

# Agritourism & Farm Stay Accommodation Fact Sheet

## What is Agritourism?

**Agritourism** is defined within the Standard Instrument (Local Environmental Plans) Order 2006 (the Standard Instrument), the document on which Wingecarribee Local Environmental Plan (WLEP) 2010 is based. WLEP 2010 may be viewed on the NSW Legislation website here -

<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0245>

***agritourism*** means the following—

- (a) farm gate premises,
- (b) farm experience premises.

### **Note—**

Agritourism is a type of ***agriculture***—see the definition of that term in this Dictionary.

***farm gate premises—***

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

***farm experience premises*** means a building or place—

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



**What is Farm Stay?**

**Farm stay accommodation (Farm Stay)** is defined within the *Standard Instrument (Local Environmental Plans) Order 2006* (the Standard Instrument), the document on which Wingecarribee Local Environmental Plan (WLEP) 2010 is based. WLEP 2010 may be viewed on the NSW Legislation website here - <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0245>

***Farm stay accommodation*** means a building or place

- (a) on a commercial farm, and
  - (b) ancillary to the farm, and
  - (c) used to provide temporary accommodation to paying guests of the farm, including buildings or moveable dwellings
- It is noted that *Farm Stay accommodation* is a form of *Tourist and Visitor Accommodation* and is not a form of *Agritourism*.

## What is a Commercial Farm?

**Moveable dwelling** means:

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
- (b) a manufactured home, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the [Local Government Act 1993](#)) for the purposes of this definition.

**Manufactured home** means: ([Local Government Act 1993](#))

a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—

- (a) that comprises one or more major sections, and
- (b) that is not a motor vehicle, trailer or other registrable vehicle within the meaning of the [Road Transport Act 2013](#), and includes any associated structures that form part of the dwelling.

The following definition of *commercial farm* is contained within the Standard Instrument dictionary, and therefore within the WLEP 2010 dictionary:

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

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

The Local Government Act 1993 may be viewed here -

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030>

The Income Tax Assessment Act 1997 may be viewed here

- <https://www.legislation.gov.au/>

In the absence of a property being categorised as farmland, it may be necessary for a property owner undertaking *agritourism* to be able to demonstrate to Council's satisfaction that the property operates as a *commercial farm*. Australian Tax Office *Taxation Ruling TR 97/11 (Am I carrying on a business for primary production?)* may provide relevance advice and may be viewed here -

<https://www.ato.gov.au/law/view/document?DocID=TXR/TR9711/NAT/ATO/00001>

Because, by definition under WLEP 2010, *agritourism* activities can only be undertaken on a *commercial farm*, is also strongly recommended that any *agritourism* operator assemble records which demonstrate eligibility.

These records would support the legitimacy of the *agritourism* operation should there be any subsequent enquiry by Council. Such records would also be required if a DA is lodged for approval under WLEP 2010.

A property owner may apply to Council for farmland rating. Details are available on Council's website at

**What is ancillary development?**

The Department of Planning & Environment describes 'ancillary' as

*a use that is subordinate or subservient to the dominant purpose. The concept is important when a development involves multiple components on the same land.*

*To put it simply:*

- *if a component serves the dominant purpose, it is ancillary to that dominant purpose;*
- *if a component serves its own purpose, it is not a component of the dominant purpose, but an independent use on the same land, i.e. it is a dominant use in its own right.*

([Planning Circular PS13-001](#))

**What is the difference between exempt & complying development?**

Exempt development is development that does not require Council approval provided it meets all of the relevant development standards set out in the Exempt & Complying SEPP (the SEPP). It is the responsibility of the property owner to satisfy themselves that their proposal meets all of the exempt requirements. Council does not verify or 'sign off' on any exempt development proposal.

Complying development enables a 'fast-track' approval, either through Council or a registered certifier, provided it all of the relevant development standards set out in the Exempt & Complying SEPP.

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**When would these provisions not apply?**

There are certain circumstances in which none of the exempt or complying codes apply, or apply with certain limitations, as set out below.

Exclusions for Exempt Development - No exempt development may be undertaken on land, if that land, or part of that land is:

- identified as declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*
- identified as critical habitat under Part 7A of the *Fisheries Management Act 1994*
- identified as, or on which there is, a heritage item that is listed on the State Heritage Register under the *Heritage Act 1977*, or that is subject to an interim heritage order under the Act.
- identified as land, or is part of, a wilderness area (within the meaning of *Wilderness Act 1987*).

Exclusions for Complying Development -

Development MAY NOT be undertaken under the agritourism and farm stay accommodation complying development code where the land:

- Is, or is part of, a wilderness area (within the meaning of *Wilderness Act 1987*
- Is identified as a Draft Heritage Item

- Is identified as an Environmentally Sensitive Area
- Is reserved for a public purpose by an EPI
- Is significantly contaminated
- Is subject to a biobanking agreement under the *Threatened Species Conservation Act* or property vegetation plan under the *Native Vegetation Act 2003*
- Is subject to a private land conservation agreement under the *Biodiversity Conservation Act* or set aside under 60ZC of *Local Land Services Act*
- Is in an EPI as a buffer area, a river front area, within an ecologically sensitive area, on environmentally sensitive land ([see clause 3.3 WLEP 2010](#)) or in a protected area.
- Is in a WaterNSW Special Area under the *Water NSW Act*, i.e. Bullio, parts of High Range, most of Alpine, Yerrinbool, some of Glenquarry, most of Kangaloon and all of East Kangaloon, and areas east of Mittagong. (mapped [here](#))

Development MAY NOT be undertaken under the agritourism and farm stay accommodation complying development code UNLESS there is an exemption pursuant to section 57(2), 57(1A) or 57(3) of the Heritage Act 1977 where the land:

- Comprises an item that is listed on the State Heritage Register under the Heritage Act 1997
- Is subject to an interim heritage order under the Heritage Act 1997 or on which is located an item that is subject to an interim heritage order
- Is identified as an Item of Heritage in Schedule 5 WLEP 2010
- Is identified as a Heritage Conservation Area (HCA) or draft HCA
- Is unsewered land in the Sydney Drinking Water Catchment (mapped [here](#)).

### What if I can't use the exempt or complying provisions?

*Agritourism* may operate under a DA consent in the following zones within Wingecarribee Shire:

- RU1 Primary Production
- RU2 Rural Landscape
- RU4 Primary Production Small Lots
- C3 Environmental Conservation
- C4 Environmental Living
- SP3 Tourist

It is noted that *cellar door premises* is a separate permitted land use in certain zones including the RU1, RU2, RU4, C3, C4 and SP3 zones.

Although *agritourism* does enable *functions*, subject to the exempt and complying controls, a DA for a *function centre* under WLEP 2010 could only be considered where *function centres* are permitted under WLEP 2010, including the RU2 and SP3 zones.

*Farm stay accommodation* may operate under a DA consent in the following zones within Wingecarribee Shire:

- RU1 Primary Production
- RU2 Rural Landscape
- C3 Environmental Conservation
- C4 Environmental Living
- SP3 Tourist

**Where can I read these provisions for myself?**

A Planning Proposal is underway to permit *Farm Stay Accommodation*, with consent in the *RU4 Primary Production Small Lots* zone and to adopt the Standard Instrument clause 5.24.

Clause 5.4 of WLEP 2010 allows for a maximum of 8 bedrooms contained in farm stay buildings.

On 1 December 2022 the Standard Instrument (Local Environmental Plans) Order 2006 (the Standard Instrument), the document on which Wingecarribee Local Environmental Plan (WLEP) 2010 is based, was amended to introduce new land use definitions for Agritourism, Farm experience premises and Farm gate premises.

The provisions were further amended on 18 August 2023.

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provisions for **Agritourism** may be found using the following links:

- Exempt provisions for agritourism may be viewed [here](#)
- The SEPP provisions relating to Farm experience premises as Exempt Development may be viewed [here](#)
- The SEPP provisions relating to Farm gate premises as Exempt Development may be viewed [here](#)
- The SEPP provisions relating to Agritourism Signage as Exempt Development may be viewed [here](#)
- The SEPP provisions relating to both Farm experience premises and Farm gate premises as Complying Development may be viewed [here](#)

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provisions for **Farm stay accommodation** may be found using the following links:

The SEPP provisions relating to *Farm stay accommodation* as Exempt Development may be viewed [here](#)

The SEPP provisions relating to *Farm stay accommodation* as Complying Development may be viewed [here](#)

**Is this all explained somewhere in simple terms?**

The Department of Planning & Environment has prepared an explanatory document with diagrams, titled -

[Setting Up An Agritourism Business - A Guide to Planning Approvals](#)