
8.2 Planning Proposal to Insert Additional Farm Stay Accommodation Provisions in to Wingecarribee Local Environmental Plan 2010

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PURPOSE

The purpose of this report is to seek Council's endorsement to prepare a Planning Proposal to submit to the Department of Planning and Environment for a Gateway Determination, to amend the Wingecarribee Local Environmental Plan (WLEP) 2010 as follows:

- Insert clause 5.24 *Farm stay accommodation* as provided in the Standard Instrument, and
- Include *Farm Stay Accommodation* as development permitted with consent in the RU4 Primary Production Small Lots zone.

THIS MATTER WAS CONSIDERED BY THE WINGECARRIBEE LOCAL PLANNING PANEL ON 25 OCTOBER 2023

OFFICER'S RECOMMENDATION

That:

1. The Planning Proposal attached to this Report be endorsed and forwarded to the Minister and the Department of Planning and Environment for a Gateway Determination to proceed to public exhibition.
2. Council request delegation from the Minister to make the Local Environmental Plan.

This matter was considered at the Local Planning Panel meeting of 25 October 2023. The staff recommendation to the Panel was:

THAT the Planning Proposal adopted by Council on 18 May 2022 to amend WLEP 2010 with regard to Farm Stay Accommodation provisions be replaced with the updated Planning Proposal accompanying this report to reflect recent amendments to the Standard Instrument Local Environmental Plan and BE SUPPORTED for progression to a Gateway Determination through the Department of Planning & Environment under s3.34 of the Environmental Planning & Assessment Act 1979.

The Panel supported the recommendation above and provided the following advice:

The Panel support the Officer's recommendation that the Proposal adopted by Council on 18 May 2022 to amend WLEP 2010 with regard to Farm Stay Accommodation provisions be replaced with the updated Planning Proposal accompanying this report to reflect recent amendments to the Standard Instrument Local Environmental Plan and BE SUPPORTED for progression to a Gateway Determination through the Department of Planning & Environment under s3.34 of the Environmental Planning & Assessment Act 1979.

REPORT

BACKGROUND

At the Ordinary Meeting of Council of 20 April 2022, Council's nominations for Agritourism and Farm stay accommodation in response to the draft Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021 were considered. Those nominations included enabling Farm Stay Accommodation with consent in the RU4 Primary Production Small Lots zone and adopting the optional clause 5.23 for Farm Stay Accommodation as provided in the Amendment Order.

The matter had previously been considered by the Wingecarribee Local Planning Panel meeting of 6 April 2022, at which time the Panel advised that it did not support the use of the Standard Instrument Amendment Order to amend the current WLEP 2010 provisions for Farm Stay Accommodation and that these should be done by means of a Planning Proposal to enable community engagement and consultation to occur. This advice was reflected in the Council Resolution of 20 April 2022 that:

2. *In relation to Farm Stay Accommodation, Council maintain the existing development standards by:*
 - a. *Continuing to allow Farm Stay Accommodation in the RU1, RU2, C3, C4 and SP3 Zones*
 - b. *Continuing to prohibit Farm Stay Accommodation in the RU4 Zone*
 - c. *Not adopting the optional Clause 5.23 – Farm Stay Accommodation*
3. *Council prepare a Planning Proposal to nominate additional development standards for Farm Stay Accommodation, in consultation with the community and industry.*

A report to prepare a Planning Proposal to include a local clause into Wingecarribee Local Environmental Plan (WLEP) 2010 with regard to Farm Stay Accommodation and to amend the land use table for the RU4 Primary Production Small Lots zone to permit Farm Stay Accommodation with consent was subsequently considered at the Ordinary Meeting of Council of 18 May 2022, at which time it was resolved as follows:

THAT the Planning Proposal (Attachment 1) to amend WLEP 2010 to include clause 5.23 farm stay accommodation into WLEP 2010 and permit with consent farm stay accommodation in the RU4 Primary Production Small Lots zone of WLEP 2010 be SUPPORTED for submission to the Department of Planning & Environment for a Gateway Determination.

The Planning Proposal was submitted for a Gateway Determination, but the Department of Planning and Environment (DPE) advised Council that it was reviewing the proposed clause 5.23 regarding Farm Stay Accommodation and that the Planning Proposal could not proceed. Council was advised to wait until the Standard Instrument was amended with an updated clause. These amendments came into force on 18 August 2023 through the State Environmental Planning Policy Amendment (Agritourism) 2023 (the amending SEPP).

The amendments included two optional local clauses, clause 5.24 (changed from the previous 5.23) applying to Farm Stay Accommodation and clause 5.25 applying to Farm Gate Premises. The Farm Gate Premises clause was automatically adopted into WLEP 2010 through the amending SEPP, but because of Council's resolution of 18 May 2022, as explained above, clause 5.24 was not inserted into WLEP 2010.

The purpose of this report is to seek support to proceed with an amended Planning Proposal which

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would insert the Standard Instrument clause 5.24 Farm Stay Accommodation into WLEP 2010, as well as proceed with amending the RU4 Primary Production Small Lots land use table to permit Farm Stay Accommodation with consent, consistent with the Resolution of Council of 18 May 2022.

It is noted that the Standard Instrument was amended on 1 December 2022 to amend the definition of Farm Stay Accommodation. The new definition is,

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 in buildings or moveable dwellings.*

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

REPORT

The intent of the Planning Proposal is two-fold:

- 1. To insert *clause 5.24 Farm stay accommodation* into WLEP 2010, and
- 2. To amend the land use table for the RU4 Primary Production Small Lots zone to permit Farm Stay Accommodation with consent.

Each is considered in more detail below.

Intent 1 - To insert clause 5.24 into WLEP 2010

The proposed clause 5.24 is the same as that in the Standard Instrument (SI). The purpose of the Planning Proposal is to enable community engagement that is facilitated and managed by Council regarding this proposed amendment instead of the clause being introduced by means of State legislation and NSW government-led consultation. Community engagement also provides the opportunity for Council to consider any additional objectives and development standards which may be nominated by the community through the consultation process, as enabled through the SI clause 5.24:

5.24 Farm stay accommodation

(1) The objectives of this clause are as follows—

- (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for primary production,*
- (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.*
- (c) other objectives which may result from community consultation (to be confirmed during consultation)*

Direction—

Additional objectives may be included.

(2) Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied all buildings or manufactured homes used to accommodate guests on the landholding will be—

- (a) on the same lot as an existing lawful dwelling house, or*
- (b) on a lot of a size not less than the minimum lot size for a dwelling house to be permitted on the lot under an environmental planning instrument applying to the land.*

(3) Subclause (2) does not apply if the development is a change of use of an existing dwelling to farm stay accommodation.

- (4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—*
- (a) whether the development will result in noise or pollution that will have a significant adverse impact on the following on or near the land—*
 - (i) residential accommodation,*
 - (ii) primary production operations,*
 - (iii) other land uses, and*
 - (b) whether the development will have a significant adverse impact on the following on or near the land—*
 - (i) the visual amenity or heritage or scenic values,*
 - (ii) native or significant flora or fauna,*
 - (iii) water quality,*
 - (iv) traffic,*
 - (v) the safety of persons, and*
 - (c) whether the development is on bush fire prone land or flood prone land, and*
 - (d) the suitability of the land for the development, and*
 - (e) the compatibility of the development with nearby land uses.*

Direction—

Additional development standards for farm stay accommodation may be included.

It is noted that the objectives of the SI clause remain as they were previously and the only substantive change to subclause (2) is the exclusion of nominated maximum gross floor area, maximum number of guests in moveable dwellings and the maximum number of moveable dwellings.

Council also notes the Direction that both additional objectives and development standards may be included and these can be identified through the community consultation process.

It is further noted that the current provisions under clause 5.4(5) of WLEP 2010 with regard to the maximum number of bedrooms in all buildings used for farm stay accommodation will remain at 8.

Intent 2 - To amend the RU4 Primary Production Small Lots land use table to permit farm stay accommodation with consent.

Although the State Environmental Planning Policy Amendment (Agritourism) 2023 automatically included Agritourism in the RU4 Primary Production Small Lots zone as development permitted with consent, Farm Stay Accommodation was not automatically included because Council had nominated to consider such an amendment by means of a Planning Proposal.

Farm Stay Accommodation is currently permitted in the RU1 Primary Production zone and the RU2 Rural Landscape zone as these were considered by the Council of the day to be the zones most suited to this land use. It is not currently permitted in the RU4 Primary Production Small Lots zone because the Council of the day did not support that option.

Enabling Farm Stay Accommodation with consent in the RU4 Primary Production Small Lots zone is considered consistent with the objectives of the zone, specifically:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To provide for a restricted range of employment-generating development opportunities that are compatible with adjacent or nearby residential and agricultural development.

It is further considered that the remaining objectives of the zone will serve to ensure that the

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assessment of Farm Stay Accommodation includes consideration of neighbour impacts and environmental and landscape protection, specifically:

- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To avoid additional degradation or fragmentation of the natural environment caused by further clearing of native vegetation, high intensity development and land use.
- To maintain flora and fauna species and habitats, communities and ecological processes that occupy land in the zone, ensuring that development minimises any off and on site impacts on biodiversity, water resources and natural landforms.
- To conserve and enhance the quality of potentially valuable environmental assets, including waterways, riparian land, wetlands and other surface and groundwater resources, remnant native vegetation and fauna movement corridors as part of all new development and land use.
- To provide for the effective management of remnant native vegetation within the zone, including native vegetation regeneration, noxious and environmental weed eradication and bush fire hazard reduction.

COMMUNICATION AND CONSULTATION

Community Engagement

Community consultation will be undertaken in accordance with the requirements of the Gateway Determination and Council's Community Engagement Strategy which also includes Council's Community Participation Plan. This is generally undertaken for a period of at least 28 days and would include formal notification as well as communication through Council's Participate Wingecarribee website and e-newsletters sent to subscribers.

Internal Communication and Consultation

Preliminary discussions have been held with Council's Development Assessment Officers and the Planning Proposal will be further considered through the consultation process and after feedback is received by the community.

External Communication and Consultation

In addition to the community consultation to be undertaken, the Planning Proposal will be formally considered by the Rural Fire Service, WaterNSW and any other agencies that DPE identifies within the Gateway Determination as requiring Council consultation.

SUSTAINABILITY ASSESSMENT

Environment

The proposed amendments require the assessment of an application for Farm Stay Accommodation to consider potential impacts on native or significant flora or fauna, water quality, whether the development is on bush fire prone land or flood prone land, and the general suitability of the land for the proposed development.

Social

The proposed amendments require the assessment of an application for Farm Stay Accommodation to consider potential impacts with regards to traffic generation and the overall compatibility of the development with nearby land uses.

Broader Economic Implications

The proposed amendments offer opportunities for a broader agritourism and agribusiness base across the Shire. It is noted that the proposed amendments to WLEP 2010 do not in any way impact on the Exempt and Complying provisions within the Codes SEPP with regard to either Farm Stay Accommodation or Agritourism.

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Culture

There are no cultural issues in relation to this report.

Governance

The Planning Proposal has been prepared in accordance with the Local Environmental Plan Making Guideline published by the NSW Department of Planning and Environment in August 2023.

COUNCIL BUDGET IMPLICATIONS

Given that the Planning Proposal is Council-initiated, Council staffing resources have been utilised to prepare the Planning Proposal.

RELATED COUNCIL POLICY

The Wingecarribee Rural Tourism Policy was adopted by Council on 13 November 2019 and is due for review. Community and industry feedback on the Planning Proposal will help inform the review of this Policy.

CONCLUSION

Council is initiating a Planning Proposal to introduce clause 5.24 Farm Stay Accommodation from the Standard Instrument into WLEP 2010 and permit with consent Farm Stay Accommodation in the RU4 Primary Production Small Lots zone. This report seeks endorsement to submit the Planning Proposal to the NSW Department of Planning and Environment seeking a Gateway Determination to proceed to public exhibition. A request for delegation for Council to make the LEP will be sought from the Minister.

The proposed amendments reflect Council's ongoing consultation with agritourism stakeholders across the Shire as well as the broader community. They also reflect Council's involvement with ongoing consultation and feedback. These provisions will also provide a strong context within which to review the Rural Tourism Policy.

ATTACHMENTS UNDER SEPARATE COVER

1. P P-v 1- Farm Stay Gateway- Oct 23 [**8.2.1** - 17 pages]