

ITEM 1 GLENBERNIE ORCHARD, DARKES FOREST - AGRITOURISM REFORMS

The State Government has been undertaking a review of agricultural related land uses. The Agritourism Reforms seek to support the viability of commercial farms by allowing ancillary activities to bolster farm income.

The usual process to amend a Local Environmental Plan (LEP) is through a Planning Proposal process, however the current State reforms have presented a second potential pathway to consider the inclusion of additional permitted uses on the Glenbernie Orchard property.

Council and relevant State Agencies have received representation from the owners of the Glenbernie Orchard at Darkes Forest for the property to be included in the reform package to permit (with consent) establishment of 'farm gate' and 'farm experience' premises. The Department of Planning and Environment has indicated it is open to the inclusion of such an amendment within its reform process subject to Council's support.

This report outlines the recommended response to this request.

RECOMMENDATION

The Department of Planning and Environment be advised of Council's support for inclusion of the Glenbernie Orchard (259 – 311 Darkes Forest Road, Darkes Forest) in the Agritourism Reforms subject to –

- a. The proponent undertaking a water quality study to meet Water NSW requirements,
- b. Water NSW advising that the water quality study demonstrates the Neutral or Beneficial Effect (NorBE) standard is likely to be achieved for the current / proposed on-site activities, and
- c. Any requirements and limitations on scale or type of use that Water NSW may recommend be included in the permissibility clause inserted in Schedule 1 Additional Permitted Uses of the Wollongong LEP 2009.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Department of Planning and Environment - Agritourism and Small-Scale Agriculture Development
- 2 Letter from Terry Wetherall - 16 December 2022 - Changes to Agritourism Legislation - Darkes Forest Road, Darkes Forest.

BACKGROUND**Agritourism Reform**

The Agritourism reforms aim to provide farmers with additional income sources to allow them to be more resilient to natural disasters and economic impacts such as from COVID-19 and to provide an opportunity for sustainable tourism. An information sheet prepared by the NSW Government is provided as Attachment 1.

Reforms to permit activities ancillary to agricultural land use and commercial farms were published on 6 October 2022 with a scheduled commencement on 1 December 2022. The reforms related to land throughout the State zoned for primary production where agriculture is permitted (RU1, RU2 and RU4 zoned land). Council planning instruments have been amended using a self-repealing State Environmental Planning Policy.

A second tranche of reform is currently underway with the additional permitted uses being considered for other zones nominated by Council through a formal resolution. Representation has been received to include Glenbernie Orchard in the reform package (Attachment 2). Representations have been received from the farm operator, local members of parliament, NSW Farmers Federation and tourism peak bodies.

The Department of Planning & Environment (DPE) has indicated that Glenbernie Orchard may be considered for site-specific application of the reforms.

The timing for the second round of planning instrument amendments is uncertain due to the State Government elections in March 2023. Given the caretaker arrangements prior to the elections, the reforms are not likely to be introduced until mid-2023. However, DPE has requested early advice to inform their ongoing work on the reform package.

Glenbernie Orchard

Glenbernie Orchard is located at 259 and 311 Darkes Forest Road, Darkes Forest. The Orchard is a 40-hectare horticultural farm that has operated for approximately 70 years.

The predominant use of the site relates to apple and stone fruit growing and distribution. Over time ancillary and complementary uses have been added to the operation to include an on-site produce store, cider production, farm tours, events (i.e. Cider Sundays and the annual Apple Pie Festival) and functions. These tourism related activities are used to supplement the income from the farm and maintain its viability.

Determining the lawfulness of the various activities is complicated by age of the Orchard and the evolution of planning instruments over that period. The proponent has indicated they will engage with Council's Development Assessment and Certification team to progress a Development Application to seek approval of existing lawful uses on site.

Site Constraints

The Orchard is located on the northern side of Darkes Forest Road approximately 4.2km off the Princes Highway.

The site is wholly contained within the Declared Catchment – Woronora Special Area. It is also mapped as bushfire prone land. There are no reticulated water or sewer services provided the area. Any subsequent Development Application received in relation to the site will need to address the site constraints.

In terms of water quality impacts, the development needs to demonstrate a Neutral or Beneficial Effect (NorBE) on the environment. Development Consent cannot be granted without concurrence being received from Water NSW.

It is the view of Water NSW and Council officers that a water quality study to address NorBE should be undertaken before any additional uses are permitted on the property, regardless of whether the LEP amendment is considered via a Planning Proposal or the State's Agritourism Reforms.

The owner has accepted this requirement and has engaged a consultant who is currently liaising with Water NSW on study requirements.

Current planning controls

The property is zoned C3 Environmental Management under the Wollongong Local Environmental Plan (LEP) 2009 where 'extensive agriculture', 'bed and breakfast' and 'farm stay accommodation' is development permitted with consent. Under the Agritourism reforms no changes are proposed to the permissibility of 'farm stay accommodation'.

The use of a site for 'intensive plant agriculture' including 'horticulture' (involving the cultivation of fruit) is not permissible under the current zoning and LEP provisions. Whilst existing lawful uses are allowed to continue under existing use rights, the lawfulness of the current activities is yet to be established through a formal process. It is understood that the landowner is investigating the Development Application pathway to establish existing use rights and formalise the current lawful uses on site. However, this pathway is not available to seek approval of future additional uses or significant expansion of existing lawful uses.

The owner has indicated they would like to enhance their current operations and expand the tourism experience offered at the orchard to include development such as a restaurant for patrons and functions, cider production, larger retail space to sell produce and more events. An amendment to the LEP to allow additional permissible uses is required for these uses to be considered. The use of the site-specific amendments to the LEP (i.e. Schedule1) through the Agritourism reforms presents an opportunity to permit these uses with consent.

If the additional permitted uses are included in the LEP, a Development Applicant would be required for any proposed development which would include a full merit assessment of relevant matters.

92 Darkes Forest Road

In 2022, Council finalised a Planning Proposal / LEP amendment on nearby former mine site to make 'artisan food and drink industry' a permissible use. The predominant purpose of the premises being the making or manufacture of boutique artisan or craft food and drink products with ancillary on-site retail sales or consumption.

The amendments to Wollongong LEP 2009 for the site followed a rigorous process involving the preparation of detailed studies and community / state agency consultation.

The Gateway determination issued by the DPE required the following -

- Preparation of water quality, bushfire risk and contamination studies.
- Demonstrated consistency with Ministerial Directions – including protection of Sydney's Drinking Water Catchment.
- Consultation with authorities, including Water NSW.
- Community engagement.

A Development Application is required for any new uses and future development on the site.

It should be noted that Agritourism reforms permit certain additional uses associated with the operation of a commercial farm. Hence the reforms are not relevant to this property given its previous use (mine site) and proposed new use as a 'artisan food & drink industry'.

PROPOSAL

Council has received representation to support the inclusion of Glenburnie Orchard in the Agritourism Reforms and permit with consent, the carrying out of certain new uses ('farm gate premises' and 'farm experience premises').

The Planning Proposal process is the usual mechanism to consider such amendment to the Wollongong LEP 2009, and would include rigorous assessment and agency / community consultation. It is acknowledged however that the Agritourism reform is another legitimate pathway to amend an LEP to reflect State Government policy.

Council staff have met with the proponent, DPE and Water NSW in relation to this matter. The introduction of new uses without a high level of confidence that the activity can be supported at Development Application stage, has been raised by both Council and Water NSW as a significant concern.

Irrespective of the LEP amendment pathway, Council staff suggest a decision should not be made on the inclusion of additional permitted uses until a water quality study is provided demonstrating that a NorBE is likely to be achieved.

This proposition has been supported by Water NSW given the constrained nature of the site and lack of current detail relating to the existing / proposed activities carried out on site.

The DPE has indicated that commissioning environmental studies for specific sites is not part of the scope for the Agritourism reforms. Subsequent discussions with the proponent suggest that they are prepared to commission the water quality study for Water NSW to consider. DPE has indicated that the timing of the reform provides a window of opportunity for a supporting study to be undertaken.

Inclusion of the property in the second tranche of the Agritourism reforms is subject to a resolution of Council. In terms of this request, the following options are provided for Council's consideration -

- 1 Decline the request and suggest that the proponent seek to formalise the activities carried out on site initially through a combination of the Planning Proposal and Development Application processes, or
- 2 DPE be advised of Council's support for the inclusion of the Glenbernie Orchard in the Agritourism reforms subject to –
 - The proponent undertaking a water quality study to meet Water NSW requirements,
 - Water NSW advising that the water quality study demonstrates the Neutral or Beneficial Effect (NorBE) test is likely to be achieved for the current / proposed on-site activities, and
 - Any requirements and limitations on scale or type of use that Water NSW may recommend be included in the permissibility clause inserted in Schedule 1 Additional Permitted Uses of the Wollongong LEP 2009.
- 3 Advise DPE that Council endorses inclusion of Glenbernie Orchard in the latest tranche of Agritourism reforms without a supporting water quality study and note the significant risk that any subsequent Development Application may not be supported by Council and / or Water NSW.

It is recommended that Council proceed with Option 2 which will provide further clarity around the likelihood of NorBe being achieved and subsequent Development Applications being supported. The proponent has provided a commitment to prepare the necessary water quality for Water NSW to consider.

If it is ultimately determined that the Agritourism reforms are not the appropriate pathway for the LEP amendment, Option 2 will serve to inform the landowner in relation to any decision to pursue an alternate pathway (i.e. Planning Proposal).

The use of Schedule 1 of the LEP, provides an opportunity to craft an additional permitted use that reflects an appropriate scale of development if considered necessary by Water NSW. In this case, it can also be used to reflect the development assumptions detailed in the water quality study and development outcome envisaged. The application of Schedule 1 in this way would not be dissimilar to the recent LEP amendments relating to the former Corrimall Coke Works site.

CONSULTATION AND COMMUNICATION

It is understood that no further community consultation will be undertaken by DPE in association with tranche 2 of the Agritourism reform.

If Glenbernie Orchard is included in the reform package the opportunity for community consultation will be available at Development Application stage.

State Agency consultation undertaken by staff at this stage is restricted to Water NSW and DPE.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goals relating to 'Goal 1 - we value and protect our environment' and 'Goal 2 - we have an innovative and sustainable economy'

It specifically delivers on core business activities as detailed in the land Use Planning, Development Assessment and Regulatory Control services of Council.

SUSTAINABILITY IMPLICATIONS

The subject property is located in the Declared Catchment – Woronora Special Area.

Any subsequent Development Application received in relation to the site will need to address the site constraints. In terms of water quality impacts the development needs to demonstrate a Neutral or Beneficial Effect (NorBE) on the environment. Consent cannot be granted without concurrence being received from Water NSW.

RISK MANAGEMENT

The proposed inclusion of the additional permitted uses in the Wollongong LEP 2009 for this particular property carries some risk. As stated in this report, the inclusion of the additional permitted uses is no guarantee that future Development Applications will be supported given the constrained natural of the site. The use of the Agritourism reform may be viewed by the public as a less rigorous pathway for an LEP amendment compared to the traditional Planning Pathway approach.

FINANCIAL IMPLICATIONS

Cost included to date in relation to this matter has been absorbed under the operation budget in Council's Operational Plan 2022-23.

CONCLUSION

The Agritourism Reforms seek to support the viability of commercial farms by allowing ancillary activities to bolster farm income. The owners of the Glenbernie Orchard at Darkes Forest have made a request to be included in the reform package to permit (with consent) establishment of 'farm gate' and 'farm experience' premises.

It is recommended that Council advise DPE of its in-principal support to the inclusion of additional permitted uses for the Glenbernie Orchard property within the Agritourism Reform package **subject to** a water quality study being provided which demonstrates to the satisfaction of Water NSW that a Neutral or Beneficial Effect is likely to be achieved.

Department of Planning and Environment

Information sheet

Agritourism and small-scale agriculture development

This information sheet will help landowners understand more about the new agritourism policy.

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.

Department of Planning and Environment

Information sheet



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.

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*.

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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 council's LEP:

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

For exempt development, in addition to these zones, farm stay accommodation, farm experience premises and farm gate premises can be carried out on other land where development for agriculture (excluding aquaculture), 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, including significantly contaminated land, land declared to be a special area under the *Water NSW Act 2014* and land identified on the [Agritourism and Farm Stay Accommodation Exempt and Complying Development Map](#). 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, which are set out in 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*.

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.

Department of Planning and Environment

Information sheet



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.

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.

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.

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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.

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 in Table 1.

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 are outlined in Table 1.

Department of Planning and Environment Information sheet



Table 1: Some of the key development standards

Activity	Exempt development	Complying development
Farm gate premises	<ul style="list-style-type: none"> 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. 100 visitors at any one time. Hours of operation - Sunday to Friday and public holidays 8am-5pm, Saturday 7am-5pm. Use up to 200m² gross floor area of an existing building. Off street parking. 	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 zones where agritourism is permitted under the LEP. Maximum 200m² gross floor area for each building to maximum 500m² for all farm gate premises and farm experience premises buildings on the landholding. The standards for exempt development for maximum guest numbers, hours of operation and parking also apply.
Farm experience premises	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 zones and in other zones where agriculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture are permitted. 50 visitors at any one time (excluding school visits, farm tours and horse riding tours). Total 100 guests at any one time for all farm gate premises and farm experience premises (excluding tours and school visits). Maximum 52 days per year (excluding school visits, farm tours and horse riding tours). Hours of operation - Sunday to Thursday and public holidays 8am-6pm, Friday and Saturday 8am-midnight. Use up to 200m² gross floor area of an existing building. Off street parking. 	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 where agritourism is permitted Maximum 200m² gross floor area for each building to maximum 500m² for all farm gate premises and farm experience premises buildings on the landholding. The standards for exempt development for maximum guest numbers, maximum days, hours of operation and parking also apply.

Department of Planning and Environment Information sheet



Activity	Exempt development	Complying development
Farm stay accommodation	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 zones and in other zones where agriculture, extensive agriculture, intensive livestock agriculture and intensive plant agriculture are permitted. Maximum 20 guests in tents, caravans and campervans. Maximum 6 caravans and campervans. Maximum 21 consecutive days of stay. Minimum landholding of 15ha for camping/caravans. Use up to 60m² gross floor area of an existing residential accommodation or manufactured home. Off street parking. 	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 zones where farm stay accommodation is permitted under the LEP. Maximum 6 buildings on the landholding. Maximum 21 consecutive days of stay. Minimum landholding size of 15ha (new buildings). Maximum 60m² gross floor area for a new building or use up to 60m² of an existing building. Use up to 25m² of an existing building to provide communal amenities or facilities. Off street parking.
Roadside stalls	<ul style="list-style-type: none"> Permitted in RU1, RU2, RU4 zones One stall per farm, located on the property Cannot be located on land adjacent to a freeway, tollway or highway Max 9m² footprint Parking on the property or on the road verge subject to certain requirements 	<ul style="list-style-type: none"> 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.

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

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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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Project #2144
16 December 2022

The General Manager
Wollongong City Council
41 Burelli Street
Wollongong 2500

Dear Sir,

Attention: David Green

Changes to Agritourism Legislation-Lot 66 DP 752054 Nos. 259-281 & Lot 56 DP 664571 No. 311 Darkes Forest Road Darkes Forest.

You are aware of numerous representations made by and on behalf of the Fahey family, the owners of Glenbernie Orchard. Matters have progressed significantly in relation to the legislation.

On December 2022, the Standard Instrument-Principal Local environmental Plan [Standard Instrument] and Codes SEPP, were amended to introduce agritourism land uses and supporting definitions.

In February 2023, DPE is anticipated to action further reforms to expand permissibility of agritourism land uses by making mandatory amendments to LEPs across NSW. These amendments would permit agritourism, farm experience premises and farm gate premises, with development consent, in the following zones:

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

You are aware that Glenbernie Orchard is zoned C3 Environmental Management and therefore will not be able to take advantage of these changes.

By way of email dated 21 October 2022 you offered the following options for the property:

- Rezone part/all of the property to RU2 Rural Landscape. However, this may not be supported by WaterNSW as the site is within the Woronora Dam catchment.
- Site specific Additional permitted use of "Farm experience premises" and/or "Farm Gate premises".
- Amend the C3 land use table to permit with consent "Farm experience premise" and/or "Farm Gate Premises". You advised that this would probably be the least likely to be supported as it would apply throughout the LGA.



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A response was forwarded advising that it would appear that the second option i.e., the site specific additional permitted land uses of "farm experience premises" and "farm gate premises" would be the appropriate pathway. The response requested suggestions to progress option 2. There has been no response to this request.

We are advised that Councils may nominate additional zones where agritourism should be made permissible with development consent. Councils may also adopt additional clauses for their LEPs to provide development controls for farm gate premises and farm stay accommodation. Should Councils choose to nominate additional zones or adopt optional clauses, the nominations are required to be submitted to DPE by 23/12/2022 [advise is that it is likely that the Department would extend this deadline].

DPE has asked Councils to consider the C3 Environmental Management, C4 Environmental Living and RU5 Village zones for agritourism expansion.

We are aware of at least one Council that has recommended the inclusion of the C3 zone as a further zone. At its meeting of 14 December 2022 Hornsby Council considered the following recommendation:

"1. Council write to the Department of Planning & Environment to nominate:

- a) Inclusion of the C3 Environmental Management zone as a zone in which farm experience premises and farm gate premises are permitted with development consent.*
- b) Adoption of the optional clauses for farm gate premises and farm stay accommodation [including an additional objective related to natural hazards as outlined in Director's Report PC 25/22] to be included in the Hornsby Local Environmental Plan 2013.*

2. An amendment to the Hornsby Development Control Plan 2013 be drafted to provide development controls for new agritourism land uses.

Council's reluctance to follow a similar approach appears to be a concern that the inclusion in the C3 permissible land uses with consent land table would apply throughout the Wollongong LGA. However, in reality Glenbernie Orchard appears to be the only commercial farm operating in the C3 zone in the LGA. That aside, the inclusion of the land use within the C3 tables does not automatically equate to the delivery of a consent.

This is particularly relevant to this site where a number of environmental constraints would need to be assessed and resolved with any future development application.



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The window of opportunity for Glenbernie Orchard is rapidly closing. One would believe that every planning possibility should be investigated to ensure the longevity of Wollongong's last remaining orchard.

Council has suggested 2 options, in either the site specific additional permitted uses, or an amendment to the C3 land use table to permit the "farm experience premises" and/or "Farm Gate premises". Either are considered logical approaches and this correspondence requests that Council make a decision to proceed with one to resolve this critical issue.

Please contact me at your convenience for any additional clarification.

Yours faithfully,



Terry Wetherall AM