



Shellharbour City Council

Business Paper

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Department of Planning and Environment
Information Sheet and
Frequently Asked Questions

Agritourism and small-scale agriculture development

This information sheet will help landowners understand more about the new agritourism policy. Detailed guidelines will be released ahead of the policy changes commencing on 1 December 2022.

We're helping farmers to future proof their land

The NSW Government is committed to supporting the resilience and recovery of regional and rural communities from natural disasters and unexpected events. We're doing this by encouraging the growth of emerging agritourism activities on farms that are supplementary to, or based on, agriculture.

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

What is the new agritourism policy?

The NSW Government is making changes to planning rules to make it easier for farmers to use their land for agritourism businesses for new income streams.

The agritourism policy introduces new land use definitions for on-farm activities that can be undertaken as exempt and complying development if they meet specified development standards. This means landowners will have the opportunity to set up agritourism businesses without the complexity and cost of lodging a development application.

Landowners will be able to run activities on their farms more easily, including farm experiences and on farm accommodation, cellar doors, cafes, retreats, roadside stalls, fruit picking and hosting small events or weddings.

Simplifying the planning rules will help landowners add value to their existing agricultural businesses and encourage the next generation to farm the land.

New and amended terms for agritourism

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

We are introducing clear terms for agritourism activities in NSW:

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

You can read the definitions in the [Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2022](#)

Who will these reforms help?

These reforms will help landowners where the main use of their land is the production of agricultural goods for commercial purposes¹.

The use of the land for agritourism must be ancillary (secondary) to the agricultural use of the land.

Existing agritourism operations that are already lawfully operating are not impacted by these policy changes.

Businesses are lawfully operating if:

- the business is operating under a valid development consent or approval and complies with any conditions of that consent or approval
- the use is exempt development and complies with the requirements and development standards for that development
- the use is an ancillary (secondary) development to another lawful use of the land and that other use has development consent or approval or does not require approval.

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

New agritourism approval pathways

There are different approval pathways, depending on the type of agritourism development you want to do:

- **Exempt development** is minor and low-impact development that can be carried out without the need for planning or building approval if it meets specified development standards.
- **Complying development** is a fast-tracked approval process for straight-forward development where planning and building standards can be signed-off by the council or a registered certifier. This process offers many benefits to applicants including certainty, as well as time and cost savings.

For more information see our [planning approval pathways](#).

If your development cannot meet the general requirements or development standards for exempt and complying development, you will need to lodge a development application with your council. Council is the best source for advice on whether you can lodge a development application and what information you need to provide. They will assess your development application having regard to requirements under the relevant policies and the council's local environmental plan (LEP) and development control plan.

Land requirements

In addition to development standards, agritourism and farm stay accommodation can only be carried out as exempt or complying development in these zones in the councils LEP:

¹ Where they have a primary production business as defined under the *Income Tax Assessment Act 1997 (Cth)* or the land has been categorised as 'farmland' by the council under the *Local Government Act 1993*.

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

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

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

Exempt and complying development cannot be undertaken on certain sensitive land. Please refer to the [list of excluded land for exempt development](#) and the [list for complying development](#). The agritourism changes have introduced some other excluded land, such as certain areas in the Hunter. For full details see the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) Amendment \(Agritourism\) 2022](#).

There are also requirements under other legislation you may need to meet that are not related to the planning rules. For example, to serve food at a farm event you may have obligations under the *Food Act 2003* and to place moveable dwellings on your farm you may need council approval under the *Local Government Act 1993*.

1. Farm gate premises

Farm gate premises allow a building or place on a farm, with commercial agriculture, to sell produce. The produce sold is to be mostly grown on the farm and supplemented with produce from other local farms in the area.

Examples of farm gate premises include direct shop front outlets, produce tastings, cooking classes, restaurants sourcing local produce, self-picking experiences and farm gate sales.

Retail and food activities can:

- showcase the farm, produce and the area
- provide direct contact between farmer and tourist
- enable supplementary income and increased resilience for farmers
- add to the regional rural economy
- provide additional employment opportunities in rural and regional communities.

These activities have an important role in creating a more direct connection from farm to plate.

Cellar door premises

Cellar door premises are now also a type of farm gate premises. You do not need to comply with the definition for farm gate premises but must comply with the definition for cellar door premises to seek approval for this land use.

Cellar door premises is defined in the planning system as:

‘a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.’

The types of development you can do as farm gate premises under exempt and complying development include:

- changing the use of an existing building to farm gate premises as exempt development
- erecting a marquee to sell produce or hold workshops as exempt development
- constructing a new building or alter or add to an existing building as complying development.

See some of the development standards you must meet to setup farm gate premises below.

2. Farm experience premises

Farm experience premises allow a farmer to provide small scale and low impact tourist and recreational activities and events on their farm. This allows visitors to experience farms and farm life through tours, school visits, retreats, weddings, conferences, horse riding and farm field days.

Rural events, especially weddings, have a far-reaching supply chain beyond just the hiring of a venue, that can add to the rural economy. This includes accommodation services, event services (such as photographers, stylists and transport), food and drink services, supporting services (gift shops, child minding) and facilities services (party hire).

The types of development you can do as farm experience premises under exempt and complying development include:

- changing the use of an existing building to farm experience premises as exempt development
- conducting tours of your farm as exempt development
- erecting a marquee to hold a wedding or other event as exempt development
- constructing a new building or alter or add to an existing building as complying development.

See some of the development standards you must meet to setup farm experience premises below.

3. Farm stay accommodation

On-farm accommodation provides opportunities for visitors to understand and engage with the land in greater depth than can be offered by day visits. Often the accommodation is coupled with activities within the property.

Accommodation as part of agritourism often takes the form of either a ‘farm stay’ building or use of the land for small camping areas. As farming practices have changed, many properties have spare capacity in their assets, such as older workers cottages, that can be converted to rural accommodation to help farmers diversify income streams.

The types of development you can do as farm stay accommodation under exempt and complying development include:

- changing the use of residential accommodation or a manufactured home to farm stay accommodation as exempt development
- erecting tents and have caravans or campervans on your land as exempt development
- constructing or installing a deck or other platform for glamping tents or cooking shelters as exempt development
- constructing a new building or modifying an existing building as complying development.

See some of the development standards you must meet to setup farm stay accommodation below.

4. Roadside stalls

Roadside stalls are essentially a very minor and location specific form of farm retail. Roadside stalls are often unattended, immediately adjacent to the road to attract passing traffic, and small in size. They provide a very simple way to sell goods to the passing public.

You can erect or install a roadside stall as exempt development.

See some of the development standards you must meet to setup roadside stalls below.

5. Development standards

A range of development standards must be met to carry out farm gate premises, farm experience premises, farm stay accommodation and roadside stalls as exempt or complying development.

Some of the key development standards you must follow include:

Activity	Exempt development	Complying development
Farm gate premises	<p>Permitted in RU1, RU2, RU4 zones and in other zones where agriculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture are permitted under the LEP</p> <p>100 visitors at any one time</p> <p>Hours of operation - Sunday to Friday and public holidays 8am-5pm, Saturday 7am-5pm</p> <p>Use up to 200m² gross floor area of an existing building</p> <p>Off street parking</p>	<p>Permitted in RU1, RU2, RU4 zones where agritourism is permitted under the LEP</p> <p>Maximum 200m² gross floor area for each building to maximum 500m² for all farm gate premises and farm experience premises buildings on the landholding</p> <p>The standards for exempt development for maximum guest numbers, hours of operation and parking also apply</p>
Farm experience premises	<p>Permitted in RU1, RU2, RU4 zones and in other zones where agriculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture are permitted</p> <p>50 visitors at any one time (excluding school visits, farm tours and horse riding tours)</p> <p>Total 100 guests at any one time for all farm gate premises and farm experience premises (excluding tours and school visits)</p> <p>Maximum 52 days per year (excluding school visits, farm tours and horse riding tours)</p> <p>Hours of operation - Sunday to Thursday and public holidays 8am-6pm, Friday and Saturday 8am-midnight</p> <p>Use up to 200m² gross floor area of an existing building</p> <p>Off street parking</p>	<p>Permitted in RU1, RU2, RU4 where agritourism is permitted</p> <p>Maximum 200m² gross floor area for each building to maximum 500m² for all farm gate premises and farm experience premises buildings on the landholding</p> <p>The standards for exempt development for maximum guest numbers, maximum days, hours of operation and parking also apply</p>

Activity	Exempt development	Complying development
Farm stay accommodation	<p>Permitted in RU1, RU2, RU4 zones and in other zones where agriculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture are permitted</p> <p>Maximum 20 guests in tents, caravans and campervans.</p> <p>Maximum 6 caravans and campervans</p> <p>Maximum 21 consecutive days of stay</p> <p>Minimum landholding of 15ha for camping/caravans</p> <p>Use up to 60m² gross floor area of an existing residential accommodation or manufactured home</p> <p>Off street parking</p>	<p>Permitted in RU1, RU2, RU4 zones where farm stay accommodation is permitted under the LEP</p> <p>Maximum 6 buildings on the landholding</p> <p>Maximum 21 consecutive days of stay</p> <p>Minimum landholding size of 15ha (new buildings)</p> <p>Maximum 60m² gross floor area for a new building or use up to 60m² of an existing building</p> <p>Use up to 25m² of an existing building to provide communal amenities or facilities</p> <p>Off street parking</p>
Roadside stalls	<p>Permitted in RU1, RU2, RU4 zones</p> <p>One stall per farm, located on the property</p> <p>Cannot be located on land adjacent to a freeway, tollway or highway</p> <p>Max 9m² footprint</p> <p>Parking on the property or on the road verge subject to certain requirements</p>	N/A

For the full requirements for exempt and complying development, please refer to the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) Amendment \(Agritourism\) 2022](#).

If you cannot meet the development standards for exempt and complying development, contact your council about lodging a development application.

Requirements for approvals, licences, permits and authorities under other legislation may also apply.

6. Other changes to agriculture and development

Reconstruction of farm buildings

We want to help farmers rebuild farm buildings after natural disasters such as the most recent floods affecting northern NSW. Allowing farm infrastructure such as farm buildings and grain bunkers to be rebuilt without the need for approval will make it easier for farmers to recover.

To do this we are enabling the reconstruction of farm buildings as exempt development following a natural disaster through amendments to the State Environmental Planning Policy (Exempt and Complying Development)

2008 (Codes SEPP). To meet these criteria a building must be constructed in the same location, to the same height and meet all relevant contemporary building standards. Farm buildings will also need to meet existing development standards in the Codes SEPP for farm buildings, except in relation to location, height or setbacks (other than setbacks to natural waterbodies).

Farmers will need to comply with any existing conditions of development consent for these buildings.

Temporary stock containment

We are making changes to where farmers can temporarily contain livestock during a natural disaster or similar emergency without approval, under the State Environmental Planning Policy (Primary Production) 2021 (clause 2.16). We are doing this to reduce future negative impacts on nearby areas and run off into waterways and neighbouring resident properties.

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

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

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

Small scale pig and poultry farms

We are increasing the distance between poultry and pig farms that can be setup without a planning approval to protect the industry from biosecurity threats.

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

These changes have come about due to concerns from stakeholders that the distance required between farms is too small and does not meet best-practice standards for biosecurity. Farms that are proposed to be located closer than these distances must seek approval by lodging a development application with their council.

Further information

Amendments have been made to a number of state planning policies.

If you have questions about the changes, please email agritourism@dpie.nsw.gov.au or [contact us via our online form](#).

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Agritourism and small-scale agriculture development

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

Overview

What is agritourism?

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

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

Why are we changing planning rules to support agritourism?

We are changing planning rules to support the resilience and recovery of regional and rural communities from natural disasters and unexpected events. The changes make it easier for farmers to use their land for agritourism to complement their existing businesses.

We heard that farmers wanting to set up an agritourism business were facing hurdles, including the complexity and cost of obtaining planning approvals.

The new agritourism policy gives landowners the option to undertake various agritourism activities without having to get a development application from their local council.

Simplifying the planning rules will help landowners add value to their existing agricultural businesses and encourage the next generation to farm the land.

Before this policy, there were no clear land uses and no exempt and complying development pathways to easily allow agritourism activities such as 'pick your own fruit' on rural zoned land.

What is the new agritourism policy?

The NSW Government is making changes to planning rules to make it easier for farmers to use their land for agritourism businesses for new income streams.

The agritourism policy introduces new land uses for on-farm activities under exempt and complying development if they meet development standards. This means landowners will have the opportunity to setup agritourism businesses without the complexity and cost of obtaining planning approvals.

Landowners will be able to run activities on their farms more easily, including farm experiences, on farm accommodation, cellar doors, cafes, retreats, roadside stalls, fruit picking and hosting small events or weddings.

Amendments have been made to a number of state planning policies to facilitate these changes.

When will the agritourism policy start?

The changes will commence on 1 December 2022.

We're now working with councils to have necessary updates to their Local Environmental Plans made.

Planning changes for agritourism

What are the changes?

The changes to planning policies introduces new land uses for on-farm activities under exempt and complying development if they meet development standards, or under a development application. They also make changes to facilitate small-scale agriculture development.

We are introducing clear definitions for agritourism in NSW:

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

For the full definition descriptions, read the [Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2022](#).

What are farm gate premises?

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

To understand more about what you can setup or run as farm gate premises, please see the [agritourism information sheet](#).

What are farm experience premises?

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

To understand more about what you can setup or run as farm experience premises, please see the [agritourism information sheet](#).

What is farm-stay accommodation?

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

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

To understand more about what you can setup or run as farm stay accommodation, please see the [agritourism information sheet](#).

How do these changes help me?

Introducing these new definitions for agritourism land uses means that agritourism activities can be setup under simplified planning pathways – as exempt and complying development.

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

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

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

If an activity doesn't meet the standards for exempt or complying development, a development application can be lodged with council.

Are there other matters I need to consider in my council area?

In addition to the development standards, agritourism and farm stay accommodation can only be carried out as exempt or complying development in these zones in the council's Local Environmental Plan (LEPs):

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

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

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

For both complying and exempt development, certain sensitive land is excluded. Building work must also be constructed in accordance with the Building Code of Australia.

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

If your development cannot meet the general requirements or development standards for exempt and complying development, you will need to lodge a development application with your council. Council is the best source for advice on whether you can lodge a development application and what information you need to provide.

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

I am already operating an agritourism business. How will these changes affect me?

Businesses that are operating lawfully before the changes commence can continue to operate and will not need to meet the new requirements.

Existing agritourism operations are considered to be lawfully operating if:

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

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

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

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

Pick-your-own produce activities may be undertaken as a farm gate premises if they involve providing agricultural products, or services or activities, on a commercial basis, related to agricultural products from the farm or other farms in the region. Pick-your-own activities can be undertaken as exempt development with up to 100 visitors to a farm at any one time. This will allow a large number of visitors across a day. For larger numbers of visitors, a development application must be submitted.

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

No. The new land use terms only apply where the main use of the land is the production of agricultural goods for commercial purposes.

A key objective of the agritourism proposals is to ensure primary production remains the principal use of farmland. The changes have been developed to achieve that objective. This includes by allowing agritourism only on a farm that is a primary production business under the *Income Tax Assessment Act 1997 (Cth)* or has been categorised as 'farmland' by the council under the *Local Government Act 1993*.

Could I set up multiple agritourism activities on my property?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We are increasing the distance between poultry and pig farms to respond to concerns from stakeholders that the distance required between farms is too small and does not meet best-practice standards for biosecurity. Farms that are proposed to be located closer than these distances must seek approval by lodging a development application with their council.

Did the department ask for feedback on these provisions?

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

During the exhibition period, we received 239 submissions, 234 survey responses and 151 comments on the ideas wall. You can [find out more about the submissions here](#).

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

Further information

If you have questions about the changes, read our [agritourism information sheet](#), or contact the department:

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

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