

Submission re NSW DPIE – Agritourism Development Proposal

Context

There is no doubt that the intentions of the proposed agritourism initiative are laudable and in the Australian spirit of offering a hand up to help farmers rebuild and recover from the impacts of drought and bushfires. It is also gratifying to see that the pilot program has resulted in sixteen pilot participants starting farm tourism businesses.

However, the context for the agritourism initiative has changed quite dramatically since it commenced two years ago. The drought has finished, and agricultural production has recovered, as shown in Department of Agriculture reports for NSW -

- *Area planted to summer crops increased significantly in 2020–21 to 433,000 hectares, constrained by a lack of fallow land due to the excellent winter cropping season, particularly in northern NSW.*
- *Summer crop production is forecast to reach 1.7 million tonnes in 2020–21, nearly six times what was produced in 2019–20.*
- *Winter crop production is estimated to rise to a record high 18.7 million tonnes in 2020–21, 88% above the 10-year average to 2019–20.*

NAB Business Review April 2021

The Australian agriculture sector is capitalising on improved seasonal conditions and government incentives including the instant asset write-off scheme to invest in farm equipment, the latest data from NAB reveals.

Loans to NAB customers for agricultural equipment finance have increased 132 per cent year-on-year from 2019 to 2020, as agribusinesses recover from two years of challenging conditions including drought, fires, COVID-19 disruptions, and most recently, floods.

*NAB executive regional and agribusiness, **Julie Rynski**, said the trends in equipment finance were indicative of the strength in lending and the resilience and overall confidence of the agriculture sector.*

“Lending for tractors has increased 146 per cent, while lending for equipment such as sprayers and headers has risen 142 per cent,” Ms Rynski said.

“Farmers looking to boost their on-farm grain storage have also driven a 140 per cent increase in lending for grain silos.

“After a record breaking 2020-21 harvest and with subsoil moisture conditions looking good across much of the south-east and south-west of the country following summer rain, the figures are reflective of our customers’ intentions to capitalise on the turnaround in seasonal conditions.”

“With business confidence at an all-time high and businesses building on things they’ve learnt through the pandemic, I’m not surprised that equipment sales are so high. The majority of farmers and regional businesses have proven to be exceptionally resilient through two years of challenging conditions and are now poised to capitalise on new opportunities and brilliant market conditions.”

Pilot Program

No details have been provided about the pilot program, which is surprising as it is being used as justification for the far-reaching removal of multiple planning provisions and the elimination of local council involvement from an array of important planning decisions.

This is potentially a recipe for anarchy in relation to the introduction of entirely unrestricted and unsupervised activities across all rural land in NSW.

At a minimum, details should be provided of the experience of all pilot participants, including those that were not successful. The details should cover the numbers and types of agribusiness that were attempted in each area, the Liverpool Plains, Wollondilly and Queanbeyan-Palerang.

The size of the landholding should be provided for each pilot participant. In the case of the Windy Station pilot on the Liverpool Plains the landholding is 21,000 ha. It seems unlikely that this would be representative of farm sizes in coastal council areas.

It is disappointing that there does not appear to be a single mention of land size in any of the documents that have been distributed for comment. That is, all except for one indirect mention at the bottom of Page 23 of the Explanation of Intended Effect, under the heading of 'Building location and size' – *Maximum height: 7 metres for landholding 4000 square metres to 10 ha*

Objectives

The stated objectives of this submission are to ensure the proposed planning changes –

- Support agricultural producers who need to supplement their income to maintain the financial viability of their agricultural enterprise and quality of life in an increasingly difficult climatic and business environment.
- Assist **real farmers** in **targeted regional areas** and do not allow the potential benefits to be crowded out by smaller lifestyle farms and developers seeking to exploit the opportunities the planning changes allow.

Intended Effect of Proposed Planning Amendments

- *The Department is proposing amendments to existing controls within the planning system to facilitate more agritourism, while balancing the need for individual councils to respond to different environmental and development settings.*
- *The proposed development standards are intended to mitigate undesired impacts by limiting the land on which the activities can occur and the scale of the use, as well as managing impacts such as noise and potential disruption to neighbouring land uses.*
- *The changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses.*

These statements are reassuring, however there is scant evidence in any of the documents that would suggest that they are more than mere window-dressing. The stating of intentions, that are not supported by meaningful definitions, controls or measurements suggests that very little attention is being paid to their implementation by the initiators of the proposed changes.

Eligibility

A key element that needs to be clearly identified and made extremely difficult to circumvent is the eligibility of the agricultural enterprise. This is addressed through two related criteria:

- the primary purpose of the property is agricultural production
- the income generated from agritourism is supplementary in nature.

The proposal recognises the need to avoid tying the criteria to farm income at a given point in time due to the highly variable nature of agricultural returns. The ATO addresses this issue in relation to the tax advantages offered to primary producers through the definition of a primary producer. Stated simply, the farm must have a business plan to maintain an ongoing and viable enterprise based on commercial agricultural production.

Recommendation 1: The ATO's criteria and tests for eligibility for primary producer status should be necessary to access the proposed planning changes. Further, this should be done in the context that access would be granted, and the focus of the enterprise will remain primary agricultural production.

The meaning of supplementary or ancillary income needs to be defined in exact terms and calculated in terms of gross income associated with the agricultural and non-agricultural income to avoid issues related to tax minimisation. To address the concern related to variability of farm income, income averaging should be allowed similar to that provided to farmers by the ATO.

Recommendation 2: Supplementary income limits should be put in place in terms of the percentage (eg 25%) of total gross income earned by agritourism, with the proviso that income averaging provisions available to primary producers are allowed in the assessment. On granting access to the planning provisions, notification should be given to the ATO.

The issue of maintaining the viability of farm enterprises and farm lifestyle depends on the ownership structure of the farm. These break in two categories, family or limited partnership farms and corporate farms. It does not appear that the spirit of the proposed changes is intended to support corporate owned farms.

Recommendation 3: Access to the proposed planning changes should be limited to family or limited partnership farms as opposed to corporate enterprises.

There are considerations that are not tied to commercial aspects of a property seeking access to the proposed planning provisions. These include threats to life and the costs and availability of emergency services.

Recommendation 4: Access to the proposed planning provisions should not be extended to flood prone areas and perhaps other areas subject to extreme events or likely impact of climate change, such as rising sea levels.

There is a need to avoid imposing additional costs and harm, under more adverse climatic conditions, in preserving adequate habitat and managing natural and man-made disasters such as bush fires.

Recommendation 5: Consideration of NSW biodiversity and habitat objectives need to be maintained and potentially expanded. Development needs to account for the impacts of building and the influx of tourists on the local habitat, including safe wildlife corridors and the offset, on or adjacent to the location, needs to be registered under the NSW Environmental Trust.

Other Key Issues

The proposal to grant broad statewide exemptions for development will inevitably result in the benefits accruing to areas close to Sydney and the major coastal towns that have more amenities and take less time to drive to. Landowners in those areas, not in need of assistance, will be able to exploit the planning changes to generate significant profits.

Recommendation 6: Exempt development should not be permitted statewide. Over the last four years we have confronted several DAs seeking to exploit the planning provisions for tourist accommodation, so we know what to expect. We have had four meetings with NSW Planning Ministers.

Camping for up to 20 people will not be “minor and low impact”, with no access to sewers or town water. How will this be regulated and how will Councils deal with the myriad of issues?

At the other extreme in the Shoalhaven, DAs have been lodged for luxury glamping with semi-permanent structures seated on very large timber platforms using the ‘Primitive Camping’ description to circumvent safety and amenity regulations.

Recommendation 7: Allowing any number of people in tents, caravans, campervans to be allowed as exempt development is fraught with issues and should be reconsidered.

Planning provisions for camping grounds and primitive camping are a mess and ripe for further exploitation. This issue must be addressed before further changes are introduced.

Farm events - Over the last three years, Berry and Kangaroo Valley have been the target of wealthy developers seeking to construct wedding function centres in rural zones. Each DA is supported by consultants’ reports that attempt to disguise the dire adverse noise, traffic and amenity impacts. Councils accept the reports as they do not have the expertise to challenge them. However, independent peer reviews paid for by residents have identified serious deficiencies.

There is just a very brief reference to the temporary use of land clause in the Standard Instrument LEP Order (clause 2.8) to seek development consent. With developers ignoring genuine concerns of residents, rural communities have relied upon Justice Moore’s judgement in the *Marshall* 2015 case, which states that Council must be satisfied that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood.

Those communities are now astonished by the proposal to allow function centres in rural zones as exempt development and are very angry that their distressing experiences could be repeated.

It’s stated that, “*Including a definition for events on farms will provide greater certainty around where such development can take place.*” The definition is irrelevant, when it’s proposed that wedding function centres can be built anywhere and adverse impacts on neighbours ignored.

Recommendation 8: Planning amendments should restrict the provision of wedding venues to less accessible regional locations “*that cannot be reached by day trip from major centres*”. This would also encourage the use of on-farm accommodation.

The proposed unrestricted siting of wedding function venues and removal of the current protection afforded to rural communities by Clause 2.8 is the most controversial aspect of the proposed amendments. It appears to be driven by the tourism lobby, with no thought given to the devastating effects that would follow its implementation. This is not an outcome that genuine farmers would want.

Based on the stated objectives for the proposed planning amendments, there can be no justification for relaxing current provisions applying to wedding venues in areas such as Berry and Kangaroo Valley.

Two sets of maximum event and guest numbers is confusing and open to exploitation. Realistically, it will be impossible to restrict the number of events and guests to the proposed limits.

Recommendation 9: As the limits will inevitably be exceeded, they should be simplified to 20 events per year with a maximum of 40 guests per event, and allowed in targeted areas only (see Recommendation 8).

If the focus is agriculture, why is it proposed “*Councils can then permit farm events in other (non-rural) zones*”, and why are ‘*destination weddings under a DA*’ being proposed?

Recommendation 10: The proposed amendments should be contained to rural zones only. Planning changes to facilitate ‘*destination weddings*’ should only be considered within the context of Recommendation 8. above

Conclusion

The elimination of Council involvement and the removal of all planning safeguards for wedding venues and camping would be destructive for rural communities in coastal council areas.

Rigorous controls around eligibility and significant limitation of exempt development are essential if benefits resulting from this proposal are to accrue to **real farmers** in **targeted regional areas**.

However, if these critical issues are not resolved, the benefits for real farmers will be marginal at best, the profits for lifestyle farmers and developers excessive, and the adverse ramifications for rural property owners extremely damaging.

The Berry Forum Committee

<http://berryforum.org.au/>

We have attached extracts from a submission prepared by a local farmer. We believe it provides a very succinct commentary on the proposal that is based on personal experience and exceptional clarity of thought. We strongly recommend it to you.

Extracts from Submission prepared by a local farmer.

My land is designated Rural. I knew this when I purchased and acted accordingly - choosing agricultural endeavours over trying to make my land use something it was not allowed to be.

I am an olive farmer. I planted my olives trees over a three-year period (2006-2009) and nurtured them for the requisite years until they began to produce harvest. Some years are better than others – I knew this when I undertook this proposition.

I am a table olive and extra virgin olive oil producer. I have a commercial processing facility with registered commercial kitchen and cellar door. I am able to conduct tours and tastings. I am able to do long lunches; and (although I do not choose to avail myself of the approval) run a café – all based around MY agricultural produce.

I am able to do all of this because I submitted a Development Application to Shoalhaven City Council in 2013. It was not costly, although there were the required professional reports. I was assigned an Assessment Officer and I dealt with him – resolving any issues – his knowledge of LOCALITY being site specific.

Part 1.2

- The NSW Government is seeking comment on proposals **recommended by stakeholders** to: Who are these stakeholders of whom we speak – tourism operators and the NSW Small Business Commission and Service NSW, or farmers???

Many of us, do not believe we need others who feel they know far better than we, of how to manage our land, or manage our livelihoods.

- **reduce land use conflict by providing clearer rules** and better managing environmental and social impacts,
There is no conflict – rules are clear and precise – it is those who seek to exploit any loophole; using (quite often) significant financial outlay to batter down those given the authority to make decisions on behalf of their constituents, by following the same set of clear and concise rules.
- **clarify current planning controls** and expand approval pathways for certain agricultural activities.
Clarification exists – before you purchase make sure the land is fit for the purpose you want; and then follow the rules set down in the relevant to your location LEPs, whether that includes a DA or complying/exempt development. Simple.
- The proposed amendments are **underpinned by the principle of no/ low environmental impact**.
Who decides what the level of this principle is going to be? Who enforces compliance?
Who do I call when, in my view, compliance is not be adhered to?

Please do not tell us to ring our local police – we have tried this – the police do not come, they are simply too busy to cater to neighbourly disputes, especially on a weekend evening. Please do not tell us to contact our local Council when the issues arise - there is no-one capable of dealing with an issue which occurs on weekend, especially of an evening. Council themselves say they simply do not have the resources or funds to do this type of activity.

Imagine, if there were 10 or 15 complaints for 10-15 venues located around a whole local government area – how many do you actually believe would elicit a timely response. Please do not tell us to wait until Monday morning at 9am to contact Council, when the events have been completed, everyone has gone home happy, the property's owners are counting their cash and we still have a headache.....but have to get up, put one foot in front of the other and continue our agricultural activity.

Part 1.3

- farm events – to **remove existing barriers** and support farm events amendments are proposed to introduce a **new definition for 'farm events'**
In essence, this relates to approval to operate large scale events such as weddings and conferences held on rural land.
- Fast track approval pathways, known as exempt and complying development, will also be established for these types of agritourism.
Again, providing a loophole, for developers and commercial operators to take advantage of this process to progress large scale events such as weddings/conferences held on rural land.

Part 2.1

- The planning system seeks to **protect agricultural land and secure it as a resource for food production for future generations.**
PROTECTING AGRICULTURAL LAND AND SECURING IT AS A RESOURCE FOR FOOD PRODUCTION FOR FUTURE GENERATIONS is unlikely to be a consequence of this proposal. A supplementary business of large-scale events such as weddings and conferences held on rural land will soon overshadow any income (and the long hours, hard work and passion that goes with it). The land as an agricultural mecca will be lost in the mists of time. A story to tell our grandchildren and pass down to future generations of when we grew our own food, raised our own livestock – rather than became “producers” of large scale event venues.
- There is scope for the planning framework to better support farmers' ability to innovate and diversify from purely primary production to other forms of value adding or **complementary agribusiness.**
I am not anti-tourism – of any sort – whether “agritourism” or other. I simply believe that certainty is eroded, when rules are not followed through. How large-scale events such as weddings and conferences held on rural land can be seen as complementary agribusinesses has eluded me since I first began my journey on local tourism boards in 2012 and my increased input into primary production. It eludes me still. Value-adding with genuine farm gate activities based on the crops / livestock etc which are located on the farm (as long as zoning permits), have nothing to do with this
- **Agritourism involves visiting a farm** or food related business for enjoyment and education or **to participate in activities and events.**
The broadness of this statement, the non-genuine value adding as the activities are not based on the crops / livestock etc which are located on the farm have nothing to do with this and is simply a means to an end to create the opportunity for large scale events such as weddings and conferences on rural zoned agricultural land.

Part 2.2

- The department has worked with the commission to identify simplified pathways to establish low impact agritourism businesses on farms, including farm stay accommodation, farm tours, roadside stalls, farm events and retail on farms. This work aligns with the department's commitment to reduce red tape and make the planning system easy to use.

It is good that the Service NSW worked with the NSW Small Business Commission. It would have been better had it included farmers and growers at the outset, rather than presenting a document for comment and not promoting the fact. Non-submission of comments by farmers and growers SHOULD NOT be taken as acquiescence or unbridled joy – most simply do not know this document exists.

Agri-tourism may be many of the things listed – but it is NOT a tourism-related experience that connects people with events solely based on “their scenic quality such as weddings” – your words.

And more broadly, true agritourism does allow for regional economies to showcase what's special about a region, its unique GROWING conditions and natural resources and provides a visitor drawcard for which other regional tourism businesses and experiences can benefit (including allowing large scale events such as weddings and conferences on appropriately zoned land).

- Service NSW has conducted research that identified challenges in the current planning regime for **aspirational agri-entrepreneurs**.

And now we come to it – this document is about and for “aspirational agri-entrepreneurs” and not really for the poor farmers no matter how much it attempts to proffer as its *raison d'être* the supposed “support” for “farmers during times of hardship or following natural disaster events”.

Genuine agritourism is NOT about large scale events such as weddings and conferences on zoned rural land. These events contribute NOTHING to the furtherance of agricultural activity, rather they provide a perfect opportunity to destroy that very agricultural activity, which they profess to support.

Part 3.1

- **New land use terms: introducing two new land use terms for farm gate activities and farm events in the Standard Instrument LEP Order.**

Farm events should be events limited to farm activities; and NOT events held on a farm (whether it is actually a working farm or just a very big block of land, may be debatable).

- Proposed new development standards will ensure development is at a scale appropriate for the agritourism or agricultural activity with **minimal impacts** on the surrounding land and amenity. Where these standards cannot be met, a landowner can lodge a development application with the local council.

Who sets the standard or what is minimal or low impact?

NO impact is easy to understand, minimal and low are subjective.

And how is this to be enforced (not even going to bother with repeating the negation of the possible suggestion that impacted persons contact their under resourced own local police or Council).

3.4 Farm events

- The ability to hold **rural events** can allow farmers to diversify and value add to their agricultural business.
Rural events should NOT mean any events held on rural land.
- In addition to the direct benefits to agricultural business, rural events can have a far-reaching supply chain benefit to the surrounding economy. **For example, if a farm can host a wedding, beyond just the hiring of a venue on a farm, the event can result in hiring of local accommodation services, engagement of event services (such as photographers, stylists and transport), food and drink services, supporting services (gift shops, child minding) and facilities services (party hire, mobile toilet hire etc).**
In principle this sounds great for the local economy – however MANY brides (most significantly for high cost weddings) choose to bring in outside (read, from where the bride originates) operators to assist with planning their wedding. From a time perspective, with constant meet ups between the bride and the other party, it is logical that these would mainly occur where the bride resides.
The number of guests who are so disorganized that they need to use the services of a local gift shop to buy their wedding present would be minimal, if any. Simple logic.
- There are limited land use terms in the planning system that enable **rural events**. Applicants can rely on the definition in the Standard Instrument LEP Order for ‘function centre’ or use the temporary use of land clause in the **Standard Instrument LEP Order (clause 2.8)** to seek development consent. Including a definition for events on farms will **provide greater certainty** around where such development can take place.
Once again, rural events are NOT weddings or functions totally unrelated to the farm activity which is being conducted. This is simply a back door to host weddings and events, nothing more. To suggest it is an adjunct to raising cattle; or growing olives; or keeping of chickens and selling of eggs commercially is plainly ridiculous. There is ABSOLUTELY no correlation between the two.
Std Instrument LEP Order (clause 2.8) provides certainty – to both the applicant as well as to adjoining landowners; neighbouring properties; and the local community IF those orders are upheld.
- It is proposed to introduce a new land use term ‘**farm events**’ into the Standard Instrument LEP Order to allow **events, tours, functions and conferences** on land used for agriculture.
If the events, functions and conferences have NOTHING to do with the crop / livestock that is being grown / produced on the agricultural land then it is NOT related to FARM. FARM events are NOT weddings or functions totally unrelated to the farm activity which is being conducted. This is simply a back door to host weddings and events, nothing more. To suggest it is an adjunct to raising cattle; or growing olives; or keeping of chickens and selling of eggs commercially is plainly ridiculous. There is ABSOLUTELY no correlation between the two.
- Exempt and complying development pathways have been developed to allow streamlined approvals for low scale, **low impact** farm events.
Who sets the definition of low impact?