed in Lismore from 5 to 15. Furthermore, the maximum floor area for any building used as Farm Stay accommodation as 75m² in the model LEP Clause seems excessive given that Council currently limits this to 45m² in the DCP. These proposed development controls would be incompatible with the Lismore LEP Clause 6.11 objective that emphasises development be 'small scale'.

Accordingly, Council does not intend to opt into the model LEP clause as outlined in the EIE document because the current controls in the Lismore LEP (clauses 5.4 (5) and 6.11) and the DCP provide an appropriate level of control for this land use.

- Farm gate activities

Staff support this new definition being introduced into the Standard Instrument LEP as Council receives numerous queries from landowners in the rural area who have expressed an interest in diversifying their farm operations and food production activities to include retail sales, tours, distilleries, and / or a café or restaurant.

However, concern is raised regarding some of the proposed conditions for exempt development. For example, the proposed development standard that 'development cannot be carried out on land in bushfire attack level (BAL) – 40 or the flame zone' should read 'BAL 29' which is a more appropriate level of bushfire risk for exempt development.

Council does not intend to opt into the model LEP Clause as outlined in the EIE because it has already developed controls in a draft Clause 6.11 and draft DCP Chapter that are deemed adequate for this land use.

- Roadside stalls

Council supports roadside stalls being exempt development. A new LEP Clause was introduced in December 2020 under Schedule 2 that allows roadside stalls as Exempt Development in response to requests from rural landowners wanting to sell farm produce from the farm gate.

- Farm events

Council generally supports the new definition of 'Farm Events' being introduced to the Standard Instrument LEP because various rural landowners have expressed an interest in holding weddings / conferences and other events on their land. In March 2021 Council supported a Planning Proposal to enable 'function centres' with associated controls on scale, number of events per year, number of patrons, and a time limit on any DA consent to 5 years.

From the EIE documentation it appears that the events proposed under the Farm Events definition are not directly related to / or necessarily dependent on agricultural production. Uncertainty surrounds the long-term consequences of the proposed reforms on productive agriculture once the non-farming related land use becomes more profitable than farming. Moreover, the unintended consequences of non-farming development becoming the norm such as increased land values (as experienced in neighbouring LGA's such as Byron) are not addressed in the EIE in any depth. The EIE also does not contemplate the question of what guarantees can be put in place to ensure that a primary producer will return to farming the land when the drought or other event outside their control ends.

Council requests that the proposed definition for 'Farm event' include land uses such as Day Spas, health studios, yoga/meditation retreats to also be permissible in Zone RU1. Council recently prepared a Planning Proposal with the intention of making a Recreation Facility (indoor) permissible in Zone RU1 to enable these types of developments. However, given the release of this EIE, it would be more appropriate for the definition of Farm Event to encapsulate these types of development.

Council understands that a model LEP Clause is not being contemplated for farm gate activities given the immensely different types of controls required for varying types of events.

Council generally supports the proposed changes to simplify approvals for Farm Dams, Recreational Bee-keeping, rebuilding farm infrastructure, small-scale processing plants and stock containment areas.

- Conclusion

In conclusion, Council broadly supports the intent of this EIE for Agritourism and small-scale agriculture development because many rural landowners and the broader community in the Lismore LGA stand to benefit from greater innovation and diversification of farming and food production and tourism related industries.

However, Council is concerned that the proposal to introduce an exempt or complying approval pathway for Farm Stay Accommodation, Farm Events and Farm Gate activities will result in not only Council losing the opportunity to assess potential impacts on rural amenity, roads, traffic and the environment, but potential revenue from developer contributions will be forgone with Council having to resource any future non-compliance with development standards.

Council looks forward to being kept informed regarding the outcome of the EIE process. Please contact me on 1300 878 387 if you have any questions about this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paula Newman', with a long horizontal flourish extending to the right.

Paula Newman
Co-ordinator
Strategic Planning, Lismore City Council

Our Ref: 103/50/3

Phone Enquiries: Pathum Gunasekara
4934 9776

16 April 2021

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124

Dear Sir/Madam,

Planning Amendments for Agriculture – Public Exhibition

Maitland City Council welcomes the opportunity to provide feedback on the proposed planning amendments to existing controls within the NSW planning system to facilitate agritourism and small-scale agricultural developments.

Council considers the proposed planning amendments for agriculture is a positive first step towards recognising needs for diversification and addressing challenges and prospects of rural lands.

I am pleased to provide the following comments for your consideration.

Approval Pathways

Introduction of fast track approval pathways (exempt and complying development) to agritourism (farm stay accommodation, farm event, farm gate activities) is a key change outlined in the Explanation of Intended Effect (EIE).

The proposed fast track approval pathways are not accounted for the following matters and therefore, consideration should be given to:

- Flood free access and flood evacuation requirements (discuss in detailed below)
- Capacity of on-site sewage management system
- Potable water supply to support intensification of uses.
- Management of complaints and land use conflicts, resulting intensification of uses.
- Setbacks/land use buffers between urban area, in particularly peri-urban areas.
- Heritage and archaeological values in rural lands

In addition, it is not clear what evidence is supported by the nominated parameters outlined in the EIE. As an example, for farm stay accommodation – proposed maximum guests, maximum floor area and timeframes etc.

Intensification of Land Use Activities in Floodplain

Maitland's floodplain has highly productive areas and is predominantly zoned as RU1 Primary Production and RU2 Rural Landscape under the Maitland LEP 2011. Maitland has a long history of destructive flood events and the current local planning instruments have appropriate and tailored provisions to guide land use and development on flood prone land, developed through floodplain risk management processes.

Council supports improving the resilience of communities and considers social, economic and environmental consequences associated with different flood events in determining development applications for any intensification of land use activities in rural areas.

In this context, consideration should be given to flood free access, flood evacuation planning and cumulative impacts on floodplain prior to approval of any development on floodplain as exempt and complying development.

New Optional LEP Clause

The Department proposes to introduce a new LEP optional clause for farm stay accommodation and farm gate activities through an amendment to the SEPP, saving Council's time and resources required to progress individual planning proposals.

Council's Rural Lands Strategy 2005 is currently under review and a draft Strategy is anticipated to be finalised in the 2021/2022 financial year to provide a strategic planning framework for our rural lands.

Council will consider the adoption of the new LEP local clause for farm stay accommodation and farm gate activities tailored to the local context, following the development of new Rural Lands Strategy.

Agricultural Land Use Planning Strategy

Council notes that the NSW Agricultural Commissioner has commenced the development of an Agricultural Land Use Planning Strategy for NSW and is undertaking an extensive consultation with the stakeholders to identify and address planning issues facing agriculture, which will be completed shortly.

Council recommends to consider the proposed changes in the context of broader Agricultural Land Use Planning Strategy's findings and recommendations without pre-empting the outcomes of this evidence-based planning process.

Rural Lands in Metropolitan Areas

Council acknowledges that there are differences in the extent and intensity of agricultural activities in rural, regional and metropolitan local government areas. These proposed changes are intended to apply to all local government areas across NSW. It will be imperative that the proposed amendments recognise the need for different approaches to rural lands within the designated metropolitan areas taking into account their local land use context in order to avoid potential land use conflicts and without compromising their future growth opportunities. Therefore, a one-size-fits-all approach may not be

appropriate and requires a flexible and locality specific approach to rural lands in metropolitan areas.

Council appreciates the opportunity to provide comment and would be pleased to provide further input, if required.

Should you have any questions, please contact Council's Senior Strategic Planner, Pathum Gunasekara on 02 4934 9776.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MP', with a stylized flourish extending from the bottom right.

Matt Prendergast
Group Manager Planning and Environment

19 April 2021

Marcus Ray
Group Deputy Secretary, Planning & Assessment
Department of Planning, Industry and Environment
Parramatta Square, 12 Darcy Street,
Parramatta, NSW 2150

Dear Sir,

SUBMISSION – Proposed Amendments for Agritourism and Small Scale Agricultural Activities

Thank you for the opportunity to review and lodge a submission on the Proposed Amendments for Agritourism and Small Scale Agricultural Activities. The EIE has been reviewed and the matter reported to Council's Planning and Strategy Committee of the Whole meeting on 14 April 2021. Please find attached Council's submission on the proposed amendments.

For further information please contact Lorena Blacklock, Program Coordinator Land-use Planning, Communities and Spatial Services on 02 6285 6524 or Lorena.blacklock@qprc.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Carswell', written in a cursive style.

David Carswell
Service Manager, Land-use Planning
Queanbeyan-Palerang Regional Council

Attachment A

QPRC Submission on NSW Government's Proposed amendments to support agritourism and other small-scale agricultural activities

The principle of the amendments to have no or low environmental impact is supported as it is the promotion of small-scale rural activities including agritourism, that achieve the no/low impact principle. QPRC was one of the three trial sites in NSW nominated by the NSW Small Business Commissioner to facilitate new Agritourism ventures and it is pleasing to see progression to proposed amendments to the NSW planning legislation to facilitate these ventures.

There are some aspects of the proposed amendments that appear to conflict with the principle of no or low environmental. To achieve this principle, the following suggestions and comments are provided:

General Comments

- The proposed amendments and concept does not show a clear consideration of the Important Agricultural Land mapping identification and protecting the future of such land from land use conflict and fragmentation especially around the fringes of urban areas. This has been a key project that has been identified in the South East and Tablelands Regional Plan and remains outstanding. This project is a key consideration for the strategic land use planning in QPRC as well as other local government areas. Further clarification and consideration of this work and project is required prior to finalising the proposed amendments.
- Future use of such agricultural land with emerging technology and markets may be stymied due to the location of the proposed accommodation uses. This aspect should be further explored prior to finalising the proposed amendments.
- Cumulative impact of exempt development on rural land does not appear to have been considered. Proposed amendments create the potential for 120 people visiting a site under exempt development on the same day:
 - 20 people camping, plus
 - 50 people at farm gate activity, plus
 - 50 people at a farm event.

The cumulative total and impact should be made apparent and considered prior to finalising the proposed amendments.

- Setback controls relate to established and proposed agricultural uses (feedlots intensive agriculture and other uses), however, they fail to provide clarification on what would constitute "proposed agricultural uses". This should be clarified so that it is clear to the community, applicants and surrounding land holders where these uses are. For example, will "proposed" mean where a development application is lodged? Or where there it is identified in a business plan, or some other method?
- Setback distances to nature reserves and Environmental zones should be included in the controls.

Farm Stay Accommodation

- The proposed amendments to allow farm stay accommodation are unclear. The detail on **how** dwelling entitlements will not be created from farm stay accommodation is required prior to progressing with these amendments. The unintentional creation of dwelling entitlements will have a significant detrimental impact on the strategic rural planning that has been undertaken by QPRC in the Local Strategic Planning Statement and the Rural Lands Study. Further information is required to be provided to councils to test the controls prior to any amendments being progressed.
- More clarity is required on controls for exempt and complying development in relation to waste management is required. Current controls appear to create an ongoing

compliance burden on councils. Further detail could assist to prevent this burden and not set up false expectations within the community.

- There is a false expectation set up for exempt farm stay accommodation when it is excluded on bushfire prone land which covers most rural land particularly with recent changes by Rural Fire Services which include grasslands as bushfire prone land. This aspect should be reviewed and the EIE should be upfront with the likelihood of where this could occur (if anywhere). It maybe that this exempt development is not possible and as such not worth including.

Farm Gate Activities

This definition needs to be clarified with reference to “*industrial retail outlet*” definition and “*artisan food and drink industry*” definition. There is overlap and potential for confusion.

Farm gate activities include roadside stalls and it is proposed to allow roadside stalls on rural land as exempt development subject to certain development standards relating to building use, location and size, site access and parking and waste management. These include allowing parking on the road verge although the development must not be located adjacent to a classified road. For this type of development, it is considered that any car parking should be provided outside of the road verge and that there should be development standards which relate to signage i.e. the number and size of any signs as well as the type of goods sold being limited to produce grown and harvested on site or sourced from nearby farms. These aspects should be addressed prior to finalising the proposed amendments.

Farm Events

The proposed land use term of farm events in the Standard Instrument LEP Order is intended to permit events, tours, functions, conferences, fruit picking, horse riding and other similar experiences on land for which the principal use of the land is the production of agricultural goods for commercial purposes. It too is proposed to have a number of approval pathways including an exempt pathway which requires compliance with a number of prescribed development standards. In addition to those proposed i.e. development standards in relation to operational requirements, setbacks and waste management, consideration should also be given to circumstances where the farm event will involve amplified music or other potential noise disturbing activities. These aspects are to be included in the amendments prior to progressing the proposal. While there is other legislation that could be relied upon, in the interests of providing a simple system for these events, the requirements should be included in one place or at the very least referred to.

Agritourism Definition

This new definition is very open ended and could potentially include any activity that brings visitors to rural land. This is at odds with most other land-use definitions in the standard instrument. The impact of this definition should be fully explored and amended to ensure the intent is achieved without creating uncertainty and unintended impacts.

Small Scale Processing Plants

The introduction of these developments as complying development is concerning given that the private certification industry has not inspired confidence in the certification of residential development. This proposal may cause more issues for compliance follow ups by councils particularly in relation to numbers of animals slaughtered per annum. Further detail on the proposed conditions to ensure suitable pollution control and animal welfare should be provided prior to progressing small scale processing plants as complying development.

Stock Containment Areas and Rebuilding of Farm Infrastructure

The rebuilding of farm infrastructure and simplification of controls for stock containment areas are supported.

Farm Dams

The creation of consistency for farm dam controls is supported.

Rural Dwelling setbacks from Intensive Livestock Agriculture

An increase in setbacks is supported as there are many local factors that affect the shape of suitable buffer areas around these uses.

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19 April 2021

NSW Department of Planning, Industry & Environment



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Submission to Agritourism Explanation of Intended Effect

Wingecarribee Shire Council welcomes the opportunity to contribute to the discussion paper on the drafting of new agritourism definitions for the Standard Instrument:

https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Agritourism+and+Agriculture+EIE+-+March+2021.pdf

Council recognises Agritourism as a major contributor to providing 'viable commercial conditions' for rural enterprises and acknowledges the description and potential benefits of agritourism as expressed in the EIE.

Council especially supports the proposed *Farm gate activities* definition as described, which has the opportunity to provide significant benefits to local agricultural enterprises.

If you require any further information in support of this submission please contact Susan Stannard, Senior Strategic Land Use Planner, susan.stannard@wsc.nsw.gov.au

Yours sincerely

Nicholas Wilton
Group Manager
Planning, Development & Regulatory Services

Working with you

1. Introduction

Agriculture has been an important land use across the Southern Highlands since initial European settlement and the sector continues to make a significant contribution to the local economy. The local agricultural sector now includes beef cattle, dairy cattle, poultry and nurseries as well as a wide variety of other smaller crops. Emerging agricultural activities include viticulture, wine production and equine activities.

Council recognises that maintaining and growing the agricultural sector positively impacts the sustainable delivery of regional services and social, economic and community infrastructure. Sydney's Food Futures is a collaborative research project being undertaken by the Institute for Sustainable Futures at the University of Technology Sydney in conjunction with a number of government and industry partners, including the Sydney Peri-Urban Network of which Wingecarribee Shire Council is a participatory member. Recent research by the Institute identified the significant growth potential in fresh food production in the Southern Region by 2031, concluding that creating a resilient food future for Sydney means that strategic metropolitan planning needs to value and better protect agriculture from urban sprawl and that farmers and agri-businesses need viable commercial conditions to sustain their enterprises.

2. Agritourism

Council recognises Agritourism as a major contributor to providing 'viable commercial conditions' for rural enterprises and acknowledges the description and potential benefits of agritourism as outlined in the Explanation of Intended Effect (EIE):

Agritourism is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events. Agritourism activities enable farmers to diversify their income from farming businesses while maintaining primary production on the land as the principal use.

Council also notes and strongly supports the EIE reminder that:

the planning system seeks to protect agricultural land and secure it as a resource for food production for future generations.

Council has already initiated Agritourism opportunities following extensive consultation with local stakeholders, adopting a Rural Tourism Policy in 2019, and completed supporting amendments to WLEP 2010 in 2020.

Council supports the proposal to incorporate an *Agritourism* definition within the Standard Instrument (SI) dictionary as a subset of the existing land use group term *Agriculture*. Council also supports the introduction of the proposed new land use term, *Farm gate activities* as subset definition of *Agritourism*. However, Council would like to offer an alternative to the proposed *Farm events* definition, as discussed in the body of the submission.

Council supports the proposed inclusion of *Roadside stalls & Cellar door premises* as subsets of *Farm gate activities* and therefore sub sets of *Agritourism*. This would benefit the

permissibility of such land uses within the E3 Environmental Management zone under Wingecarribee Local Environmental Plan (WLEP) 2010 because currently these land uses are a form of *Retail premises* which is mandated prohibited in the E3 zone under the SI. WLEP 2010 could enable the group term *Agritourism* with consent in the E3 zone which covers some 83% of the Shire and within which many agricultural enterprises are located. Permissibility in the E3 zone is currently a significant impediment to enabling certain land uses which might support agriculture in this zone.

Before considering each type of land use in more detail however, Council wishes to address the various pathway options, noting the strong reliance on the proposed exempt and complying provisions for each land use type.

It is noted that much of Wingecarribee Shire is subject to environmental or heritage sensitivities which particularly apply to the non-urban areas, including the following:

- *Virtually all of the Shire lies within the Sydney Drinking Water Catchment*
- *The Shire contains extensive areas of mapped Category 1, Category 2 and category 3 Riparian Land*
- *The Shire contains extensive areas of mapped flood prone land*
- *The Shire contains extensive areas of mapped bushfire prone land*
- *The Shire contains extensive areas of mapped Threatened Ecological Communities*
- *Certain rural properties are listed as Items of Local Heritage under Schedule 5 of WLEP 2010*
- *Significant non-urban areas of the Shire are mapped Heritage Landscape Conservation Areas*
- *There are several mapped Archaeological sites within the Shire.*
- *Farmland which has been under primary production for an extensive period of time may face contamination issues.*

Council strongly recommends that the risks to life, property and heritage associated with these sensitivities be managed through the planning process by excluding these areas from all but the most minor options under the proposed exempt and complying pathways.

Each land use is now considered specifically.

3. Farm Stay Accommodation – General Comments

Council acknowledges the tourism benefits of *Farm stay accommodation* and has recently increased the maximum number of bedrooms in a *Farm stay* development from 5 to 8 under WLEP 2010.

Council supports the proposed amendment to the existing definition of *Farm stay accommodation* in the SI to remove the references to 'working farm' and 'secondary business'. Council agrees that it is not a 'planning matter' to address the financial viability of a farming operation which the current definition requires, nor is it possible to ensure that farm stay accommodation remains ancillary to the farming business without a stronger compliance and regulatory regime.

Council acknowledges the merit in the proposed replacement of these references with a requirement that the existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes. However, the proposed amendment possibly simply replaces one challenging definition with another. A use may be a 'principal' use, even in its most modest form, simply because there are no other uses on

the land. Presumably a dwelling be included as a land use, but how would the relative areas of the residential use and the farming use be assessed to determine the 'principal' use?

Council raises these questions, not to be pedantic, but because increasingly, previously agricultural land is being utilised for rural residential purposes with many owners seeking new opportunities to generate additional income through short term holiday letting, tourist and visitor accommodation, or activities such as rural weddings.

While such uses support tourism they can actually undermine the viability of agricultural land by increasing property values and creating neighbour conflicts. Such impacts are already occurring and could be expected to increase if care is not taken to ensure that only genuine farming enterprises are supported through these planning initiatives as intended.

Council would be reluctant to support *camping* as a form of *farm stay accommodation*, especially as exempt development, given that almost all of the Shire is within the Sydney drinking Water Catchment.

It is noted that to ensure *Farm stay accommodation* remains a low impact use, an optional clause is proposed that councils can choose to adopt, setting out development standards which councils can tailor to suit local conditions. Council requests that details of this draft clause be released as soon as practicable.

Due to the sensitivities discussed above, Council would only support the exempt development pathway for *Farm stay accommodation* for a 'change of use of an existing dwelling or part of a dwelling' and would only support the complying development pathway for a 'change of use of an existing building or manufactured home'.

4. Farm Stay Accommodation – Responses to EIE Questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?

In Wingecarribee Shire, *Intensive agriculture* is only permitted within the RU1 Primary Production zone which is predominantly limited to the western area of the Shire. Council makes no comment on the proposed setbacks contained in the EIE, but does recommend that fixed minimum lot sizes and setbacks be defined for all forms of proposed new development.

It is further recommended that development on land within the Sydney Drinking Water Catchment, including *Camping*, require a Development Application accompanied by an effluent disposal report or a water quality management report.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

Council strongly agrees that *Farm stay accommodation* should only be permitted on land which has a dwelling entitlement. Many rural lots within the Shire do not have a dwelling entitlement, either because they are below the minimum lot size, or because they do not qualify for a dwelling entitlement under other provisions contained within WLEP 2010.

Council considers that to allow *Farm stay accommodation* on land which does not have a dwelling entitlement would be contrary to the principal aim of the proposed amendments of

supporting existing rural businesses. It is considered highly doubtful that WaterNSW would support such an option.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

Council's current controls for the distance between rural buildings is 50 metres. Any separation greater than 50 metres may result in walking distances which would discourage the use of facilities for the appropriate containment and treatment of sewage and waste water.

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

Council considers that zoning and lot size might be more appropriate standards.

5. Farm Gate Activities – General Comments

Council considers this proposed definition to be the most valuable aspect of agritourism support. Council has long sought to enable local farmers to value add through a small retail outlet similar to a *Cellar door premises*. This was an option under Council's previous LEP through a local clause, but was removed under the Standard Instrument LEP. The *Artisan Food and Drink* definition would have resolved this issue, but for the inclusion of the word *Industry* in the definition. *Artisan Food and Drink Industry* is a type of *Light industry*, and the Standard Instrument mandates *Light industry* as prohibited in the E3 Environmental Management zone. Much of the Shire's agricultural land is zoned E3 and therefore this land use option is not available in those locations.

The resolution of this matter is of major importance to Wingecarribee Shire and the proposed *Farm gate activities* definition looks very promising. It is noted that council, industry organisations and primary producers (including Southern Highlands Key Stakeholder Group (SHKSG), NSW Wine Industry Association and the NSW Farmers Federation) are all supportive of such a definition.

It is noted that the proposed new *Farm gate activities* land use term would include:

- *the processing, packaging and sale of agricultural produce, or*
- *a restaurant or café, or*
- *facilities for the holding of tastings, workshops or providing information or education to visitors for agricultural produce grown on the farm or predominantly grown in the surrounding area.*

It is noted that the proposed definition is intended to ensure that the principal use of the land must be the production of agricultural goods for commercial purposes, including when the farm is currently not producing goods due to drought or similar events. This is supported.

Council agrees that *Farm gate activities* are in keeping with the surrounding agricultural landscape, community and region and that these activities can also protect farming from

encroachment by non-agricultural or conflicting uses by strengthening the value of the agricultural activity itself. Council also supports the inclusion of *Roadside stalls & cellar door premises* as subsets of *farm gate activities* and therefore sub sets of *Agritourism*.

Council foreshadows concerns with the proposed *Farm events* definition and notes here that the less intensive uses described under *Farm events* such as *tours, fruit picking, horse riding and other similar experiences* could be equally included under the *Farm gate activities* definition.

Council generally supports the proposed pathways contained in the EIE, subject to more detail on the 'specified development standards'. Council is not as concerned with the proposed exempt and complying development pathways for *Farm gate activities* as it is with *Farm stay accommodation*.

In conclusion, Council considers this to be the most useful proposed amendment, offering broad ranging support to genuine farming enterprises. It is long overdue.

6. Farm Gate Activities – Responses to EIE Questions

5. How far do you think a roadside stall should be set back from the road?

It would be difficult to establish a fixed numerical standard in this regard as it would depend on several factors – size of the stall, type of road, sight lines, and so on. Guidance should be sought from Transport for NSW.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

No additional comments are offered here.

7. Farm Events – General Comments

Council considers this proposed land use definition is the most potentially problematic given the current broad range of land use definitions. Council considers that the less intensive uses described under *Farm events* such as *tours, fruit picking, horse riding and other similar experiences* could be equally, and perhaps more appropriately, included under *Farm gate activities* where they would be compatible with similar activities identified there such as *facilities for the holding of tastings, workshops or providing information or education to visitors*.

However, land uses such as *functions* and *conferences* could be more problematic especially in the context of offering a supplementary income source with no or low environmental impact. It is noted that under WLEP 2010, *function centres* are prohibited in the E3 zone and that the LEP contains a 'heads of consideration' clause for the DA assessment of function centres in zones where they are permitted with consent. It is further noted that *function centres* are excluded from the operation of clause 2.8 of WLEP 2010.

Council has already addressed limitations within its own LEP to provide increased opportunities for weddings, by introducing a Rural Tourism Policy and amending WLEP 2010 to enable function centres in the RU2 zone, facilitating the rezoning of a portion of E3 zoned land, where appropriate, to RU2 and including a 'heads of consideration' clause for function

centres. Such uses can generate significant environmental impacts and neighbour conflict which is why Council developed a Policy and amended WLEP 2010 as it did.

Council would support the replacement of *Farm events* with an alternative definition such as *Rural Function Centres* or *Destination weddings* with an appropriate supporting 'heads of consideration' clause. It is noted that the term *Destination weddings* is discussed in the EIE without being defined, but the EIE consultation questions for *Farm events* appear to focus on *Destination weddings*.

8. Farm Events – Responses to EIE Questions

7. *The proposed maximum number of people and events per day for exempt and complying development are:*

- a) *52 event days per year and up to 30 guests per event, or*
- b) *10 event days per year and up to 50 guests per event*

Are these appropriate?

Council prefers option (b). It is considered that the impact of an additional 20 guests over 10 events would be far less than 20 fewer guests over 52 events.

8. *What events, if any, do you think should be excluded from the definition of farm events?*

Council recommends that the proposed definition *Farm events* be replaced with either *Rural function centre* or *Destination weddings* as suggested above.

9. *Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted?*

Council would support permitting *Destination weddings* with consent in the RU2, RU4 zones and E3 zones. Council would be reluctant to permit *Destination weddings* without consent due to environmental sensitivities and constraints such as bushfire and flooding. Council is well aware of the potential for neighbour conflict when rural locations are utilised for functions or wedding related activities on a regular basis.

10. *Should the Department prepare a model clause for destination weddings which councils can choose to adopt?*

Council would support the drafting of such a clause.

11. *Is there any rural land or areas in which agritourism activities should not be permitted? If yes, why?*

Council has already addressed concerns regarding the sensitivities of and constraints on land across the Shire. It is expected that these constraints would impact approval pathways rather than require total prohibition.

9. ADDITIONAL PROPOSED CHANGES RELATING TO AGRITOURISM

It is noted that the EIE also seeks comment on the following, to which Council has responded as best as it can given that not all activities occur within the Shire. 'No further comment' indicates that Council does not consider it has sufficient experience to comment.

- **small-scale processing plants** – *allow establishment of these plants as complying development for meat, dairy and honey where certain development standards are met.*

Council would be unlikely to support such uses as complying development.

12. Should any other agricultural produce industries be complying development? What standards should apply?

Council would consider any form of industry, including *agricultural produce industries* as unsuitable for a 'complying' approval pathway due to the varied sensitivities and constraints of agricultural land across the Shire.

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

Council is not familiar with such development, but would consider the equivalent 20 animals a week to be quite high.

14. Should any additional standards be included?

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a) as complying development?*
- b) through the standard DA process?*

Council considers the current process to be satisfactory.

- **rebuilding of farm infrastructure** – *allow reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to same size and contemporary building standards*

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

Council supports enabling rebuilding of farm buildings through an exempt approval pathway provided they are replaced 'like for like'.

17. Should any additional standards be included?

Council would support a complying approval pathway to encourage better design where an improved rural outcome could be achieved.

- **stock containment areas** – *update and rationalise existing planning controls to reflect current practice, and ensure stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses*

18. *What type of permanent infrastructure should be permitted for stock containment areas?*

No further comment

19. *What type of permanent infrastructure should not be permitted for stock containment areas?*

No further comment

- **farm dams** – *clarify terminology used in the planning system and provide a consistent approval process across the state*

20. *How could we simplify planning provisions for farm dams?*

Options for doing so would be limited by most of the Shire being within the Sydney Drinking Water Catchment.

- **biosecurity for poultry farms and pig farms** – *update development standards to align with separation distances required under biosecurity standards*

21. *Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?*

No further comment

22. *Should any additional standards be included?*

No further comment

- **setbacks for rural dwellings** - *review controls that allow dwellings on rural lots as complying development to ensure there is sufficient separation from adjacent primary production enterprises*

23. *Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?*

Council would prefer that setbacks be dependent on the area of the lot rather than a fixed numerical standard.

24. *From which point should the setbacks be measured?*

- a) From the proposed or existing intensive agricultural use*
- b) From the property boundary shared with land used for intensive agriculture*
- c) A combination of the above*

Submission from Wingecarribee Shire Council to the Explanation of Intended Effects of proposed amendments regarding Agritourism and small-scale agriculture development.

A combination of both would probably be most practical but with an emphasis on setback from the intensive agricultural land use.

- **recreational beekeeping** – *providing an exempt development pathway for recreational beekeeping to improve certainty.*

25. Are the proposed development standards appropriate and are any additional standards needed?

They appear adequate.

Thank you for the opportunity to make a submission.

Anita Skinner

From: noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>
Sent: Monday, 19 April 2021 4:14 PM
To: Anita Skinner
Cc: DPE PS ePlanning Exhibitions Mailbox
Subject: Webform submission from: Planning Amendments for Agriculture

Follow Up Flag: Follow up
Flag Status: Flagged

Submitted on Mon, 19/04/2021 - 16:14

Submitted by: Anonymous

Submitted values are:

Submission Type

By ticking this box, I confirm I am a representative of my council and agree to be contacted by the department about incorporating certain clauses in to our LEP.

Name

First name

Luke

Last name

Stein

Council name

Albury City Council

Council email

lstein@alburycity.nsw.gov.au

I would like my submission to remain confidential

No

Info

Email

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Suburb/Town & Postcode

Albury, 2640

Submission

Thank you for the opportunity to review the Explanation of Intended Effect relating to the Planning Amendments for Agriculture. We also appreciate the opportunity to 'opt-in' to clauses and identify suitable zones rather than having these nominated automatically or requiring a separate planning proposal, which is resource intensive.

Regarding the opt-in opportunity, AlburyCity would like to be contacted further to discuss potentially incorporating the optional clauses into our LEP. Based on the information provided in the EIE, we are considering "agritourism" (farm gate activities and farm events) in selected zones (such as RU1, RU2 & RU4) subject to further information and discussion.

In consider this, we'd like to seek clarification on the land use definitions for:

- Agritourism
- Commercial purposes / commercial farming business. In particular noting the comment in the EIE stating "the changes are not

intended to enable hobby farmers or other recreational farmers to establish agritourism businesses". Understanding the 'commercial purposes' definitions are particularly important for AlburyCity noting that many of the farming activities in our rural zones are hobby farms on smaller allotments. Appropriate definitions and clauses are needed to avoid these uses on these smaller allotments and minimise any unintended consequences.

- Farm events – including whether there is a requirement for the event to relate to the commercial purpose (e.g. fruit picking) versus a wedding venue

We would also like to seek clarification on the proposed revised definition for "farm stay accommodation". We note on page 8 of the EIE it states it "encourages tourism to locations that cannot be reached by day trip from major centres" – this would rule out any farm stay in AlburyCity.

Regarding changes to proposed exempt/complying/development application provisions we note a minimum number of residents per bedroom, tent etc. (for farm stay accommodation) and maximum number of patrons (guests) (for farm gate activities and farm event activities) and maximum number of event days per year (for farm event activities) are stipulated through proposed exempt/complying/development application provisions. We would like to seek clarification on DPIE expectations with the policing and enforcement responsibilities on local Council's in recognition of the additional impost such additional land uses will create.

We also support appropriate buffers being achieved (via provision), particularly where existing dwellings are being used that are located in a position less than nominated setbacks, may create land use conflicts (where none currently exist) with adjoining/adjacent farming activities. In addition, AlburyCity advocates the use of a maximum distance any building and/or structure used for farm stay accommodation must not exceed from the existing dwelling house in the interests of clustering development (sensitive land uses).

Thank you again for the opportunity to provide input. We look forward to discussing further.

I agree to the above statement

Yes

Our Reference:

19 April 2021

NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2000

Dear Sir/Madam

Planning Amendments for Agriculture

We would like to thank the Department of Planning, Industry and Environment (DPIE) for the opportunity to provide comment on the Planning Amendments for Agriculture. Eurobodalla Shire Council (Council) has considered the Explanation of Intended Effect (EIE) that describes how proposed planning amendments agriculture are intended to work and what they aim to achieve.

Council supports changes to agritourism development and small-scale agriculture development that will support agriculture businesses to diversify their product offering and trial small-scale operations to see if they could look at a long-term viable business expansion. This aligns with the findings of Council's Rural Lands Strategy that was adopted in 2016.

We would like to register our interest in making amendments to the Eurobodalla LEP 2021 related to this EIE. Please contact our Coordinator Strategy and Place, Angie Radford, by emailing angie.radford@esc.nsw.gov.au.

Council has considered all aspects of the proposed changes and supports the following key points:

- 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
- Amending the existing definition for farm stay accommodation in the Standard Instrument (*Local Environment Plans*) Order 2006 (Standard instrument) to support more farm stays including tents and caravans
- Clarifying terminology and approval pathways used for farm dams. Noting that the process should be different between areas as there are local issues, potential impacts and priorities, especially between coastal and non-coastal areas.

- Updating and rationalising existing controls for stock containment lots to reflect current practice and ensure stock containment areas are used temporarily – this would require a definition for temporary, however.
- Providing an exempt development pathway for recreational beekeeping to improve certainty
- Development standards related to setbacks for agritourism developments
- Unoccupied caravans, campervans and tents are not to remain on the land after 24 hours

Background

Eurobodalla is located on the South Coast of NSW, approximately 280 km south of Sydney and 140 km east of Canberra. Our Shire covers an area of 3,422 sq. km, much of which is covered by National Parks and State Forests. Eurobodalla has a population of 38,117, which is predominantly concentrated along the coast and population growth is forecast to reach 44,000 by 2036. Our tourism industry is valued at over \$370 million each year with the accommodation and food services sector contributing the highest of any sector to the Eurobodalla economy.

Areas of potential review

The topics discussed below highlight several concerns for Council's Development Services and Strategic Services area regarding the proposed amendments to the NSW planning system related to agritourism and should be reviewed.

Eurobodalla's landscape

- Eurobodalla's landscape means that almost all rural zoned land is considered bush fire prone. As such, there are very few landowners that could benefit from these amendments.
- Eurobodalla has many small sized rural properties, and most are much less than 100ha, and RU4 zoned land can be only a few hectares and close to our main towns.

Definitions

- Council supports the intended effect of improved definitions.
- Consider a definition for 'temporary' regarding stock containment areas
- Consider how to identify if the existing main use of the land is the production of agricultural/primary production goods for commercial purposes.
- Consider how to identify whether food is predominantly produced on site or on nearby farms.

Farm Events

- Support for limits on the number of farm events being restricted to 50 people x 10 times a year or 30 people x 52 times a year. Notification of these events to neighbours is also supported, including to keep records of the number of events occurring.
- The EIE does not describe standards in enough detail to be confident other potential conflicts related to noise and odour would be managed.
- Food safety requirements should be made clear in the standards for farm events.
- Consider a standard related to parking requirements for farm events.
- Unsealed roads in rural areas would experience a significant increase of traffic in our rural areas. Exempt and complying development should only apply to sealed access roads. Development on unsealed roads can be assessed through a DA.
- Eurobodalla has many small sized rural properties, and most are much less than 100ha, and RU4 zoned land can be only a few hectares and close to our main towns. Without a clear definition of what is considered commercial agricultural production, different standards for smaller sized rural properties should be included to minimise land use conflicts. For example, the 200m² and 500m² footprints for all building used for farmgate activities and farm events and related building heights may not be in keeping with some of the areas with a smaller minimum lots size.
- We note that there are some standards related to onsite waste management, however the standards should consider onsite sewerage management systems (OSMS) to minimise the risk of impacts to nearby waterways. Standards should clearly state that the development will be connected to reticulated sewer or an approved Onsite Sewage Management System (OSMS) under the Local Government Act 1993. This is particularly important in areas within proximity of oyster leases, another important industry supported in Eurobodalla.
- If a development is located on land that is identified for the purposes of an environmental planning instrument as “Land with scenic and landscape values” on a Scenic and Landscape Values Map or as “Scenic Protection Area” on a Scenic Protection Map or Scenic Protection Area Map specific standards related to height and location on a property should be considered.
- Decks cannot be on front of heritage buildings in current Exempt and Complying codes SEPP and that should apply to agritourism related activities too.

Farm Stay

- Eurobodalla’s landscape means that almost all rural zoned land is considered bush fire prone. As such, there are very few landowners that could benefit from these amendments.
- We note that there are some standards related to onsite waste management, however the standards should consider onsite sewerage management systems (OSMS) to minimise the risk of impacts to nearby waterways. Standards should clearly state that the development will be connected to reticulated sewer or an

approved Onsite Sewage Management System (OSMS) under the Local Government Act 1993. This is particularly important in areas within proximity of oyster leases, another important industry supported in Eurobodalla.

- The EIE does not describe standards in enough detail to be confident other potential conflicts related to noise and odour would be managed.
- If a development is located on land that is identified for the purposes of an environmental planning instrument as “Land with scenic and landscape values” on a Scenic and Landscape Values Map or as “Scenic Protection Area” on a Scenic Protection Map or Scenic Protection Area Map specific standards related to height and location on a property should be considered.
- Decks cannot be on front of heritage buildings in current Exempt and Complying codes SEPP and that should apply to agritourism related activities too.

Farm Gate and small-scale processing plant

- Farm gate to include allowance for restaurant/café. Development standard requiring registration of food premise
- Small scale processing plants – Who is dealing with noise, odour, OSMS and waste disposal, food safety?
- Unsealed roads in rural areas would experience a significant increase of traffic in our rural areas. Exempt and complying development should only apply to sealed access roads. Development on unsealed roads can be assessed through a DA.
- We note that there are some standards related to onsite waste management, however the standards should consider onsite sewerage management systems (OSMS) to minimise the risk of impacts to nearby waterways. Standards should clearly state that the development will be connected to reticulated sewer or an approved Onsite Sewage Management System (OSMS) under the Local Government Act 1993. This is particularly important in areas within proximity of oyster leases, another important industry supported in Eurobodalla.
- The 200m² and 500m² footprints for all building used for farmgate activities and farm events and related building heights may not be in keeping with some of the areas with a smaller minimum lots size.
- If a development is located on land that is identified for the purposes of an environmental planning instrument as “Land with scenic and landscape values” on a Scenic and Landscape Values Map or as “Scenic Protection Area” on a Scenic Protection Map or Scenic Protection Area Map specific standards related to height and location on a property should be considered.
- Decks cannot be on front of heritage buildings in current Exempt and Complying codes SEPP and that should apply to agritourism related activities too.
- Consider how to identify whether food is predominantly produced on site or on nearby farms.

In summary, Council supports the key changes of the framework subject to further consideration given to the matters raised above.

We look forward the Department considering Council's concerns and ensure that the outcomes of our submission are communicated back to us.

Please do not hesitate to contact Tim Booth, Manager Tourism and Events on (02) 4474 1309 or by email Tim.booth@esc.nsw.gov.au, if you would like to discuss any matter contained in this submission.

We look forward to your response.

Yours sincerely

Tim Booth
Manager Tourism and Events



BELLINGEN SHIRE COUNCIL

33-39 Hyde Street · Bellingen · NSW

All communications to be addressed to the General Manager

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Our Ref: GOVERNMENT RELATIONS/Submissions
Contact: Customer & Business Services
Phone: (02) 6655 7300
Your Ref:

19 April 2021

Executive Director Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124

Dear Sir/Madam

Submission - Agritourism and small-scale agriculture development: Proposed amendments to support farm businesses and regional economies.

Please find following a submission prepared by Council Officers in respect of the abovementioned matter that raises a number of concerns with the proposed amendments.

Inadequate consultation

The public exhibition period has not allowed for the elected Council to consider this matter given monthly meeting cycle dates and reporting deadlines. The changes are far reaching in scope and the consultation timeframe is inadequate, depriving elected bodies of the chance to express opinions.

Strategic underpinning

The Explanation of Intended Effect (EIE) states that the proposed amendments are underpinned by the principle of no or low environmental impact however does not properly demonstrate that this is actually the case, especially from the perspective of adjoining landowners. For example, the proposal to facilitate "small scale processing" as complying development includes no discussion of potential environmental impact associated with waste disposal associated with the processing of up to 4000 pigs annually. These types of development are not 'low impact' or 'straight forward' development and should not be considered complying development.

Also, the proposal to permit up to 52 events per year with up to events up to 52 with 30 guests as exempt development does not properly consider how this could impact adversely upon an adjoining landowner in terms of noise generation in particular, or the ability for on site facilities (On-site Sewage Management Systems) to cater for waste generated by these events.

Lack of guidance on primary use

The EIE states that these changes will allow small-scale agritourism development and other small-scale agricultural activities to occur on land where the principal use of the land is the production of agricultural goods for commercial purposes and will allow for consistent permissibility of land uses across the state. The changes also remove the references to working farm and secondary business as it is suggested these requirements are not typically planning considerations.

There is inadequate detail provided to assist Councils in determining when the principal use of the land is agriculture. This needs to be better explained and better provided for in the legislation. Failure to do so will result in a gradual shift towards non-agricultural uses of land and will lead to significant differences in interpretation. Also, because many of the changes will be available to farmers as "exempt development", which is a self-assessment

process, it is possible that investment decisions may be made based upon an interpretation of “principal use” that differs to an interpretation that may be made by a Council in response to complaints regarding the conduct of particular uses.

Inadequate consideration of compliance burdens for Councils

The failure to properly contemplate the actual degree to which the reforms would have an environmental impact flows through to a lack of awareness regarding the likely compliance issues that will present, especially for small Councils with limited resources. Development Applications provide the opportunity to consider bespoke conditions of consent that reflect the unique circumstances of the site and its relationship to adjoining land, and also provide clear avenues for enforcement action if non compliances arise.

Compliance actions involving potential exceedance of exempt development criteria involving the total number of guests in attendance at events and total number of events held in a 12 month period, are resource intensive and amenity actions based around noise complaints and the like (which may be all that is left to manage a situation where exempt criteria permit the activity) require expensive and complicated noise monitoring.

The increasing move towards switching off a local Councils ability to make decisions regarding permissible uses in its rural zones (which is evidenced in this EIE) should be accompanied by a corresponding assumption of compliance responsibilities by the NSW Government for overseeing complaints regarding the activities that they are permitting.

Setbacks standard wording

The wording of this provision is not clear – the reference to “the other use” is not defined (as highlighted below). Clarification on what this is referring to is required.

Setbacks

the minimum following setbacks from any adjoining established or proposed:

- *pig farm, feedlot or poultry farm – 1,000 metres*
- *other intensive livestock agriculture – 500 metres*
- *intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres*

*or 250 metres from the boundary with **the other use**, whichever is greater.*

Roadside stalls

Permitting car parking on the verge of roads is presumptive in terms of the owner of the land authorising this activity and is an activity that requires detailed consideration in terms of potential traffic safety impacts.

At the very least, reference should be made to the need to obtain approval under the provisions of the Roads Act 1993 for any such activity.

Call for expressions of interest from local councils.

Councils' ability to “opt in” is highly limited, relating only to the following provisions.

- Deciding whether we want to make farm gate activities and farm events permissible in other zones besides those in which agriculture is already permissible.
- Deciding whether we include two new clauses in the LEP to be used for DA assessment for farm gate activities and farm events if the proponent can't meet either of the very generous exempt and complying provisions that will facilitate the uses without merits-based assessment.

It is considered that the provision to opt in should apply for the full suite of land uses proposed in the EIE. The decisions being made as part of this process are often ones that

an LGA will contemplate via a careful process of consultation with its community via a process such as a Rural Lands Strategy and the proposed amendments are effectively removing this ability of Council to plan for its own rural zones.

At this stage Council does not wish to nominate additional zones in which farm gate activities and farm events will be permissible, or to adopt either of the clauses to be used DA assessment for farm gate activities and farm events.

Thank you for the opportunity to provide comment.

If you have any questions about the content of this letter, please telephone the undersigned on (02) 6655 7352.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Daniel Bennett', with a stylized flourish at the end.

Daniel Bennett
SENIOR STRATEGIC PLANNER



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19 April 2021

Contact: Nick Thistleton
Reference: AGRITOURISM AND SMALL-SCALE
AGRICULTURE DEVELOPMENT

Department of Planning, Industry and Environment
via Planning Portal submission

**Subject: Explanation of Intended Effect
Agritourism and small-scale agriculture development**

Goulburn Mulwaree Council (Council) thanks the Department of Planning, Industry and Environment (DPIE) for the opportunity to comment on the Explanation of Intended Effect (EIE) for Agritourism and small-scale agriculture development planning reforms.

Fundamentally, Council is supportive of the intent to make the planning system more flexible for rural landholders and supportive of the agriculture and agritourism industries. However Council is concerned by the range of land uses that are proposed to be permissible as either exempt or complying development. Some of the key underlying concerns are that the proposed changes would, in many circumstances, remove the ability to require approval for the development of unmapped flood prone land or increased usage of existing unsafe driveways on 100-110km/hour roads, which both constitute **a direct and material risk to human life and safety** that are currently addressed under the development application process.

Council is also concerned about the apparent lack of coordination involved in this consultation process, as evidenced by the absence of any reference or recognition of the separate, comprehensive review into the land use planning system for agriculture being undertaken by the NSW Agriculture Commissioner.

Council would again like to stress that it is supportive of the move to make the planning system more flexible for rural landholders and supportive of the agriculture and agritourism industries, however it is concerned as to how DPIE is seeking to achieve this end. Detailed commentary is provided in the enclosed **attachment**.

Thank you for the opportunity to provide feedback on this EIE. Council would be happy to expand on this submission at any time. If further information is required, please contact Nick Thistleton at nick.thistleton@goulburn.nsw.gov.au or by phone on 02 4823 4434.

Yours faithfully

A handwritten signature in black ink that reads "N. Thistleton".

Nick Thistleton
Senior Strategic Planner

Attachment: Detailed Comments

Consultation Process

Council is concerned by the extent of the land use planning changes proposed and the coordination with other major reviews to the NSW planning system. While regular review of the planning system is integral to the growth of the NSW economy, this lack of coordination between governments agencies coupled with sporadic, limited consultation for major revisions to the planning system is a driver of development uncertainty in NSW.

Key issues that underlie this concern are as follows:

- The EIE reads as though DPIE has already agreed to the proposed amendments and signals that all proposed changes will be introduced in one form or another, despite proposing major and fundamental changes to the planning system without undertaking a preliminary consultation process first. This is evidenced by the request for councils to opt into proposed clauses without consultation being undertaken as to the suitability of the clauses proposed. This is also contrary to other EIE's released by DPIE, which typically foreshadow a secondary round of consultation after initial consultation is factored in to final proposed changes.
- The NSW Agriculture Commissioner has only just recently completed a comprehensive consultative process with stakeholders, industry and the public in relation to how the NSW land use planning system can better work for rural landholders and the agriculture industry. This process involved two (2) rounds of consultation and the release of issues and options papers intended to seek comprehensive feedback to inform the Agriculture Commissioner's recommendations to the NSW Government. Despite this separate process being undertaken in the background, DPIE has released this EIE with no such preliminary consultation being conducted. It should be noted that this EIE raises many issues that were discussed in detail through this separate consultation process. This includes many issues (such as the proposed poultry exemptions) that both Council and industry have strongly opposed.
- This consultation coincides with the release of the *Design and Place SEPP* EIE and *Building Back Better* EIE, which together arguably constitute the most significant changes to the NSW planning system in the last decade. None of these consultations appear to recognise the existence of each other and have forced Council to significantly deviate from its ordinary work programme established under its *Local Strategic Planning Statement* to provide meaningful input. The deadlines provided for this feedback also mean that elected councillors are rarely if ever able to compile responses during public meetings due to the spacing between Council meeting dates and lead in time required to prepare and make available Council reports and agendas.

Exempt and Complying Development Provisions- General

Council is concerned with the scale of the proposed exempt and complying development provisions proposed. Fundamentally, Council is not opposed to exempt and complying provisions for developments that have only minor impacts on the environment. The proposed exempt and complying provisions however, do not apply to developments with minor environmental impacts.

Council would also like to add that the level of uncertainty and inconsistency in planning decisions relating to agricultural and agritourism development has little to do with the development assessment process itself, but rather the lack of clear policy direction

provided by the NSW Government. This is particularly the case with identifying suitable buffer distances, the absence of any agent of change principle and the absence of guidelines defining an acceptable farming practice. The solution to this problem is therefore in the preparation of clear policy guidance, not in the bypassing of the transparent development assessment process and the integral checks and balances it provides in regulating land use.

Council raises the following key general concerns in relation to the proposed exempt and complying provisions:

- Merit assessment-complying development has historically been limited to assessment of specified development criteria. A number of the proposed complying development provisions include assessment of a range of considerations beyond typical minimum specifications for complying development, often requiring merit assessment. Complying development is not appropriate for these types of development.
- Road safety- where properties already have existing access to a rural road, the proposed exempt or complying development provisions can allow for development to occur without any assessment or other approval mechanism, including under the *Roads Act 1993*. Unlike in urban settings, most rural areas are serviced with roads operating with speed limits of 100-110km per hour, with many older driveway accesses containing dangerously insufficient sight distances that are entirely unsuitable for any increase in traffic movement. Without the ability to require approval in these instances, the proposed exempt and complying provisions constitute **a direct and material risk to human life and safety**. This increased and unmitigated risk would also be contrary to the NSW Government's towards zero target under the *Road Safety Plan 2021*.
- Flooding- most rural areas across NSW have not been modelled for flood risk under any flood study or floodplain risk management study and plan. The proposed exempt and complying codes do require any consideration of flooding outside of mapped flood areas. The adequate consideration of flood risk is another **direct and material risk to human life and safety** that will be lost if the ability to require approval is taken away.
- Cumulative impact- a key consideration dealt with through the planning process in the consideration of cumulative impact, where a development may not be significant in isolation, but is when replicated broadly. This can include instances in which too much development result in a rural road becoming too dangerous due to the increase volume of traffic or the very scenic quality of the landscape that attracts people in the first place from being ruined. Cumulative development can also amplify bushfire and flood risk, especially when they increase the amount of land that needs to be defended by emergency personnel or evacuated. This cumulative impact on bushfire and flood risk is another issue addressed through the planning system that is a **direct risk to human life and safety**.
- Bushfire prone land- the general exclusion for land mapped as bushfire prone land for the proposed exempt and complying development codes could create legacy issues for local government areas where bushfire prone land mapping has not been updated to reflect the current Australian Standard 3959:2018, despite meeting the current requirement for a bushfire prone land designation. There is also no consideration of bushfire planning controls for events, which may be dangerous if occurring on bushfire prone lands during catastrophic bushfire alert periods.
- Biosecurity- the planning process is crucial for taking preventative measures to manage biosecurity risk. Neither local government nor the state government will be able to protect the agricultural industry from biosecurity threats at the planning stage for any of the proposed exempt and complying development if the provisions are adopted.

- Contaminated land- none of the proposed provisions consider contaminated land as a key constraint. Certain former agricultural uses such as sheep dips, chemical storage and fuel storage can present a serious health risk to any proposed use for agritourism. The general requirement for contamination only considers significantly contaminated land as defined under the *Contamination Land Management Act 1997*. This kind of contaminated land listing typically does not include most kinds of land contamination that are unsuitable for human health, such as the aforementioned contaminating agricultural land uses. This also does not cover situations in which land is only identified as being contaminated as the result of a preliminary or detailed site investigation conducted through the development assessment process in accordance with the *State Environmental Planning Policy No 55—Remediation of Land*, which constitutes many of the instances in which Council has identified new contaminated lands.
- Parking requirements- while agritourism and agricultural development will occur on large rural lots, this does not mean parking does not need to be identified and designed specifically. Continuous use of improperly designed car parks on unsealed land can result in significant erosion with impacts on neighbouring properties, critically endangered ecological communities and the drinking water catchment.
- Miscellaneous planning issues- a key ability lost through exempt and complying development is the ability to account for miscellaneous planning issues that cannot be accounted for on a strategic planning or policy level due to their variability and unpredictable nature. This is particularly the case for development on rural land, where lot sizes, site constraints and neighbouring users vary significantly from lot to lot and where the application of rural zoning is not subject to the same amount of rigour and exhaustive consideration of issues as residential or employment zones. Some of these miscellaneous issues that have been known by Council to emerge in rural areas on a sporadic basis include competing usage for road networks with quarries, maintenance of explosives buffer zones with quarries and maintaining safe setbacks with high pressure gas pipelines.
- Operational impacts- most of the concerns Council receives in relation to agriculture and agritourism developments relates to the operational aspects of the development rather than the design or principle of the development itself. The ability to introduce consent conditions is the primary tool councils use to manage these operational impacts and settle land use conflicts as they arise. The loss of this ability to self-regulation under the proposed exempt and complying provisions means that local government will be unable to intervene and resolve land use conflict and potential litigation between landowners in many instances.

Farm Stay Accommodation

Council opposes the proposed amendments to make any form of farm stay (including camping) as exempt or complying development. In addition to the general issues raised in the previous section, these exempt and complying provisions are potentially unenforceable and contrary to dwelling entitlement provisions. This is because Council has no feasible way of ensuring that camping grounds are only temporary in nature or to ensure that manufactured homes are not used for the purposes of residential accommodation without continuous video surveillance.

In relation to the above, Council notes that it is currently dealing with a large number of unlawful dwellings, which often involve the unlawful conversion of sheds or other farm buildings into dwellings. Council has attached a report dated 6 October 2020 for reference, which details the scale of the problem. It is considered that the proposed complying development provisions in the EIE may serve to amplify this problem, by

providing a pathway to develop buildings that can be easily be converted unlawfully into dwellings without development approval.

Any and all dwellings should be subject to dwelling entitlement provisions the Local Environment Plan and any remaining accommodation should only be permissible with consent on the condition that they cannot be used as a standalone dwelling as established through the development application process.

Agritourism Definition

Council is supportive of the proposed agritourism definition for both farm gate and farm event activities.

Road Side Stalls

Council supports the exemptions for road side stalls subject to consideration of the increased speed limits on rural roads and separate approval requirements under the *Roads Act 1993*, to ensure that all road stalls are erected and operated safely.

Small Scale Processing Plants

While the proposed small scale processing plants may be small in comparison to their larger commercial counterparts, they by no means have a minor environmental impact. All proposed complying development provisions under this section would permit significant heavy vehicle movements, the production of environmentally hazardous waste, odour and noise impacts that can irreparably damage the amenity of rural landholdings if not planned for or subject to development consent provisions through a development application.

It is noted that the proposed provisions do not expressly prohibit abattoirs or detail that the different kinds of processing facilities are mutually exclusive for the purposes of complying development approval. This means that there could potentially be hundreds or thousands of animals waiting onsite for slaughter, without any requirement for development approval or development consent conditions to minimise the impact. It is also noted that none of the setbacks apply to tourist and visitor accommodation.

Council opposes these provisions their entirety.

Rebuilding of Farm Infrastructure

Council supports this recommendation in principle, however recommends removing this provision for larger structures damaged or destroyed by flooding, as the debris caused by these developments in a flood event can cause downstream damage and pollution.

Farm Dam Definition

Council is supportive of a standard definition of farm dams, however recommends that the terminology used for farm dams aligns with the same terminology used by WaterNSW and NRAR.

Council also supports a streamlined assessment process for farm dams that encompasses consideration of water entitlements, vegetation clearing and accountability over the contamination of imported or exported earth.

Poultry Exemptions

The EIE provides no explanation or evidence as to why the biosecurity risk is negligible for poultry operations of less than 10,000 birds, and so therefore recommends extending the exempt provisions to this amount. This is contrary to the advice Council has received from industry and the Department of Primary Industry, which both contend that it is in fact the smaller operations with fewer birds that pose the highest risk, as they do not generally have the resources to follow high level biosecurity protocols or source stock from operations that do. Given this feedback, it is not appropriate to make this claim or propose such an exemption without a detailed explanation or evidence being provided.

It is also unclear as to why the EIE is proposing an exemption for 10,000 bird operations when it also claims that this is the stocking threshold at which poultry operations require significant biosecurity considerations.

It is also noted that no minimum lot size is specified for this exemptions, which may lead to overstocking in situations.

Recreational Beekeeping

Council is supportive of the proposed exemptions for recreational bee keeping.

15.3 ONGOING COMPLIANCE MATTERS**Author:** Scott Martin, Director Planning & Environment**Authoriser:** Warwick Bennett, General Manager

Attachments: 1. **Unlawfully Erected Dwellings Letter dated 23 June 2020** [!\[\]\(74d4806277d7e73349d8e8c0897931e9_img.jpg\)](#) [!\[\]\(5f42d2cd7ad901bc24e5d35a38c777fd_img.jpg\)](#)
 2. **Unlawfully Erected Dwellings Letter dated 12 August 2020** [!\[\]\(628bc0b1ef2b63d1fc4442fb794e3e78_img.jpg\)](#) [!\[\]\(210e01d0c2c300cf4405442bfd570b4e_img.jpg\)](#)

Link to Community Strategic Plan:	<p>Strategy EN1 - Protect and enhance the existing natural environment, including flora and fauna native to the region.</p> <p>Strategy EN3 - Protect and rehabilitate waterways and catchments.</p> <p>Strategy EN4 - Maintain a balance between growth, development and environmental protection through sensible planning.</p> <p>Strategy CO3 - Foster and encourage positive social behaviours to maintain our safe, healthy, and connected community.</p> <p>Strategy CO5 - Maintain our rural lifestyle</p> <p>Strategy CL1 - Effect resourceful and respectful leadership and attentive representation of the community.</p>
Cost to Council:	No specific cost implications as a result of this report at this time. However we will report separately to Council on the need to engage additional resources (contract or staff) that can assist in these compliance matters
Use of Reserve Funds:	N/A

RECOMMENDATION

That:

1. The report from the Director, Planning & Environment in relation to ongoing compliance matters be received.
2. Council write to all real estate agents operating locally advising that “weekenders” are not a recognised or permissible use, and that planning advice should be sought from Council prior to any form of development taking place.
3. Council create an additional appendix for use on rural s10.7 Planning Certificates to highlight to prospective purchasers of rural land their obligations in relation to obtain the appropriate consents prior to works being carried out.

INTRODUCTION

In recent times a number of high profile unauthorised developments have come to the attention of Council. No.111 Knowlman Rd, Run-o-Waters and 555 Forest Siding Rd, Middle Arm are two such developments that required a determination by Council and received significant media coverage in the process.

More recently Council’s Environment & Health team have been dealing with an increased workload, managing a significant number of unauthorised developments. This has resulted in resources being redirected away from statutory functions, such as food safety inspections and parking, in an attempt to deal with the growing issue.

The following report attempts to demonstrate the nature of work currently being undertaken by the Environment & Health team, provide an insight as to why these tasks consume many hours and staff resources, provide some options moving forward in an effort to suitably resource what appears to be a growing issue, and finally provide disincentive to landholders who are considering carry out works without consent.

BACKGROUND

In NSW, Councils are responsible for administering many pieces of legislation. Legislation is enacted by Parliament to ensure the betterment of the community. This is achieved by enforcing laws to keep the community safe, ensuring that development is undertaken in an appropriate manner to ensure land is appropriately serviced, and to ensure that the community is not financially burdened into the future. Accordingly, there is a community expectation that Council upholds the law and keeps the playing field fair and equal for everybody.

It has been observed in many forums that the Goulburn Mulwaree Council area is still considered affordable compared to the likes of Sydney, the Southern Highlands and Canberra. Accordingly, the Goulburn region remains popular amongst those seeking a rural lifestyle change, or simply land for recreational purposes in order to escape the confines of the cities.

This has seemingly created a market that is being exploited by landholders and the real estate industry generally. It is common for many rural lots to not have a dwelling entitlement, and this is often reflected in the price of land. A recent example saw several 15 hectare (40 acre) lots sell for approximately \$250,000 each. The attractive prices are often accompanied by some long standing marketing techniques, such as referring to rural sheds as “weekenders”.

Unfortunately “weekender” is not a defined land use term in accordance with either the Environmental Planning & Assessment Act 1979, any of the State Environmental Planning Policies, or the Goulburn Mulwaree Local Environmental Plan 2009.

Since late-June 2020, Council have written to at least two local real estate agents advising of this, and requesting in good faith that their advertising methods be changed to reflect Council’s advice. **A copy of each letter is attached.** It is recommended that a similar approach be taken with all real estate agents to ensure a consistent message is being delivered.

It is important to note that the matter is not just confined to the rural area. Some matters are occurring within urban areas, which in some cases intensifies the impact upon the community.

REPORT

As Council would be aware, several high profile unauthorised developments have generated significant community interest in recent times. Unfortunately the profile and media coverage of these matters does not seem to have deterred other landholders from carrying out further unauthorised works.

When unauthorised works or activities are identified, Council are required to adhere to legislated procedures to ensure that any investigation is conducted fairly and reasonably, and that natural justice is allowed to take its course. Council also have to consider its Enforcement Policy, the latest version of which was recently adopted by Council. This Policy is adapted from the Model Enforcement Policy generated by the NSW Office of Local Government and ensures that Council’s across NSW adopt a consistent and fair approach to compliance actions.

This can include the need to put any enforcement action on hold whilst the landholder/developer is given the opportunity to seek retrospective approval (where available). Put simply, following through a compliance matter can be a slow and time consuming process.

At the time of writing this report, a total of 94 matters are either under investigation, currently subject to enforcement actions (such as Orders and Notices), or are subject to ongoing monitoring. The nature and type of these matters vary significantly, and include:

- An abandoned vehicle parked on a road verge;
- Lack of erosion and sediment control measures on a construction site;
- Unauthorised signage;
- Overgrown land;
- Illegal dumping and pollution incidents;
- Conversion of existing premises into an unauthorised use; or
- Large scale and unauthorised vegetation clearing, earthworks, construction and/or habitation.

Since 2017, the number of Orders (such as Stop Work, Cease Use, Demolish Works, Restore Works) being issued under the Environmental Planning & Assessment Act 1979 has increased in line with the following:


2017	3
2018	3
2019	11
2020	45 (to date)

The increase can partially be attributed to Council Officers having to use a more formalised process to achieve an acceptable compliance outcome, noting that historically the preference has been to achieve “cooperative compliance” as opposed to the use of formal directions.

Unfortunately the cooperative compliance pathway has become less effective (to the point of being ineffective), and has therefore created the need for Council to become more direct and formal in its approach. Anecdotally, it has been relayed to Council Officers that one of the key reasons for this trend has been due to Council’s willingness in the past to negotiate a solution where clear breaches have occurred. This approach invariably favoured those who broke the law to the detriment of the community, and penalised those who sought to play by the rules.

It is important to note that not all complaints received by Council result in enforcement action. This can occur for many reasons, but often it can be found that a breach has in fact not been made, that Council is not the appropriate regulatory authority, and/or relates to a civil matter such as a neighbourly dispute. Regardless, Council has a duty of care to follow up the majority of such complaints which ultimately takes time and expends the limited staff resources that are available.

The following tables provide an insight into many of the matters currently under investigation or undergoing enforcement action at this point in time.

Address/Locality	Description
555 Forest Siding Rd, Middle Arm	Unauthorised clearing of native vegetation, earthworks, construction of shed/dwelling, conversion of garage to dwelling, non-compliant wastewater system, pollution of waters.
Current Status <ul style="list-style-type: none">• Council have resolved to prosecute the landowner in the Land & Environment Court.• Council have issued the landowner with notices to provide information under Section 9.22 of the Environmental Planning & Assessment Act 1979 to assist in the prosecution.• Stop Work and Stop Use Orders served.• Draft Demolition Order and Draft Restore Works Order served.	
Photos 	

Address/Locality	Description
540 Marble Hill Rd, Kingsdale	Unauthorised clearing of native vegetation, earthworks, construction of road, partial construction of buildings, various other unauthorised structures present.

Current Status

- Multiple Parish Portion lots appear to have recently been disaggregated, resulting in Council pursuing numerous landowners, including a previous landowner.
- Multiple Stop Work Orders served.
- Information being sought from previous landowner.

Photos



Address/Locality	Description
265 Inverary Rd, Bungonia	Unauthorised "Olive Storage" Shed

Current Status

- Compliance action was paused to give owner an opportunity to lodge a DA and BIC.
- Insufficient information provided with required applications, therefore compliance action to recommence.

Photos





Address/Locality	Description
1100 Koorngaroo Rd, Gundry	Camping Grounds (use only, no known structures or facilities at this stage)
Current Status <ul style="list-style-type: none"> • Notice of Proposed Order served. • Awaiting statutory response period to lapse prior to issuing Order. 	
Photos No Photo available.	

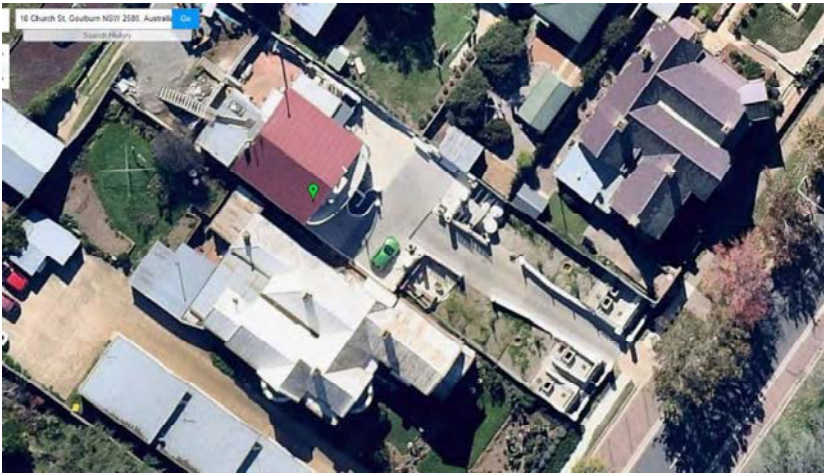
Address/Locality	Description
206 McLaughlin Rd, Gundry	Noise complaints (amenity), use of site
Current Status <ul style="list-style-type: none"> • Investigation underway. • Establishing permissibility of use and the extent of Council's authority. 	
Photos No Photo available.	

Address/Locality	Description
14729 Hume Highway, Marulan	Earthworks, unauthorised structures
Current Status <ul style="list-style-type: none"> • Stop work Order served. • Under investigation. 	
Photos <div>   </div>	

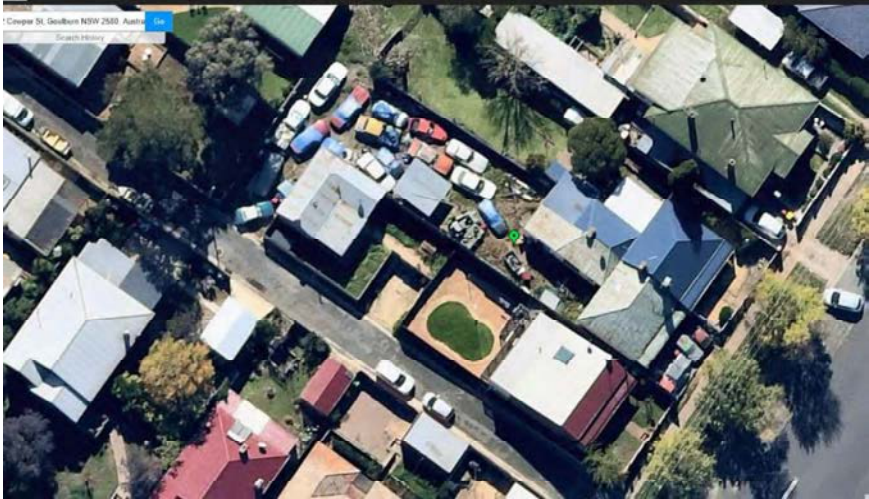
Address/Locality	Description
16197 Hume Highway, Marulan	Earthworks, potential use of site as landfill
Current Status <ul style="list-style-type: none"> Under investigation. 	
Photos No Photo available.	

Address/Locality	Description
137 Styles Rd, Bungonia	Unauthorised building, plumbing and drainage works including wastewater system, use of building (potential dwelling), land clearing,
Current Status <ul style="list-style-type: none"> Stop Work, Demolish & Clean-Up Orders/Directions served. Wastewater system removed and rehabilitated. Ongoing negotiations regarding remainder of works. DA intending to be lodged. Penalty Infringement Notice issued for unauthorised development (\$3000). 	
Photos <div style="display: flex; flex-wrap: wrap;">    </div>	

Address/Locality	Description
150 Minshull Road, Windellama	Unauthorised buildings and use of land
Current Status <ul style="list-style-type: none"> Concerns raised by representative of Windellama RFS Highly bushfire prone and being used as a 'weekender' No approval for any element of the development. Wastewater being disposed of on the ground. Stop Use Order, Clean-up Direction and Demolish Works Order Issued. 	
Photos <div style="display: flex; justify-content: space-around;">   </div>	

Address/Locality	Description
18 Church Street, Goulburn	Unauthorised works, lack of consideration to the Heritage Conservation Area.
Current Status <ul style="list-style-type: none"> Stop Work Order issued. Compliance actions paused as landowner has indicated that a DA will be lodged. Still awaiting lodgement. 	
Photos <div style="text-align: center;">  </div>	

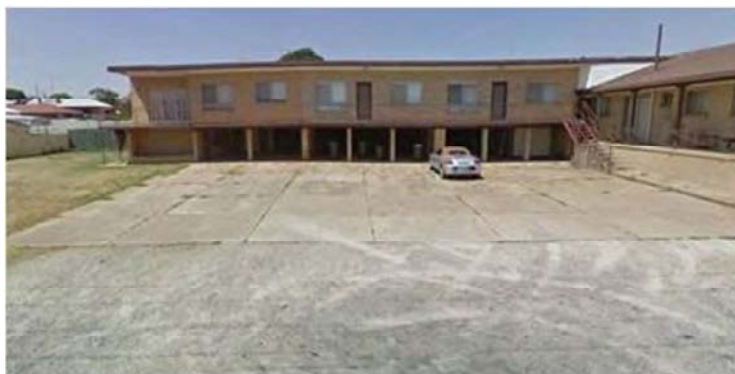
Address/Locality	Description
89 Mary Street, Goulburn	Accumulation of waste, odour and pet ownership concerns (numerous cats)
Current Status <ul style="list-style-type: none"> • Stop Work Order issued 	
Photos No photo available.	

Address/Locality	Description
102 Cowper Street	Hoarding of vehicles, stormwater run-off, possible structural concerns, and impediments to public space.
Current Status <ul style="list-style-type: none"> • Ongoing for many years. • Council constantly impounding vehicles, trailers and boats. • Impeding access to neighbouring properties. • Neighbours concerned about lack of downpipes and gutters, causing runoff to enter adjoining properties. • Legal representation received from neighbours. • Multiple rectification Orders served. 	
Photos 	

Address/Locality	Description
15 Avoca Street, Goulburn	Unauthorised conversion of underfloor car parking spaces to habitable accommodation

Current Status

- Demolish Works Order issued.
- Owner has challenged via Class 1 Proceedings in Land & Environment Court.
- Converted habitable spaces in flood liable area.
- Further Orders likely.


Photos

Address/Locality	Description
1596 Oallen Ford Road	Unauthorised construction of dwelling, wastewater system
Current Status <ul style="list-style-type: none"> • Demolish Works Order issued. • Premises has recently exchanged ownership. • Order extended by 60 days to allow new owner to lodge DA. 	
Photos <div style="display: flex; flex-wrap: wrap;">     </div>	





Address/Locality	Description
104 Silverstream Road, Lower Boro	Multiple unauthorised structures and accumulation of vehicle bodies
Current Status <ul style="list-style-type: none">Under investigation.	
Photos	
	





Address/Locality	Description
202 Silverstream Road, Lower Boro	Unauthorised composite non-compliant building (part caravan, part structure), wastewater system
Current Status <ul style="list-style-type: none"> • Located on edge of property boundary. Adjoins dense bushland, high fire risk to any occupant. • Recently purchased in current state. • Demolish Works Order issued. 	
Photos 	

Address/Locality	Description
204 Silverstream Road, Lower Boro	Unauthorised construction of dwelling, wastewater system
Current Status <ul style="list-style-type: none"> • Stop Use Order issued. • Records indicates previous compliance on past owner. Past owner appears to have reinstated plumbing, drainage and wastewater system before selling. • Premises has recently exchanged ownership. • Investigations underway. 	
Photos <p>No photo available.</p>	

Address/Locality	Description
53 Dorsett Road, Marulan	Hoarding of vehicles, unsightly premises
Current Status <ul style="list-style-type: none"> • Investigations ongoing. • Cleanup Orders being prepared. 	
Photos 	




Address/Locality	Description
570 Boxers Creek Road, Boxers Creek	Burning of tyres in watercourse
Current Status <ul style="list-style-type: none"> • Investigations underway. • Cleanup Notice issued. • Landowner currently undertaking water samples for analysis to determine extent of water pollution. 	
Photos <p>No photo available.</p>	

Address/Locality	Description
70 Stockade Lane, Boxers Creek	Accumulation of chemical containers, unauthorised dwelling and structures, wastewater system
Current Status <ul style="list-style-type: none">• Investigations underway.• Initial complaint relating to chemical containers. Inspection found unauthorised structures, including dwelling and wastewater system.• Cease Use Order.	
Photos <div></div>	

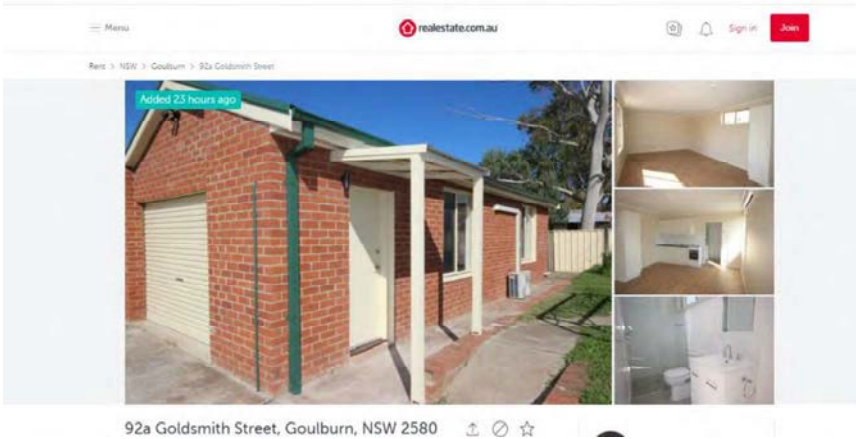
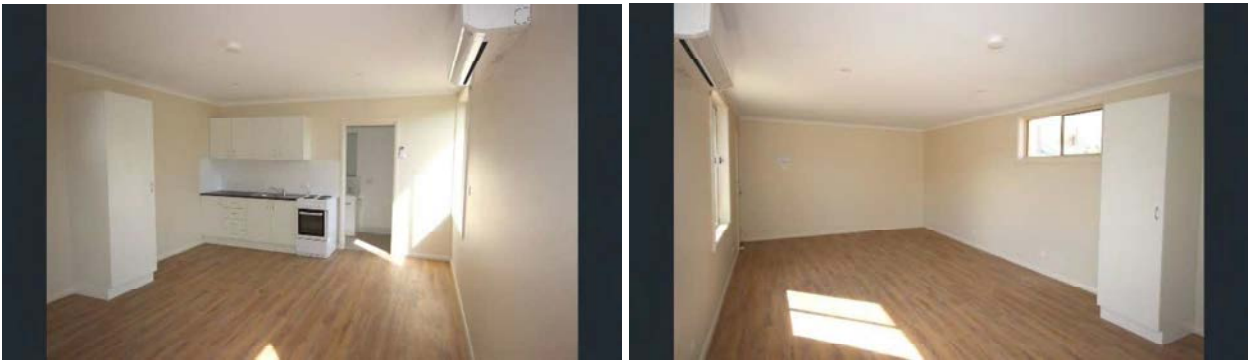
Address/Locality	Description
1270 Towrang Road, Greenwich Park	Unauthorised conversion of farm shed to dwelling
Current Status <ul style="list-style-type: none"> Notice served on landowner. Awaiting 	
Photos <div>     </div>	

Address/Locality	Description
36 Mulwaree Street, Tarago	Occupation of caravan in shed, no wastewater, unhealthy conditions
Current Status <ul style="list-style-type: none"> Occupant advised to vacate. Approvals to be sought and obtained prior to any further occupation of site. 	
Photos No Photo available.	

Address/Locality	Description
168 Verner Street, Goulburn	Operation of vehicle repair garage without consent in residential area
Current Status <ul style="list-style-type: none"> Under investigation and monitoring 	
Photos No Photo available.	

Address/Locality	Description
84-86 George Street, Marulan	Unauthorised changes and internal configuration to commercial building
Current Status <ul style="list-style-type: none">• Stop Work Order issued.• Landowner seeking to lodge DA and BIC.	
Photos <div></div>	

Address/Locality	Description
7 Prell Street, Goulburn	Unauthorised conversion of a garage to a granny flat, and a large unauthorised verandah
Current Status <ul style="list-style-type: none">• Demolish Works Orders issued• Landowner has lodged DA and BIC. Currently under assessment.	
Photos <div></div>	

Address/Locality	Description
92 Goldsmith Street, Goulburn	Unauthorised conversion of a garage to a granny flat
Current Status <ul style="list-style-type: none"> Demolish Works Order issued Landowner to lodge DA and BIC. 	
Photos  	

Address/Locality	Description
12 Wran Street, Goulburn	Unauthorised conversion of a garage to a granny flat
Current Status <ul style="list-style-type: none"> Demolish Works Order issued Premises currently for sale Landowner currently unwilling to carry out required works – wishes to pass over to new owner. 	
Photos No Photo available.	

Address/Locality	Description
2 Chantry Street, Goulburn	Unauthorised shed located upon land considered a Local Heritage Item and Heritage Conservation Area.

Current Status

- Demolish Works Order issued
- Landowner currently wanting to defer demolition for 12 months in order to store personal effects.

Photos

Address/Locality	Description
158 Nicholson Street, Goulburn	Unauthorised enclosure of verandah and laundry
Current Status <ul style="list-style-type: none">• Demolish Works Order issued• Landowner has lodged DA and BIC. Currently under assessment.	
Photos <div></div>	

Address/Locality	Description
396 Canyonleigh Rd, Brayton	Unauthorised dwelling and wastewater
Current Status <ul style="list-style-type: none"> Demolish Works Order issued Premises currently vacated voluntarily Landowner to lodge DA and BIC. 	
Photos <div>   </div>	

Address/Locality	Description
31 Lockyer Street, Goulburn	Unauthorised truck depot
Current Status <ul style="list-style-type: none"> Stop Use Order issued. Landowner has lodged DA for continued. 	
Photos No Photo available.	

ENFORCEMENT OPTIONS

A wide and vast array of enforcement options are available given the various legislated activities that are regulated by Council. These can vary from Penalty Infringement Notices in instances where an offence can be proven, through to prosecution via the Courts. Other alternatives are also available depending on the seriousness of the matter, the risk posed to the community or the environment and whether the actions will deter further breaches of a similar nature. The correct enforcement pathway is guided by Council's *Enforcement Policy*.

In addition to the enforcement mechanisms listed described throughout this report, such as Orders and Notices, Council does have the ability to issue Penalty Infringement Notices (PIN's). Some of the more common PIN's are listed below:

Act	Offence	Penalty Value
Environmental Planning & Assessment Act 1979	Development without consent	\$3000 (Individual) \$6000 (Corporation)
	Development without consent – Class 1 & 10 Buildings	\$1500 (Individual) \$3000 (Corporation)
	Occupy or use building without occupation	\$3000 (Individual)

	certificate	\$6000 (Corporation)
Protection of the Environment Operations Act 1997	Pollute Waters	\$4000 (Individual) \$8000 (Corporation)
	Pollute Land	\$4000 (Individual) \$8000 (Corporation)
	Unlawfully use etc place as waste facility	\$4000 (Individual) \$8000 (Corporation)
Local Government Act 1993	Operate sewage management system without approval	\$330
Plumbing and Drainage Act 2011	Plumbing and drainage work not comply with standards	\$1100
	Not notify plumbing regulator when ready for inspection	\$1100
Impounding Act 1993	Abandon a motor vehicle in a public place	\$550

As can be seen, there are a number of PIN's that can be issued for various offences. In many circumstances, multiple PIN's can be issued if the various offences can be proven. For example, in the majority of circumstances where an unauthorised dwelling has been constructed, the following PIN's could be applied:

- Development without consent: \$3000 (\$6000 if developer is a company)
- Pollute waters(no erosion/sediment control): \$4000 (\$8000 if developer is a company)
- Not notify plumbing regulator: \$1100
- Occupy without occupation certificate: \$3000 (\$6000 if developer is a company)

TOTAL: \$11100 (\$21100 for developer)

Given the increasing volume of unauthorised development currently under investigation, and continuing to take place across the LGA, it will be recommended in a future report that Council consider adding an additional resources to assist in dealing with the required compliance and enforcement actions. Based on the available penalties that can be applied, the position could be funded entirely from penalty revenue.

CONCLUSION

The volume of unauthorised development across the LGA appears to be at an all-time high. There is a community and legislated expectation that unauthorised works be dealt with in accordance with the relevant laws and processes.

This is creating additional work for not only Council's compliance staff, but also Council's Planning and Building teams, as additional pressure is often applied by the landowner/developer to have works regularised. It is recognised that a multi-pronged approach is required to address the matter, and it is therefore recommended that the following be endorsed by Council in order to address the expectations of the community:

1. Council write to all real estate agents operating locally advising that "weekenders" are not a recognised or permissible use, and that planning advice should be sought from Council prior to any form of development taking place.
2. Council create an additional appendix for use on rural s10.7 Planning Certificates to highlight to prospective purchasers of rural land their obligations in relation to obtain the appropriate consents prior to works being carried out.



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23 June 2020

Contact: Planning & Environment
Reference: 1270561

Dear

Subject: Unlawfully Erected Dwellings ("Weekenders")

Council wishes to bring to your attention the recent advertisement for the sale of land at an undisclosed address, located within the Local Government Area currently advertised for sale on realestate.com.au, advertisement number 700079974.

The land sale advertises "no dwelling entitlement, suitable for a shed/weekender" and is listed by

The definition of a "weekender" is not an approved use within NSW as per the *Standard Instrument (Local Environmental Plans) Order 2006*, and therefore is not an approved use under the *Goulburn Mulwaree Local Environmental Plan (LEP) 2009*. Accordingly, a "weekender" is not a legitimate building or land use classification.

Council advises that "weekender/s" are an unlawful structure, often resulting from the unauthorised conversion of a non-habitable building (Class 10a as per the *Building Code of Australia*) into a Class 1 habitable building. In essence any form of habitation requires a dwelling entitlement.

In instances where Council is notified of the presence of an unauthorised structure, Council has a duty of care to the community and potential property buyers to ensure that the appropriate compliance pathway is actioned. In other words properties that do not attract dwelling entitlement and are found to have an illegal structure on the land will be subject to compliance and enforcement action from Council. This may result in the need to remove the structure and any associated infrastructure.

In good faith, Council is asking you to reconsider the methods in which rural properties are advertised so as to ensure that property owners and prospective purchasers are not misled and create future liability issues for both Council and yourself. Specifically Council is requesting that property sales that advertise "weekenders" as a potential land use to prospective buyers be ceased.

For any further enquiries please contact Council's Development Liaison Team during business hours on (02) 4823 4444.

Yours faithfully

A handwritten signature in black ink, appearing to read "SA Mc", is written over the typed name "Scott Martin".

Scott Martin
Director Planning & Environment



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12 August 2020

Contact: Planning & Environment
Reference: 1289718

Dear

Subject: Unlawfully Erected Dwellings ("Weekenders")

Council wishes to bring to your attention the recent advertisement for the sale of land at 202 Silverstream Road, Lower Boro.

The land sale advertises "Due to the access the property does not have an entitlement to live permanently" and promotes the property with land improvements consisting of a mobile home with amenities and ancillary structures, listed by

The erection of a mobile home on land that does not attract dwelling entitlement under clause 4.2A of the *Goulburn Mulwaree Local Environmental Plan 2009*, is an unlawfully erected dwelling. These are sometimes referred to as a "weekender" and/or advertised as "the property does not have an entitlement to live permanently" as indicated within the property advertisement.

The definition of a "weekender" is not an approved use within NSW as per the *Standard Instrument (Local Environmental Plans) Order 2006*, and therefore is not an approved use under the *Goulburn Mulwaree Local Environmental Plan (LEP) 2009*. Accordingly, a "weekender" is not a legitimate building or land use classification.

Council advises that "weekender/s" are an unlawful structure, often resulting from the unauthorised conversion of a non-habitable building (Class 10a as per the *Building Code of Australia*) into a Class 1 habitable building. In essence any form of habitation requires a dwelling entitlement.

In instances where Council is notified of the presence of an unauthorised structure, Council has a duty of care to the community and potential property buyers to ensure that the appropriate compliance pathway is actioned. In other words properties that do not attract dwelling entitlement and are found to have an illegal structure on the land will be subject to compliance and enforcement action from Council. This may result in the need to remove the structure and any associated infrastructure.

Further to the above, and due to the compliance action required to be investigated by Council, the current land owner has made complaints to Council regarding the misrepresentations made to them by the Real Estate Agent.

In good faith, Council is asking you to reconsider the methods in which rural properties are advertised so as to ensure that property owners and prospective purchasers are not misled and create future liability issues for both Council and yourself. Specifically Council is

requesting that property sales that advertise “the property does not have an entitlement to live permanently” and/or are advertised with homes or weekenders (where no dwelling entitlement is legally permissible) as a potential land use to prospective buyers be ceased.

For any further enquiries please contact Council’s Development Liaison Team during business hours on (02) 4823 4444.

Yours faithfully

Scott Martin
Director Planning & Environment

Department of Planning, Industry and Environment

Attn: Anita Skinner

Agritourism EIE – Muswellbrook Shire Comments.

I refer to the documents on exhibition to support agritourism and other small-scale agricultural activities in rural locations.

Management of wastewater through on-site sewage management (OSSM) systems must be considered prior to easing restrictions on farm stay accommodation. Most “working farms” have a domestic OSSM system that is designed to of service up to 10 persons generating an average of 120L/person/day (for tank water) (Australian Standards 1547:2012). Disposal areas servicing these systems are sized based on calculations of maximum number of occupants per household and predicted wastewater generation loads as taken from the Australian Standards 1547:2012. These calculations ensure that the area that the wastewater is disposed onto is adequate to evenly distribute wastewater in a manner that does not cause detriment to the environment or human health. Domestic OSSM systems are also designed to take steady wastewater loads distributed evenly throughout the day/week. Introducing shock loads (increased generation of wastewater in short periods i.e. numerous showers in short periods) will also cause untreated bacteria to be pushed through the OSSM system without adequate storage and treatment times.

Most NSW Councils when calculating appropriate size of the disposal area will base their calculations on two people per main bedroom/guest room, then 1 or 1.5 persons per bedroom thereafter. The new proposal is allowing two persons per bedroom and unrestricted children under 12. This does not allow control over the maximum number of people per bedroom. For example, an OSSM system designed to store and treat wastewater generated from a 3 bedroom house or 4 people (480l/day) may then be required to intermittently accommodate a wastewater load of 10+ people (1200l/day+). The increased water load on the OSSM system and disposal area will likely lead to overloading the OSSM system and the OSSM system will fail. You then have potential for untreated effluent containing bacteria and potential diseases to be introduced into the environment and potential for human contact.

Similarly allowing farm stay accommodation to allow the use of land for up to 20 persons in tents, caravans and camper trailers to be exempt development needs to consider the generation of human wastewater and management of wastewater. Where toilet facilities are not provided for use, there should be strict control regarding the generation and treatment of wastewater from temporary occupants to prevent primitive wastewater conditions occurring and raw effluent being released into the environment. Where toilet facilities are provided, the above calculations and design of an OSSM system needs to be considered.

Farm premises event exemptions also need to consider wastewater management. As mentioned above, domestic OSSM systems will not manage wastewater generation from shock loads. A OSSM system that has little to no wastewater generated during the week, and then inundated by 30-50+ guests over a short period of time will fail. This will result in the potential for untreated effluent to enter the environment and pose a threat to human and environmental health.

As such, allowing farm accommodation and farm events to occur as exempt without stringent consideration relating to wastewater management will result in increased OSSM system failures, detrimental impacts to human and environmental health and less regulation and monitoring from

Councils in relation to the installation and management of OSSM systems. Conditions should be in place to ensure that these events still require Council review for wastewater management.

Consideration is required for the water supplied for drinking purposes by members of the public. All private water supplies who provide drinking water to members of the public need to have and enact a Water Quality Assurance Program to ensure that the water they are providing is safe and suitable for drinking. Measures should be included in the changes to control provision of drinking water to patrons.

The use of any private swimming pools by guests staying at farm accommodations then triggers the pools under the Public Health Act 2010 to become a Public Swimming Pool. Thought into the control and registration of these pools to ensure that they do not pose as a threat to public health needs to be given.

A condition preventing the preparation and sale of food for consumption by guests at the farms unless registered with Council as a food business also needs to be included.

The impact of traffic movements also needs to be considered. Many country roads have poor construction standards, with poor sight distances, narrow pavements and uneven surfaces. Encouraging large numbers of visitors down some of these roads (plus the heavy vehicles bringing food and other supplies) will hasten pavement degradation and will lead to a mixing of heavy vehicle local traffic and visitor traffic (e.g. car meeting a tractor, rural supplies produce truck or mining vehicle on the bend of a narrow road) with potential for more crashes.

Regards

A handwritten signature in dark ink, appearing to be 'Sharon', with a stylized flourish at the end.

Sharon Pope
Executive Manager Environmental and Planning Services

Your Ref: Agritourism and Small Scale Agriculture Development
Our Ref:

19 April 2021

Executive Director
Local Government and Economic Policy
NSW Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam

Proposed Amendments to the NSW planning system to better enable 'agritourism' and small-scale agricultural development

I refer to the proposed amendments to the:

- Standard Instrument (Local Environmental Plans) Order 2006
- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- State Environmental Planning Policy (Exempt and Complying Development codes) 2008.

to support 'agritourism' and small-scale agricultural development.

As part of the exhibition, it is also understood that the Department of Planning, Infrastructure and Environment is also extending an invitation to councils to consider whether they wish to adopt the proposed new optional clauses in relation to 'farm stay accommodation' and 'farm gate activities'.

Hawkesbury City Council wishes to express its interest in potentially incorporating the proposed optional clauses into the Hawkesbury Local Environmental Plan 2012, subject to finalisation of the relevant clauses, and Council's formal consideration of the implications of the final clauses of the proposed amendments before committing. Based on the exhibited Explanation of Intended Effect, the implications of concern include:

1. Hawkesbury City Council has previously submitted a planning proposal to the Department of Planning, Infrastructure and Environment that contained numerous elements, including the permissibility of function centres on land zoned for rural/agricultural uses. The function centres component of that planning proposal was removed following issues raised by state agencies, including issues associated with flooding impacts within the Hawkesbury Nepean Valley, much of which is zoned for rural purposes.

The proposed amendments will introduce the land use term 'farm events' as a subset of 'agritourism', and 'farm events' will be permissible in all local environmental plans where 'agriculture' is currently permissible.

As a consequence, events will now be permissible in rural/agricultural zones within the Hawkesbury Local Government Area contrary to the previous views expressed by state agencies, or due consideration to the impacts and risks associated with including such uses on the Hawkesbury Nepean floodplain.

In addition, it may not be appropriate for these new land uses to be allowed in all zones that permit agriculture, as the resulting impacts could be unacceptable. It is acknowledged that requiring development consent provides a mechanism in which the potential impacts of a proposal can be assessed, however in some circumstances, it is highly likely that



particular zones should be avoided to minimise unrealistic expectations and conflicts with proponents and neighbours. For example, within the Hawkesbury Local Government Area the Primary Production Small Lots RU4 zone permits agriculture, however has been used in areas where lots sizes are relatively smaller (2ha and 4ha). Some of these areas are predominantly rural residential in character and allowing 'farm events' would contribute to land use conflicts.

2. The amendment of the definition of 'farm stay accommodation' will result in the use of tents, caravans, campervans or similar, and the proposed new optional clause will allow a maximum of 20 such structures at any one time. This is not considered to be small scale or compatible with a rural character or visual amenity.
3. A new definition 'agritourism' is proposed and will include the new land use 'farm gate activities', as well as the existing uses of 'roadside stall' and 'cellar door premises'. The proposed new optional clause will limit the number of people at any one time for agritourism uses to 50. However, it appears that there is not limitation as to the number of 'agritourism' developments/types, that are permitted on site under exempt or complying pathways or as a development approval, or as a combination of these.

In addition, an owner could use their farm property for a mixture of farm stay, farm events, farm gate activities, or roadside stall, and the cumulative impact of multiple uses would be unacceptable, especially within peri-urban areas, such as the Hawkesbury Local Government Area. This would not be considered as low scale, would result in amenity impacts on adjoining properties, and likely to undermine the principle use of the property for agricultural purposes.

Thank you for the opportunity to provide comments. Council would welcome further discussion with the Department of Planning, Industry and Environment with respect to the issues raised prior to its formal consideration of inclusion of new definitions and clauses.

Should you have any enquiries in relation to this matter please contact Colleen Haron on (02) 4560 4564.

Yours faithfully



Andrew Kearns
Manager Strategic Planning



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Megan Yates

19 April 2021

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2150

Submission – Agritourism and small-scale agriculture development: Proposed amendments to support farm businesses and regional economies

Richmond Valley Council appreciates the opportunity to comment on the draft planning amendments for agriculture. Council is keen to see any improvements to the Planning System that will support the creation of new tourism and business opportunities in our region. Streamlining the planning system to make it easier to develop agritourism industries will complement our recently completed Destination Management Plan, our Discover Richmond Valley tourism campaign and our Paddock to Plate program which supports existing farmers to diversify their farms to provide tourism options for visitors to our Valley.

With any reforms it is important to consider the full impacts of the changes to avoid any unintended consequences. We fully support the intent of the proposed amendments and have provided the following commentary to assist your team to further develop the proposed changes.

Our feedback focuses on areas where we believe further development is required and greater clarity would be beneficial to ensure quality planning outcomes are achieved for our community and the integrity of our agricultural lands is maintained.

In summary our feedback relates to matters including:

- wording of definitions,
- unintended neighbour and community impacts on local amenity,
- waste management,
- safe drinking water,
- on-site sewerage management and

1. Farm Stay Accommodation

The current definition of farm stay accommodation requires the development be located on a working farm as a secondary business to primary production. The proposed changes include the replacement for these references to require the **existing** principal use of the land be for primary production/agriculture. It is important that the wording of this proposal maintains agricultural/primary production to continue in perpetuity. Council is supportive of allowing diversification on farms, however not at the expense of agricultural industries.

Love where we live and work



Exempt development

The proposed changes aim to allow up to 20 persons in any tent, caravans, campervans or other similar portable light weight temporary shelters. It is suggested that requirements similar to the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*, may be more appropriate to limit the number of sites per property depending on the size of the land.

Additionally, given the number of persons permitted under the use of land for farm stay accommodation, and the length of stay proposed being up to 14 days, consideration needs to be given to requiring that a manager to be contactable 24/7 during use of the farm stay accommodation.

Complying development

The proposed changes aim to limit farm stay accommodation as complying development with a maximum of 1 dwelling per 15 hectares, and a maximum of six dwellings per landholding. Clarification is required to confirm whether these limits exclude residential dwellings. As with the exempt provisions, Council believes it would always be appropriate for a manager to be contactable 24/7 during use of the farm stay accommodation.

The erection, alteration or addition to a building or manufactured home for the purposes of farm stay accommodation is proposed as complying development. The standards outlined however fail to require the existing building or manufactured home to be lawful either by an existing consent or by meeting the exempt provisions. Council believes this is an important requirement to ensure existing buildings meet legislative and BCA requirements especially where it is being provided as tourist accommodation.

Development application

There are two proposed objectives for the optional clause that councils can choose. However, neither of these objectives raise matters regarding protecting the agricultural use of the land. An additional objective should be included to allow for diversification of agricultural lands and ensure agriculture and primary production remains the predominant land use. This is an important consideration to ensure the agricultural sector and significant primary production lands are not compromised by excessive tourist developments. Council would be interested in including a model clause in our LEP for farm stay accommodation.

Consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
 - A minimum of 250 metres is proposed from mining and extractive industries. The NSW DPI Living and Working in Rural Areas Handbook recommends a minimum of 500-1000 metres (1000 metres for operations involving blasting) from mining and extractive industries to rural tourist accommodation. Council believes the setbacks outlined in the NSW DPI Handbook may be slightly excessive, therefore an appropriate setback may sit somewhere in between the two.
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling opportunity?
 - Yes – Council believes it is important for the land to enjoy a dwelling opportunity. Along with the suggested requirement for a manager to be onsite a separate residential dwelling house would be required.
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other

distance) from the existing dwelling house to enable clustering together of sensitive land uses?

- Yes – Council believes it is important to cluster the farm stay accommodation together and for them to be relatively close to the principal dwelling house. In some circumstances 300 metres may be excessive, with a distance of between 100 to 200 metres more appropriate. This ensures the tourist development is managed appropriately and close enough to the principal dwelling in the case of an emergency. It also reduces the impact of the development on adjoining properties by clustering the farm stay together.
4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of the Great Dividing Range)? If yes, please provide your suggestions and reasons.
- Council supports the view that one size fits all regulations do not achieve the best outcomes for all communities. We are supportive of the inclusion of flexible provisions that we then have discretion to apply in our own circumstances. o – The proposed standards for maximum dwellings per hectare and per landholding do provide assurance that smaller allotments won't be overdeveloped through the exempt and complying pathway however there may be scenarios where more intensive use could be supported.

2. Farm gate activities

The proposed definition for farm gate activities includes 'for agricultural produce grown on the farm or predominantly grown in the surrounding area'. There is no clear definition of what is meant by 'surrounding area' which could lead to misinterpretations and differing opinions between Council and prospective developers when implementing the amended legislation. Council believes guidance is required for what is meant by 'surrounding area' in the form of a definition or a planning circular or it could be a matter required to be included in a council's DCP.

Exempt & complying development

A maximum number of 50 guests is proposed for exempt development. While there may be circumstances where this is appropriate there will be locations where 50 guests is excessive. Given that exempt development is 'low impact, low-scale' a lower number is considered more appropriate when you take into consideration potential impacts like traffic, noise, odour, sanitation requirements etc. occurring in rural areas that are generally quiet with very little traffic and in some cases lower standard road networks.

A maximum number of 50 guests is also proposed for complying development. Again, there will be circumstances where 50 guests will be too many and our view is that the development standards should slowly increase through the different planning approval pathways. A minor increase from exempt development number of guests, but it should not increase to a point that should require development assessment.

It is noted the proposed exempt provisions state the development cannot be carried out on land in bushfire fire attack level 40 and flame zone. Council has concerns as to why it has been limited to BAL 40 and flame zone only. While it appears the exempt and complying provisions aim predominantly at low scale developments such as roadside stalls, the proposed definition of farm gate activities includes tastings, workshops and information and education facilities which encourage tourists to an unfamiliar area. Consideration and advice should be sought on whether this should apply to all bushfire prone land.

Development application

As with the proposed changes to farm stay accommodation, there are two proposed objectives for the optional clause that councils can choose. However, neither of these objectives raise matters regarding protecting the agricultural use of the land. An additional objective should be included to allow for diversification of agricultural lands and ensure agriculture and primary production remains the predominant land use. Council would be interested in including a model clause in our LEP for farm gate activities.

Additionally, the clause also proposes to restrict the number of people at the farm gate activities, at any one time, to either 50 people or the number the council specifies in its LEP. A maximum number of people is unnecessary for the development application pathway because any cap on patrons should be assessed on merit depending on the scale and impacts of the proposed development.

Consultation questions

5. How far do you think a roadside stall should be setback from the road?

- Council believes the setback from the road for roadside stalls should be relative to the size of the structure and availability of safe parking/stopping areas and ensure no visibility impacts on the adjacent road network.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

- Hours of operations for all development types and planning pathways. There do not appear to be any standards in relation to hours of operation for complying development.

3. Farm events

Council supports the diversification of agricultural activities and events are an important part of any vibrant community. However, we are concerned the proposed definition will inadvertently permit activities on a larger scale that would have serious impacts on the agricultural area, neighbours and beyond. Any definition of farm events should clearly define what is and isn't included. Large music festivals like 'bush doofs' for example, are not something that Council would support being included as a farm event.

Exempt & complying development

The proposed amendments for exempt and complying development for farm events are, in Council's opinion, too generous. The hours of operation allow exempt farm events to finish at 11.00pm weeknights, 12.00am Friday & Saturday, and 8.00pm on Sundays. Council believes this is excessive for exempt and complying development considering it should be 'low impact, low scale' development and does not require any consideration of how these times could affect the amenity of the area.

Additionally, a development standard is proposed to require the event holder to notify neighbours of an event at least one week before holding the event. Given the various activities proposed to be included in the farm event definition and the extensive impacts farm events could potentially have on the surrounding area, clarification is required to determine to what extent event holders are required to notify. Impacts such as traffic and noise can affect more than just adjoining land owners.

Development standards are also proposed to require events with amplified music or voices to be located at least 1,000 metres from the nearest dwelling or building for housing animals. Given the hours of operation discussed above, and should they remain the same, Council believes a requirement to reduce the volume of amplified music or voices at a certain time

should be included to ensure it is not heard (or doesn't exceed specified noise limits) at the nearest property boundary.

Consultation questions

7. The proposed maximum number of people and events per day for exempt and complying development are:

- a. 52 events days per year and up to 30 guests per event, or
 - b. 10 event days per year and up to 50 guests per event
- Are these appropriate?

- Given the exempt and complying development pathways are predominantly for low impact, low scale development, these number may be excessive. Fifty-two (52) events per year could result in 1 event per week, which is some locations this would cause issues. . Additionally, the proposed development standards do not specify or comment on a 'bump in, bump out' periods for setting up of the event. Set up periods can create additional impacts that have not been considered under the exempt and complying development pathways.

8. What events, if any, do you think should be excluded from the definition of farm events?

- Council believes large scale events such as festivals, including music festivals, should be excluded from the definition of farm events. In our experience these events should be subject to development application and assessment processes.

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted?

Please provide reasons for your selection.

- a) RU1
- b) RU2
- c) RU4
- d) Other zones (please specify)

- Clarification is required regarding what is meant by destination weddings. The proposed land use definition for farm events includes events and functions which could be utilised to gain consent for weddings venues in rural areas. Council does not believe there is a need for a separate land use definition to permit destination weddings given the proposed farm event land use definition.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

- Yes – As per the above, Council believes a separate definition is not warranted, however an additional clause for farm events would assist in the assessment and interpretation of farm event proposals.

11. Is there any rural land or areas in which agritourism activities should not be permitted?

- Council does not have any rural land or areas in which we believe agritourism activities should not be permitted as long as public health standards are adequately provided for.

4. Additional changes relating to agritourism

The proposed amendments aim to allow up to 4 business identification signs per landholding and one sign every two kilometres. Clarification is required regarding the location of these signs. Will the signs be permitted every two kilometres along road frontages? Will there be a requirement for consideration of SEPP 64? It's important that we don't encourage excessive signage along major roads. In our experience there is low demand for more signage than what is proposed.

Additional amendments to the Code SEPP are proposed to provide for free standing signs. Subclause g) proposes hours of operation between 7.00 am and 10.00 pm on any day if the hours of operation have not been approved. It is noted these hours do not correlate with the hours of operation proposed under the exempt and complying development pathways for farm stay accommodation, farm gate activities and farm events.

5. Small-scale processing plants

The proposed amendments include allowing small-scale processing plants associated with agricultural produce industries that process meat, honey & dairy as complying development. It is proposed to include both livestock processing industries and agricultural produce industries as complying development. Council has serious concerns about allowing livestock processing industries and agricultural produce industries as complying development. Although the maximum throughput is proposed to be at a low scale, there are significant impacts that are associated with these land uses.

The proposed amendments are silent on the potential impacts of the developments. No standards are proposed regarding waste management (both solid waste and waste water), supply of potable water, traffic impacts, odour impacts etc. Even at a low scale, these issues must be considered to ensure the development is compatible with the existing surrounding area and does not significantly impact on the environment. Without development standards around these issues, Council believes it would be inappropriate to allow these developments as complying development.

The amendments proposed are to allow processing of agricultural produce including honey. The maximum throughputs per annum however do not provide standards for agricultural produce outside of the processing of dairy. Council has concerns given the land use definition of agricultural produce industry that no maximum throughput is provided. Clarification of whether the proposed changes include all agricultural produce industry types, and also the maximum throughput for all proposed industries is required.

Given the risks, we question why this is being proposed as both exempt and complying development. Our Council assesses DA's efficiently and this process ensures that potential public health and environmental risks are considered and managed appropriately.

Consultation questions

12. Should any other agricultural produce industries be complying development? What standards should apply?

- Each different agricultural produce industry has different impacts and therefore without including a myriad of development standards, it is difficult to determine whether additional agricultural produce industries should be included. Even with those proposed, Council has concerns about whether the development impacts will be suitably addressed.

13. Is a maximum throughout of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

- Council has no objections to the maximum throughput for other animals such as deer and kangaroo being 1,000 carcasses per annum if development standards are included to address and control the potential impacts such as waste, supply of potable water, traffic impacts, odour impacts etc.

14. Should any additional standards be included?

- As mentioned above, additional standards are required to control the impacts of waste (both solid and waste water), supply of potable water, traffic impacts, odour etc. These impacts are synonymous with livestock processing and agricultural produce industries and need to be addressed by all complying development applications.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a. As complying development
- b. Through the standard DA process?
- Council does not believe the locational criteria should be changed for designated development for either livestock processing industries or agricultural produce industries. Given these changes are proposed for low impact, low scale development, Council does not believe development types that would trigger designated development could be considered low scale or low impact and therefore would be more appropriately assessed through the development application process.

6. Rebuilding of farm infrastructure

Council has no objections to the proposal to allow the reconstruction of lawful farm infrastructure that is destroyed or damaged in natural disaster.

16. Will these provisions sufficiently enable the rebuilding of buildings lost in natural disasters in the same location of the same size and form?

- The proposed amendments aim to assist farmers which may have been unable to use the existing exempt provisions because of requirements such as minimum setbacks. However, the development standards proposed state the new structure must comply with standards identified under existing provisions under the Code SEPP except for provisions relating to height and footprint. The existing provisions however include standards for setbacks which the structure being rebuilt would need to comply with. Given the age of some of these structures, it is likely they wouldn't be able to comply with the setback requirements, and therefore landowners would not be able to utilise these provisions to rebuild their farm infrastructure in the same location.

17. Should any additional standards be included?

- No – as long as the structures comply with the development standards proposed, and any standards of the existing exempt provisions (other than those that are excepted), no additional standards would appear warranted.

7. Stock containment areas

Council has no objection to allow stock containment areas to contain livestock temporarily during natural disasters, for agistment or housing, or for weaning, dipping, tagging, backgrounding or similar husbandry purposes as exempt development.

18. What type of permanent infrastructure should be permitted for stock containment areas?

- As livestock are worked and yarded for several reasons on a temporary basis sporadically throughout the year, Council believes infrastructure such as yards, troughs and other water storage facilities (eg. tanks) should be permitted on a permanent basis for stock containment areas.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

- Large scale hard stand areas should not be permitted as permanent infrastructure for stock containment areas due to the potential environmental impacts.
- Any containment area within a prescribed distance of residential accommodation on adjoining properties. Often these yards are used to house, albeit temporarily, weaned cattle that can bellow and generate 24/7 offensive noise.

8. Farm dams

20. How could we simplify planning provisions for farm dams?

- Provision should be made for small scale farm dams to be undertaken as exempt or complying development in our region which has good rainfall and abundant river systems. While development standards would be required to ensure the impacts are managed, this would enable small dams to be constructed without the need for development consent. Clarification on what classifies as a 'small farm dam' would also need to be provided.
- Consideration will need to be given to dam safety and locating dams in appropriate locations. There are different types of dams. A hole in the ground may be safe relative to a turkey-nest dam or perched dam on the side of a hill, however, in an acid sulphate soil area this could create major water quality issues.

9. Biosecurity for poultry farms and pig farms

Council has concerns regarding the proposed increase for poultry farms from 1,000 to 10,000 birds as being without consent. While this increase may not have biosecurity impacts, there is potential for other impacts to occur which do not appear to have been considered including traffic impacts, noise, odour and dust impacts etc.

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

- Council considers the biosecurity provisions proposed are adequate if they align with industry standards and best practice for poultry and pig farms and any requirements of Department of Primary Industry.

22. Should any additional standards be included?

- Additional setbacks could be included in line with the NSW DPI Living and Working in Rural Areas Handbook including separation distances between dwellings, tourist

accommodation and other rural industries. Standards in relation to drinking water catchments, traffic movements, odour, sanitation and dust should also be included.

10. Rural dwelling setbacks from intensive livestock agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?

- Council supports the proposed increase for setbacks between rural dwellings and intensive livestock agriculture, however increases to other land uses such as mines and extractive industries, and rural industries should be considered.

24. From which point should the setbacks be measured?

- a. From the proposed or existing intensive agricultural use
- b. From the property boundary shared with land used for intensive agricultural
- c. A combination of the above
- Council believes the setback should be measured from 'c'. This could depend on where the intensive livestock agriculture is being undertaken on the adjoining property in comparison to where the rural dwelling is proposed.

11. Recreational beekeeping

Council has no objection to the proposed amendment to include recreational beekeeping in the Code SEPP as exempt development. A separate land use definition for recreational beekeeping would be beneficial for clarity. Council already considers recreational beekeeping as exempt development under the Home Occupation definition.

25. Are the proposed development standards appropriate and are any additional standards needed?

- Council supports the proposal to align with NSW Beekeeping Code of Practice. Council has concerns regarding the requirement for the development to not be used for a commercial purpose, and the proposed number of hives permitted per lot size. Given the developments are permitted in rural, residential or environmental zones, Council holds concerns about how this will impact on adjoining properties, especially in residential zones. Council believes similar standards to the requirements for home business's regarding interference with the amenity of the neighbourhood should be included to ensure developments do not have an adverse impact.
- Alternatively, the word 'recreational' could be removed to provide standards for 'beekeeping' in general. There could then be exempt provisions provided for minor low scale beekeeping activities, with limits placed on the number of hives in different zones. A limit of 1-2 hives within urban/residential zones would be appropriate and a requirement regarding interference with the amenity of the area should also be provided. A larger limit (or no limit) could be provided in rural and environmental zones.

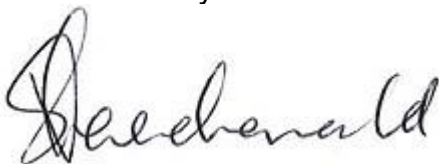
General comments/recurring issues

- **Waste and wastewater** – for all exempt and complying development aspects of the agritourism changes, the proposal states 'putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed'. The proposal fails to require these treatment systems be approved by the relevant Local Government Authority and fails to ensure the treatment system has an adequate capacity to deal with the waste and wastewater generated by the agritourism activity.

- **Water** – the proposed amendments for agritourism are silent on requirements for potable water and how this will be managed for both exempt and complying development pathways. Given a large majority of these development types will be undertaken outside serviced areas, Council believes it is important to include a requirement for potable water and a Water Quality Assurance Plan to ensure the development has access to, provides and uses clean water.
- **Setbacks** – the proposed amendments detail minimum setbacks from adjoining established or proposed land uses. A minimum of 250 metres is proposed from mining and extractive industries. The NSW DPI Living and Working in Rural Areas handbook provides recommended minimum buffer distances for primary industries. The Handbook recommends a minimum of 500-1000 metres (1000 metres for operations involving blasting) from mining and extractive industries to rural tourist accommodation. Council believes the setbacks outlined in the NSW DPI Handbook are more appropriate for this development type than those proposed by the planning amendments.
- **Excluded lands** – for all exempt and complying development aspects of the agritourism changes, consideration should be given to whether all development types should not be able to occur through exempt and complying development if it is located on bushfire prone land, flood prone land, and/or contaminated land.
- **Impacts** – the proposed amendments for agritourism being undertaken as exempt and complying development are silent on potential impacts of the developments. As a large portion of the developments will be undertaken in rural areas, with potentially inadequate road networks, issues such as traffic impacts, noise, odour, dust, ecological impacts and social and economic impacts should be considered and provided as development standards.
- **Limitation to agricultural land** – the proposed changes aim to assist with diversification of agriculture which results in limitations of how these provisions can be utilised. The requirement for the principal use of land to be for the production of agricultural/primary production goods for commercial purposes reduces the ability for these changes to be utilised by other rural and environmental zones/uses. Council believes these amendments are a great opportunity to provide tourism land uses, however it should be considered whether limiting them to agritourism is the best outcome.

If you wish to discuss the contents of this submission please do not hesitate to contact me on (02) 6660 0321 or Megan Yates on (02) 6660 0216 or by email at megan.yates@richmondvalley.nsw.gov.au.

Yours sincerely



Vaughan Macdonald
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19 April 2021

NSW Department of Planning, Industry and Environment

Dear Sir/Madam,

RE: Agritourism and Small Scale Agriculture Development

Council welcomes the opportunity to provide comment on Explanation of Intended Effects (EIE) for the Agritourism and Small Scale Agriculture Development exhibited by the Department of Planning Industry and Environment. Council agrees that agritourism plays an important part in the economies of rural communities and changes are needed within the NSW Planning system to support the development of agritourism land uses. Notwithstanding, Council has concerns with respect to the proposed amendments for Exempt and Complying Development as addressed below, with the questions contained in the EIE answered in the attached appendix:

- **Farm Stay Accommodation**

- ***Proposed changes to the standard instrument definition***

- Council has concerns about the removal of references to the provision of accommodation being secondary to the primary production use of the lot. The primary and ancillary uses of a lot is a significant planning consideration and is referenced under *Planning Circular PS 13-001: How to Characterise Development*.
 - Will there be a definition or 'test' to quantify what a 'commercial purpose' with respect to agriculture/primary production is?
 - If Farm Stay Accommodation can be commenced on a lot currently not utilised for a commercial agricultural purpose, what recourse would there be to require that the lot be utilised for primary production into the future.

- ***Exempt Development***

- Council welcomes changes that would allow the change of use of existing lawfully erected dwellings on properties for farm stay accommodation. It is not uncommon for rural properties to have unused or underutilised dwellings that could easily be reused for farm stay accommodation. Council makes the following comments:

- There appears to be no consideration of natural hazards. The change of use of dwellings on bushfire or flood prone land should require further consideration and should not be permitted as exempt development. There

is a likelihood that a dwelling on a rural property does not meet current requirements for construction in a natural hazard prone area.

- If the use of a dwelling is changed as exempt development to Farm Stay Accommodation, would there be provisions to allow for the use to be changed back to a dwelling? This may pose issues with the ability for Council to lawfully approve a dwelling on a lot if it does not meet the minimum lot size for the respective zone.
- Is there a requirement for at least one dwelling to remain on the property? As per above, in the event that a dwelling is changed to farm stay accommodation, if there are no dwellings on the property, this could lead to implications with respect to dwelling approvals in the future.
- Council has concerns about the use of land for farm stay accommodation (or more appropriately a campground) as exempt development. There appears to be no restriction on the size of a lot that could be utilised, and the setbacks within the Explanation of Intended Effects are ambiguous.
- Council would request that the maximum stay be reduced to a more appropriate length (7 days) to ensure that the use of a site does not adversely impact the amenity of the locality and that a nominated minimum setback from boundaries and dwellings on adjoining lots be required.

Complying Development

Council has significant concerns over the proposed complying development for farm stay accommodation. The change of use of an existing building (aside from an existing lawfully erected dwelling) on a lot or the erection of a building for farm stay accommodation should be a consideration under a Development Application.

- What requirements would there be to ensure compliance with *State Environmental Planning Policy No. 55: Remediation of Land*? There is a reasonable likelihood that buildings on rural properties could be used for storage of hazardous materials which would be an issue considered as part of a development application.
- Again, the setbacks proposed under the EIE are unclear. If the minimum setback is 250m to all boundaries, then this is impossible to achieve on a 15Ha allotment.
- Is there a maximum duration of a stay for the Farm Stay Accommodation? The ability to change the use of, or erect, up to 6 buildings for Farm Stay Accommodation as complying development could lead to them being used as pseudo dwellings if no maximum stay is imposed and in turn defeat the purpose of minimum lot sizes for dwellings on rural properties.

- **Farm Gate Activities**

The proposed new definition of 'Farm Gate Activities' appears to be somewhat ambiguous in regard to what may be permissible with the wording in the EIE able to cover a wide number of land uses. Will there be more clarification or limitations with respect to the type of land uses that can be undertaken? Whilst Council welcomes the recognition that this would allow for value adding to existing agricultural undertakings, Council has reservations about the type of uses that may be permissible as exempt or complying development, given there are a number of factors that require consideration as part of a formal Development Application as addressed below:

- There is no consideration in regard to the suitability of the access road or the property access. Significant increase in traffic on unsealed roads would lead to Council having to maintain or improve roads which would generally be a requirement of a development consent at the cost of the developer. If there is a maximum of 50 guests at any one time, this could result in

significant traffic being generated on roads that have not been constructed to accommodate such volumes.

- Is there a requirement for the person to obtain confirmation from Council or a suitably qualified person with respect to the permissible sightlines?
- What requirements are there to ensure that buildings are constructed in accordance with the requirements of the Food Act?
- What requirements would there be to ensure compliance with *State Environmental Planning Policy No. 55: Remediation of Land*? There is a reasonable likelihood that buildings on rural properties could be used for storage of hazardous materials which would be an issue considered as part of a development application.
- Suitable setbacks (or inclusion of buffers) to dwellings on adjoining lots should be established to ensure that there are not adverse impacts on adjoining lots.

- **Farm Events**

There has been a significant increase in the number of enquiries and applications that Council has received for farm events or for social events on agricultural land. A planning pathway outside of a temporary use approval pursuant to clause 2.8 of the standard instrument LEP would give certainty to organisers of such events. However, these approvals have also generated significant community interest in the impacts that such events may have on the amenity of the surrounding rural area. Council is generally supportive of the proposed land use, however further detail with respect to the categorisation of the permissible events requires clarification. Council offers feedback on the exempt and complying approval pathways below (in addition to comments made above):

- The proposed hours of operation could lead to adverse impacts on the amenity of rural areas. Further restrictions on the hours of operation for exempt and complying should be imposed, especially if a subject site is in close proximity of dwellings on adjoining lots.
- The number of events would allow for a person to have an event once a week for a year. This again may result in adverse impacts on the amenity of rural areas.

Cabonne Council would like the option to review the draft 'opt in' clauses prior to any determination being made.

Should you have any further enquiries please contact Council's Development Services Department on 6392 3265 between 9am and 11am Monday to Friday.

Yours faithfully,



CD Eldred

DEPARTMENT LEADER – DEVELOPMENT SERVICES

Consultation Questions

Farm Stay Accommodation

1. The setbacks are adequate, however given
The EIE is also silent on other setbacks to boundaries and dwellings on adjoining lots.
2. All Farm Stay Accommodation should only be permissible on lots that contain an existing dwelling (whether exempt, complying or a Development application).
3. Yes, all the buildings should be clustered together to mitigate the impacts on productive lands.
4. The standards should be linked to the lot size where a minimum lot size is required for the farm stay accommodation to be via exempt or complying development. Cabonne Council considers 100Ha an adequate size for the farm stay accommodation to not adversely impact on the agricultural use of the lot.

Farm Gate Activities

5. The setback from the road should be dependent on the classification and quality of the road. A setback from a classified road would be greater than a local road, and the setback from an unsealed road should also be considered.
6. - Farm Gate Activities via exempt or complying development should be limited to sites that have frontage to a sealed road.

-Nominated setbacks should be required. With a set dimension for setbacks to a dwelling on an adjoining property.

Farm Events

7. The maximum capacity would depend on the type of event permissible. The EIE does not provide detail on what the events could or couldn't be.
8. Weddings and other significant noise generating events should be excluded.
9. Weddings should be treated separately to farm events. The establishment of a 'destination wedding' land use would be appropriate in the RU1 and RU2 zones.
10. An opt in basis for a potential destination wedding clause would be preferable so that Council can review the proposed clause prior to opting in.
11. Water catchments, riparian areas, small lots (<5Ha). Ensuring there is a suitable separation between dwellings on adjoining lots.

Small Scale Processing Plants

12. Council considers that due to the potential impacts of the land uses, they should require a development application.
13. Yes assuming they are of comparable size.

14. Standards for the disposal of both solid and liquid waste would need to be imposed. Standards for the quality of roads if animals are to be transported to/from a site.
15. Council considers that due to the potential impacts of these land uses, they should be considered by a development application.

Rebuilding of Farm Infrastructure

16. Yes, however limitations should be imposed on the size of a building that can be rebuilt as exempt development.
17. A limit on the floor area of a building to be rebuilt.

Stock Containment Areas

18. Fencing
19. Structures above what can be constructed as exempt development.

Farm Dams

20. A standardised way to calculate the maximum size of a dam for the size of a lot based on:
 - a. The catchment area
 - b. Number of existing dams
 - c. Number of existing dams also within the same catchment/watercourse
 - d. A limit on the size of a dam that can be constructed as exempt development

Biosecurity for poultry and pig farms

21. Would there be a 10,000 limit on the number of birds at any one time or a limit per annum. The separation of 1000m between poultry farms does not appear sufficient to ensure that there is adequate biosecurity measures.
22. An exclusion for lots fronting unsealed roads. A requirement that lot accesses be upgraded to accommodate the required vehicles.

Rural Dwelling Setbacks from Intensive Agriculture

23. It would depend on the type of intensive agriculture land use being undertaken. The 2018 publication by NSW DPI: *Buffer Zones to Reduce Land Use Conflict with Agriculture* provides a range of setbacks for various uses.
24. From the property boundary to allow for potential growth of the intensive agriculture land use.

Recreational Bee Keeping

25. A minimum lot area of 1000m² to ensure that there is suitable separation available in residential areas.

Submission

NSW Department of Planning, Industry and Environment Explanation of Intended Effect: Agritourism and small-scale agriculture development.

Council welcomes the initiatives of the NSW Government to introduce measures that support business diversification for farmers to meet new market trends in land uses that genuinely support and value add to the agriculture industry.

The following submission contains several suggestions relating to the draft definitions and proposed exempt and complying provisions that Council would like the Department of Planning, Industry and Environment to take into consideration when finalising the proposed amendments.

Planning overlays and issues

While exempt and fast track complying development approval pathways are strongly supported by Council, it is important that the potential impacts to the environment and community are considered adequately when designing these provisions. Urban/industrial and rural interface, rural landscapes, flooding, bushfire, heritage, biodiversity, contaminated land, legal and physical access, carparking, traffic and proximity to waterways are all potential issues in rural areas that need to be adequately considered and reflected in any new exempt and complying development provisions.

Right to farm

Many of the activities proposed as exempt or complying development have the potential for land use conflict with the agricultural industry. Is it important that the proposed amendments ensure that new development genuinely supports the agriculture industry and does not impact on surrounding farmers' right to farm.

Zoning and minimum lot size

The Explanation of Intended Effect (EIE) does not nominate the specific zones that the amendments to the exempt and complying development codes apply to which makes it difficult for Council to fully assess the impact of some of the proposed changes. Similarly, none of the provisions are tied to minimum lot sizes and permitting agritourism activities on small allotments as exempt or complying development may result in inadequate consideration of potential land use conflicts and the cumulative impacts of non-agricultural development with alternative land uses.

Consultation with agencies

Some of the issues raised in this submission relate to traffic generation, flooding, bushfire, biodiversity, rural land use conflict and public health which are shared responsibilities between local and state government. Consultation with relevant state government agencies and relevant bodies is recommended if this has not already commenced.

The following feedback is provided to specific elements of the EIE:

1) Farm stay accommodation

The current definition of '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'.

The proposed new definition of 'farm stay accommodation' will include a requirement that the principle existing use of the land must be the production of agricultural/primary production goods for commercial purposes, whether that farm is currently producing goods.

Council comments:

- *Bega Valley Local Environmental Plan 2013* (BVLEP 2013) currently permits farm stay accommodation with consent in the following rural zones: RU1 Primary Production, RU2 Rural Landscape RU4 Primary Production Small Lots and R5 Large Lot Residential zones as well as the E3 Environmental Management zone. Council strongly supports the requirement that the definition of farm stay accommodation includes the principle that the existing use of the land must be the production of agricultural/primary production goods for commercial purposes.
- Council does not support permitting farm stay accommodation on farms unless they can legitimately demonstrate that they are producing goods. This is necessary to avoid undermining the objective to ensure a farm stay supplements an existing commercial farming business and avoid tourist development with minimal planning that may lead to land use conflict with the agriculture industry.

The proposed definition of 'farm stay accommodation' also includes accommodation in a building and camping (camping is currently not included under farm stay accommodation). It is proposed to amend the definitions of camping ground and caravan park to exclude tents, campervans and caravans erected on land for the purposes of farm stay accommodation. This is intended to facilitate small-scale camping being undertaken on a farm as exempt development.

Council comments:

- BVLEP 2013 currently permits camping grounds with consent in the following rural zones: RU1 Primary Production and RU2 Rural Landscape. Council does not support including camping in the definition of farm stay accommodation and believe camping should remain a separately defined use, as it can have more significant planning issues. The proposal to split the definition of camping depending on whether it can be considered as farm stay accommodation is confusing and unnecessary. Incorporating camping into a definition that has exempt and complying pathways is not appropriate as camping is not a low environmental impact activity due to the risk to the environment if human waste is not managed and the risk to life from bushfire and flood in certain areas. This would also cause inconsistency because there are no current or proposed provisions for exempt or complying development for camping in any zones in the Codes SEPP.

Proposed exempt development

Change of use of an existing dwelling or part of dwelling (including secondary and rural workers dwellings) for farm stay accommodation where lawfully constructed, max two people per bedroom. Subject to maximum guest and waste management requirements.

Use of land for farm stay accommodation for up to 20 people in temporary accommodation including tents, caravans on non-bushfire prone rural zoned land for up to 14 days. Subject to location, size, setbacks and waste management requirements. If human waste storage devices are proposed they must be emptied on site.

Council comments:

- All rural zoned land in the Bega Valley Shire is bushfire prone, so the proposed exempt provisions for use of land for farm stay accommodation would not apply. For reasons explained above, Council considers that camping does not meet the exempt development requirement to be of 'minimal environmental impact' and is therefore not suitable for any form of exempt development provisions. Camping should remain a separate use as per current Standard Instrument definition and not be permitted as exempt development.
- Should the exempt development provision be applied, the proposed provision requires clarification regarding whether it applies to camping for 20 people for 14 days of a calendar year or for a maximum stay of 14 days.
- Any form of exempt development for farm stay accommodation must also be subject to the following development standard to ensure safety for motorists:

Site location and access

- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')

Proposed complying development

Change of use of a lawfully approved existing building or manufactured home of up to 60sqm to **farm stay accommodation** on rural zoned land. Subject to flood control, bushfire, on-site sewer, setbacks and waste management requirements.

Erection, alteration or addition to up to 6 buildings or manufactured homes on rural zoned land for **farm stay accommodation**. Must be within 300m of any existing dwelling, maximum floor area for new building or manufactured home the greater of the standard in the LEP or 60sqm. Maximum one dwelling per 15ha to a maximum of 6 dwellings per landholding. Subject to setbacks, on-site sewer and waste management requirements.

Council comments:

- Council does not support the proposed provision for up to six additional dwellings per landholding as farm stay accommodation with a complying development pathway. The number of dwellings proposed is not 'small scale' and is therefore not suitable for approval

through a fast track pathway due to potential environmental and public safety issues and may increase land use conflict with adjoining land uses.

- Council supports the erection, alteration or addition of one building or manufactured home for farm stay accommodation provided the land has a dwelling entitlement, has legal and safe vehicle access and provided that the same complying development pathway is provided for secondary dwellings on rural zoned land. This will limit the scale of complying development and prevent the misuse of the provisions for uses that do not genuinely support the agriculture industry. Permitting six buildings or manufactured homes as complying development is considered excessive as potential impacts will not be adequately assessed and farm stay accommodation is only intended as supplementary to an existing agriculture industry.
- Council supports the proposed provisions that the development is within 300m of any existing dwelling and the maximum floor area for new building or manufactured home the greater of the standard in the LEP or 60m² as complying development on rural zoned land.
- As discussed above Council does not support inclusion of camping in the definition of farm stay accommodation. Any proposed complying development provisions for camping will need careful consideration and may have resourcing implications for councils in monitoring compliance with complying development provisions.
- Council supports complying development involving buildings that are being altered or added to provided they have been lawfully approved. In addition, any form of complying development for farm stay accommodation must also be subject to the following development standards to ensure that risk to life and environmental impacts are minimised:

Bush fire prone land and flood control lots

- the development must comply with the flood control lots requirements in the Codes SEPP (clause 3D.7) if the building is on this type of land
- the development must not be a type that requires a bush fire safety authority under section 100B of the *Rural Fires Act 1997* because it is on bushfire prone land.

Site location and access

- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')

Environmental considerations

- the development must not be carried out on land because of the provision of clause 1.19 as they apply to the *Rural Housing Code*

Development application

A draft optional clause is proposed for inclusion into BVLEP 2013 that applies when development can-not meet exempt or complying standards. The draft clause:

- includes objectives to:
 - allow for small scale tourism and commercial uses that complement the agricultural use of the land
 - balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- provides the following requirements:
 - allow the number of people accommodated in any buildings/manufactured homes to be three times the number of bedrooms permitted under clause 5.4(5) of the council's LEP, or the number the council specifies in its LEP
 - allow the number of persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters on the landholding to be 20 at any one time for up to 14 days
 - require the maximum floor area of any new building to be 75 square metres or the number the council specifies in its LEP (which must be not more than 75 square metres).

Council comments:

- Council has been invited to provide an expression of interest to adopt the new optional clause for farm stay accommodation. Council would like to formally express an interest in adopting the new model clause subject to a review of the wording of the finalised clause and any amendments to the definition of farm stay accommodation, noting Council's objection to the inclusion of camping within the definition of farm stay accommodation.
- The provisions require clarification regarding whether it applies to camping for 20 people for 14 days of a calendar year or for a maximum stay of 14 days
- The new optional clause should also include the development standards for the proposed complying development provisions for the erection, alteration or addition to a building or manufactured home regarding the use, location and size of farm stay accommodation:
 - any structure constructed or converted for the purpose of farm stay accommodation cannot be used as a dwelling without consent
 - the erection of a new building or manufactured home for farm stay accommodation must be within 300 metres of the existing dwelling
 - maximum height of 6 metres
 - for a new building or manufactured home, a maximum floor area that is the greater of the standard in the relevant LEP or 60 square metres
 - maximum one dwelling per 15 hectares, to a maximum of six dwellings on a landholding
 - the development cannot occur on land that is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997

2) Farm gate activities

It is proposed to introduce a new land use term for farm gate activities which includes:

- a. the processing, packaging and sale of agricultural produce, or
- b. a restaurant or café, or
- c. facilities for the holding of tastings, workshops or providing information or education to visitors

for agricultural produce grown on the farm or predominantly grown in the surrounding area.

Council comments:

- Council strongly supports the introduction of new land uses into the Standard Instrument to support agritourism and small-scale agriculture development, including, in principle, a new definition of farm gate activities.
- Regarding the draft definition; Council strongly support the requirement that the definition of farm gate activities includes the principle that the existing use of the land must be the production of agricultural/primary production goods for commercial purposes. However, Council does not support permitting farm gate activities on farms that are not producing goods as it will undermine the objective to ensure farm gate activities supplement an existing commercial farming business and may lead to land use conflict.
- Council does not support including restaurants in the definition of farm gate activities. Council currently permits restaurants or cafés with consent in the RU1 Primary Production, RU2 Rural Landscape and E4 Environmental Living zones. Incorporating restaurants or cafés into a definition that has exempt and complying pathways is not appropriate as restaurants or cafés are not a low environmental impact activity due to the potential risk to the environment from human waste and the potential risk to life from food preparation and service, bushfire, flood, traffic generation and potential impact on neighbouring residential amenity. This would also cause inconsistency because there are no current or proposed provisions for exempt or complying development for restaurants or cafés and few provisions for other types of food premises in any zones in the Codes SEPP.
- It is also noted that the current definition of artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products which includes one of the following:
 - (a) a retail area for the sale of the products,
 - (b) a restaurant or cafe,
 - (c) facilities for holding tastings, tours or workshops.

The proposed definition of farm gate activities is very similar to artisan food and drink industry. Under BVLEP 2013 artisan food and drink industries are permitted with consent in the RU1 Primary Production and RU2 Rural Landscape zones. The provisions of the Codes SEPP specifically exclude artisan food and drink industry and do not provide for restaurants or cafes or information and education facilities. Council suggests that some consistency between the approval pathways for these uses and farm gate activities be established.

Proposed exempt development

farm gate activities on rural zoned land which do not involve a change of building use between certain times with up to 50 guests. Subject to site location and access, setbacks waste management requirements

change of use from a lawfully approved use to a **roadside stall** on rural zoned land with no site increase and providing original conditions of consent are met.

erection of a **roadside stall** where the use is permitted with consent in LEP and max size 8sqm (LEP 10sqm) subject to location, site access, parking and waste management requirements

Council comments:

- Council considers that farm gate activities that increase visitation to a site by up to 50 guests without consideration of on-site effluent disposal, access, bushfire, stormwater drainage or potential traffic impacts does not meet the requirement for exempt development to be of 'minimal environmental impact'. As such exempt provisions for farm gate activities are not supported except for roadside stalls.
- Any form of exempt development for roadside stalls must also be subject to the following development standards to ensure that risk to life and environmental impacts are minimised:

Site location and access

- carparking must be located onsite and not within the road reserve
- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')
- the development cannot be carried out on land in bush fire attack level-40 or the flame zone

Proposed complying development

Change of use of a lawfully approved existing building (not manufactured home, moveable dwelling or temporary structure) to a **farm gate activity** premises for up to 50 guests on rural zoned land. Subject to on-site sewer, size, setback and waste management requirements.

Erection, alteration or addition to a building for a **farm gate activity** for up to 50 guests on rural zoned land subject to building location and size, setbacks, on-site sewer and waste management requirements.

Council comments:

- Complying development involving buildings that are being altered or added to must have been lawfully approved. Any form of complying development for farm gate activities must also be subject to the following development standards to ensure that risk to life and environmental impacts are minimised:

Bush fire prone land and flood control lots

- the development must comply with the flood control lots requirements in the Codes SEPP (clause 3D.7) if the building is on this type of land
- the development must not be a type that requires a bush fire safety authority under section 100B of the *Rural Fires Act 1997* because it is on bushfire prone land.

Site location and access

- carparking must be located onsite and not within the road reserve
- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')

Environmental considerations

- the development must not be carried out on land because of the provision of clause 1.19 as they apply to the *Rural Housing Code*

Development application

Proposed optional clause for LEP that applies when development can-not meet exempt or complying standards

- introduce objectives:
 - to allow for small scale tourism and commercial uses that complement the agricultural use of the land
 - to balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- introduce the following standards:
 - a. the gross floor area must not exceed 200 square metres or the number the council specifies in its LEP (which must be not less than 200 square metres)
 - b. the maximum number of people is not to exceed 50 at any one time or the number the council specifies in its LEP (which must be not less than 50)
 - c. despite a., if a structure is a roadside stall, the maximum floor area must not exceed 8 square metres or the number the council specifies in its LEP (which must be not less than 8 square metres).

Council comments:

- Council does not support a cap on the maximum number of people when the use is proposed through a development application pathway as this may limit proposed farm gate activities and the impacts of the scale of the proposal can be assessed on its merits.
- Council has been invited to provide an expression of interest to adopt the new optional clause for farm gate activities and identify the zones in which it wishes to allow farm gate activities. Council would like to formally express an interest in adopting the new model clause subject to a review of the wording of the finalised clause and any amendments to the definition of farm gate activities, noting Council's objection to the inclusion of restaurants or cafes' within the definition of farm gate activity.

- Council proposes to permit farm gate activities with consent in the following rural zones: RU1 Primary Production, RU2 Rural Landscape RU4 Primary Production Small Lots and E3 Environmental Management.

3) Farm events

It is proposed to introduce a new land use term to permit events, tours, functions, conferences, fruit picking, horse riding and other similar experiences on land for which the principal use of the land is the production of agricultural goods for commercial purposes. The definition will also enable farm events on a commercial farm that is currently not producing goods because of drought or similar events outside the landowner's control.

- 'Farm events' needs to be clearly defined, all activities related to activities associated with events centres should be removed and the definition of farm events should include the wording 'and does not include Function Centres' for clarity. Function centres are not a low environmental impact activity due to the potential risk to the environment from human waste and the potential risk to life from food preparation and service, bushfire, flood, traffic generation and potential impact on neighbouring residential amenity. Permitting function centres as farm events would also cause inconsistency because there are no current or proposed provisions for exempt or complying development for function centres in any zones in the Codes SEPP.
- Council does not support a special clause for destination weddings.

Proposed exempt development

Farm events on rural zoned land which do not involve a change of building use between certain times with up to 50 guests. Subject to operational, setback and waste management requirements.

Council comments:

- Any form of exempt development for farm gate activities must also be subject to the following development standards to ensure safety for guests and motorists:

Site location and access

- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')
- the development cannot be carried out on land in bush fire attack level-40 or the flame zone

Proposed complying development

Change of use of a lawfully approved existing building (not manufactured home, moveable dwelling or temporary structure) to farm event premises for up to 50 guests on rural zoned land. Subject to operational, size, setback, on-site sewer and waste management requirements.

Erection, alteration or addition to a farm event building on rural zoned land for up to 50 guests subject to operational, building location and size, setbacks, on-site sewer and waste management requirements.

Council comments:

- Complying development involving buildings that are being altered or added to must have been lawfully approved. Any form of complying development for farm events must also be subject to the following development standards to ensure that risk to life and environmental impacts are minimised:

Bush fire prone land and flood control lots

- the development must comply with the flood control lots requirements in the Codes SEPP (clause 3D.7) if the building is on this type of land
- the development must not be a type that requires a bush fire safety authority under section 100B of the *Rural Fires Act 1997* because it is on bushfire prone land.

Site location and access

- access to the development must be via a lawfully approved access
- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5 (the term 'major road' needs to be defined more clearly to clarify if it applies to a 'classified road' or 'Council Road')

Environmental considerations

- the development must not be carried out on land because of the provision of clause 1.19 as they apply to the *Rural Housing Code*
- Council proposes to permit farm gate activities with consent in the following rural zones: RU1 Primary Production, RU2 Rural Landscape RU4 Primary Production Small Lots and E3 Environmental Management.

4) Additional proposed changes

Changes relating to agritourism

Additional changes are proposed to apply to existing standards to the agritourism activities and amend existing exempt development standards to better facilitate these activities.

Bush fire prone land: Apply existing complying development standards in the Codes SEPP for bush fire prone land to buildings used for farm activities or farm events as complying development.

Council comments:

- Council supports the application of the existing complying development standards in the Codes SEPP for bushfire prone land to building used for farm activities and farm events.

Business identification signs: Amend clause 2.83 exempt development provisions of the Codes SEPP to allow business identification signs for farm stay accommodation, farm gate activities and farm events, limited to 4 per landholding and one sign every 2 kilometres.

Council comments:

- Council supports the amendment to the Codes SEPP to allow business identification signs for farm stay accommodation, farm gate activities and farm events, provided it is limited to two per landholding on which the development is being carried out on to protect rural landscapes and vistas.
- All rural signage must have a maximum specified size

Free standing signs: Amend the Codes SEPP to allow the construction of business identification signs as exempt development that are displayed on a free-standing structure, fixed to the fence adjacent the entry gate or the entry gate.

Council comments:

- Council supports the amendment to the Codes SEPP to allow free standing signs in rural zones on the development site that are displayed on a free-standing structure, fixed to the fence adjacent to the entry gate or the entry gate and permit one sign per site.
- All rural signage must have a maximum specified size
- Signage in road reserves also requires approval by the relevant body

Verandahs: Amend clause 2.12 of the Codes SEPP to allow decks, patios, pergolas, terraces and verandahs on the front of buildings in rural zones as exempt development if they are setback 50 metres from the road.

Council comments:

- Council supports the amendment to the Codes SEPP to enable the erection of verandahs as exempt development.

Small-scale processing plants

Allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey where certain development standards are met.

Council comments:

- Council offers in principle support to provisions that allow the establishment of small-scaled processing plants as complying development; however, does not support the scale of development as outlined in the EIE for meat and dairy uses. If the scale can be justified as more of a “boutique” type development or is for honey that provides a supplementary income to a genuine agricultural activity that has minimal environmental impacts, then Council would consider unqualified support.
- The scale of development proposed in the EIE as ‘small-scale’ has the potential to cause environmental impacts which require development assessment through the development application performance review process. Issues identified include:
 - bushfire or flood and contaminated land
 - disposal of liquid waste considering the amount of water that would be required to process products on these scales
 - disposal of solid waste such as effluent and animal carcasses.

- heavy vehicle traffic movement from the development and potential impact on existing residential amenity or local traffic movement (such as school bus route).
- adequate heavy vehicle access to the site.
- The EIE does not include other products that could be produced such as from a viticulture and olive oil.
- The EIE does not specify that products are produced onsite and are produced as per agricultural industry standards.
- The EIE does not specify a maximum number of a particular type of animal that meat is sourced from and there is potential for the amount of processing going above the intended thresholds if more than one type of animal is processed in one location and therefore greater impacts from one development site.

Rebuilding of farm infrastructure

Allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size and contemporary building standards including the Building Code of Australia and relevant Australian Standards.

Council comments:

- Council supports the reconstruction of lawfully approved farm buildings (such as silos and hay sheds) as exempt development following destruction or damage by natural disaster.

Stock containment lots

Updating and rationalising existing controls for stock containment lots to reflect current practice, and ensuring stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.

Council comments:

- Council supports the erection of stock containment areas for the temporary containment of livestock as exempt development. This control could be strengthened by imposing a maximum length of time that the structures can be utilised by livestock when there are a certain number of beasts per square metre (i.e. when impacts are created).
- If this type of activity is provided for stock containment, then infrastructure to support animal welfare should be supported also including adequate drinking water facilities, effluent treatment facilities to adequately dispose of waste created in the temporary circumstance, sun and wind protection structures with temporary structure materials such as shade cloth or tarps. This needs an added clause that the site is adequately cleaned post the development to ensure existing amenity is reinstated.

Farm dams

Clarify terminology used in the planning system and provide a consistent approval process across the state

Council comments:

- Council supports the introduction of exempt development provisions for small farm dams by having a certain minimum size of dams as exempt or complying development provided they are not close to a natural or artificial waterbody.

- Appropriate sizes for exempt or complying farm dams should be set in consultation with relevant agencies such as Soil Conservation Service and Local Land Services.

Biosecurity

Updating development standards for poultry farms and pig farms to align with separation distances required under biosecurity standards

Council comments:

- Council supports the proposed amendments to increase the number of birds permitted at a poultry farm and pigs permitted at pig farms without consent subject to locational restrictions to align with industry standards.

Rural dwelling setbacks

Updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.

Council comments:

- Council supports the proposed amendments to increase dwelling setbacks from intensive livestock agriculture for complying development to minimise land use conflict between these two uses and to provide for future expansion of the intensive livestock in the future. The provisions need to specify that the setback is from the property boundary and not the development.

Recreational beekeeping

Providing exempt development pathway for recreational beekeeping to improve certainty.

Council comments:

- Council supports the proposed amendment would introduce a new definition of recreational beekeeping, and permit it as exempt development if certain conditions are met in rural, residential and environmental zones.



22 April 2021

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam

Re: Submission to Agritourism and Small-scale Agriculture Development EIE

Thank you for the opportunity to provide feedback with respect to the proposed agritourism reforms.

Council notes the recent exhibition of the Agricultural Land Use Planning Options Paper by the NSW Agriculture Commissioner. Council's submission to that exhibition is attached for your reference. Council notes that the two reform papers appear to represent diametrically opposed land use planning philosophies, suggesting a lack of policy consistency in the direction and priorities of the State Government with respect to agricultural land management.

Council encourages the Government to develop a consistent and holistic policy framework for the protection of agricultural productivity and provision for appropriate rural development (including agritourism) that balances the interests of stakeholders and provides for an appropriate level of impact assessment.

From an economic development perspective, the value of agricultural land for production and associated activity is recognised in Ballina Shire. It is noted that Ballina Shire's 'Ballina Coast and Hinterland Destination Management Plan', prepared in consultation with the tourism industry includes the following relevant actions:

- Action 12: *'Preserve primary production land for food security and diversity purposes'*.
- Action 16: *'Enable visitation and alternative revenue streams that promote the long term viability and agricultural character of our rural areas. A key point of difference for the destination is the abundance of primary producers. Build on this strength and ensure visitors can engage with authentic experiences'*.

Over the last few years Ballina Council has also been adjusting its local planning framework (to the extent possible within the standard instrument) to provide for some forms of agritourism development whilst protecting the values identified by our community with respect to rural land in the shire. These local reforms include the following:

- Providing for small-scale roadside stalls as exempt development, subject to obtaining relevant approvals under the *Roads Act* 1993.
- Providing for small-scale retail sales in association with approved rural industries ('industrial retail outlets').

- Introducing additional development assessment criteria in relation to function centres (wedding venues) on land zoned RU2 Rural Landscape zone whilst reinforcing the prohibition of these facilities on land zoned RU1 Primary Production zone. This amendment was introduced in response to concerns with ongoing land use conflict and compliance issues associated with a number of existing approved rural wedding venues.

In supporting emerging agritourism activity Council has been careful to ensure these opportunities are balanced with respect to protecting the viability of agriculture and minimising the risks associated with land use conflict. These changes have been made within the context of the North Coast Regional Plan, local strategic planning policy, community engagement and Council's experience in considering development proposals in rural areas of the shire.

Having regard to this, some aspects of the Department's proposal are welcomed, as outlined below. In particular, the intention to refine the range of land use definitions under the Standard Instrument LEP (SILEP) to provide councils with flexibility regarding the range of land uses enabled in rural areas is supported. Notwithstanding, further work is required to refine the details of these reforms to achieve an appropriate balance between private interests and the broader public interest with respect to rural land use activity.

In summary, the following elements of the proposed agritourism reforms are generally supported:

- Provision for genuine agriculture-related tourism activities such as farm tours, tastings and (agriculture-related) workshops, which may complement ongoing agriculture production activity on the land.
- The opportunity to distinguish between "farm events" such as farm tours and paddock-to-plate on-farm restaurant experiences that might occur on an infrequent or irregular basis, and "farm gate activities" (such as farm gate retail) that might occur on a regular and ongoing basis.

Notwithstanding, it is recommended that the reforms require further refinement to avoid significant problems for coastal areas of the North Coast which, due to the history of rural subdivision in the region, is dominated by small rural allotments and relatively high density of rural landholdings (comprising a broad range of agricultural, rural and tourism uses) compared to western parts of the State. The presence of State and regionally significant farmland is also a key consideration in this regard.

As noted above, in general terms the amendment of the Standard Instrument Local Environmental Plan (SILEP) to better capture agritourism activities within the set of definitions is supported. In particular, farm gate retail activities and farm events that relate directly to agricultural production occurring on the land are currently not adequately addressed in the SILEP. Enabling local councils to consider such uses would (in principle) be an improvement to the SILEP and support the development of genuine agritourism opportunities. The provision for such uses through the land use table should, however, be at the discretion of local councils.

Notwithstanding, Council is concerned with the proposal to include a range of non-agriculture related activities as forms of 'agritourism' under the definition, and to include 'agritourism' as a form of 'agriculture' within the SILEP definition hierarchy. These aspects of the proposal have the potential to significantly undermine State and local planning objectives relating to agriculture.

It is noted that the Merriam-Webster Dictionary defines 'agriculture' as:

'the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products'.

The proposal to include a range of land uses that are currently captured under the definitions of 'tourist and visitor accommodation' (such as farm stays) and 'function centres' (such as wedding venues) as forms of 'agritourism' is ill-conceived. With reference to the dictionary definition of agriculture, it is noted that tourist accommodation and wedding venues do not relate (directly or indirectly) to the production of crops or raising of livestock in any sense, other than that they may occur on the same allotment of land. It would be incorrect and inappropriate to include these uses in the definition of agriculture.

Further, the inclusion of these 'agritourism' uses as forms of 'agriculture' in the SILEP would have the consequence of making these uses permissible without consent on all land subject to the RU1 Primary Production zone and RU Rural Landscape zone, unless Council's were to list agritourism as either permissible with consent or prohibited under the land use table to the LEP.

The primary purpose of rural zoning, particularly in the case of the RU1 Primary Production zone, is the preservation of agricultural productivity. An important distinction should be made, therefore, between those rural land uses that support and add value to agricultural production (such as tastings, farm tours, and modest retail sales in association with on-farm rural production) and those higher-impact activities that do not directly relate to the agricultural activity occurring on the land and which have a greater potential to complete or conflict with other legitimate rural activities and undermine the viability of agriculture.

Having regard to the above, should these reforms be implemented in their current form Council will need to give serious consideration to whether agritourism should be listed as a development activity that is prohibited on land zoned RU1 under the Ballina LEP 2012, in order to protect agricultural values consistent with the zone objectives. This would have the disadvantage of limiting opportunities for genuine agritourism in these areas.

In summary, Council is concerned with the following elements of the proposed reforms:

- The introduction of a new 'agritourism' definition that would include activities such as wedding venues, farm stay accommodation and restaurants and cafes, and the inclusion of agritourism as forming part of the LEP definition of 'agriculture', despite these activities not relating in any practical or real sense to agricultural production.
- Provision for 'small scale' wedding venues as a form of 'farm event', allowing 52 events annually of up to 30 guests per event or 10 events annually of up to 50 guests per event that could occur as forms of exempt or complying development or otherwise as development with consent on any agricultural land.
- Provision for restaurant or café development as a form of 'farm gate activity' that could occur as either exempt or complying development or development with consent on any agricultural land.
- Provision for the conversion of existing farm buildings or the erection of tents as forms of 'farm stay' accommodation that could occur as either exempt or complying development or development with consent on any agricultural land. This is particularly problematic given farm buildings can often occur without requiring development consent.

- Provision for 'small-scale' animal process facilities as forms of exempt or complying development (allowing for example the annual on-farm processing of up to 3 million litres of dairy, 4,000 pigs, 100 cattle and 4000 poultry). The lack of adequate residential setbacks, effluent management provisions or details regarding how the proposal relates to the relevant food safety regulations are particular concerns.
- The lack of appropriate exempt and complying development standards that explicitly address issues such as wastewater management, or the provision of appropriate set-backs from nearby rural residential uses and intensive horticulture. Further, the proposals setback requirements are problematic by not recognising that rural villages or hamlets do not have 'residential zoning'. It is further noted that the failure to properly consider the risk spray-drift could be detrimental to ongoing agricultural production.
- With respect to 'farmgate activities' proposed as exempt development, the failure to acknowledge the need for appropriate authorisations for any works within the road reserve, pursuant to section 138 of the *Roads Act* 1993. Further, the self-assessment by applicants with respect to road safety standards (sight-distances and verge conditions) is not supported.
- The failure to appreciate the impracticalities of undertaking compliance activities in relation to many uses and activities that would be enabled by the proposed reforms. The consequence of this being that the proposed exempt and complying development activities could be largely unregulated in a practical sense, or compliance will be limited to reactive efforts after impacts have occurred.

With respect to the exempt and complying development proposals, a key concern is that the framework put forward does not allow for an appropriate level of impact assessment and is reliant on compliance and enforcement when issues arise. It is arguable as to whether the proposed uses are low impact and it is suggested these types of uses are more suited to the merit assessment process so that the implications of the use relative to the local circumstances and characteristics of the land and surrounds can be properly examined and addressed (where they are permitted).

As noted above, the reforms should focus on genuine agritourism activities that have strong linkages with ongoing agricultural production occurring on the land. Examples of such uses might include farm gate retail activities (some of which although already provided for under the SILEP could be improved) and genuine 'farm events' such as 'paddock to plate' on-farm restaurant experiences, farm tours and tastings and food or agriculture-related workshop activities. Such uses would support ongoing farm production while catering to visitor demand for genuine on-farm experiences.

These uses should be distinguished, however, from uses that are not agriculture-related such as 'function centres' (wedding venues) and 'café and restaurant' development, which are already well-defined and have more significant land use implications. The widespread provision for these uses in rural areas has the potential to give rise to significant land use conflicts (such as by spray-drift and use of farm machinery) and further compete with agriculture by increasing rural land values.

If provision is to be made for small scale café or restaurant activity in association with primary production, it is suggested a preferred course of action would be drafting complying development provisions relying on existing land use definitions and containing the scale of the activity by way of strong associations with other lawful agricultural activity (beyond simply grazing for example), floor area controls and limitations on hours of operation.

The Department should also give further consideration to the interoperability of the land use term 'café and restaurant' as it relates to the existing group term of 'food and drink premises' (under which café and restaurant are currently placed), inclusion under the 'artisan food and drink industry' and its proposed inclusion under the 'agritourism' definition as a form of 'agriculture'. The current proposal risks introducing significant confusion with respect the interpretation of group terms under the SILEP. This aspect of the proposal should be clarified before proceeding further.

It is also suggested that there may be merit in making further distinction between the following activities that currently fall within the 'function centre' definition of the SILEP (but which vary in terms of their operation and associated impacts):

- Wedding venues, with the potential to further distinguish between wedding ceremonies (typically held during the day with impacts mostly associated with traffic) and wedding receptions (typically held into the evening with higher impacts associated with music and revellers and night-time traffic);
- Conference facilities, typically involving a large number of attendees without (necessarily) including accommodation on site, but which may include a café and restaurant; and
- Health or retreat centres (such as yoga and meditation retreats) that may be characterised by less frequent traffic and less noise but which incorporate forms of accommodation.

With the introduction of any amendments to the SILEP, the Department should have careful regard to the implications of these reforms on relevant non-standard local LEP clauses that councils may have included in their respective LEPs, such as clause 7.9 'Rural and nature-based tourism development' of the Ballina LEP 2012 (similar provisions are contained in other North Coast LEPs).

The Department should also give careful consideration to the potential impacts of these reforms, beyond the narrow view of the benefits to individual landowners. For example, whilst these reforms are proposed to provide certainty to landholders regarding what they can do on their land, if implemented in their current form, the reforms could significantly increase uncertainty regarding what neighbours and competitors may do. Further, by reducing opportunities to ensure rural development is undertaken sensitively the reforms have the potential to erode the character and amenity of rural areas and thereby undermine the very features that attract tourists to regions in the first place.

Having regard to the above, the Department is encouraged to take a deeper and broader view of rural land use issues relating to this matter and focus its reforms on providing for genuine agritourism opportunities.

If you have any enquiries in regard to this matter please contact Simon Scott on telephone 1300 864 444 or email simon.scott@ballina.nsw.gov.au.

Yours faithfully



Matthew Wood

Director
Planning and Environmental Health Division

Enc. Ballina Shire Council submission to NSW Agriculture Commissioner's Agricultural Land Use Planning Options Paper

cc: Tamara Smith MP
Member for Ballina
ballina@parliament.nsw.gov.au

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Parliamentary Secretary for Energy and the Arts
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enquiries refer
Simon Scott
in reply please quote
Submission to NSW Agriculture Reforms (259-10)



26 February 2021

Agriculture Commissioner
NSW Department of Primary Industries
Emailed to: agcommissioner@dpi.nsw.gov.au

Dear Sir/Madam

Re: Submission to Agricultural Land Use Planning Options Paper

Thank you for the opportunity to provide feedback with respect to the above. The following feedback is provided by Council staff from a technical perspective.

Feedback on Chapter 1

Option 1 – The NSW Government could identify production areas across the State.

This option is supported on the basis that:

- The information would assist in the development of sound evidence-based policy relating to agricultural land.
- The NSW Department of Primary Industries is in the best position, with respect to expertise and resources, to develop a consistent and comprehensive data set of this kind across the State.

Option 2 – The NSW Government could monitor land use change and the loss of rural land that is best suited to agriculture.

This option is supported on the basis that:

- The information would assist in the development of sound evidence-based policy relating to agricultural land.
- The NSW Department of Primary Industries is in the best position, with respect to expertise and resources, to develop a consistent and comprehensive data set of this kind across the State.

Notwithstanding, there is a question as to how "loss" would be defined. For example, would this include agricultural land productivity that is lost in areas due to a high take up of rural residential activity or other land use conflict that limits agricultural activity? Including such areas would provide a more comprehensive measure of agricultural activity and decline.

Option 3 – The NSW Government could support local government planners to understand the needs of agricultural operations.

The delivery of educational programs for planning professionals is supported.

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In developing such programs it is recommended that particular attention be given to specific examples illustrating where understanding the particular needs of agricultural enterprises might materially affect the decision making process associated with development assessment or preparation of local strategic plans.

Option 4 – The NSW Government could implement a policy on all rural land, including mandatory considerations in the planning framework and fill the schedule in the State Environmental Planning (Primary Production and Rural Development) 2019.

The options paper would benefit from further details regarding what the 'mandatory considerations' referred to would involve in practice. In the absence of such detail, it is difficult to form a view as to the suitability of this approach.

It is noted that Ministerial Local Planning Direction 1.5 Rural Lands already requires that councils give consideration to the implications of planning proposals on agriculture. Further, Agricultural Impact Assessments (AIA) and Land Use Conflict Risk Assessments (LUCRA) are regularly undertaken in association with planning proposals and development assessments involving the conversion of rural land to urban purposes.

Option 4a - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and provide councils with a list of criteria that defines SSAL in Schedule 1 in the PPRD SEPP for councils to make their own maps.

The NSW Department of Primary Industries is in the best position to provide a comprehensive and consistent agricultural mapping dataset across the State. Local councils typically have neither the specific expertise nor the resources to deliver such mapping. Further, this option risks the production of inconsistent mapping and associated planning outcomes across the State. Consequently, this option is not supported.

Option 4b - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and a map of SSAL in Schedule 1 in the PPRD SEPP.

Subject to adequate resources being applied by NSW Department of Primary Industries, the preparation of SSAL mapping is supported.

Council is concerned, however, with over-reliance on mapping undertaken as part of the Northern Rivers Farmland Protection Project (NRFPP) as the basis for the SSAL mapping for the North Coast. If SSAL mapping is to be associated with strong planning constraints, the existing mapping for the north coast and its methodology should be reviewed.

It is recommended that SSAL mapping:

- Be undertaken in a scientifically rigorous manner that reflects the multiple criteria relevant to identifying high value agricultural land (beyond simply selecting certain "soil landscape" types) such as water availability, slope and access to markets and labour.
- Be undertaken with a consistent methodology.
- Ideally be spatially accurate to a property scale or provide a mechanism for review against objective assessment criteria.

Before proceeding with this approach though it is requested that further details be provided regarding the mandatory considerations referred to under this option, for areas identified as State Significant Agricultural Land (SSAL).

Option 4c - The NSW Government could implement a policy on agricultural land, including mandatory considerations in the planning framework and a map of SSAL which is optional for councils to adopt.

As noted above, it is difficult to comment on this option in the absence of further detail regarding what the 'mandatory considerations' referred to would involve in practice.

Notwithstanding, as noted above, it is preferred that SSAL mapping be prepared by the NSW Department of Primary Industries (subject to such mapping having scientific rigor). Further, providing local councils with the option to adopt any such arrangements is a preferred approach, particularly in light of the lack of detail provided in the options paper.

Option 5 - The NSW Government could prohibit zone changes or non-agricultural uses on agricultural land except in certain tightly defined circumstances or through a stringent exceptions process.

Land use planning decisions often involve the weighting up of public interest outcomes associated with housing, employment, resource management (including agriculture) and the environment. If the State Government wishes to elevate a particular consideration to the status of an absolute constraint, this should be done in full recognition of the broader implications of such policy approach.

Before proceeding with the implementation of this type of approach, further information on the nature of exceptions criteria or review mechanisms would be beneficial.

The NSW planning system should provide a robust framework for rural land that prioritises the protection of productive agriculture, whilst balancing the consideration of other values such as economic development, community facilities and the environment.

This would be most appropriately achieved through maintaining a robust land use planning framework of State Regional Plans, Ministerial Directions and local Strategic Plans informing the statutory planning proposal process, supported by consultation with relevant Government agencies and the local community.

With respect to details presented under this option, the following points are noted:

- Mandating the zoning of SSAL as RU1 Primary Production zone requires scientifically robust SSAL mapping that is accurate at a property scale, as per the comments above.
- Prohibiting the changing of rural land zones to non-rural zones may significantly constrain the capacity of local councils to achieve outcomes based on sound strategic planning processes where there is a need to balance various issues and viewpoints.
- In the case of the Ballina LEP 2012, the RU1 Primary Production zone is already a closed zone meaning 'Any other development not specified in item 2 or 3' is identified as prohibited development in the zone.
- The Ballina LEP 2012, in its current form, does not provide for further subdivision of rural land to create new lots with dwelling entitlements.

Option 6a – The NSW Government could require councils to obtain approval from DPI and DPIE-Planning before deciding on the development of non-agricultural uses on SSAL and in IPAs.

This option would appear inconsistent with previous reforms of the NSW Department of Planning and Environment to remove concurrences from development assessment processes.

Option 6b - The NSW Government could require councils to seek formal advice from DPI for the development of non-agricultural uses on SSAL and in IPAs.

It is standard practice for Council to refer development applications to the NSW Department of Primary Industries where the proposal is considered to have potential implications on agriculture or where the DPI expertise may assist the assessment of the matter.

Provided the Department of Primary Industries has sufficient resources to respond to such referrals in a timely manner, clarifying the circumstances under which such referrals would be beneficial.

Feedback on Chapter 2

No comments are made in relation to this aspect of the options paper.

Feedback on Chapter 3

Option 1 - The NSW Government could revise and update definitions in the Standard Instrument LEP to address ambiguity between LGAs.

The need for a review of Standard Instrument LEP definitions is supported, with particular reference to the 'Artisan food and drink industry' definition. This definition is considered problematic, in the case of potential application to rural zones, due to the inclusion of 'cafes and restaurants' and 'workshops and the like' as permitted elements.

Under the Ballina LEP 2012, 'cafes and restaurants' and 'function centre' development are permissible in the RU2 Rural Landscape zone. In order to protect primary production areas from incompatible non-agricultural land uses, these uses are prohibited in the RU1 Primary Production zone of the Ballina LEP 2012.

Due to concerns that the 'artisan food and drink' definition may enable function centre like development in all rural zones, this use is prohibited in the RU1 and RU2 zones under the Ballina LEP 2012.

Having regard to the above, the inclusion of artisan food and drink premises as a mandatory permissible land use in rural zones under the Standard Instrument LEP is not supported. The permissibility of uses like this in local plans should be matters for the consideration of each local government authority relative to local circumstances.

It is noted that Ballina Shire Council has recently made 'Industrial retail outlets' permissible development in the RU1 and RU2 zones, to provide for the modest retail sale of items produced within approved rural industries. It is suggested that this approach, which supports on-farm diversification of income and on-site value adding in support of agriculture, could have broader application across the State than currently appears to be the case.

Option 2 - The NSW Government could expand the list of exempt and complying developments in agriculture.

The inclusion of low impact agriculture-related activities as appropriate forms of exempt and complying development is supported.

Notwithstanding, provision for additional non-agricultural land uses in rural areas should be considered carefully, due to the potential for land use conflicts and competition to squeeze out legitimate agricultural activities.

Consequently, the inclusion of non-agricultural activities such as forms of tourist and visitor accommodation, function centre uses or artisan food and drink premises as forms of exempt or complying development in rural zones is not supported.

Option 3 - The NSW Government could establish a guideline to clarify and consolidate buffer requirements across industry and LGAs.

Provision of standardised evidence-based advice on appropriate land use buffers, having regard to the variable nature of rural activities and patterns of rural settlement across New South Wales, is supported.

Land use buffers utilised by local councils on the NSW North Coast are largely based on the guideline *Living and Working in Rural Areas - a handbook for managing land use conflict issues on the NSW North Coast* (Department of Primary Industries, Northern Rivers Catchment Management Authority and Southern Cross University).

These North Coast guidelines have benefitted the region in providing a consistent benchmark for the consideration of land use conflict issues.

Option 4 - The NSW Government could introduce the agent of change principle and reverse the onus of buffer requirements to new/encroaching developments.

The responsibility for the accommodation of land use buffers in rural areas should fall upon the proponents of new/encroaching non-agriculture related development.

Option 5 - The NSW Government could amend the planning regulation to better guide councils on how to consider submissions.

As noted in the options paper, local councils and their planning staff have the appropriate expertise and experience to consider local submissions, in association with planning proposals and development applications. Consequently, this option is not supported.

Thank you for the opportunity to comment.

If you have any enquiries in regard to this matter please contact Simon Scott on telephone 6686 1432 or email simon.scott@ballina.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink that reads "Matthew Wood". The signature is written in a cursive, flowing style.

Matthew Wood
Director
Planning and Environmental Health Division

22 April 2021

Executive Director
Local Government and Economic Policy
NSW Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam

Proposed Agritourism and small-scale agriculture development

Council appreciates the opportunity to comment on the proposed Agritourism and small-scale agriculture development and offers the following comments.

Council understands the pressures facing NSW farmers, particularly with the impacts of drought, floods and bushfires. It is important that an appropriate planning response enables activities which support a range of farming activities to meet that demand. Council highlights the inappropriateness of a 'one-size-fits-all' approach to some of the proposed agritourism activities. Council continues to oppose the imposition of statewide planning controls that are contrary to the long term strategic work that Councils are required to complete. Council urges the Department to consider the implementation of many of these provisions as model clauses for voluntary insertion into LEPs.

The comments below have been divided into different themes.

Farm Stay accommodation

The primary consideration for this development type is that it must be used in conjunction with a permissible dwelling located on the land. There is a real concern from Council that the farm stay accommodation could be used for permanent occupation where a dwelling is not permitted.

The Mount Panorama precinct is an important economic driver for the Bathurst region. Privately owned land at Mount Panorama is zoned RU2, and Clauses 7.7 and 7.8 restrict the accommodation of more than 13 people during race events as commercial motor race hosting. **Council would seek to exclude the Mount Panorama Precinct, which includes of the RU2 Rural Landscape zoned land in the Bathurst Regional LEP 2014, as mapped in the Bathurst Regional LEP 2014, from the intended amendments.**

The alteration of the *farm stay accommodation* definition to remove the requirement of being on a working farm is unjustified. A working farm is established with the intent to generate an income, as opposed to a hobby farm, lifestyle rural property or the like.

Whether the working farm is generating an income due to climatic events is not a matter that should be considered in a planning sense and should be retained in the definition. For properties classified as a hobby farm or rural lifestyle property, *bed and breakfast accommodation* is an appropriate land use that is available.

The Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 provides for primitive camp grounds and for larger scale camping activities, it is appropriate that the caravan park provisions would apply. Amendments to this regulation may be a better vehicle to facilitate the intended outcome. Clarification should also be made with respect to structures associated with campgrounds (amenity blocks, decks associated with glamping tents, camp kitchens and the like) and the approvals required, including Section 68 for Onsite Sewerage Management Systems.

The emerging popularity of 'tiny homes' and the lack of certainty as to what constitutes a 'light weight temporary structure' may cause concerns for Council and some guidance on this type of structure would be appreciated.

Clarification is sought regarding the exempt development pathway for farm stay accommodation and whether the landowner is required to confirm their ongoing compliance with the exempt criteria following each 14-day period. In the case where land may change from not being bush fire prone to being bush fire prone, does the landowner retain the benefit of the initial assessment of the exempt criteria, or is the landowner required to satisfy themselves each time they rely on the exempt criteria?

With the recent introduction of the Short Term Rental Accommodation provisions, do the proposed provisions under complying development remain relevant, particularly if the change of use is proposed for a rural workers dwelling? It is Council's opinion where a farm building, such as a shearing shed, farm shed or the like, is proposed to be converted to farm stay accommodation, there is often significant building works required, and may have contamination issues associated with the agricultural uses of the building. These contamination uses may not be listed on a Council database.

Section 100B of the Rural Fires Act requires a Bush Fire Safety Authority (BFSA) for hotels, motels and other tourist accommodation. It is Council's opinion that a BFSA is required for these change of use applications on bush fire prone land.

Farm gate activities

The inclusion of *artisan food and drink industry* definition in the Standard Instrument 2019 facilitated a range of uses that are similar in nature to the proposed *farm gate activities* proposed as part of these reforms. Additionally, the inclusion of "or predominately grown in the surrounding area" in the *farm gate activities* is not normally a circumstance that Council would consider as part of a planning application.

The EIE identifies a number of approval pathways, including exempt and complying development. As an exempt development up to 50 guests can be catered for. It is considered that 50 guests are likely to have an impact that is other than 'minor'. Further clarification should also be made to ensure that development under the exempt development pathway should not involve a change in building class.

Farm gate activities as exempt development allows for parking to be provided on the verge (i.e. within the road reserve) or on the property. Council raises significant concerns with this, particularly in rural zones where the speed limit may be 100km/hr, allowing works within the road reserve without the requisite consideration of environmental issues or notification of Council, and the implications for classified roads. Council's normal requirement would require parking to be provided on the property to which the development relates. Additionally, there are no standards that parking needs to be provided for the complying development pathway.

Further clarification is sought in relation to the erection of a roadside stall, in so far that the development cannot be located adjacent to a classified road. The use of 'adjacent' appears to be ambiguous and open to different interpretation.

The Department released a Planning Circular on 21 February 2013 (PN 11-003) which provided assistance on how to characterise development. The circular also described ancillary development did not require separate consent for the separate use, provided it was subservient to the dominant use. Further consideration of the circular should be given in this circumstance.

Farm events

Council raises significant concerns with the introduction of *agrotourism* to permit *farm events*. There are a number of farm activities and events that are proposed to be covered by the new definition, which are otherwise routine agricultural activities which would not require consent, for example farm tours, fruit picking, horse riding or other farm experiences.

The Standard Instrument provides for the temporary use of land (Clause 2.8) for periods up to 42 days per year. A farm event such as a music concert, gymkana, rodeo or the like could well be permissible under this current provision.

The inclusion of wedding venues and conference facilities as farm events, particularly under the exempt development and complying development pathways raises significant concerns for Council. These venues should be classified as a *function centre* under the current definition in the Standard Instrument, there is simply not sufficient justification to insert another definition that is not significantly different.

Clarification is sought for the operational requirements of farm events operating for 52 days/year and up to 30 guests OR 10 days/year and up to 50 guests. Can a landowner operate a mix of these combinations, or are they strictly limited to the established standards? Additionally, Council is reliant on landowners to operate within these

parameters and must act in a compliance role when they operate outside the set criteria, adding to the burden of Council.

Council also notes that there is a requirement for the event holder to notify their neighbours of the event for both exempt and complying development pathways. Council suggests that the event holder establish a process of receiving complaints and registering those complaints. Whilst there is an obligation to notify neighbours, in practical terms, it is difficult to monitor and Council will be expected to deal with the ongoing complaints irrespective of whether notification has occurred or not. To ensure that the proposed wedding venue or conference centre does not negatively impact on neighbouring properties is critical that the development complies with the Industrial Noise Policy, the Protection of the Environment Operations Act and Noise Control Regulation 2017.

It is also important to note that providing food in any accommodation agreement / package or at any food or drink establishment (definition of Sell) is subject to inspection/ regulation under the Food Act 2003. This means that premises where food (for sale) is handled must comply with the Food Act 2003, Food Regulation 2015, and the Australia New Zealand Food Safety Standards, AS 4674-2004 "Design construction and fit-out of food premises".

Small scale processing plants

Council can appreciate obtaining consent for certain processing plants may be frustrating for applicants, as currently there is no distinction between the requirements for large or small scale operations. Council considers the inclusion of the additional definition as a useful tool to guide Council in assessing the impacts.

Council, remains concerned with the Department's attempts to shoehorn developments into the exempt or complying development pathway when a merit assessment is an appropriate approval pathway. "Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a council or an accredited certifier. Complying development applies to homes, businesses and industry and allows for a range of things like the construction of a new dwelling house, alterations and additions to a house, new industrial buildings, demolition of a building, and changes to a business use" (NSW Planning website, 2021) An agricultural processing plant is undoubtedly not a straightforward application.

Agricultural processing plants, irrespective of the setbacks set out in the EIE, are likely to have environmental impacts, ranging from noise, odour and effluent disposal that need to be considered in each individual circumstance. Using complying development for straightforward development is appropriate, however for agricultural processing plants is likely to result in community angst and a loss of planning control for local Councils. For these reasons, a merit based assessment is the appropriate approval pathway and retains the integrity in the NSW Planning system.

It is also suggested that RU5 Village and the Environmental zones be included in the 5km setback identified in the EIE. A recent case that Council has experienced is defining '*game meat field depots*' where animal carcasses, in Council's example kangaroo carcasses, are received, stored and consolidated before being transported to an abattoir for processing. The point of difference in this case to an abattoir is that no processing is undertaken to the carcass, only storage and consolidation of the carcass prior to transport.

It should also be noted that agricultural processing plants are required to be licenced by the NSW Food Authority, and appropriate standards should be incorporated into the building.

Rebuilding of farm infrastructure

Council appreciates the Department's response to natural disasters and allowing the community to rebuild essential infrastructure. Council suggests that the proposed natural disasters clause, which Council has opted into, could include criteria that caters for the exempt development pathway.

It is also suggested that the reconstruction of the farm infrastructure in the same location may not be appropriate, for example on flood prone land, and the landowner may wish to relocate it out of the 'impact zone', however may still not meet the setback requirements. This should still be able to be considered as exempt development.

Stock containment areas

Council supports the amalgamation of all criteria in a single planning instrument.

Farm dams

Farm dams should be appropriately defined, and are inherently different from either a *water storage facility* or *artificial waterbody*. Farm dams are an essential part of a rural enterprise and their size is largely governed by the Maximum Harvestable Rights Order, and may require a licence from Water NSW.

Biosecurity for poultry and pig farms

Biosecurity and planning issues are two separate issues that need to be approached from different angles. Whilst, according to the EIE, the biosecurity risks for poultry are negligible up to 10,000 birds, the potential planning impacts from the same number of birds is worthy of a merit based assessment. Council urges the Department to reconsider the proposed changes.

It is also suggested that the setbacks proposed as part of 3.11 of the EIE should be reflected in this section.

Rural dwelling setbacks from intensive agriculture

Council considers that the setbacks imposed on intensive livestock industries should apply to new rural dwellings. Clarification needs to be made on the use of 'proposed' uses in the EIE. The location of a intensive livestock industry should only be considered where it is operational, a valid development application is lodged, or a valid consent is in place. Given that private certifiers can approve rural dwellings as complying development, there needs to be procedures in place, other than relying on Council to provide the information, to ensure private certifiers have sufficient information to make an appropriate assessment.

Other general comments

There are a number of operational requirements that are explained in the EIE as exempt or complying development, for example "unoccupied caravans, campervans and tents are not to remain on the land after 24 hours" which will create a compliance and resource burden on Councils to deal with the community.

Food Act 2003

The provision of food in any accommodation agreement / package or at any food or drink establishment (definition of Sell) is subject to inspection/ regulation under the Food Act 2003. This means that premises where food (for sale) is handled must comply with the Food Act 2003, Food Regulation 2015, and the Australia New Zealand Food Safety Standards, AS 4674-2004 "Design construction and fit-out of food premises". This will include Bed and Breakfast premises, farm stay packages, cafes, restaurants, small scale processors or manufacturers etc.

Food handling for On Farm dining and / or sale is subject to the food requirements as noted above. Depending on the activity the food handling may also be regulated by NSW Food Authority as a food manufacturer. The selling of whole produce is low risk and does not require food handling regulation.

Where mobile food and drink services are proposed Mobile food and drinks premises must still comply with *Guidelines for mobile food vending vehicles* (NSW/FA/F1055/1302) published by the NSW Food Authority in February 2013, and any requirements of the *Food Act 2003* NSW.

Water supply and wastewater

Water supply

The proposed premises may be remote from reticulated potable water supply or a proponent may choose to provide a stored water supply to "enhance" the farm stay experience. Where water supply is captured / stored on site i.e., tank water the supply of water is regulated under The Public Health Act 2010 and Regulation 2012 to ensure the water supply will not harm the health of the consumer. The water quality must

consistently meet the requirements of the Australian Drinking Water Guidelines. As a commercial operation providing drinking water or preparing food for others a drinking water quality assurance program is required and must be lodged with the local NSW Health Public Health Unit.

Where water or sewerage services are provided by Council written confirmation of requirements and completion of required works must be obtained and submitted as part of the approval process.

Wastewater Management

The intention of the SEPP is to enable accommodation on agricultural premises which, generally will be remote from the infrastructure of reticulated sewerage services. On-site sewage management is essential for managing the public health risk and the potential for pollution on land associated with the proposed activities. On-site sewage management is regulated under the Public Health Act 2010 and Regulation 2012, AS1547: 2012 "On-site domestic wastewater management", Councils Wastewater management Strategy and Water NSW "Designing and Installing On-site wastewater systems".

Occupancy loadings and wastewater treatment requirements for each of the proposed accommodation and food activity categories are subject to the availability of appropriate wastewater treatment facilities, on-site or off-site disposal capability, separation from on-site water supplies, buffers from water courses/ dams, buffers from cropping and agricultural activities generally. As commercial activities a site-specific wastewater report/ geotechnical report is to be prepared by a suitably qualified consultant is required as part of the assessment process.

Example: p 10 Proposed farm stay up to 20 persons at any one time for up to 14 days. This is a significant wastewater loading and may be repeated under this proposal on an on-going cycle.

The use of human waste storage facilities (assumed to be temporary e.g. Portaloos / portable ablutions facilities) (p11) has not been permitted for on-going use in Bathurst Regional Council Local Government Area . This requires assessment and engagement of licenced contractors for servicing.

Activities involving on-site wastewater management systems cannot be exempt or complying development.

Where water or sewerage services are provided by Sydney Water written confirmation of requirements and completion of required works must be obtained and submitted as part of the approval process.

Council looks forward to ongoing consultation on this matter prior to changes being made. The Department can contact Mr Nicholas Murphy (Nicholas.murphy@bathurst.nsw.gov.au) to discuss the clauses proposed to be inserted into Council's LEP.

If you have any queries please contact Mr Nicholas Murphy of Council's Environmental, Planning & Building Services Department on 02 6333 6514.

Yours faithfully



Neil Southorn
DIRECTOR
ENVIRONMENTAL, PLANNING & BUILDING SERVICES

SA | LAN900013

26 April 2021

Mr Marcus Ray
Group Deputy Secretary, Planning & Assessment
NSW Department of Planning, Industry and Environment
Submission uploaded to Planning Portal

Dear Mr Ray,

**SUBJECT: AGRITOURISM AND SMALL-SCALE AGRICULTURE DEVELOPMENT
SUBMISSION**

Thank you for the opportunity to provide feedback on the Explanation of Intended Effects (EIE) for Agritourism and Small-Scale Agriculture Development.

Mid-Western Regional Council (Council) recognises the important role that the agricultural and tourism industries play in the economic prosperity of the Mid-Western Region. The Region attracts more than 700,000 tourists each year, and Council supports opportunities and initiatives that will allow this sector to continue to grow in the future. Council also supports emerging industries and the ability for local farmers to diversify their income streams while maintaining primary production as the principal land use.

Council currently delivers agritourism across the Region through the development application pathway. The current pathway works effectively in allowing the assessment of a proposed land use, ensuring continuation or future use of the site and adjoining sites for agriculture, whilst not burdening adjoining property owners and rural residents with detrimental amenity impacts.

Council is very concerned that the proposed amendments have not adequately addressed the consequences and outcomes of the amendments in managing land use conflict between neighbours, mitigating the potential impacts of agritourism development and increasing the future compliance burden for councils.

The main areas of feedback are provided below.

No or Low Impact Environmental Impacts

According to the EIE, the proposed amendments are underpinned by the principle of no or low environmental impacts. Council does not agree that all of the proposed activities identified for inclusion under the new land use terms and exempt and complying development pathways for agritourism are “no or low impact”.

Whilst the additional land use definitions may assist to better define some of the activities that are occurring on rural land, Council's significant experience in assessing development applications of this nature and responding to compliance matters historically, consistently demonstrates that the majority of these activities are not considered as "no or low impact" by the local community.

The exempt pathways may provide time savings for an individual landowner upfront, however, from Council's experience, this will result in ongoing neighbour land use conflict if relevant matters are not addressed prior to the development, event or activity occurring. This will not deliver better outcomes for either the landowner or neighbouring properties and increase the compliance burden for Council. To date the development application pathway has allowed Council to condition site specific mitigation measures to minimise conflict. Impacted land owners are generally satisfied when they have had an opportunity to make a submission and can see that Council has undertaken a thorough assessment of the issues in determining the development application.

Farm Stay Accommodation Permissibility

For all development pathways, Farm Stay Accommodation should only be considered where the lot benefits from a dwelling entitlement. Allowing Farm Stay Accommodation on land without a dwelling entitlement will result in the proliferation of unauthorised dwellings on undersized lots across the Region. Council is not resourced to investigate and resolve resulting compliance matters of potential Farm Stay Accommodation being used for residential purposes as a permanent dwelling. Council already experiences issues regarding the unauthorised use of tourist accommodation as permanent residential accommodation. The proposed amendments will further exacerbate compliance matters and result in undesirable impacts for adjoining farmers on prime agricultural land.

Allowing Farm Stay Accommodation on undersized lots without dwelling entitlement will create unplanned pseudo rural lifestyle opportunities. Council strategically identifies the location of future rural lifestyle opportunities within a specific radius of the towns across the region. This ensures rural lifestyle dwellings are accessible to services and have frontage to appropriate road infrastructure, while protecting important agricultural land and minimising rural land use conflict.

Proposed Farm Stay Accommodation Definition

Council has seen the establishment of a range of tourist accommodation across the rural zones and is continuing to experience this demand. The applicants were not required to demonstrate the agricultural use of the land. A merit based development assessment was undertaken to ensure the location and density of the development did not hinder the current or future agricultural use or create land use conflict. Accordingly, Council does not consider it necessary for the definition to reference 'commercial purpose' or 'agricultural / primary production of goods'. It may be cumbersome for an applicant to demonstrate this and an agricultural use can cease overnight.

If Farm Stay Accommodation is only facilitated on lots with dwelling entitlement and supported by the appropriate development standards of length of stay, clustering of dwelling and buildings, density standards (such as the 1 dwelling or building per 15 hectares) and the maximum number of people to be accommodated onsite, it is not necessary for 'commercial purpose' or 'agricultural / primary production of goods' be included in the definition.

Council is not resourced to investigate and resolve potential compliance matters if or when the use of land for the production of 'agricultural / primary production of goods' or 'commercial purpose' ceases.

For similar reasons, Council does not support the proposed change to the Farm Stay Accommodation definition to allow camping including in tents, caravans and campervans for up to 20 people for 14 nights. Council already experiences land use conflicts and compliance matters arising from people visiting or living in caravans on rural properties without relevant approvals. It would be difficult to establish the movement of visitors and caravans on and off a farm, without 24/7 surveillance which Council is not resourced to undertake.

Development Standards for Farm Stay Accommodation

If the proposed amendments are to progress, further work with councils to develop suitable standards is critical for all Farm Stay Accommodation development pathways including: length of stay, appropriate clustering of building and dwellings, density standards (such as the 1 dwelling or building per 15 hectares), the maximum number of people to be accommodated onsite and mechanisms to manage visitors on a site (such as operating manuals, visitor registers and emergency management plans). The inclusion of these standards is important to mitigate negative impacts and ensure the agricultural activity on the subject and adjoining sites can continue as the primary purpose of the land.

Exempt Development Pathway for Farm Events and Farm Gate Activities

Council considers the land use activities of functions, conferences, events and restaurants or cafés as commercial land uses. These uses are independent to the agricultural use of the land and should be excluded from the proposed new definitions. Such land uses are not no or low environmental impact, and require appropriate consideration through the development application pathway.

The development application pathway allows Council to appropriately consider amenity impacts such as, noise (including amplified music), light spill, operating hours, security, traffic generation from guests and service vehicles, parking, emergency management and road safety. The development application pathway also allows Council to consider the interaction with agricultural activities such as spray drift, burn off in preparation for sowing, noise generated from stock and large machinery on any proposed development. The buffers to mitigate these impacts are always accommodated on the subject site.

Council supports the new land use definitions for Farm Gate Activities or Farm Events which are genuinely no or low impact, and do not have the potential to cause any detrimental amenity impacts for adjoining properties and the broader community, or create an increased compliance burden for Council.

Council has an extensive road network that includes 1,263 kilometres of unsealed/gravel roads, in addition to hundreds of kilometres of unmaintained unsealed/gravel roads. Accordingly, traffic generation and road safety are of significant concern and need to be carefully assessed through the development application pathway.

As proposed, Farm Gate Activities have the potential to attract 50 guests per hour (or greater), over a 12 hour period (7am – 7pm Monday – Saturday) resulting in up to 600 traffic movements per day. This significant number of movements along an unmaintained road of an inadequate standard is a significant safety hazard for all road users and especially for drivers who are not familiar with local road conditions. Such traffic movements are of a volume that would trigger a road upgrade, which could only occur when considered under the development application pathway.

Any development standards for Farm Events and Farm Gate Activities should include maximum traffic movements per day of all vehicles associated with the land use, not just the number of guests.

Other Matters

Any increase in business identification signage must consider the visual impact on the rural landscape and character of the area. Illumination of signage is not considered necessary as this form of signage does not preserve, enhance or positively contribute to the character of rural areas. Council's current Development Control Plan strictly prohibits illuminated signage in all rural areas for the primary reason of negative visual impact and distraction to drivers. Therefore, it would be inappropriate to consider such a form of signage as exempt or complying development.

Case Studies and Examples

As discussed above, both agriculture and tourism are important sectors for the local economy. Consequently, Council has had significant experience in considering agritourism developments in the Region, which are the subject of the proposed amendments. Council would be pleased to engage in further discussions with the Department and provide relevant examples of the types of development activities and proposals which have generated significant levels of public interest, and to demonstrate Council's concerns regarding land use conflict, management of detrimental impacts and compliance activities.

Opting in / Expression of Interest

Please accept this letter as an expression of interest to work with the Department on the new optional clauses for Farm Stay Accommodation and Farm Gate Activities and to identify the zones to allow Farm Events and Farm Gate Activities.

Should you wish to discuss the matters raised further or to work on the proposed optional clauses and permissibility please do not hesitate to contact Sarah Armstrong on 02 6378 2850.

Yours sincerely

A handwritten signature in black ink, appearing to be 'BRAD CAM', followed by a horizontal line.

BRAD CAM
GENERAL MANAGER

Blue Mountains City Council
Submission on Explanation of Intended Effects - Agritourism and Small-Scale
Agriculture Development

Introduction

Thank you for the opportunity to provide comment on the Agritourism and small-scale agriculture development – Explanation of Intended Effect (EIE), currently on exhibition.

Councils overarching position is one of general support for planning policy recognises activities that supports the local economy and provides clear approval pathways for these activities. Allowances for the consideration of landowners who have been impacted by natural disasters is also supported. Forethought is however required such that policy is designed to be responsive to local requirements, including the protection of environmentally sensitive land and amenity of rural area. The issues can best be addressed through the development assessment process and therefore concern is raised with the extent of development proposed to be able to be undertaken as exempt or complying.

This submission outlines the Blue Mountains context in relation to the proposed changes, provides general comments, and identifies key areas of concern and recommendations under the themes (land use activities) identified within the EIE as relevant to the Blue Mountains, under the following structure:

- Agritourism
 - Farm stay accommodation
 - Farm gate activities
 - Farm events
- Rebuilding of farm infrastructure
- Stock containment areas
- Farm dams
- Recreational beekeeping

Context

- The Blue Mountains has relatively small rural areas with limited or declining primary production. There are a number of properties in these areas that offer accommodation and also host events, as well as some cellardoors and farmgate type activities. There are currently some challenges defining and assessing some of these uses.
- At a strategic level, Council has identified that agritourism uses could add diversity to the local visitor economy and potentially increase expenditure.
- However, the rural areas of the Blue Mountains have limited infrastructure and poor access, single road in and out, that means any use which could intensify visitation need to be carefully considered.

General comments

The primary concern raised with the proposed new provisions is the scale of development permissible as both exempt and complying development. The value of exempt and complying development pathways is acknowledged for truly low impact development. However there is potential for significant impact or issues from these types of development in rural areas with limited infrastructure and services, particularly where smaller lots could result in greater impacts on neighbours, or where there are impacts on environmental sensitive areas to consider.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Agritourism and Small-Scale
Agriculture Development

Agritourism

- For both farm stay accommodation and farm gate activities, there is concern over how Councils are able to regulate or assess the need for primary production for commercial purposes to be the primary use of the land. This is especially the case given the proposed allowance for seasonal produce or down turns due to natural disasters which could make it difficult to consider income for example. There is also concern that a property may have been used for primary production but is transitioning to other uses. It is possible that at the time of a DA that primary production may be the principal use of the site, but in the future, if the primary production on a property ceases it would create a very difficult compliance matter in the future

Farm stay accommodation

- It is unclear how accommodation for children is considered in the “Maximum two person aged over 12 per bedroom” requirement. Unless additional beds are provided that specifically for children then the age requirement seems unnecessary, because any full sized bed could also be used for an adult.
- There is concern with the scale of camping permitted without supporting infrastructure, particularly on unsewered land in environmentally sensitive areas, such as near watercourses. This issue is further exacerbated by the waste disposal needs of caravans and campers. It is noted that there are proposed provisions that exclude emptying of human waste storage devices. However, there is also concern about their use or storage on environmentally sensitive land, particularly near watercourses watercourse.
- Any provisions which allow a change of use of building to accommodate people would need to meet habitable standards, including consideration of potential for asbestos, fire proofing, slab height, roof height and the like. This is particularly important in a rural setting where farm buildings or sheds may be converted to accommodation.
- Site access requirements should be included, particularly from a safety issue. In bushfire or flood prone areas the ability to safely evacuate, or for emergency vehicles to access a site should be considered.

Farm gate activities

- Clause 6.28 already within LEP 2015- appears to have consistent objectives and intent to the proposed optional clause. It would be Councils preference that instead of a new clause being included, the existing clause is updated (if the final controls are suitable). In this regard, Council will not opt in at this point, but await the finalisation of the definition and relevant controls before investigating an amendment to the LEP to incorporate the changes. This comment applies to all proposed optional clauses.
- It is not clear how “the surrounding area” be defined or quantified for the purposes of selling produce on site. This could be potentially quite broad and also result in unintended outcomes. The description leaves it open for someone to sell only a small, potentially tokenistic, amount of local produce.
- The proposal to not allow exempt development on BAL 40 of flame zone seems onerous. Presumably a bushfire report would be required which is a complex process. Question whether this is really an issue for a roadside stall of 8m². Greater consideration should be given to bushfire risk for other proposed uses such as farmstay accommodation (particularly camping) and farm events.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Agritourism and Small-Scale
Agriculture Development

- Garden open day should be included as a farm gate activity to assist with compliance
- Minimum lot frontage requirements should be incorporated to ensure that in smaller, more fragmented areas there is not a high density of farm gate activities along a road (specifically in the mounts, could cause issues for traffic and safety).
- As a principal, any proposal for structures beyond what can be done as exempt development should be through a DA process, due to the potentially greater impact and more complex issues.
- The EIE specifies a 'sliding scale' of maximum height of structures based on lot size but not for building footprint. Recommend utilising a similar 'Sliding scale' approach for other standards such as footprint, setbacks, site coverage and building height to protect rural amenity, particularly in small lot rural areas.

Farm events

Concerns with the proposal to allow farm events through a fast track approval pathway, and particularly as exempt development, are primarily related to impacts on the amenity of an area. This is of particular concern in rural areas where infrastructure is not designed or available to cater to significant visitor numbers.

- Access, traffic and parking standards are important to maintain rural amenity and to reduce impact
- The rationale for the limit on the number of guests and event days isn't clear. There is a significant difference between 10 and 52 event days. 52 event days equates to once a week or nearly two straight months. It is also not clear whether someone could 'mix and match' between the two event scales.
- The number of guests seems arbitrary, and the potential to have 52 events a year with up to 30 people is not low impact. If this is to be retained, there should be controls around the time between events, to account for seasonal motivations for events (a landowner could hold an event for 52 days in a row?). 52 event days/30 guests still seems too high and too frequent to be considered as exempt development- more appropriate to be considered as either complying but preferably through a DA.
- Similarly 50 guests, even if less frequent or held over a shorter period, especially impactful when considering parking requirements.
- There is also a lack of clarity regarding how restrictions on event numbers relate to events where visitors would come and go throughout a day. Whether the restriction applies at any one time or is the limit for all visitors across the event day.
- The requirement to notify neighbours seems problematic. How is this enforced for exempt development? Presumably there would be no options for issues to be resolved, and will create a regulatory burden on Council. Suggest that the onus should be on the landowner to be able to prove the events- log book or similar to assist with compliance/regulation of such events
- At least one week before for notification – potentially not enough notice given the potential for impact to amenity.

Blue Mountains City Council
Submission on Explanation of Intended Effects - Agritourism and Small-Scale
Agriculture Development

Recommendation

The scale of events able to be undertaken as either exempt or complying should be limited to a level that is truly low impact. Where an event will occur regularly or for an extended period of time, and will attract a large number of people, a DA should be required. This will provide the opportunity to assess and mitigate potential impacts. A development approval would also provide an owner or operator greater certainty than having to ensure they are meeting exempt requirements, which may change over time.

Rebuilding of farm infrastructure

No issue raised. This would be positive for Blue Mountains community recovering from fires and floods.

Stock containment areas

Generally no issue. However, there is limited detail provided within the EIE. Any controls should consider proximity to environmentally sensitive land, and setback from neighbouring properties.

Farm dams

No issue raised. Consistency across documents is a positive approach, and would provide certainty for landowners around what is required to manage their land with regard to farm dams.

Recreational beekeeping

- Support recognising this use and providing clarity around approval requirements in the planning system. However, it is recommended that setbacks be required for residential lots.
- There is also concern with the proposed open pathway for a DA where not exempt. The first challenge for assessment is that as it is not a land use in the land use table permissibility would be difficult to establish. If the scale of beekeeping was beyond the exempt requirements, then it could be considered to be of a scale commensurate with commercial bee keeping and therefore may most appropriately be assessed as such, including any limitations on the zones where it would be permissible.

Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Attn: Executive Director
Local Government and Economic Policy

Our Ref:
File:
Date:

Z21/68633
CST-100.07.035
30 April 2021

Dear Sir/Madam

EXPLANATION OF INTENDED EFFECT – AGRITOURISM AND SMALL-SCALE AGRICULTURE DEVELOPMENT

Reference is made to the current exhibition of the Explanation of Intended Effect – Agritourism and small-scale agriculture developments.

Council officers provide the following comments:

Optional Clause

Council does not want the Department to introduce the optional clause for farm stay accommodation or farm gate activities into the Wollongong LEP 2009.

Farm Stay Accommodation

The inclusion of the proposed revised definition in the EIE would have been helpful. Farm stay accommodation should remain as a secondary or ancillary use on a rural property, where the principal use continues to be farming.

In the Wollongong LGA, many rural properties are hobby farms or provide agistment, and are not the primary income source for the owner. Farming activities still occur during droughts, although crops may not be grown. Farming is a long-term land use which does not change with short term events.

It is unclear why the Department considers that current wording of the definition which includes a “building or place” does not include camping. It is considered that the word a “place” would cover land that can be camped on.

The proposed exempt development pathway of allowing 20 people to camp/caravan on land is not supported. This proposal could enable the activity to occur all year round. As complying development there would be no neighbour notification. Additionally, with the Wollongong LGA many of these properties are not sewered which could lead to water quality impacts, and may not have town water.

It is unclear how the Department expects Council to monitor usage. Council does not have the resources to check the number of campers or bookings on each property.

Council officers are concerned that the proposed complying development pathway to allow the use of manufactured homes will become a pathway for secondary dwellings on rural properties.

It is agreed that different provisions should apply to different parts of NSW. A 2-hectare rural zoned property in the Wollongong LGA is not the same as a 1000+ hectare rural zoned property in Western NSW.

The provisions should refer to the size of the properties/landholdings. The provision should not apply to small rural properties, less than 20 hectares.

Farm Gate Activities

The proposed definition of farm gate activities is supported. However the proposal to include agritourism in the definition of agriculture is not supported. Agriculture should remain the primary land use, whereas agritourism is an additional/secondary/ancillary land use that may occurred on the same property.

The proposed definition would enable a restaurant to be established on a property where no agricultural activity occurs, but is relying on produce grown in the surrounding area. The unchecked introduction of ancillary uses could undermine the genuine agricultural production on adjoining properties.

Currently, roadside stalls or cellar door premises require a second approval, as an additional use. This process should continue to ensure genuine agricultural activities are occurring on the land.

Farm Events

The proposal to define and allow farm events is supported. The definition should enable activities such as farm tours, fruit picking, horse riding and cooking which relate to agricultural production. However activities such as conferences, functions centres do not relate to agricultural production and should remain separate uses, and require development consent. The scale of the use needs to be considered. For example, a 4WD tour would be appropriate to drive around/tour a large property, but a 4WD adventure park would not be appropriate and would be defined as a recreation facility – outdoor.

In the event of complaints, it is unclear how Council will be able to check compliance with hours of operations or guest numbers.

Destination weddings should remain covered by either the function centre definition, or be permitted in the agritourism café/restaurant as a private booking.

Small-scale Processing Plants

In the Wollongong context, small-scale processing plants should continue to require development consent. Different provisions should apply to different parts of NSW. A 2-hectare rural zoned property in the Wollongong LGA is not the same as a 1000+ hectare rural zoned property in Western NSW.

Rebuilding of Farm Infrastructure

Wollongong was not impacted by the 2019/2020 bush fires. The rebuilding of farm infrastructure following flood or bush fire is supported. However it should not be regarded as the opportunity to do other activities such as clearing native vegetation, or building new farm dams without approval.

Recreational Beekeeping

Council officers support the proposed change to clarify the permissibility of recreational beekeeping. Council reserves are also used for recreational beekeeping, especially during the recent drought.

Please contact me should you require further information.

This letter is authorised by

David Green

Land Use Planning Manager

Wollongong City Council
Telephone (02) 4227 7111

23 April 2021

Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 1250

Dear Mr Betts

SUBMISSION TO EXPLANATION OF INTENDED EFFECT – AGRITOURISM AND SMALL-SCALE AGRICULTURE DEVELOPMENT

Singleton Council has reviewed the explanation of intended effect for agritourism and small-scale agriculture development and commends the Department on its policy development to assist regional economies. Council thanks the Department for the opportunity to make a submission to inform this policy development and provides the following comments for consideration.

With regard to proposed amendments to *farm stay accommodation*, as exempt development Council requests the policy require the lot have a rural address so emergency services can easily locate the property if required.

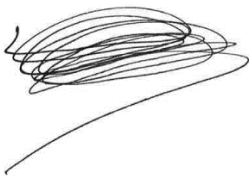
For *farm stay accommodation* as complying development, the proposed policy states that a manufactured home as farm stay accommodation must be within 300m of an existing dwelling. It would be beneficial if the policy addresses whether a manufactured home may be installed for the purpose of farm stay accommodation if there is no existing, approved dwelling on the land. If it is the intent of the policy to permit farm stay accommodation as complying development on land which does not have an existing dwelling or a dwelling right, then it is important that standard conditions of consent require the use not to be used for permanent accommodation.

With regard to proposed amendments for *farm events*, Council considers the proposed exempt and complying development provisions suitable for small-scale and sporadic farm events to support the regional economy through streamlined development pathways. However, because the term *farm events* does not logically include 'destination weddings' particularly in vineyard areas which are prevalent in the Singleton local government area, it would be beneficial if the definition makes it clear that the *farm event* can be used for this use.

In addition, when this form of development seeks to exceed the proposed maximum number of people and events per year and a development application is required, an optional model clause for destination weddings would be beneficial to provide LEP controls that councils can choose to adopt.

If you have any further enquiries, please do not hesitate to contact me on (02) 6578 7337 or by email at mcrawford@singleton.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends downwards and to the left.

Mary-Anne Crawford
Manager Development & Environmental Services

30 April 2021

Department of Planning, Industry &
Environment

Enquiries: A Macvean

Dear Sir/Madam,

Proposed Amendments to Agriculture - Agritourism and small-scale agriculture

Thank you for the opportunity to comment on the Explanation of Intended Effect for Agritourism and small scale agriculture development.

MidCoast Council is in the process of finalising a range of strategic planning work aimed at informing the preparation of an inaugural MidCoast Local Environmental Plan and Development Control Plan. The final component of this work is a Draft Rural Strategy which is to be exhibited in 2021.

The intent and purpose of the Explanation of Intended Effect is generally supported and consistent with the objectives of the Draft Rural Strategy – to increase flexibility and diversity of land uses within the rural landscape, with a focus on ensuring appropriate development is permitted in appropriate locations.

Council is interested in making amendments to the Gloucester LEP 2021, Great Lakes LEP 2014 and Greater Taree LEP 2010 as part of an amending State Environmental Planning Policy.

The comments below provide a summary of the feedback received in response to the exhibition material and have been reported to the elected representatives of MidCoast Council prior to lodgement of this submission.

Farm stay accommodation

1. There are no clear requirements for the property to have an existing approved dwelling house, satisfy the minimum lot size development standard or have a dwelling entitlement, within the exhibition documents.

The amendments must be consistent with the existing provisions of Model [Clause 4.2A – Erection of dwelling houses on land in certain rural and environmental protection zones](#), to ensure that any form of residential, tourist and visitor accommodation, including farm stay accommodation, caravan parks and camping grounds **must only** be permitted on land with a dwelling entitlement.

2. There are no requirements for a permanent resident to be on the site.

To ensure appropriate management of the activity, particularly in emergency situations it is considered essential that any exempt or complying development activity associated with residential or tourist accommodation on rural land should only

be permitted where there is an existing, lawfully approved dwelling on the property that is occupied by a permanent resident of the property.

This requirement is consistent with the new short-term holiday accommodation definition, gazetted on Friday 9 April 2021 that will come into effect on 30 July 2021: **hosted short-term rental accommodation** means short-term rental accommodation provided where the host resides on the premises during the provision of the accommodation.

3. There are no on-site sewage management requirements in the documentation.

The immediate and cumulative impact of providing accommodation without any form on on-site sewage management system are significant, particularly with the proposed exempt development provisions that allow up to 20 additional people for up to 14 days. Noting that this open-ended provision may result in an ongoing occupation of a site by 20 additional people at any given time.

4. The proposed setbacks are supported. The proposed setbacks should be consistently applied to farm stay accommodation and any other residential and tourism accommodation on rural lands to ensure consistency and minimise land use conflicts between accommodation and agricultural activities on rural lands.
5. Land based exclusions must be applied consistently. Any form of exempt or complying residential, tourist and visitor accommodation, including farm stay accommodation, caravan parks and camping grounds should be excluded from bushfire prone, flood affected, environmentally sensitive areas and contaminated land for consistency and to ensure environmental characteristics of the site are maintained.
6. There are no requirements for emergency management or evacuation provisions within the documentation. In this regard, there is no requirement to ensure access from a publicly constructed and maintained road is available to ensure evacuation can occur safely or consideration of parking, access and egress for visitors.

Farm gate activities including Roadside stalls

1. The intention and purpose of including 'cafes and restaurants' within the farm gate activity definition is unclear and not supported. Council would be supportive of the inclusion of *artisan food and drink industry* within a definition of agritourism as this activity directly relates to the intent and purpose of the Proposed Amendments for Agriculture. The definitions are provided for context:

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops.

Note — See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.

Artisan food and drink industries are a type of **light industry**—see the definition of that term in this Dictionary.

restaurant or cafe means a building or place the principal purpose of which is 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.

Note — Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

2. The introduction of exempt provisions for roadside stalls are welcomed provided access, egress and any parking areas can be safely provided in accordance with RMS requirements.
3. The exempt and complying development provisions for roadside stalls and farm gate activities need to be clarified to ensure both forms of activity have minimum floor areas and hours of operation:
 - a. Roadside stalls as exempt development is limited to 8sqm and hours of operation 7am-7pm Monday to Saturday and 9am-6pm on Sundays and public holidays;
 - b. No floor area or hours of operation controls appear to be specified for exempt farm gate activities. These exempt criteria should be more than roadside stalls and less than complying development e.g. maximum floor area of 50sqm, with the same hours of operation.
4. The criteria do not provide consistent consideration of floor areas or hours of operation between the different land use activities or approval pathways. Maximum floor areas and hours of operation must be specified for each land use – roadside stalls, farm gate activities and events - based on the relative scale of that use, to ensure impacts on neighbours and the environment are appropriately identified and managed for each of the exempt, complying and development assessment processes.
5. The introduction of farm gate activities for up to 50 people are supported, but require criteria like farm stay accommodation, to ensure minimal impacts on adjoining owners and the environment:
 - a. There are no requirements for an existing lawfully approved dwelling or a permanent resident to be on the property within the documentation.

The amendments must be consistent with the existing provisions of LEPs in the MidCoast to ensure that any form of farm event **must only** be permitted on land with a dwelling entitlement.

To ensure appropriate management, particularly in emergency situations, it is considered essential that any exempt or complying development provisions for farm gate activities should only be permitted where there is an existing, lawfully approved dwelling on the property and that a permanent resident is on site during the activity.

6. There are no on-site sewage management requirements in the documentation.

The immediate and cumulative impact of providing farm gate activities for up to 50 people without any form of on-site sewage management system are significant. Most existing systems would only be designed to cater for existing approved dwelling houses and would require replacement or supplementary systems separate to the dwelling house, to accommodate additional demand created by these activities. Noting that this open-ended provision may result in multiple groups of up to 50 people visiting a site on any given day.

7. The proposed setbacks are supported. The proposed setbacks should be consistently applied to avoid confusion and minimise land use conflicts between agritourism events and agricultural activities on rural lands.

8. Land based exclusions must be applied consistently. Any form of exempt or complying farm gate activity other than a roadside stall, should be excluded from bushfire prone, flood affected, environmentally sensitive areas and contaminated land to ensure consistency and to ensure environmental characteristics of the site are maintained.
9. There are no requirements for emergency management or evacuation provisions within the documentation. In this regard, there is no requirement to ensure access from a publicly constructed and maintained road is available to ensure evacuation can occur safely or consideration to the appropriate provision of parking, access and egress for visitors to a farm gate activity.

Farm events

1. The provisions for exempt farm events are not supported and have the potential for significant impacts upon adjoining residents, agricultural activities and generate additional land use conflicts.
2. Farm events are only supported as complying development if the criteria are consistent with those for development applications, in that they can be measured, managed and enforced.
3. The 1000sqm separation for farm events with amplified music or voices is supported but requires a specification regarding the acceptable level of noise.
4. The requirement to notify adjoining residents (noting that the resident may not be the landowner) is supported however one week is considered insufficient to allow for management of stock and other agricultural activities on the adjoining properties to ensure land use conflict is minimised.
5. The range of hours of operation and maximum number of guests and events per year are excessive. The open-ended nature of the provisions may result in multiple groups of up to 30 people visiting a site every weekend (52) per year or for 52 consecutive days, without recourse or respite for adjoining landowners. It is recommended that the wording be amended from “event days per year” to “separate events”; and include a limit to the number of consecutive “event” days.
6. The document as exhibited also makes no comment on dwelling entitlements; a permanent resident being on site during the event; the provision of parking, access, egress; on-site sewage management systems; setbacks to environmentally sensitive areas; or areas where these activities are excluded. Previous comments regarding these issues as they relate to farm stay accommodation and farm gate activities, are also relevant to farm events.

Ancillary activities and structures

1. The consideration of bushfire prone land should be consistently applied to all forms of accommodation and activities including ancillary structures.
2. Business identification and free-standing signs should not be exempt or complying development if the signage is illuminated, to minimise any visual impact on adjoining landowners or livestock.

Small-scale processing plants



1. The inclusion of a small-scale processing plant complying development provisions and criteria are not supported.
2. The document as exhibited does not provide any criteria or consideration of parking, access, egress, on-site sewage management systems, waste management or building/facility requirements for these activities. Therefore, the proposed small-scale processing plant provisions are insufficient for the scale of activity proposed and are not supported.
3. Council would support the inclusion of a small-scale processing plant definition and local clause in the local environmental plan, to enable clear and consistent criteria for a development assessment process.
4. Consistent with previous comments on agritourism activities, small-scale processing facilities should:
 - a. only be permitted where there is an existing, lawfully approved dwelling on the property;
 - b. only operational when a permanent resident is on site;
 - c. be excluded from flood and bushfire prone land; and
 - d. require landowners to consider emergency management requirements for facilities with employees or associated farm gate activities.

Farm infrastructure

These provisions are generally supported on the basis that the controls will be clearly and consistently applied across all relevant environmental planning instruments.

Biosecurity for poultry farms and pig farms

No comment is provided at this time as it is unclear how planning controls could or should over-ride or otherwise interfere with industry standard bio-security requirements.

Rural dwelling setbacks from intensive livestock agriculture

1. There are no requirements for the property to satisfy the minimum lot size development standard or have a dwelling entitlement within the exhibition documents.

The amendments must be consistent with the existing provisions of Model [Clause 4.2A – Erection of dwelling houses on land in certain rural and environmental protection zones](#) to ensure that any form of residential, tourist and visitor accommodation, including farm stay accommodation, caravan parks and camping grounds **must only** be permitted on land with a dwelling entitlement.

2. The additional setbacks are supported. However, the setbacks should be measured from the property boundary to ensure clear and consistent application and ensure that potential expansion and or modification of the agricultural activity within the rural property is not affected by the location of the constructed dwelling.

Recreational Beekeeping

The inclusion of a recreational beekeeping definition and exempt development provisions are supported.



In conclusion, while the *Proposed Amendments to Agriculture* provisions are supported at a strategic level, the provisions and criteria provided do not appear to adequately consider the range of natural hazards or on-site management requirements associated with accommodating or entertaining tourists and visitors on rural land.

The provisions if applied as proposed, would also exacerbate existing inconsistencies between the Gloucester, Great Lakes and Greater Taree LEPs.

Therefore, Council is interested in working with the Department to enable the introduction of clear and consistent planning controls for agritourism and related activities to ensure the opportunities created by these amendments are provided to agricultural producers across the MidCoast, and we look forward to engaging in this process.

Please contact MidCoast Council's Senior Land Use Planner Alexandra Macvean on (02) 7955 7320 or Alexandra.macvean@midcoast.nsw.gov.au directly to progress these amendments.

Yours sincerely

Paul De Szell
Director, Liveable Communities





3 May 2021

Department of Planning, Industry and Environment
Via Planning Portal

Dear Sir/Madam

Planning Amendments for Agritourism

Thank you for the opportunity to comment on the proposed amendments within the Explanation of Intended Effect (EIE) for Agritourism and small-scale agriculture development.

Agriculture forms a significant part of the Central Coast regional economy; therefore, it is important that opportunities to support existing and future agricultural operations (and ancillary activities). In this regard, it is also important to ensure that land uses which may potentially conflict with these operations are avoided.

In this regard, Central Coast Council supports the inclusion of new defined uses and expansion of existing use categories, but consider these proposed activities and uses should remain subject to an assessment process and should be prohibited from within the vicinity of primary agricultural production due to the likelihood of conflict.

Most of the Central Coast Council agricultural land is located west of the M1 Pacific Motorway and is within the nominated drinking water catchments. While agritourism could have great educational value, it could introduce increased risks such as wastewater and OSSM management, management of general waste and additional traffic on unsealed roads which could increase sediment washing into waterways.

Therefore, it is within the interest of landowners and Council to continue to assess these types of proposals through the development application or Complying Development process to ensure appropriate controls are included in planning tools. Additionally, having a landholder submit an application to Council also enables Council to add the property to internal registers so these can be regulated.

Council does intend to undertake a Rural Lands Strategy, where it is expected that such landuses, their permissibility and potential impacts, might be able to be more thoroughly investigated.

The attachment to this letter responds to the consultation questions as per Part 4 of the EIE.



Should you require further information regarding Council's submissions or comments, please contact Jenny Mewing, Acting Section Manager, Local Planning & Policy via email (Jenny.Mewing@centralcoast.nsw.gov.au) or phone (0437 747 660).

Yours sincerely



Karen Tucker
Acting Unit Manager
Strategic Planning

JM/LL/Jenny Mewing
F2006/01588; F2004/00550

Attachments

1. Response to Consultation Questions

Attachment 1 – Response to Consultation Questions

Farm Stay accommodation

1. Are the proposed setbacks to pig farm, other intensive livestock, forestry and mines for exempt and complying development appropriate?

All farm stay accommodation should be assessed via either a complying development application process or a development application process. Which will ensure proper consideration can be given to matters such as adequate setback distances and potential implications for existing approved activities.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

Yes, farm stay accommodation should only be permitted on land that benefits from dwelling entitlement. It is not considered appropriate to permit Farm Stay accommodation on land without a dwelling entitlement to minimise likely compliance issues related to farm stay accommodation being utilised as permanent accommodation.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

Yes, clustering of structures should be encouraged to ensure the main use undertaken on agriculturally zoned lands are permissible agricultural uses and productive lands are not sterilised for accommodation purposes.

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of the Great Dividing Range)? If yes, please provide your suggestions and reasons?

Development standards should relate to the size of the subject property and scale should be determined by the overall landsize and land constraints. This should be assessed via an assessment process, either via complying development or a development application.

Farm Gate Activities

5. How far do you think a roadside stall should be setback from the road?

Roadside stalls should be positioned on the property boundary but enable safe off-road parking for vehicles.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?



Farm gate activities should be assessed as either complying development or as a development application and not be considered exempt development.

Farm events

7. The proposed maximum number of people and events per day for exempt and complying development are:

a) 52 events days per year and up to 30 guests per event, or

b) 10 event days per year and up to 50 guests per event

Are these appropriate?

Farm events should be assessed as either complying development or a development application and not considered as exempt development. The number of events and guests can then be adequately considered through this process.

8. What events, if any, do you think should be excluded from the definition of farm events?

All proposed defined events that come under the umbrella of farm events should be assessed through either a complying or development assessment process.

Assessment of these proposals will ensure there is adequate consideration given to matters such as potential conflict with adjoining land uses, traffic impacts, noise, amenity, site suitability and other related matters.

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.

a) RU1

b) RU2

c) RU4 zones

d) Other zones (please specify)

Destination weddings and association infrastructure could be considered as a permissible use in rural zones under a development assessment process. The use could be permissible in all zones outlined above and the RU5 Rural Village and RU6 Transition zone.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

Yes, the department should develop a model clause.

11. Is there any rural land or areas in which agritourism activities should be permitted? If yes, why?

Agritourism activities should be a permissible use in all rural zones but should be subject to a merit-based assessment process via either a complying development or development assessment application to ensure the potential impacts are adequately assessed.

12. Should any other agricultural produce industries be complying development? What standards should apply?

All agricultural produce activities should be assessed via a development application process. Assessment of these proposals will ensure there is adequate consideration given to matters such as potential conflict with adjoining land uses, traffic impacts, noise, amenity, site suitability and other related matters.

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

The maximum throughput of carcasses should be assessed under either a complying development or development application process. If the land is classified as being land to which the SEPP for Exempt and complying development is applicable then the maximum number of carcasses per year would be acceptable as 1000, if adequate measures for environmental protection, waste disposal, traffic movement and food safety regulation were stringent.

14. Should additional standards be included?

No response.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants can be approved:

a) as complying development?

b) through the standard DA process?

The locational criteria should remain the same as stipulated for designated development. The scale of the processing plant should determine whether the subject proposal can be undertaken as a complying development application or a development application.

Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form/

Yes

17. Should any additional standards be included?

No

Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?

Depends on numbers of stock to be contained. Infrastructure for shelter, feeding and watering requirements and potential structures for observation of stock should be permitted.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

No response.

Farm dams

20. How could we simplify planning provisions for farm dams?

Farm dams should be assessed via a development application process unless the volume triggers the need for the proposal to be considered as designated development.

Biosecurity for poultry and pig farms

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

Yes, it is considered they do.

22. Should any additional standards be included?

No.

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?

250m is an acceptable setback.

24. From which point should setbacks be measured?

- a) From the proposed or existing intensive agricultural use
- b) From the property boundary shared with land used for intensive agriculture
- c) A combination of the above

From the property boundary shared with the intensive agriculture.

25. Are the proposed development standards appropriate and are any additional standards needed?

Development standards are appropriate, and no additional requirements are considered necessary at this point in time.

Council Reference: Explanation of Intended Effect – Agritourism and Small-Scale Agriculture Development

3 May 2021

Annette Skinner
Department of Planning, Industry and Environment
Level 16, 4 Parramatta Square
PARRAMATTA NSW 2150

Annette.skinner@planning.nsw.gov.au

Submission on Explanation of Intended Effect – Agritourism and Small-Scale Agriculture Development

Dear Annette

The following submission has been prepared by Council staff and is not necessarily a policy position of Shellharbour City Council.

Council officers have reviewed the documentation that was available during the exhibition and would like to thank you for the extension of time given to lodge this submission.

Generally, Council is supportive of the proposed changes which would cater for small-scale Agritourism uses which are compatible with agricultural, environmental and conservation values of the land. These opportunities will however need to be carefully considered to ensure that any development permitted through the Codes SEPP as proposed is low scale and low impact and does not result in unreasonable environmental or amenity impacts.

The proposed changes also align with the Illawarra Regional Food Strategy, as adopted by Shellharbour City Council in 2013. This strategy identified growing opportunities for direct contact between producers and consumers and encouraging value-adding and vertical integration' for local producers' as strategies supported by Council.

Council would like to raise some concerns regarding the exempt and complying approval pathway for development as proposed in the EIE on land currently zoned Rural. Shellharbour City Local Government Area has Rural zoned land which are currently affected by constraints identified in the LEP such as Significant Extractive Resources (including mapping of State and Regional Mineral Resources and Quarry Buffer areas) and Airspace Operations (OLS and ANEF). These constraints specially relate to safety and amenity and have the potential to restrict or limit the types of Development proposed in the EIE. Where possible these constraints should be addressed in the development standards or else the land affected by those constraints excluded from the Codes SEPP.

Many rural properties in the Shellharbour Local Government Area are also currently listed in Schedule 5 of Shellharbour LEP as Items of Local Heritage Significance. The proposed changes to the Codes SEPP will potentially allow inappropriate development on these lands

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

that may potentially impact the heritage significance of the item. The heritage item could consist of built structures, gardens and significant trees, or landscape settings and connectivity to other significant rural properties. These things would normally be assessed in a Heritage Impact Statement that is required as part of the merit assessment of a Development Application. It is recommended that any lands identified as having Heritage Significance (including Local Significance) and listed in Schedule 5 of the LEP be excluded from the Codes SEPP for this type of development.

Response to questions in the Explanation of Intended Effect:

3.2.2 Farm stay accommodation - consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?

The wording of the setback requirements currently refers to the setback from any established or proposed number of uses. The use of the term 'proposed' is not practical, whether or not any of those uses are proposed is an unknown. If the term 'proposed' is used, it will need to be specifically defined (such as approved or identified in a Planning Instrument)

That being said, the proposed setbacks are considered to be satisfactory with the exception of the setbacks to mines and extractive industries. As explained above this matter needs to be addressed in greater detail. Mines and extractive industries should also refer to lands identified as State and Regional Mineral Resources and Quarry Buffer areas. Preferably, to enable adequate assessment of any possible impacts, these lands should be excluded from the Codes SEPP.

The dot point specifying that:

- *if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation may have the same setback*

This statement is not supported as an existing dwelling within the specified setbacks from the nominated land uses may be a historic legacy of location and may be experiencing or causing unacceptable impacts to the adjoining uses. The introduction of additional tenants (even if short term) is not considered to be appropriate on that basis.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

Council does not consider that this is an issue at present. However, the management and enforcement of numbers (particularly campers) would likely be better achieved if the land was permanently occupied by way of an approved dwelling.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

The clustering of development on rural land is preferred to reduce the impact of access ways (roads and driveways) as well as possibly benefiting from a combined and easily managed on site effluent system. The scattering of accommodation facilities throughout the rural landscape may also present significant visual impacts. In this regard, the use of non-

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

reflective materials is strongly recommended to be included in the Development Standards. Camping and caravan sites should also be clustered and not scattered over a large area for the reasons stated above as well as ease of waste management.

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

Council has no comment on this question.

3.3.2 Farm gate activities - consultation questions

5. How far do you think a roadside stall should be setback from the road?

A roadside stall must be located so that there is adequate vehicle sight distance as well as a safe pull over area and parking. These requirements are covered in the proposed Development Standards for the exempt development of a Roadside Stall. However, the specificity of these standards are technical in nature and relate to public safety. Therefore, it is considered that these are best assessed through the Development Application assessment process.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

The potential to construct a building up to 200 square meters with multiple buildings up to a total of 500 square meters, to be used as a farm gate activity or as a combined Farm gate activity and Farm events, has the potential to be visually prominent. There should be some mitigating standards imposed such as not locating it on a ridge, using non-reflective materials and specifying a design that is sympathetic to its setting. Preferably, structures of this size should require a Development Application to ensure there are no adverse impacts. In addition, suitable access arrangements, parking and on-site effluent disposal should be specified in the Development Standards.

3.4.2 Farm events - consultation questions

7. The proposed maximum number of people and events per day for exempt and complying development are:

- a) 52 event days per year and up to 30 guests per event, or**
- b) 10 event days per year and up to 50 guests per event**

Are these appropriate?

The proposed maximum numbers of people and events per year appear to be satisfactory; however, currently it is unclear what constitutes an event day? E.g. does bump in/out of equipment constitute an event day. How the recording of event occurrences and enforcement of compliance with these standards is to occur is also unclear. This is likely to affect Councils regulation resources, with additional financial burden to Council and the community. Have any options for regulating these standards been explored.

8. What events, if any, do you think should be excluded from the definition of farm events?

Given the small scale of the proposed events, Council does not recommend any additional exclusions.

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted?

Please provide reasons for your selection.

- a) RU1**
- b) RU2**
- c) RU4 zones**
- d) Other zones (please specify)**

Destination Weddings should not be separately defined, and should fall under the proposed Farm Events and Farm Stay definitions and Development Standards.

10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?

No. Destination Weddings should not be separately defined, and should fall under the proposed Farm Events and Farm Stay definitions and Development Standards.

11. Is there any rural land or areas in which agritourism activities should not be permitted? If yes, why?

Potentially there may be some landuse conflict within the RU6 Transition Zone due to additional permitted uses and smaller land areas.

3.6.2 Small scale processing plants - consultation questions

12. Should any other agricultural produce industries be complying development? What standards should apply?

No. It is worth noting that other agricultural produce industries are proposed to be complying development through the Farm gate activities changes.

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

Unless those animals are farmed on the land containing the processing plant they should not be processed at all in the facility.

14. Should any additional standards be included?

Additional development standards relating to compliance with the requirements of any relevant or applicable health and/or animal welfare legislation should be included.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a) as complying development?**
- b) through the standard DA process?**

Council is satisfied with the current requirements, however, would be willing to engage in a review if it was proposed.

3.7.2 Rebuilding of farm infrastructure - consultation questions

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

Depending on the constraints that resulted in any natural disaster, it may not be appropriate to relocate the structure in its original location eg flood affected land or unstable land. It is appreciated that the recent bushfires have resulted in losses of farm buildings but the appropriate location of any replacement building should consider the constraints of the land to avoid any avoidable future losses.

17. Should any additional standards be included?

Additional standards relating directly to known constraints on the land should be developed or else a Development Application required to enable appropriate assessment of the constraint on the proposed structure.

3.8.2 Stock containment areas - consultation questions

18. What type of permanent infrastructure should be permitted for stock containment areas?

There should be no permanent infrastructure permitted for stock containment areas permitted without consent or as exempt development. The intention is to enable temporary stock containment areas.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

See above.

3.9.2 Farm dams - consultation questions

20. How could we simplify planning provisions for farm dams?

There is insufficient information in the EIE to comment on this matter.

3.10.2 Biosecurity for poultry and pig farms - consultation questions

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

The proposal to raise the provisions in the Standard Instrument allowing poultry farms to be developed without consent from 1,000 to 10,000 birds, subject to locational restrictions, is a concern to Council. Although the Biosecurity risks for poultry are negligible up to 10,000 birds, there are other potential impacts of a facility of that size which would require a more detailed assessment. A more appropriate approval path for that scale of Development would be through the Development Assessment process.

22. Should any additional standards be included?

See above.

3.11.2 Rural dwelling setbacks from intensive agriculture - consultation

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

Questions

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?

Council agrees with the proposed increase in setbacks to avoid future conflict. This is particularly supported if there is the proposed increase in animals as suggested.

24. From which point should the setbacks be measured?

- a) From the proposed or existing intensive agricultural use**
- b) From the property boundary shared with land used for intensive agriculture**
- c) A combination of the above**

The set back should be from a combination of the above, therefore ensuring that the maximum setback can be achieved. This will help ensure that any development does not restrict the operations of the adjoining property owner.

3.12.2 Recreational Beekeeping – Consultation Questions

25. Are the proposed development standards appropriate and are any additional standards needed?

From a biodiversity conservation perspective, it is considered inappropriate to allow recreational bee keeping in an environmental zone as exempt development. Currently in Shellharbour LEP2013, bee keeping is permitted with consent in the E2 Zone Environmental Conservation. The NSW Government's Scientific Committee has identified '[Competition from feral honeybees](#)' as a key threatening process listing. Therefore, the keeping of honeybee hives in environmentally sensitive areas should continue to be allowed only with development consent.

Conclusion


Council officers have undertaken a review of the exhibited Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development and have identified a number of matters of concern.

As previously stated, Council is generally supportive of the proposed changes which would cater for small-scale Agritourism uses which are compatible with agricultural, environmental and conservation values of the land.

Council would also like to advise that it is interested in working with the Department on the new optional LEP clauses for farm stay accommodation and farm gate activities and identifying the zones in which we may wish to allow the new farm events and farm gate activities. The contact for any future discussions on that matter is myself.

If you would like further information in relation to the matters raised in this letter, please contact me on telephone (02) 4221 6127 or Cheryl.Lappin@shellharbour.nsw.gov.au.

Yours sincerely



Cheryl Lappin
Senior Strategic Planner

Council Reference: Explanation of Intended Effect – Agritourism and Small-Scale Agriculture Development

3 May 2021

Annette Skinner
Department of Planning, Industry and Environment
Level 16, 4 Parramatta Square
PARRAMATTA NSW 2150

Annette.skinner@planning.nsw.gov.au

Submission on Explanation of Intended Effect – Agritourism and Small-Scale Agriculture Development

Dear Annette

The following submission has been prepared by Council staff and is not necessarily a policy position of Shellharbour City Council.

Council officers have reviewed the documentation that was available during the exhibition and would like to thank you for the extension of time given to lodge this submission.

Generally, Council is supportive of the proposed changes which would cater for small-scale Agritourism uses which are compatible with agricultural, environmental and conservation values of the land. These opportunities will however need to be carefully considered to ensure that any development permitted through the Codes SEPP as proposed is low scale and low impact and does not result in unreasonable environmental or amenity impacts.

The proposed changes also align with the Illawarra Regional Food Strategy, as adopted by Shellharbour City Council in 2013. This strategy identified growing opportunities for direct contact between producers and consumers and encouraging value-adding and vertical integration' for local producers' as strategies supported by Council.

Council would like to raise some concerns regarding the exempt and complying approval pathway for development as proposed in the EIE on land currently zoned Rural. Shellharbour City Local Government Area has Rural zoned land which are currently affected by constraints identified in the LEP such as Significant Extractive Resources (including mapping of State and Regional Mineral Resources and Quarry Buffer areas) and Airspace Operations (OLS and ANEF). These constraints specially relate to safety and amenity and have the potential to restrict or limit the types of Development proposed in the EIE. Where possible these constraints should be addressed in the development standards or else the land affected by those constraints excluded from the Codes SEPP.

Many rural properties in the Shellharbour Local Government Area are also currently listed in Schedule 5 of Shellharbour LEP as Items of Local Heritage Significance. The proposed changes to the Codes SEPP will potentially allow inappropriate development on these lands

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

that may potentially impact the heritage significance of the item. The heritage item could consist of built structures, gardens and significant trees, or landscape settings and connectivity to other significant rural properties. These things would normally be assessed in a Heritage Impact Statement that is required as part of the merit assessment of a Development Application. It is recommended that any lands identified as having Heritage Significance (including Local Significance) and listed in Schedule 5 of the LEP be excluded from the Codes SEPP for this type of development.

Response to questions in the Explanation of Intended Effect:

3.2.2 Farm stay accommodation - consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?

The wording of the setback requirements currently refers to the setback from any established or proposed number of uses. The use of the term 'proposed' is not practical, whether or not any of those uses are proposed is an unknown. If the term 'proposed' is used, it will need to be specifically defined (such as approved or identified in a Planning Instrument)

That being said, the proposed setbacks are considered to be satisfactory with the exception of the setbacks to mines and extractive industries. As explained above this matter needs to be addressed in greater detail. Mines and extractive industries should also refer to lands identified as State and Regional Mineral Resources and Quarry Buffer areas. Preferably, to enable adequate assessment of any possible impacts, these lands should be excluded from the Codes SEPP.

The dot point specifying that:

- *if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation may have the same setback*

This statement is not supported as an existing dwelling within the specified setbacks from the nominated land uses may be a historic legacy of location and may be experiencing or causing unacceptable impacts to the adjoining uses. The introduction of additional tenants (even if short term) is not considered to be appropriate on that basis.

2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?

Council does not consider that this is an issue at present. However, the management and enforcement of numbers (particularly campers) would likely be better achieved if the land was permanently occupied by way of an approved dwelling.

3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

The clustering of development on rural land is preferred to reduce the impact of access ways (roads and driveways) as well as possibly benefiting from a combined and easily managed on site effluent system. The scattering of accommodation facilities throughout the rural landscape may also present significant visual impacts. In this regard, the use of non-

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

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4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

Council has no comment on this question.

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5. How far do you think a roadside stall should be setback from the road?

A roadside stall must be located so that there is adequate vehicle sight distance as well as a safe pull over area and parking. These requirements are covered in the proposed Development Standards for the exempt development of a Roadside Stall. However, the specificity of these standards are technical in nature and relate to public safety. Therefore, it is considered that these are best assessed through the Development Application assessment process.

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Given the small scale of the proposed events, Council does not recommend any additional exclusions.

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted?

Please provide reasons for your selection.

- a) RU1**
- b) RU2**
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3.6.2 Small scale processing plants - consultation questions

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17. Should any additional standards be included?

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18. What type of permanent infrastructure should be permitted for stock containment areas?

There should be no permanent infrastructure permitted for stock containment areas permitted without consent or as exempt development. The intention is to enable temporary stock containment areas.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

See above.

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20. How could we simplify planning provisions for farm dams?

There is insufficient information in the EIE to comment on this matter.

3.10.2 Biosecurity for poultry and pig farms - consultation questions

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

The proposal to raise the provisions in the Standard Instrument allowing poultry farms to be developed without consent from 1,000 to 10,000 birds, subject to locational restrictions, is a concern to Council. Although the Biosecurity risks for poultry are negligible up to 10,000 birds, there are other potential impacts of a facility of that size which would require a more detailed assessment. A more appropriate approval path for that scale of Development would be through the Development Assessment process.

22. Should any additional standards be included?

See above.

3.11.2 Rural dwelling setbacks from intensive agriculture - consultation

Submission on Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development

Questions

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?

Council agrees with the proposed increase in setbacks to avoid future conflict. This is particularly supported if there is the proposed increase in animals as suggested.

24. From which point should the setbacks be measured?

- a) From the proposed or existing intensive agricultural use**
- b) From the property boundary shared with land used for intensive agriculture**
- c) A combination of the above**

The set back should be from a combination of the above, therefore ensuring that the maximum setback can be achieved. This will help ensure that any development does not restrict the operations of the adjoining property owner.

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Conclusion


Council officers have undertaken a review of the exhibited Explanation of Intended Effect – Agritourism and Small Scale Agricultural Development and have identified a number of matters of concern.

As previously stated, Council is generally supportive of the proposed changes which would cater for small-scale Agritourism uses which are compatible with agricultural, environmental and conservation values of the land.

Council would also like to advise that it is interested in working with the Department on the new optional LEP clauses for farm stay accommodation and farm gate activities and identifying the zones in which we may wish to allow the new farm events and farm gate activities. The contact for any future discussions on that matter is myself.

If you would like further information in relation to the matters raised in this letter, please contact me on telephone (02) 4221 6127 or Cheryl.Lappin@shellharbour.nsw.gov.au.

Yours sincerely



Cheryl Lappin
Senior Strategic Planner

SC3438-02
21/144861

10 May 2021

NSW Department of Planning, Industry and Environment
State and Regional Economy - Local Government and Economic Policy
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam,

Re: Explanation of Intended Effect (EIE) – Agritourism and Small-Scale Agriculture Development

Thank you for granting an extension of time for Council officers to review and comment on the Explanation of Intended Effect (EIE) for Agritourism and Small-Scale Agriculture Development. Council officer's submission to the EIE is attached for the Department's consideration.

In summary, Council officers provide in-principle support for the strategic intent of the proposed legislative amendments explained in the EIE. In addition, the attached submission outlines Council officers concerns about implementation aspects of the proposed changes.

We confirm that Council wishes to opt-in to the proposed Standard Instrument LEP clauses for farm stay accommodation (RU1 and RU2 zones) and farm gate activities (RU1, RU2 and RU4 zones) into the Camden Local Environmental Plan 2010 (Camden LEP 2010).

If you have any further questions, please contact Kerri-Ann Barry or Heath James of Council's Strategic Planning Branch on 4654 7648 or 4654 7833.

Yours sincerely,

A handwritten signature in black ink, appearing to be "S. Gill".

Sam Gill

Acting Director Planning and Environment

Attachment: Submission to EIE – Agri-tourism and Small-Scale Agriculture Development



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4654 7777



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English

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Arabic

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Submission: *Agritourism and Small-Scale Agriculture Development – May 2021*

Submission

Explanation of Intended Effects for Agritourism and Small-Scale Agriculture Development



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Executive Summary

This document is a submission from Council officers on the Explanation of Intended Effects (EIE) for Agritourism and Small-Scale Agriculture Development.

The broad intent of the proposed changes to support farmers to diversify their income streams and return to business operations as soon as practical after being impacted by a natural disaster is acknowledged. The proposed changes to the Standard Instrument (Principal Local Environmental Plan) 2006 (Standard Instrument LEP) and the State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (Codes SEPP) broadly aligns with Council's Local Strategic Planning Statement (LSPS) that seeks to protect rural land and enhance rural economies including agritourism.

It is requested that the recommendations contained within this submission are considered in the finalisation of the proposed legislative changes.

The key concerns and recommendations outlined in this submission include:

- Farm stay accommodation;
- Farm gate activities;
- Farm events; and
- Other matters.



Introduction

The Department of Planning, Industry and Environment (DPIE) is reviewing the development approval pathways and planning legislation to facilitate complementary development and land use activities on rural land that are deemed to have no to low impact to its agricultural uses.

DPIE's initiative to amend planning legislation to support NSW-based agricultural industries recover from the COVID-19 pandemic and natural disasters including bushfire and flood is supported. For DPIE's information, Council is implementing a COVID-19 community recovery and support package to the value of \$130.6M.

In 2016, Council commissioned a Rural Lands Study (RL Study). The RL Study concluded Camden's agricultural land is important, not only for its role in providing Sydney with fresh food, but because of other benefits including employment opportunities, tourism potential, its visual quality and scenic landscapes, and its contribution to the local area's cultural heritage and identity. Based on this Study, Council adopted the key principles of *retaining Camden's valued scenic and cultural landscapes* and *enhancing Camden's rural economy* within the Camden Rural Lands Strategy (RL Strategy), which was adopted by the Council in November 2018.

Council's LSPS adopted in 2020, notes *protecting Camden's rural land* (Local Priority S3) and *leveraging Camden's natural and cultural assets to promote local agricultural production and increase tourism* (Local Priority P6) are important local priorities. The agritourism industry within Camden Local Government Area (LGA) has the potential to grow, due to the area's proximity to the Western Sydney Airport, the North South Rail Corridor and other catalytic infrastructure proposed for Western Sydney.

Council officers provide in-principle support for the strategic intent of the proposed amendments and welcome the opportunity to provide comment. Council officers agree that making it easier and more efficient for farmers to diversify their business practices and offer agritourism activities presents multiple community benefits including supporting the sustainability of farming businesses, securing local food production, and providing an opportunity for people to visit, learn and appreciate the role of local farms and rural land. Using rural zoned land for non-agricultural activities that are compatible with the agricultural, environmental and conservation values of the land is supported.

In addition to providing broad support for the proposed amendments, this submission outlines Council officer's concerns about the practical implementation of some of the proposed changes explained in the EIE.



Key Concern 1: Farm Stay Accommodation

As part of Council's accelerated LEP review program, Council endorsed an amendment to the Camden Local Environmental Plan 2010 (Camden LEP 2010) to permit with consent eco-tourism facilities in the RU1 Primary Production and RU2 Rural Landscape zones.

Whilst supporting agri-business to diversify and leverage their tourism potential is supported in-principle, further consideration needs to be given to the type, location, bulk and scale of farm stay accommodation, servicing infrastructure requirements, and its compatibility with the agricultural, environmental and conservation values of rural land.

Farm stay accommodation should be effectively regulated to ensure it remains an ancillary use to agricultural production and must not adversely affect the agricultural productivity of the land, or that on adjoining land. It is noted the Standard Instrument LEP enables extensive agriculture to be permitted without consent in the RU1 and RU2 zones, meaning there is no requirement for a landowner to lodge a development application (DA).

The EIE aims to facilitate no-to-low impact farm stay accommodation to be considered as exempt or complying development under the Codes SEPP. Council officers are concerned the proposal to accommodate up to 20 people at any one time for up to 14 days could have adverse environmental impacts should the land not have adequate infrastructure in place (including waste management, on-site sewage management, and water servicing infrastructure). This may create public health and amenity concerns that exceed the no-to-low impact threshold. Council officers support farm stay accommodation to go through a Complying Development Certificate (CDC) or DA approval pathway.

Clarification is sought on the reason to specify a maximum number of buildings (1 dwelling per 15 hectares) for a change of use of an existing building or manufactured home. If the draft development standard is intended to apply to a development comprising of new buildings, Council officers would be concerned about an adverse impact on the visual and scenic qualities of the rural landscape.

Recommendations:

1. Farm stay accommodation should only be permitted on land that benefits from a dwelling entitlement, with an existing dwelling to be located on the land.
2. Farm stay accommodation should go through a CDC or DA approval pathway (not an exempt development pathway).
3. Insert a definition for what constitutes a 'farm' in the context of providing farm stay accommodation into the Codes SEPP.
4. Farm Stay Accommodation on land that is flood prone, environmentally sensitive, identified as having visual or scenic qualities or afforded a similar protection within an environmental planning instrument (EPI) should be excluded from the Codes SEPP.
5. Clarify why a development standard that specifies a maximum number of buildings (1 dwelling per 15 hectares) is necessary for a change of use of an existing building or manufactured home.
6. A development standard that encourages built forms on rural land to be clustered on the land to preserve the rural characteristics, scenic landscape, and visual qualities is supported for inclusion.
7. Prior to a CDC being issued, the landowner must obtain approval from Council (Section 68 of the Local Government Act 1993) for *On-Site Sewage Management*.
8. The exception to the minimum setback for farm stay accommodation (an existing dwelling has a setback from the specified use that is less than the proposed setbacks in the EIE, or less than 250m from the lot boundary) is not supported by Council officers due to the potential public health risk, amenity impacts and potential for land use conflict.
9. The exempt provisions for farm stay accommodation should include a cap on the number of days (per calendar year) that the land may be used for farm stay accommodation (in addition to the number of guests).

Key Concern 2: Farm Gate Activities

Council officers provide in-principle support for the proposed amendments aimed at facilitating farm gate activities. Farm gate activities offers the potential for the general population to have better access to farms and local produce and could lead to a broader acceptance of agricultural industries and their role in providing Sydney's fresh food needs.

Under subdivision 10A of the Codes SEPP, the change of use of premises provision (clause 2.20B (f)) excludes food and drink premises and roadside stalls being established under the change of use exempt provisions. Council officers do not support roadside stalls and food and drinks premises to be permitted as exempt development on rural-zoned land for agritourism purposes.

Restaurant or café has been included within the proposed definition for farm gate activities. Restaurants and cafes that can service up to 50 people are not considered to constitute no-to-low impact development activity. Furthermore, it is important that the construction and fit out of farm gate activities can achieve compliance with the NSW Food Act 2003 and regulations, Food Standards Code and Australian Standard AS4674 Design, Construction and Fit Out of Food Premises. Any food related farm gate activity (except where whole fruit and vegetables will be sold to consumers) should go through a CDC or DA approval pathway to ensure the development satisfies the above standards.

Farm gate activities also has the potential to generate traffic impacts and increase demand for on-site parking which can be assessed when a DA is lodged with Council.

Recommendations:

1. Any food related farm gate activity (except where whole fruit and vegetables are being sold) should require approval via a CDC or DA to ensure the proposed construction and fit-out comply with the NSW Food Act 2003, Food Standards Code the Australian Standard (AS4674-2004 – Design construction and fit-out of food premises).
2. Roadside stalls and food and drink premises (agritourism or otherwise), should remain excluded from exempt development.
3. Roadside stalls and parking should be located wholly within the property boundary.

Key Concern 3: Farm Events

The scale and type of farm events can vary, as well as their impacts. Council officers support farm events being a permissible use in the RU1 and RU2 zones only. Farm event activities on RU4 zoned land has the potential to result in greater negative amenity impacts and land use conflict issues due to the smaller land holding.

Landowners seeking to stage ongoing events should be required lodge a DA so that any proposed construction, amenity impacts (noise and traffic), community benefit, and servicing infrastructure requirements can be adequately considered. A DA approval pathway will enable Council officers to seek community feedback on proposed events and set operating conditions that mitigate any negative amenity impacts and land use conflict issues.



Council officers are seeking clarification from DPIE on the development standards proposed for farm events and the potential resource impacts on Council (if any) as follows:

- a. Does DPIE intend to establish a register for farm events to assist with the enforcement/regulation of event limits?
- b. Can the landowner choose to coordinate a total of 62 events per year; 10 with up to 50 guests, and 52 with up to 30 guests or is it an either/or scenario?
- c. Does the landowner have to nominate event dates and the maximum number of guests in advance for the calendar year/financial year like a limited multi-function liquor licence approval system?

Recommendations:

1. Farm events are permissible with consent in the RU1 Primary Production and RU2 Rural Landscape zones only.
2. Farm events that utilise amplified music, bands, and public address systems, and that are located within proximity to existing residential premises, hospitals, schools, and other sensitive land uses should go through a DA approval pathway.
3. Farm events on land that is flood prone, environmentally sensitive (land with a watercourse or riparian area) and land identified as having visual or scenic qualities or afforded a similar protection within an EPI should be excluded from the Codes SEPP.

Key Concern 4 – Other matters

Small-scale processing plants can generate a broad, and complex range of issues. Processing plants, regardless of scale, should go through a DA approval pathway.

Built structures destroyed by a natural disaster may need to be constructed to higher standards or in a new location on the property to mitigate any future flood, bushfire, and other natural disaster risks. For this reason, a DA approval pathway would be more appropriate. Council officers support temporary accommodation, temporary portable offices, and temporary storage being considered under the Codes SEPP to assist farmers to reinstate their operational business practices with limited time delay.

Council officer's note that amending the separation distance between rural dwellings and other land uses is consistent with *Managing Biosecurity Risks in Land Use Planning and Development Guide* prepared by the Department of Primary Industries (DPI), however is inconsistent with designated development triggers outlined in Schedule 3 of the NSW Environmental Planning and Assessment Regulation 2000 for intensive livestock agriculture (clause 21).

DPI in their *Options Paper: Agricultural Land Use Planning Strategy* noted the need for the NSW Government to establish guidelines and to clarify and consolidate buffer requirements across industries and LGAs. DPIE, in partnership with other State Government agencies, is encouraged to review relevant EPIs, regulations, and guidelines related to buffers/separation distances between land use activities on rural land and provide consistent advice to alleviate confusion around requirements for Councils and landowners. This will reduce non-compliance matters and mitigate the need for retrospective works or action to be undertaken by the landowner.

Recommendations:

1. Small scale processing plants should go through a DA approval pathway.
2. Establish a guideline to clarify and consolidate buffer requirements across industry and LGAs.
3. The reconstruction of structures destroyed or damaged in a natural disaster should go through a DA approval pathway
4. Business identification signage in a rural zone should not be permitted to be illuminated.
5. NSW Government to prepare and roll out an education program outlining legislation obligations for farm events, farm gate activities and farm stay accommodation under the NSW Local Government Act 1993, NSW Protection of the Environment Operations Act 1997, and NSW Food Act 2003.



Conclusion

This submission supports the broad intent and aims of the EIE to amend planning legislation to streamline development approval pathways for no-to-low impact agriculture development; provide clarity and consistency across planning legislation and regulation for agriculture-related land uses; and to support farmers to diversify their businesses efficiently in response to economic opportunities, market downturns and industry changes.

This submission has outlined key concerns and recommendations from Council officers for DPIE's consideration during the finalisation of these proposed amendments.

SC3438-02
21/144861

10 May 2021

NSW Department of Planning, Industry and Environment
State and Regional Economy - Local Government and Economic Policy
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam,

Re: Explanation of Intended Effect (EIE) – Agritourism and Small-Scale Agriculture Development

Thank you for granting an extension of time for Council officers to review and comment on the Explanation of Intended Effect (EIE) for Agritourism and Small-Scale Agriculture Development. Council officer's submission to the EIE is attached for the Department's consideration.

In summary, Council officers provide in-principle support for the strategic intent of the proposed legislative amendments explained in the EIE. In addition, the attached submission outlines Council officers concerns about implementation aspects of the proposed changes.

We confirm that Council wishes to opt-in to the proposed Standard Instrument LEP clauses for farm stay accommodation (RU1 and RU2 zones) and farm gate activities (RU1, RU2 and RU4 zones) into the Camden Local Environmental Plan 2010 (Camden LEP 2010).

If you have any further questions, please contact Kerri-Ann Barry or Heath James of Council's Strategic Planning Branch on 4654 7648 or 4654 7833.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Gill".

Sam Gill

Acting Director Planning and Environment

Attachment: Submission to EIE – Agri-tourism and Small-Scale Agriculture Development

English

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Submission

Explanation of Intended Effects for Agritourism and Small-Scale Agriculture Development



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Farm stay accommodation should be effectively regulated to ensure it remains an ancillary use to agricultural production and must not adversely affect the agricultural productivity of the land, or that on adjoining land. It is noted the Standard Instrument LEP enables extensive agriculture to be permitted without consent in the RU1 and RU2 zones, meaning there is no requirement for a landowner to lodge a development application (DA).

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Recommendations:

1. Farm stay accommodation should only be permitted on land that benefits from a dwelling entitlement, with an existing dwelling to be located on the land.
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3. Insert a definition for what constitutes a 'farm' in the context of providing farm stay accommodation into the Codes SEPP.
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Recommendations:

1. Farm events are permissible with consent in the RU1 Primary Production and RU2 Rural Landscape zones only.
2. Farm events that utilise amplified music, bands, and public address systems, and that are located within proximity to existing residential premises, hospitals, schools, and other sensitive land uses should go through a DA approval pathway.
3. Farm events on land that is flood prone, environmentally sensitive (land with a watercourse or riparian area) and land identified as having visual or scenic qualities or afforded a similar protection within an EPI should be excluded from the Codes SEPP.

Key Concern 4 – Other matters

Small-scale processing plants can generate a broad, and complex range of issues. Processing plants, regardless of scale, should go through a DA approval pathway.

Built structures destroyed by a natural disaster may need to be constructed to higher standards or in a new location on the property to mitigate any future flood, bushfire, and other natural disaster risks. For this reason, a DA approval pathway would be more appropriate. Council officers support temporary accommodation, temporary portable offices, and temporary storage being considered under the Codes SEPP to assist farmers to reinstate their operational business practices with limited time delay.

Council officer's note that amending the separation distance between rural dwellings and other land uses is consistent with *Managing Biosecurity Risks in Land Use Planning and Development Guide* prepared by the Department of Primary Industries (DPI), however is inconsistent with designated development triggers outlined in Schedule 3 of the NSW Environmental Planning and Assessment Regulation 2000 for intensive livestock agriculture (clause 21).

DPI in their *Options Paper: Agricultural Land Use Planning Strategy* noted the need for the NSW Government to establish guidelines and to clarify and consolidate buffer requirements across industries and LGAs. DPIE, in partnership with other State Government agencies, is encouraged to review relevant EPIs, regulations, and guidelines related to buffers/separation distances between land use activities on rural land and provide consistent advice to alleviate confusion around requirements for Councils and landowners. This will reduce non-compliance matters and mitigate the need for retrospective works or action to be undertaken by the landowner.

Recommendations:

1. Small scale processing plants should go through a DA approval pathway.
2. Establish a guideline to clarify and consolidate buffer requirements across industry and LGAs.
3. The reconstruction of structures destroyed or damaged in a natural disaster should go through a DA approval pathway
4. Business identification signage in a rural zone should not be permitted to be illuminated.
5. NSW Government to prepare and roll out an education program outlining legislation obligations for farm events, farm gate activities and farm stay accommodation under the NSW Local Government Act 1993, NSW Protection of the Environment Operations Act 1997, and NSW Food Act 2003.



Conclusion

This submission supports the broad intent and aims of the EIE to amend planning legislation to streamline development approval pathways for no-to-low impact agriculture development; provide clarity and consistency across planning legislation and regulation for agriculture-related land uses; and to support farmers to diversify their businesses efficiently in response to economic opportunities, market downturns and industry changes.

This submission has outlined key concerns and recommendations from Council officers for DPIE's consideration during the finalisation of these proposed amendments.

Agritourism and small-scale agriculture development
Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
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By email only: eplanning.exhibitions@planning.nsw.gov.au

19 April 2021

Dear Sir/Madam,

Submission - Agritourism and small-scale agriculture development

Council welcomes the opportunity to provide comments on the Explanation of Intended Effect (EIE) for Agritourism and small-scale agriculture development.

Following consideration of a detailed report, Council resolved (MIN21.252) on 4 May 2021 to make this submission on this important matter.

General Comments

Council appreciates that these planning reforms are part of a response to the recent economic impacts of natural disasters, such as droughts, bushfires, floods, as well as the impact of COVID-19 on the farming community and the economy more broadly.

The EIE proposes amendments to the:

- *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument LEP Order),*
- *State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP), and*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).*

The intent of the proposed amendments to the NSW planning system to streamline the approval of agritourism development and small-scale agricultural development; is understood, however there is an overriding concern, with the increasing range of exempt and complying development and development without consent along with the

expanding Code SEPP, that the community is slowly losing opportunities to have a say. The broader community does not often understand policy or strategic planning but do understand when something is proposed or built next to them or there are a set of architectural drawings showing what is proposed.

Given that the proposed reforms are in response to the recent economic impacts of natural disasters and COVID-19, clarification is sought as to whether these initiatives are able to be turned on and off (for example by a Council) or will they be mandated?

Tourism is extremely important to economy of Shoalhaven – the local tourism industry is worth over \$1 billion per year based on total visitor expenditure. Shoalhaven is argued to be the most visited area in NSW outside Sydney.

Farm-based experiences and local produce is in high demand with target audiences from cities such as Sydney and Canberra making up around 80% of the 3.71million visitors who visit Shoalhaven every year.

Tourism within Shoalhaven has traditionally been highly seasonal with visitation driven by its beaches and nature-based experiences; however, in recent years the visitor economy and target markets have evolved significantly with destination marketing campaigns such as the “Unspoilt South Coast” campaign, food and wine campaigns, and more recently the “Wine & Whales” campaign, focusing on driving off-season visitation. As a result, total visitors during the Shoalhaven off-season grew 43% between 2015 and 2018 due to promotional activities driving brand awareness for winter-based experiences.

The proposed amendments to support farm businesses and regional economies are generally supported, they come at a time when Shoalhaven tourism industry has suffered greatly with bushfires and COVID-19 and the proposals could result in economic benefits for the farming community and others. The attempt to clarify consistent planning approval pathways for existing and emerging opportunities is supported. Council also appreciates and acknowledges the benefits of industry diversification and the role that tourism can play in this regard. There is however also a need to be cognisant of and consider the complexities associated with this type of diversification, including for example pressures on infrastructure, land use conflict and the degradation of rural character.

Shoalhaven’s proximity to Canberra and Sydney means that the area benefits from but is also directly impacted by the tourism industry and popularity of our area. It is essential that any legislation recognises and identifies the different pressures that coastal communities experience compared to, for example, western and peri-urban Councils. Thus, it is essential that careful planning and consideration is still an integral part of the process for certain land uses to ensure that there is a balance between the benefits and potential impacts.

Given the relevance of this matter to Shoalhaven it is important that there is additional consultation and engagement with Council’s to ensure that the final reforms are appropriate, can function as intended and impacts are balanced.

Specific Comments

Agritourism Definition

The EIE defines 'agritourism' and identifies that the term covers farm-stay, camping and other on-farm accommodation, farm tours and activities, and events. Whilst the EIE goes on to specify that two new land use terms for farm gate activities and farm events will be included in the Standard Instrument LEP Order, it is unclear whether 'agritourism' will be introduced as a new group term. Clarification is requested in this regard and it is suggested that a new group term should be awarded given the confusion that they create.

Clarification would also be appropriate around what constitutes a 'farm' for the purposes of the proposed provisions given the possible compliance pressure that may result if this is not clarified.

Bushfire Prone Land

The amendment proposes to allow farm stay accommodation as exempt development where visitors reside in tents, caravans, campervans or other similar portable and light weight temporary shelters on rural zoned land.

Whilst available mapping can be used to identify whether land is bushfire prone, this does not provide the additional detail normally outlined within a bushfire report and accompanying a development application (DA), such as water supply, Asset Protection Zones (APZs) Bushfire Attack Levels (BALs), which would otherwise currently be required for development of this nature on bushfire prone land.

Farm stay accommodation is a form of tourist accommodation, which is currently identified as development for 'Special Fire Protection Purposes (SFPP)' by the NSW Rural Fire Service (RFS). As such how will the SFPP requirements outlined within the *Rural Fires Act 1997* be considered if development is exempt?

Given that most of Shoalhaven is bushfire prone and the fact that these developments are usually within a rural setting, the vast majority of sites will be potentially within a bushfire hazard area, thus posing a potential and significant risk to life. For this reason, it is suggested that this land use should be permissible with consent (i.e., development application required) where it is proposed to take place on bushfire prone land to ensure that the issue is given appropriate consideration.

State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008

Similarly, it is proposed to allow land to be used for farm stay accommodation as exempt development and the erection, alteration or addition to a building for a farm gate activity or farm event on rural zoned land as complying development, provided the land is not significantly contaminated within the meaning of the *Contaminated Land Management Act 1997*.

Many agricultural activities involve contaminating land uses (e.g. sheep dips) and due to the ongoing agricultural uses this has not been acknowledged or recorded. Currently,

where contamination is potentially an issue, the DA process enables a Phase 1 contamination report to be provided or required as part of the process.

If contamination is confirmed, the land is then subsequently recorded as contaminated land and notated within Part 5 of Council's Section 10.7 planning certificates. Whilst a principle certifying authority (PCA) can request a 10.7(5) planning certificate as part of the complying development process, which would specify if the land is currently known to be contaminated, it is unlikely that they would request a contamination report. This will prevent Council from capturing properties that should otherwise be identified on a contaminated lands register and subsequently within a planning certificate. Furthermore, given the self-assessment aspect of exempt development and no requirement for a planning certificate, contamination issues or concerns could be overlooked and future visitors possibly placed at risk.

Additionally, many dairy farms, particularly within Shoalhaven are located on floodplains or in areas where Class 1 or 2 acid sulphate soils are mapped. This affectation currently restricts complying development from being undertaken generally under the Codes SEPP and this should also be the case for agritourism.

Clarification needs to be provided on whether the complying development provisions for agritourism will form part of a new Code or will be contained within the suite of existing Codes in the Codes SEPP. It needs to be very clear what land agritourism may or may not be carried out on (i.e. land based exclusions) to ensure that complying development is appropriately considered and future compliance burdens minimised.

The EIE outlines that where the erection, alteration or addition to a building or manufactured home is proposed as complying development, the development cannot occur on unsewered land to which *SEPP (Sydney Drinking Water Catchment) 2011* applies, if that development will result in an increase to the number of bedrooms on the site or in a site disturbance area of more than 250 square metres or in any other drinking water catchment identified in any other environmental planning instrument. The EIE also currently specifies that the same development could not occur in any other drinking water catchment in an environmental planning instrument.

In Shoalhaven, parts of Kangaroo Valley and Sassafras are affected by *SEPP (Sydney Drinking Water Catchment) 2011*, however no other drinking water catchments are currently mapped within an environmental planning instrument even though they exist for example Bamarang and Porters Creek. Guidance would be appreciated in this regard and specifically whether Council should now map all drinking water catchments with its LEP to ensure they are appropriately recognised in planning legislation that is emerging from the NSW Government?

Where land is used for farm stay accommodation, farm gate activities and farm events, neither the proposed exempt or complying development pathways give any level of consideration to management of human waste or on-site sewerage. This has the potential to have significant impacts on the environment, which are outlined further in the later sections of this submission. It is recommended that farm stay accommodation, farm gate activities and farm events should not be undertaken on unsewered land as exempt development, but instead be included as complying development or development with consent which would facilitate the requirement for a drainage application under the *Local Government Act 1993*, thus ensuring this important potential impact is appropriately considered.

Local Strategic Planning Statement (LSPS) - Protection Rural Land

Council recognises the importance of and has committed to supporting the region's agriculture and aquaculture sectors with a Planning Priority in Council's Local Strategic Planning Statement (LSPS) – Shoalhaven 2040.

This includes a policy statement to retain and manage existing rural land, avoiding the rezoning of land for other uses including rural-residential and residential outcomes, unless identified in a relevant strategy. One of the 'short-term' actions identified in the LSPS is the preparation of a rural lands strategy to identify strategically important resource lands. This strategy will be informed by the provisions of a potential State Agricultural Land Use Planning Strategy and the new Illawarra-Shoalhaven Regional Plan that are currently under preparation. The finalisation of the proposed reforms needs to be considered against and alongside these, particularly the Agricultural Land Use Planning Strategy, which amongst other things is considering land use conflict and the right to farm.

Shoalhaven's agricultural activities and industries are an important economic asset, contributing \$320 million annually to the local economy and employing 803 people as of 2019, with dairy farming, beef cattle, sheep and grains forming the largest industries. There is scope to further develop the sector by leveraging off the potential for value-adding industries including milk and cheese production, abattoirs, wineries and agritourism ventures. The region also supports several agricultural processors, the largest being bakery product manufacturing and grain mill and cereal product manufacturing which employ a further 728 people. The Shoalhaven's estuaries and waterways also support a growing aquaculture sector with 11 active oyster farms and 50 hectares of aquaculture leases.

These activities and industries, and the way they have shaped the land, also contribute greatly to the rural landscape and amenity which makes the area both an attractive residential lifestyle and tourist destination.

As a peri-urban local government area, managing rural land use conflict is an important and ongoing strategic planning challenge. The City's proximity to Greater Sydney makes it an attractive destination for landowners seeking a country lifestyle change, who may not necessarily be fully informed or aware of the realities of living in a rural location. The desire for rural-residential development creates pressure for further subdivision and fragmentation of rural land, which can displace farmland or impinge on working farms by bringing them closer to residential development. Additionally, there is a need to continue to provide a range of residential opportunities and also balance further greenfield growth on the edges of or close to the region's urban centres which are fringed by rurally zoned land.

The general intent of the proposed amendments aligns with the commitments made within Council's LSPS and most likely the future Rural Lands Strategy related to continuing to support the region's agriculture sectors. Potentially incentivising non-agricultural uses to the extent proposed, without appropriate development standards relating to density or legitimate primary production, could result in a range of impacts and concerns. This could increase land use conflict, reduce opportunities for legitimate farming, increase fragmentation of rural areas and create negative environmental and scenic impacts. This is potentially at odds with the intent of Council's LSPS and the NSW Agricultural Land Use Planning Strategy Options Paper.

Consultation Questions

4.1.1 Farm stay accommodation

1. *Are the proposed setbacks to pig farms, other intensive livestock, forestry, and mines for exempt and complying development appropriate?*

Council generally has no issue with the setbacks proposed but requests clarification and confirmation that the term “waterway” is the same as the definition within Shoalhaven LEP 2014 to ensure that dams and intermittent watercourses are also captured within this definition.

2. *Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?*

Shoalhaven has a number of rural lots that are below the standard minimum lot size or do not otherwise meet the requirements for a dwelling entitlement under clause 4.2D of Shoalhaven LEP 2014. It is often difficult to work out easily in all cases whether land has a dwelling entitlement without detailed research.

If farm stay accommodation remains secondary to primary production and does not need to be tied to a dwelling, farm stay accommodation should be able to be considered where the land does not have dwelling entitlement, however, there are still several issues that need to be considered (i.e. consideration of size and density).

Chapter G15: Tourist and Visitor Accommodation of Shoalhaven Development Control Plan (DCP) 2014, currently contains a range of development controls that relate to tourist developments in rural areas and need to be considered as part of the relevant development application process. The DCP includes requirements for a minimum area for all forms of tourist development in rural areas, as well as density requirements for tourist cabins. These controls ensure that the density of development is sustainable, has minimal impact on the environment and is compatible with the rural character of the area. Similar development standards should be considered as part of the proposed reforms and are recommended.

Where farm stay accommodation is no longer secondary to primary production, farm stay accommodation could be considered where the land does not have a dwelling entitlement only if the land is of a suitable size, the proposal has an appropriate density and wherever possible a manager's residence (not a dwelling house) is part of the proposal. Whilst a manager's residence in relation to larger tourist developments may be considered as ancillary development, it is essential that this use is associated with a genuine working farm and the use is ancillary to the tourism use. Occupation would however then need to cease upon the discontinuation of the tourist and visitor accommodation use to ensure that the managers residence is not utilised as a de facto dwelling.

Farm stay accommodation should not be possible or considered on smaller rural lots that are not associated with some form of primary production and where there is no dwelling entitlement.

3. *For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some*

other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

Yes, wherever possible, new buildings or manufactured homes for the purposes of farm stay accommodation should be located in close proximity to the primary dwelling house. This is generally consistent with accepted planning outcomes and will not only prevent the fragmentation of agricultural land and reduce land use conflict but will ensure that other structures and facilities such as roads, waste effluent disposal facilities are able to be shared. However, a distance of 300m may be considered too large.

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

It is suggested that development standards east of the Great Dividing Range should be based on land size/density. Development standards relating to density help ensure that development density relates or responds to the constraints of the land or a general area and is sustainable in the long term, as well as conserving and protecting environmental attributes or scenic protection.

It is acknowledged that some (not all) land in 'Inland' areas has very different characteristics and holdings are often substantially larger with different characteristics (less constraints), which could warrant or support different development standards.

Other comments regarding farm stay accommodation:

The current requirement for farm stay accommodation to only occur on working farms ensures that the principal land use continues to be for agricultural purposes. Removing this requirement means the agricultural use could become ancillary. Whilst the proposed amendments may benefit some farmers, enabling them to diversify their incomes during times of drought or natural disaster where their incomes could be jeopardised, the Australian Tax Office (ATO) already addresses this through the criteria for primary producers. This change could see fewer farms utilised primarily for rural/primary production purposes, undermining the protection of agricultural lands as a resource for primary production and food security, creating land use conflict and ongoing development pressures on Shoalhaven's rural land.

There could also be a range of compliance issues or concerns that emerge as a result of the changes.

The proposed reform intends to amend the existing definition of 'farm stay accommodation' to include camping. This is in order to facilitate small-scale camping on a farm as exempt development. Additionally, it is proposed to amend the definitions of camping ground and caravan park to exclude tents, campervans and caravans erected on land for the purposes of farm stay accommodation.

Caravans are able to be located on land as exempt development for the purpose of farm stay accommodation and to accommodate people for up to 14 days; however, it is unclear if the caravan can remain on the land if the caravan is not 'accommodating' – this needs to be clarified and further detail provided in the final reforms. Whilst the

definition excludes caravan parks, there is the potential for de facto caravan parks to emerge due to the exempt nature of development and this needs to be managed.

Currently the development application process requires a management plan that demonstrates how a tourist facility will be managed appropriately and that safeguards that are in place to manage issues, including the behaviour of guests, and impacts on neighbours and the surrounding environment. In the absence of a development application and relevant conditions of consent, what powers do Councils have to ensure that compliance with relevant requirements and legislation is adhered to?

It is assumed that the proposed reforms are consistent with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* relating to “primitive camping grounds,” as well as *SEPP No 21—Caravan Parks*. Further clarification in this regard would be appreciated.

On-site effluent disposal

Currently, where land is used for farm stay accommodation or where there is a change of use of an existing dwelling or building/manufactured home for the purpose of farm stay accommodation, neither the proposed exempt or complying development pathways gives any level of consideration to human waste or on-site sewerage.

Where there is a change of use of an existing dwelling/ building, given that the original structure subject to the change of use would have initially been assessed and approved as a residential dwelling, the calculation to determine the potential effluent loading and design of the on-site sewerage system would be significantly less than that of tourist accommodation.

Whilst the EIE specifies that the maximum number of guests allowed is two persons per bedroom, given the exempt nature of this, in reality it is possible that the use will be far greater and could lead to a range of compliance requests and difficulties. Regardless, all tourist accommodation has the potential to create very large peak loads on the sewerage system, which requires specific measures to be put in place for the system to perform satisfactorily. Additionally, and due to the seasonal nature of tourism, there can be significant periods where the sewerage system is not in use, which is not suitable for certain types of on-site sewerage systems.

Also, many farms rely on aerated wastewater treatment systems, which require a steady delivery of effluent for the system to function properly. If this is not occurring, micro-organisms within the system die-off, meaning there are insufficient organisms within the system. This can result in inadequately treated wastewater being potentially distributed to the ground surface when there is a sudden peak load. Where a property is located within an oyster catchment area, that exist in parts of Shoalhaven, this has the potential to have catastrophic impacts on the environment and public health. In this regard, Council is keen to avoid a similar negative outcome to what occurred at Wallis Lakes.

Additionally, in the instance an on-site sewerage management system fails, Council would be required to issue significant fines under the *Protection of the Environment Operations Act 1997* (POEO). However, compliance action is not consistent with the intent of this reform, as it would make it more difficult and expensive for landowners, nor is it something that Council has the staffing or financial resources to expend.

Similarly, the EIE identifies that where human waste storage devices are proposed for farm stay accommodation, such as for camping/ caravanning, these devices must not be emptied on sites without reticulated sewerage. Clarification is sought in relation to the term “reticulated sewerage” - does this mean that only pump-out systems are permissible or can other methods of effluent disposal, such as trenches, mounds or irrigation also be considered?

It is assumed that only the scenario of portable camping toilets or toilets in caravans with cannisters has been considered, there is however a need to consider and manage wastewater from caravan kitchens, showers, handbasins and washing machines. Given caravans do not usually have a waste tank for kitchen blackwater and greywater and at a minimum this wastewater needs to go to an on-site system as untreated wastewater will otherwise end up going to the ground surface and has the potential to end up in waterways.

It is recommended that exempt development not occur on unsewered land - see ‘Specific Comments.’

4.1.2 Farm gate activities

5. How far do you think a roadside stall should be setback from the road?

The setbacks in this regard should be considered on merit and a standard setback may not be appropriate in all circumstances or result in good outcomes. This may then raise the question of whether exempt development is appropriate.

6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

There are several concerns regarding exempt development for farm gate activities. Whilst the exempt development pathway has always involved a self-assessment process, safety concerns are raised regarding the following themes:

Traffic

Standardised sight distance (250m) may not be appropriate for all sites, as this could be affected by topography and environmental features such as trees. Additionally, the speed limit and existing road signage could also impact on this.

Clarification and a definition is sought in relation to what constitutes a “major road” as this is subjective.

The EIE proposes to enable parking within the verge, provided certain development standards are met. Parking has the potential to affect the 250m sight lines and poses potential safety issues. Given that the verge is located within the public road reserve, there are provisions within both the *Roads Act 1993* and the *Local Government Act 1993* that either require approval to use the road for food and drink premises or restrict operations within the road reserve particularly regarding safety.

Issues associated with roads are likely to create significant resourcing issue for Councils (e.g. community complaints), as well as the cost of resourcing compliance actions. Additionally, developments that may arise from this initiative could also generate traffic on roads that are unsealed or not designed to accommodate large volumes of traffic, creating both safety concerns and possible maintenance impacts and costs.

Food Safety

Under the proposed amendments, there is the potential for bed & breakfasts and food and drink premises to be established as exempt development. This would not only remove the consideration that occurs through the development application process, but additionally there is no requirement for compliance with the relevant Australian Standard for food premises fit out. This could have long term ramifications on a business's ability to comply with Food Safety Standards.

Additionally, it is likely that food businesses, particularly those in rural areas, could go unnoticed and not be registered or inspected by Environmental Health Officers (EHO's) for some time resulting in increased outbreaks of food born illnesses (FBI's) on a larger scale, particularly if catering for small weddings and events.

Currently the NSW Food Authority (NSWFA) exempts the farm gate retail of fruit and vegetables and eggs; however, licensing (with a fee) is required for any wholesale production. Will the NSWFA change their process to include the other proposed farm gate activities as exempt development? If not, this will mean that any compliance action resulting from these increased farm gate activities will fall to Council to resource.

Given that the proposal currently negates any development standards relating to food safety, compliance action could be significant. Compliance action conflicts with the intent of this reform, by making it more difficult and expensive for landowners. Additionally, it is not something that Council can resource either financially or with regard to staff resources. It is recommended that either development standards for food safety be included within the exempt provisions requiring licensing by NSWFA or that farm gate activities be undertake as complying development, to enable some form of inspection.

Noise and Amenity and Human Waste Issues

Farm gate activities allowing up to 50 people has the potential to have a range of significant impacts on the amenity of neighbouring properties - noise, traffic generation and parking issues. The maximum scale (50 people) also raises a range of potential safety issues particularly for sites adjacent to main or busy roads.

The proposed reform enables both the erection of, as well as a change of use to an existing building for the purpose of a roadside stall as either exempt or complying development. This means a building has the potential to go from producing no wastewater to wastewater being generated for up to 50 guests at any one time. With no development standards specifying the need for toilets or the treatment of human waste on land used for farm gate activities or for the erection of roadside stalls, this could potentially have significant environmental and public health impacts from human wastewater on unsewered land – please see 'Specific Comments.'

4.1.3 Farm events

7. *The proposed maximum number of people and events per day for exempt and complying development are:*

- a) 52 event days per year and up to 30 guests per event, or*
- b) 10 event days per year and up to 50 guests per event*

Are these appropriate?

There are significant concerns about the potential impacts that the proposed numbers could create. As such the proposal for farm events to be undertaken as exempt development is generally not supported and should be reconsidered.

The development standard for operational requirements outlined above is similar to Clause 2.8 of Shoalhaven LEP 2014 that allows Council to grant development consent for any purpose (of a temporary nature) in any zone. Clause 2.8 has been used to approve function centres and wedding centres within rural zones where these development types would otherwise be prohibited. Under the current Clause 2.8, approved temporary uses can only operate for a maximum period of 52 days (consecutive or non-consecutive) in any 12-month period. It is assumed that similar to Clause 2.8, any days spent setting up or deconstructing structures associated with the farm event do not contribute to the maximum 52-day restriction. Clarification is sought in this regard,

However, unlike Clause 2.8, given the exempt nature of the above development standard, there is no consideration of 'adverse' impacts on any adjoining land or the amenity of the neighbourhood; however, given that the proposed planning reforms enable 52 events per year / 30 guests or 10 events per year / 50 guests, for small weddings and functions, with the ability to operate to 12am on Friday and Saturday, the reform has the potential to have adverse impacts on neighbouring properties without the ability to consider or comment on a proposal.

From experience, noise associated with amplified/acoustic music, people talking/shouting and vehicular movements would be commonplace. The exempt nature of these events will mean that the usual development application process, which would normally involve an assessment from an independent acoustic consultant, would not be required and there is not opportunity or ability to impose corrective noise attenuation measures/conditions.

Developments approved under the current LEP Clause 2.8 already cause Council's compliance unit significant work. The ability for this form of development to be approved via an exempt development pathway could result in a proliferation in these types of events and also the complaints associated with them. Whilst the Shoalhaven economy relies heavily on the tourism industry, there is also a community desire to ensuring that development within rural areas, particularly for weddings, events and function centres, considers all relevant issues.

Although the majority of operators will function within the bounds of legislation, there will always be operations that push the boundaries of non-compliance due to the exempt nature of the development. Should the reforms process, the opportunities for

compliance action, without the safeguards of a development consent, need to be clarified.

8. *What events, if any, do you think should be excluded from the definition of farm events?*

There are a range of concerns and impacts that could result. As such it is argued that proposals for farm events should not be undertaken as exempt development and a complying development or development approval pathway should be considered

Events that create noise, traffic and amenity issues, such as motorbike events and weddings should be considered for exclusion from the definition of farm events.

9. *Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.*

- a) RU1
- b) RU2
- c) RU4 zones
- d) Other zones (please specify)

Yes, changes to the planning system to help facilitate and confirm an approval pathway for destination weddings under a development application would be supported. This would allow relevant matters to be considered within structured planning criteria. Zones that may be suitable for destination weddings, subject to further discussion, could include;

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone E3 Environmental Management.

Further consultation with Councils should be undertaken regarding zone suitability and the SI LEP must remain flexible enough for each Council to opt in or out regarding permissibility (i.e. it should not be mandatory).

10. *Should the department prepare a model clause for destination weddings which councils can choose to adopt?*

Yes. As discussed above, this would allow structured planning criteria to be set, which would allow relevant planning matters to be considered and assessed, as well as relevant community concerns to be considered. A model clause would also provide longer term certainty for those operators currently utilising Clause 2.8 of the LEP, which does not currently provide clarity or certainty regarding whether a modification to a *temporary use development application for an extension to the time operation of a wedding or function*, will be approved or not.

11. *Is there any rural land or areas in which agritourism activities should not be permitted?*

Agritourism, particularly for the purpose of farm stay and farm events should only be permitted within the RU1 and RU2 zones. Additionally, a development standard relating

to density would assist in limiting or managing amenity issues associated with agritourism developments.

4.1.4 Small scale processing plants

12. Should any other agricultural produce industries be complying development? What standards should apply?

Shoalhaven already has a number of issues with commercial activities and developments in rural areas. As such it is suggested that additional agricultural produce industries should not be included as complying development, so as not to create additional issues.

Livestock processing industries are currently a form of designated development and require concurrence with the EPA. How will manage these requirements and at what cost? Development standards need to address amenity issues, as well as the numerous environmental concerns that are associated with abattoirs, for example.

13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?

1,000 carcasses per annum for 'other animals' appears reasonable, subject to a state-wide review following implementation of the SEPP. However, consideration should be given to areas that have a focus on 'other animal' farming pursuits to identify if a greater threshold should be identified in those locations.

14. Should any additional standards be included?

All the current requirements associated with development approval need to be included within any development standards.

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:

- a) as complying development?*
- b) through the standard DA process?*

This could potentially be considered within a development application process; however, Council does not feel that complying development is appropriate for this type of use generally.

4.1.5 Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?

Yes and are generally supported, however, there should be a trigger to identify that if the design of the structure changes, where complying development cannot be undertaken, a then a development application is required.

17. Should any additional standards be included?

It is recommended that an additional development standard be included that if the property is not connected to sewer:

- The new structure must have the same number of bedrooms (or less) as the former structure;
- The new structure must have the equivalent on-site sewerage management system as the former.

A change in the number of bedrooms will require an assessment for on-site wastewater as per previous comments. The type of system proposed may also trigger this – or a higher treatment level. Another form of effluent disposal may be proposed and therefore a different type of assessment would be required.

4.1.6 Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?

Stock food and drink troughs and open sided weather shelters are considered appropriate.

19. What type of permanent infrastructure should not be permitted for stock containment areas?

It is recommended that that an additional development standard be included that prohibits stock containment areas in effluent disposal areas, if a property is not connected to sewer. Stock can damage effluent application infrastructure (such as pipework) as well as cause compaction of soils which may reduce the permeability and therefore ability of the soils to treat wastewater.

4.1.7 Farm dams

20. How could we simplify planning provisions for farm dams?

Consistent terminology across the State would be beneficial and should be established, as well as consolidated provisions.

The planning provisions currently in place for farm dams requiring consent help ensure the protection of existing waterways and should remain. This is particularly relevant on the coast, where the overflow from dams can seep into natural waterways and have the potential to contaminate oyster catchments.

4.1.8 Biosecurity for poultry and pig farms

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

Standards for poultry and pig farms should be in line with the relevant bodies best practice management. The reform identifies that locational restrictions will apply; however, it is queried how these will be captured given that development consent will not be required. Whilst it identifies that the development consent will not be required, the approval pathway needs to be identified as either exempt or complying development.

22. Should any additional standards be included?

Development standards for location restrictions need to be identified and better articulated.

4.1.9 Rural dwelling setbacks from intensive agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?

The setback required would most likely need to vary depending on the nature of the intensive agriculture. As such It would be helpful for DPIE to provide additional information regarding research undertaken and any associated conclusions. In some situations, a complying development pathway may not be appropriate.

24. From which point should the setbacks be measured?

- a) From the proposed or existing intensive agricultural use*
- b) From the property boundary shared with land used for intensive agriculture*
- c) A combination of the above*

For ease of interpretation and consistency, the setback should be taken from the property boundary shared with the land used for intensive agriculture.

4.1.10 Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?

Provided that the relevant biosecurity measures are met, Council has no issue with the proposed standards for recreational beekeeping.

Conclusion

Thank you again for the opportunity to provide feedback on this very important matter.

Given the relevance of this matter to Shoalhaven it is important that there is additional consultation and engagement with Council's to ensure that the final reforms are appropriate, can function as intended and impacts are balanced. Further consultation regarding opt in clauses for farm stay accommodation and farm gate activities is also specifically requested.

If you need further information about this matter, please contact Peta Brooks, City Futures on (02) 4429 3228. Please quote Council's reference 31157E (D21/200059).

Yours faithfully

Gordon Clark.

Gordon Clark
Strategic Planning Manager
Shoalhaven City Council

Our Reference: 1150#1121

21 May 2021

NSW Department of Planning, Industry and Environment

Dear Sir/Madam,

**SUBMISSION - EXPLANATION OF INTENDED EFFECT
AGRITOURISM AND SMALL SCALE AGRICULTURE DEVELOPMENT**

Wollondilly Shire Council welcomes the opportunity to provide feedback on the Explanation of Intended effect for Agritourism and Small Scale Agriculture Development. I would also like to thank you for accommodating our request for an extension to the timeframe to provide feedback on this document.

At a high level, the proposed amendments to support farm businesses and regional economies is an exceptional initiative, and I look forward to the changes being finalised so the increased flexibility can benefit rural land holders in Wollondilly.

Developing the visitor experience and economy by increasing access to natural areas and rural landscapes is a key priority for Wollondilly which is recognised in Wollondilly 2040, our Local Strategic Planning Statement. Our quality agriculture and horticulture provide opportunities for agritourism, expanded farm-based tourism and generating income streams.

The proposed amendments will complement a number of initiatives currently being pursued by Council. In particular from the draft Wollondilly Rural Lands Strategy and the Wollondilly Visitor Economy Study.

The draft Rural Lands Strategy is currently being finalised by Council and was funded as part of the Accelerated Local Environmental Plan Review Program. The preparation of the Strategy involved undertaking a survey of primary producers in the area to gauge the key issues currently being experienced on rural lands in the Shire and future approaches to resolve these issues.

One of the key messages identified during the stakeholder consultation and the survey of rural landholders was ongoing viability and the lack of ability for farmers to value add to their existing farms and diversify income streams through uses such as agritourism.

In response to the findings of the Rural Lands Strategy and other Council projects, council is actively trying to progress two accelerated Planning Proposals to expand the range of tourism and economic growth as follows:

LEP Review Program Stage 1A (Events and Visitor Economy)

Planning Proposal provides for an increase in opportunities for events, enabling destination weddings, functions and business conferencing in rural locations, enabling more diverse tourist accommodation by creating the opportunity for a destination holiday park in Wollondilly and broadening the locations where uses such as timber yards, artisan food and drink premises, markets, eco-tourist facilities etc can occur in Wollondilly.

LEP Review Program Stage 2 (Developing the Visitor Economy and Employment Land Uses)

Planning Proposal aims to increase the opportunities for visitor economy related developments while protecting agricultural production, scenic and environmental values of land, recognise the visitor economy as a core objective for development and strengthen the role and function of employment land.

In light of the above, Council unequivocally supports the proposed insertion of new definitions for 'farm events' into the Standard Instrument LEP in order to allow events, tours, functions and conferences on land used for agriculture.

This is an essential amendment with the same principle that Wollondilly Shire Council strongly advocated for and attempted to lead policy reform through its accelerated planning proposals noted above.

However unfortunately to date these straightforward amendments to Councils LEP have been denied by the Department as it appears there is unfortunate contrary legal, policy and legislative practice within DPIE, with the ultimate result not allowing the desired outcomes and permissible land uses. Despite similar amendments being approved in other jurisdictions such as Wingecarribee, Camden and, we understand Narrabri and the north coast, the Wollondilly proposals have been delayed unreasonably and unnecessarily.

The Mayor of Wollondilly has written separately to the Planning Minister to highlight these inconsistencies and the urgent need for correct resolution. This amendment will provide some resolution and is a step in the right direction.

Key matters in Council Submission:

In addition to the above matter, following a review of the Explanation of Intended Effect, we believe there are some aspects of the proposed amendments that could be strengthened to ensure good planning outcomes can be achieved. We have also raised a few matters as questions that require some further consideration by the Department.

The following is a summary of the key issues, with a more detailed response provided in the attached table:

- It is clearly noted that community events were specifically defined and addressed in the provisions of the temporary changes to the SEPP, which also stated that outside of these temporary arrangements, i.e. beyond 18 April 2021, such activities would now require development consent. This was both for the events and for the structures associated with the events. This should be reinstated.
- There is a conflict with Farm Stay Accommodation being permitted as Exempt development on bushfire prone land as it requires a Bushfire Safety Authority under Section 100B of the Rural Fires Act, being a Tourist Accommodation Use. While planning proposals are bound by Ministerial Direction 4.4, where consultation with the RFS and preparation of a strategic bushfire assessment is required, this has not been carried out for

the proposed amendment (given it is an EIE). The Department should review this matter carefully to make sure bushfire risk has been carefully considered.

- In Wollondilly, a majority of the rural lands are not serviced by a reticulated wastewater network and rely on on-site disposal. A permanent on-site amenities facility for guests would increase the load on existing wastewater infrastructure and would almost certainly require an amplification of the system. The development standards for these uses in the EIE should include a requirement for the necessary upgrades to an on-site system are undertaken before the use commences (including any approvals under Section 68 of the Local Government Act, 1993).
- It is not clear in the EIE, which Code in the SEPP (Exempt and Complying Development Codes) 2008 would be used to include the new provisions or whether a new Code would be created, however, any application for Complying Development should be subject to (at a minimum) the following land based exclusions which currently exist in the SEPP:
 - Unsewered land in a drinking water catchment;
 - Any land within a Special Area identified under the Water NSW Act, 2014
- The development standards for Farm Stay Accommodation, Farm Gate Activities and Farm events include setback requirements from existing or proposed farm operations that need to be satisfied in order for the use to be undertaken as exempt or complying development. This is to ensure that the new use does not contribute to land use conflict with existing farms in rural areas.
- There are some types of agricultural uses which are not factored in to these setback requirements (including dairies, stock grazing, stock yards and outdoor cropping). Consideration should be given to additional agricultural uses, where appropriate in finalising the amendments.

Table 1 of the Department of Primary Industries 'Buffer Zones to Reduce Land Use Conflict with Agriculture' can be relied on to assist in this regard.

Unfortunately given the tight timeframes, we have not had the opportunity to report the proposed changes to Council or liaise with our community, and so the submission has been prepared on Council officer comments.

We see these changes as a part of a range of strategies to enhance viability of rural lands and will forward through any further comments received from our rural land holders following Council's formal consideration of this submission at its June Council meeting.

Should you have any further enquiries regarding this submission please contact me on 0409 999 934 or at stephen.gardiner@wollondilly.nsw.gov.au.

Yours faithfully



Stephen Gardiner
Manager Sustainable Growth

ATTACHMENT 1 Feedback on Proposed Amendments in the Explanation of Intended Effect

Part	Proposed Amendment	Council Comment
3.2 Farm Stay Accommodation	3.2.1.1 Proposed Definition	The proposed amendments to the land use definition to enable Farm Stay Accommodation to continue on land which is unable to produce goods because of time of drought or other events outside the landowners' control is supported.
	3.2.1.3 Approval Pathways	<p><u>Exempt Development</u></p> <p>The proposed changes enabling the use of land for farm stay accommodation where visitors reside in tents, caravans, campervans or other similar portable lightweight shelters etc, subject to meeting the development standards listed is noted.</p> <p>While it is acknowledged that campervans and some other types of structures used for temporary accommodation often have their own amenities it is considered that the need to provide toilet facilities and amenities for visitors should be provided proportionate to the intensity of the use on a per person basis.</p> <p>Tents and Caravans are not subject to the requirements of the Building Code of Australia in the same manner in which a change of use or new building would be and requirements to provide amenities facilities for guests should therefore be outlined in the development standards which the use needs to satisfy.</p> <p><u>Complying Development</u></p> <p>The EIE stipulates that in order for the erection, alteration or addition to a building or manufactured home to be undertaken as Complying Development, it must be a <i>maximum height of 6 metres</i>. For clarity, Council recommends that this be amended to state <i>maximum height of 6 metres above ground level</i>.</p> <p><u>Development Application</u></p> <p>In relation to the proposed optional clause that Councils can adopt in their LEPs, clarification should</p>

Part	Proposed Amendment	Council Comment
		be provided on whether councils will need to prepare a strategic bush fire study in accordance with NSW RFS <i>Planning for Bush Fire Protection</i> in order to adopt the optional clause.
3.3 Farm Gate Activities	3.3.1.1 Proposed Definition	The new land use term ‘farm gate activities’ to be included in the Standard Instrument LEP in order to allow uses such as showcasing agricultural produce and retail sales, a small restaurant or café, tastings and workshops is supported.
	3.3.1.2 Permissibility	The proposal to make the new land use term ‘farm gate activities’ a subset of the group term ‘agriculture’ and to make the use permissible wherever agriculture, or any of the subsets of agriculture are permitted is supported.
	3.3.1.3 Approval Pathways	<u>Development Application</u> In relation to the proposed optional clause that Councils can adopt in their LEPs, clarification should be provided on whether councils will need to prepare a strategic bush fire study in accordance with NSW RFS <i>Planning for Bush Fire Protection</i> in order to adopt the optional clause, or whether the Department intends to insert this clause automatically.
3.4 Farm Events	3.4.1.1 Proposed Definition	<p>Council agrees with the proposal in the EIE to introduce a new land use term ‘farm events’ into the Standard Instrument LEP in order to allow events, tours, functions and conferences on land used for agriculture. This is a fundamental proposal, where Council has attempted to lead policy reform, and has been so far denied by the Department through its accelerated planning proposal.</p> <p>The Departments policy and legal team have indicated the gathering of people is not a land use, and therefore have not supported Councils work, contrary to many other land uses already in existence, this is in direct contradiction to a recent SEPP amendment.</p> <p>A temporary SEPP amendment regarding community events on Council land that was in place for the period 21 December 2020 to 18 April 2021 could provide an alternative pathway to delivering our desired economic opportunities for local communities, which would also benefit all councils.</p> <p>Following is a link to the fact sheet on the now repealed temporary SEPP provisions:</p>

Part	Proposed Amendment	Council Comment
		<p>https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/Policy-and-legislation/faqs-outdoor-events-temporary-use-of-council-land-2020-12.pdf?la=en</p> <p>It is clearly noted that community events were specifically defined and addressed in the provisions of the temporary changes to the SEPP, which also stated that outside of these temporary arrangements, ie beyond 18 April 2021, such activities would now require development consent. This was both for the events and for the structures associated with the events:</p> <p><i>Councils can use the provision for outdoor community events <u>from 21 December 2020 until 18 April 2021</u>. After 18 April 2021, the exempt development provision will no longer apply. Any temporary structures associated with the outdoor events must be removed and <u>future uses will require a development application</u>.</i></p>
	3.4.1.2 Permissibility	Council agrees with the proposal to make the new land use term 'Farm Events' a subset of the group term 'agritourism' which will in turn make the use permissible wherever agriculture, or any of the subsets of agriculture are permitted.
3.7 Rebuilding of Farm Infrastructure	3.7.1 Proposed Development Standards	<p>The proposal to allow farm buildings that have been damaged or destroyed by a natural disaster event to be rebuilt as exempt development if built to a contemporary standard and in the same location is supported.</p> <p>The proposed development standards could be strengthened by also accommodating lawfully built structures with development approval. One of the requirements is that the new structure must comply with standards for a farm building contained in the SEPP (other than those relating to height and footprint). These standards do not appear to consider any farm building which may already have a development approval. In this regard, Council suggests including in this standard that there is no requirement for the structure to comply with the requirements for exempt development in the SEPP relating to farm buildings where the structure is being reconstructed in accordance with a development consent.</p>
3.9 Farm Dams	3.9.1 Proposed Amendments	Council agrees with the proposal to clarify the requirements in the Standard Instrument LEP, SEPP (Primary Production and Rural Development) and the Environmental Planning and Assessment

Part	Proposed Amendment	Council Comment
		Regulations, 2000 to provide a consistent approval process and terminology in each of the planning instruments as they relate to farm dams.
3.11 Rural Dwelling Setbacks from Intensive Livestock Agriculture		<p>Council is supportive of the proposed amendments to increase the setback requirements for rural dwellings from an existing agricultural pursuit in order to be undertaken as Complying Development under the Codes SEPP. This would ensure that the construction of single dwellings align more appropriately with the objectives of the zone.</p> <p>Consideration should be given to applying the buffer distances prescribed in Table 1 of the Department of Primary Industries 'Buffer Zones to Reduce Land Use Conflict with Agriculture' in determining the setback requirements for single dwellings for the purposes of Complying Development.</p>
3.12 Recreational Beekeeping	Applicable zones	Consideration should be given to extending the application of the proposed exempt development provision to business zones.



25 May 2021

Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Anita Skinner

Subject: Lake Macquarie City Council staff submission on Explanation of Intended Effect (EIE) - Proposed amendments to agritourism and small-scale agriculture development

Lake Macquarie City Council thank you for the opportunity to comment on the Explanation of Intended Effects (EIE) for the proposed amendments to agritourism and small-scale agriculture development. This submission provides comment from a staff perspective (reporting to Council for endorsement was not possible within the timeframe provided). Council staff support the intent of the amendments to provide better certainty, flexibility and consistency in approval pathways enabling diversification of agricultural economies.

Application of the amendments

The Lake Macquarie Local Strategic Planning Statement (LSPS) acknowledges rural production land as an important finite resource which needs to be protected and managed. The LSPS acknowledges the decline of agricultural production in greater Sydney (including the Lake Macquarie local government area) while pressure is increasing for more localised food production. The LSPS seeks to balance the functions of rural production areas and facilitate new opportunities including economic activities such as tourism. The LSPS includes Planning priority 3 - a principle to increase flexibility for new tourism products such as buildings, hotels, spaces and activities in rural areas.

According to the EIE, the amendments only apply where the existing main use of the land is production of agricultural/primary production goods for commercial purposes. While there may be some benefit to expanding the applicability, Council supports the primary objective to supplement the activities and income of commercial producers. Applying amendments to commercial producers would improve their income, viability thereby enabling agritourism as a supplementary activity rather than an alternative to primary production uses.

Rural production land is predominantly concentrated in south west of Lake Macquarie around the suburbs of Cooranbong, Martinsville, Freemans Waterhole, Mandalong and Wyee.

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The proposed exempt and complying approval pathways for farm stay accommodation do not apply to land identified as bush fire prone. This includes the use of land as camping for farm stay accommodation as exempt development. A significant proportion of rural zoned land in Lake Macquarie LGA is located on bushfire prone land. While Council does not object to this development standard, it is expected this will significantly limit the application of the exempt and approval pathways in Lake Macquarie.

To improve compliance with the proposed amendments Council requests that pathways for dispute management and mediation are made clear so that affected parties and operators know how to address conflicting land uses. Clear guidelines and criteria will assist compliance officers enforcing the prescribed development standards and ensure that operators are aware of their responsibilities. Council suggests providing a list of prohibited activities and a code of conduct to improve clarity regarding unwanted activities, implementation and dispute resolution.

Optional Local Environmental Plan (LEP) clause

Council is interested in adopting the optional LEP clause for farm stay accommodation and farm gate activities. Further information about that clause is necessary to provide meaningful comment. For example, how it would function and how widely it could be applied in the Lake Macquarie LGA. Please refer to the contacts provided in the associated email for ongoing liaison, alternatively any correspondence directed to council@lakemac.nsw.gov.au will be referred to the relevant contacts.

Farm stay accommodation

Proposed definition

The intent of the proposed amendment to the definition of farm stay accommodation is supported.

Exempt development – Use of land for farm stay accommodation

Use of land for farm stay accommodation as exempt development includes an operational requirement to:

“allow up to 20 persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters at any one time on the landholding for up to 14 days”.

More information is needed to clarify how this operational requirement is intended to operate. It is unclear if this requirement is intended to limit the duration of stay for individuals/groups to prevent the site being used for longer term accommodation or if it is intended to limit the term the site is used for farm stay accommodation. For example, could a second group of 20 people arrive immediately following the departure of a previous group of 20 people? Council has some concerns about how exempt farm stay accommodation will be monitored and enforced in a low impact way in accordance with the development standards. Consideration should be given to management of noise and anti-social behaviour, as well as delineating clear responsibilities for provision of amenities. Visitors or operators need be aware if they are required to bring or provide waste facilities. These types of guidelines and expectations could be outlined in a code of conduct.

The waste management standards are acknowledged and supported, however Council has some concerns regarding the potential for cumulative and waste management impacts.

Despite some concerns about its implementation, Council is generally supportive of the proposal to enable camping as exempt development.

Complying development – Change of use of an existing building or manufactured home, and erection, alteration or addition to a building or manufactured home

Lake Macquarie LEP 2014 does not permit secondary dwellings in rural zones and the change of use to farm stay accommodation could inadvertently facilitate opportunities for farm stay accommodation to operate as secondary dwellings. Similar approval conditions for secondary dwellings should apply.

A requirement for new buildings or manufactured home for farm stay accommodation to be within 300 metres of the existing dwelling is supported by Council as it would enable clustering of sensitive uses and facilitate efficient augmentation of existing services and infrastructure.

Farm gate activities

Proposed definition

Providing farm gate activities and farm events as two separate definitions under the agritourism definition is supported as it is expected that farm events will generate separate impacts to farm gate activities.

The intent of the definition for farm gate activities is supported. Additional information is needed to clarify the criteria of activities that qualify, including what extent of the activity must be directly related to agricultural produce grown on the farm or predominantly grown in the surrounding area.

Rebuilding of farm infrastructure

Application of this control requires the farm building development to be rebuilt within the same building footprint as the previous structure. If the former structure was destroyed as a result of a natural disaster event it is likely that it was sited in a hazardous location such as bushfire prone land or flood prone land. Application of this control could encourage re-development of structures in unsuitable and hazardous locations. Consideration should be given to the cause of the destruction of the structure and avoiding future reoccurrences.

Notwithstanding, Council recognises the benefits of efficient recovery as well as constraints in locating farming infrastructure and Council is generally supportive of the amendment.

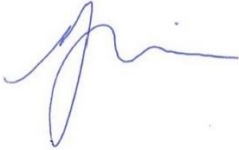
Recreational Beekeeping

The orientation of bee hives and bee flight paths is pertinent to the impacts of the hive on adjoining properties. Bee hives should be orientated away from adjoining sensitive uses such as childcare centres and community facilities. Flight paths can be controlled through the use of fencing and landscaping.

There may be scope to include business zones or mixed-use zones which could accommodate roof top beehives. Similarly, consideration should be given to permitting the use of bee hives located on roof tops in residential zones.

For further information, please do not hesitate to contact Abigail Hawtin on 4921 0098 or via email at ahawtin@lakemac.nsw.gov.au.

Yours sincerely,



Abigail Hawtin

Strategic Landuse Planner



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Our reference: InfoStore
Contact: Natalie Stanowski
Telephone: 4732 7403

25 May 2021

Department of Planning, Industry & Environment

[Sent by email: anita.skinner@planning.nsw.gov.au]

Dear Sir/Madam

Penrith City Council Final Submission on the Planning Amendments for Agritourism and small-scale agriculture.

Thank you for the opportunity to provide feedback in response to the Explanation of Intended Effect (EIE) for the proposed amendments for agritourism and small-scale agriculture developments. This matter was endorsed at Council's Ordinary meeting of 24 May 2021. Please find attached our final submission to the EIE.

The Greater Sydney Region Plan and Western City District Plan includes objectives and strategies to protect scenic and cultural landscapes and to protect and enhance the environmental, social and economic values of the 'Metropolitan Rural Area' (MRA). In alignment with the Greater Sydney Commissions strategic (GSC) intent, a key priority is to protect Penrith's rural landscapes and activities. Extensive open space areas, the backdrop of the Blue Mountains escarpment and access to fresh local food and farm produce are key values held by our community. The agricultural activities and use of rural lands make a valuable contribution to the Western City District's economy through employment, tourism, and agricultural production.

Whilst it is acknowledged that the EIE does to some level address some of the representations made, it is our view that it does not go far enough to ensure suitable planning outcomes for our community. Council considers that there are some inconsistencies between the proposed agritourism uses and the objectives of the MRA.



The proposed agritourism amendments are not contextually appropriate for Western Sydney

- The Explanation Intended Effect (EIE) explicitly states that the amendments are proposed to better support farming businesses, rural/regional areas and support the recovery and resilience of regional communities.
- Outside of rural villages, most private land in the Penrith MRA is peri-urban, located within 30 km of Penrith City Centre. Agricultural activity is minimal on this land, despite its rural characteristics (compared to NSW regional and rural areas). The MRA's private land in Penrith usually consists of highly fragmented lots, with many under 5 hectares. There is potential for negative cumulative impacts on smaller landholdings, particularly if the proposed agritourism amendments are encouraged concurrently.
- These areas serve as locations for residents to enjoy a rural setting and lifestyle amongst bushland, farms/hobby farms and other rural industries while being in close proximity to urban amenities. These areas offer both the cosmopolitan and cultural lifestyles of a city and the casual character of a rural community.
- The attributes of private land, e.g. biodiversity, cultural landscapes, scenic values, and heritage, have social and environmental values to the communities that are not fully reflected in economic values proposed for individual properties by the amendments.
- Specification should be provided on the definition of 'farm'. Council raises concerns of possible compliance issues surrounding the application of the proposed exempt and complying controls.

Farm Stay Accommodation

- According to the EIE, a core component of agritourism is farm stay in areas that are inaccessible by day trips from major cities. Council believes the proposed amendments are not contextually relevant for rural lands in Greater Sydney as rural land is primarily located in proximity to city centres. Council believes the amendments are more applicable and will result in lower impacts to land outside of metropolitan Sydney.
- Considering the smaller nature of lot sizes and the limited number of larger homesteads/allotments, it is anticipated that increased noise, pollution, and traffic movements generated by amplified agritourism activity are likely to negatively impact visual and acoustic amenity and cause land use disputes between neighbouring properties.
- A floor size of 75m² may be excessive on smaller sized rural lots, particularly if a rural dwelling and secondary dwelling are existing on-site, resulting in visually intrusive and dominant development in a rural area. Secondary dwelling provisions for Penrith have identified 60m² as being an appropriate maximum floor size.

- The proposed farm stay activities and controls under exempt and complying are not considered appropriate for smaller peri-urban land holdings in Penrith's rural areas as they do not consider the cumulative impact on rural lands and landscape sensitivity.
- If permissible under exempt and complying development, it will be difficult for Council to ensure that landholders are complying with the controls. This is primarily a concern with accommodation such as camping, caravans etc. Collectively this raises concerns for compliance, waste and servicing issues. This is a particular concern for the landholdings that may be hobby farms but choose to proceed with farm stays under exempt development on land where agriculture is a permissible use.
- The acceptance of temporary or moveable accommodation such as caravans, tents or other such temporary structures is not considered acceptable in a peri urban environment such as Penrith LGA, where cumulative impacts of essentially caravan park uses should be assessed more appropriately through a development application process.

Farm gate activities

- Council supports the introduction of the Agritourism land use term, and its location as a sub term of Agriculture, however we do not support it being automatically permissible where Agriculture currently applies. We request Agritourism be identified as prohibited until Council has time to consider the final amendments and potentially consider their permissibility in a future Planning Proposal.
- Although Council encourages the increased economic opportunities for primary producers, it is important to preserve and protect the elements that contribute to Penrith's rural character. A 200m² building for farm gate activities is not considered to be in keeping with the rural character. Large structures of this capacity such as a restaurant or a café may be considered the land's dominant use, which would be an undesirable outcome in a rural setting. Controls need to be strengthened to ensure that farm gate activities are located to have a minimum adverse impact on the environment and the potential use of the land for agriculture.
- In the context of Penrith LGA, 50 people attending a farm on a single day is considered excessive. Smaller lots may not provide an adequate distance to buffer the noise of large groups. DPIE should specify controls to provide appropriate separation between rural residential uses and noise generating sources such as farm gate activities. This will ensure amenity for neighbouring residents.
- Council suggests that DPIE reconsider the controls for small lots or make them applicable only to large landholdings with controls in respect to scenic landscapes, so new buildings do not visually dominate and may be adequately visually screened. This ensures that all development



considers the locality's inherent rural character and is responsive to that character and the local landscape qualities.

- Whilst it is appreciated that the DPIE has attempted to identify development standards for LEP controls, given that these controls will be located in a LEP, Council should have the ability to set the most appropriate development standards that are keeping with the character of the LGA without limitation.
- It is suggested a control be included which prevents the installation of a roadside stall on a classified road.

Farm events

- The land sizes and uses in Penrith's rural areas are typically not intended for mass customer patronage.
- Aside from a few vineyards in the Penrith LGA, there are not many instances where it would be suitable to host an ancillary event to the main farming operation, especially without requiring a Development Application.
- Similarly, Council largely does not support the addition of destination weddings as a category for farm events considering the cumulative negative impacts of such large events on smaller peri-urban lots.
- Appropriate controls would need to be applied, considering the landholding size and ensuring the use remains ancillary and subservient to an operating farm. Considering the rural area's sensitive nature, Council believes that if destination weddings are permissible, they should only be permitted via a development application. This will ensure the noise, waste, traffic, hours of operation, number of guests per event and number of events per year and other factors can be appropriately considered.

Impacts on Biodiversity

- The Penrith LGA sits within the Cumberland Plain subregion. The extent of urban development within the subregion has already resulted in a high level of clearing and fragmentation of native vegetation. This significantly increases the conservation value of remaining vegetation and highlights the need to prioritise conservation and reparation initiatives that can support healthier and more resilient ecological outcomes.
- Council is dedicated to environmental protection and enhancement, including bushland preservation and biodiversity conservation, particularly in the rural areas. It is considered that the proposed agritourism uses will have a negative impact on the environment when considered in their entirety and are not supported.



- There appears to be inadequate safeguards in the statement of intended effects to ensure that the unique biodiversity values of the MRA will be protected and managed. If the proposed amendments come into effect, these environmental values may be negatively impacted by private landholders' actions, such as clearing vegetation to facilitate additional structures for agritourism.

High value landscapes

- The MRA has significant landscape values for residents and tourists alike and can be impacted by the intensification of land uses. With a forecast growing population in Penrith and urban areas of Greater Sydney, visitations to the MRA is likely to expand, requiring stronger planning controls and management to ensure that the landscape attributes that are valued by the community are not degraded.
- Council's LEP provides mapped controls to protect scenic character and landscape values and vistas to heritage items, with this mapping relating largely to characteristically rural areas. By allowing agritourism development in these areas via complying or exempt development, newer agritourism activities are not required to comply with the strategic intentions of these values and are inconsistent with Councils long standing controls.

Waste Management

- The proposed exempt and complying controls are not sufficient for the management of waste, services and facilities to accommodate such growth in rural areas.
- Allowing for a significant increase in land use under exempt and complying development creates considerable risks of adverse impacts on human health and the environment from inappropriate disposal of wastewater generated by the additional activities.

Safety and Amenity

- The proposed controls do not make any reference to any health requirements for accommodation or food businesses.
- Controls relating to acoustic privacy, in particular amplified music, do not sufficiently consider peri urban rural context and the impact of noise amplification in rural contexts. Some of the proposed uses have the potential to disturb the quiet rural setting sought by residents in Penriths peri urban areas.

Biosecurity for poultry farms and pig farms

- Despite the setback provisions, Council believes that if poultry farms with roughly 10,000 birds or nearly 200 pigs are permitted without consent, significant amenity issues may arise. Established/existing



dwellings, for example, 30m from the property boundary, may be negatively affected by odour and noise.

- The amendment is not considered contextually appropriate unless it applies to large landholdings to ensure properties used for these purposes are large enough to support the required facilities and allow sufficient setbacks from boundaries, adjacent land uses and public areas to minimise impacts, particularly noise.

Recreational Beekeeping

- The proposed number of hives is considered excessive when compared to the size of the lots in residential areas. Halving these amounts will minimise unnecessary impacts in residential and environmental zones.

We appreciate the opportunity to provide feedback in relation to this matter. If you have any further questions on Council's submission, please contact Natalie Stanowski, Principal Planner on 4732 7403 or natalie.stanowski@penrith.city

Yours sincerely

Abdul Cheema
City Planning Coordinator

20 May 2021

Department Ref: IRD20/40921

Executive Director
Local Government and Economic Policy
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

<http://www.planningportal.nsw.gov.au/exhibition>

Dear Mr Walton

Planning Amendments to Support Farm Businesses and Regional Economies

The Department recently exhibited from 9 March 2021 until 19 April 2021 proposed planning changes for small business activities and low-impact agricultural development on NSW farms.

Unfortunately, Port Macquarie-Hastings Council did not meet the 19 April timeframe for submissions on the proposed amendments due to our commitments towards disaster relief and recovery works following the recent east coast floods that devastated much of our area.

We would very much appreciate your consideration of this letter and Council's *Response to the Consultation Questions* as a late submission in support of the government's suite of proposed amendments aimed at assisting regional communities to recover from recent events and grow emerging agribusiness opportunities. Council staff welcome any opportunity to work with the Department to implement the changes to:

- the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument LEP Order)*,
- the *State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP)*, and
- the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.

Council also seeks to **opt in to the Stage 2** amendments, by working with the government to implement the changes to *Port Macquarie-Hastings Local Environmental Plan 2011 (PMH LEP 2011)* through an amending SEPP.

Council's nominated representative for further contact and or liaison with the Department about implementation of the amendments is Leanne Fuller, Land Use Planner.

Yours sincerely



Dan Croft
Group Manager

Development Assessment

Consultation Questions

Farm stay accommodation	Comment
1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?	No objection
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?	Yes, and suggest inclusion of a requirement for consolidation of parcels if the land is an 'existing holding' - to minimise opportunities for conversion over time into permanent dwellings.
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?	Agreed, the clustering of buildings is supported.
4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.	Nil comment

Farm gate activities	Comment
5. How far do you think a roadside stall should be setback from the road?	Behind property boundary, no minimum setback to boundary.
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?	Minimum size/area, and measures to ensure appropriate waste disposal, access and parking arrangements.

Farm events	Comment
7. The proposed maximum number of people and events per day for exempt and complying development are: a. 52 event days per year and up to 30 guests per event, or b. 10 event days per year and up to 50 guests per event Are these appropriate?	No issue.
8. What events, if any, do you think should be excluded from the definition of farm events?	Nil comment - the above criteria is considered to be sufficient

9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection. a. RU1 b. RU2 c. RU4 zones d. Other zones (please specify)	Yes. No issue with facilitating destination weddings in rural RU1 Primary Production to Primary Production Small Lots).
10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?	Supportive of a mandatory model clause.
11. Is there any rural land or areas in which agritourism activities should not be permitted?	Forestry, villages and R5 Large Lot Residential.

Small scale processing plants

12. Should any other agricultural produce industries be complying development? What standards should apply?	Unlikely to be.
13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?	Yes.
14. Should any additional standards be included? Agritourism and small-scale agriculture development NSW Department of Planning, Industry and Environment IRF19 7296 35	Nil comment
15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved: a. as complying development? b. through the standard DA process?	Open to a further review.

Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?	Yes
17. Should any additional standards be included?	Nil comment

Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?	Nil comment
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19. What type of permanent infrastructure should not be permitted for stock containment areas?	Nil comment
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Farm dams

20. How could we simplify planning provisions for farm dams?	By specifying numerical standards/criteria for exempt farm dams
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Biosecurity for poultry and pig farms

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?	Nil comment
22. Should any additional standards be included?	Nil comment

Rural dwelling setbacks from intensive agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?	Yes, suggest minimum 500m
24. From which point should the setbacks be measured? a. From the proposed or existing intensive agricultural use b. From the property boundary shared with land used for intensive agriculture c. A combination of the above	Combination

Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?	Agreed.
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