Submission No 18

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

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Date Received: 26 September 2025

Select Committee on Rural Housing & Second Dwelling Reform
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Overview

In the late 1960s early 1970s the NSW Government introduced interim development order (IDO) planning schemes across the State that specified minimum lot sizes for subdivision and dwelling in rural areas. This was undertaken to prevent:

- The fragmentation of rural land.
- The demand for uneconomical expansion of services.
- Incompatible land uses sterilising resources.
- Economic Use of agricultural land being undermined.

Typically, only one dwelling was permitted under the IDOs for existing holdings, with worker's dwelling permitted where the agricultural productivity of a farm could be justified.

It should be recognised that many farms consist of multiple lots emanating from the original "portions in parishes" subdivision.

Many subsequent Local Environmental Plan that replaced the IDOs permitted secondary dwellings, ostensibly for family members, particularly elderly parents.

Existing LEP Provisions

Since this time there has been a confused expansion of the ability to construction a second dwelling in rural LEPs as either a dual occupancy or a secondary dwelling, with differences relating to the maximum size of the secondary dwelling, the attachment to the primary dwelling or maximum separation distance from the primary dwelling. There is no consistency across the State - it is a dog's breakfast.

There are two definitions under the standard LEP that refer to one additional dwelling that is applicable to rural zones (excluding a workers dwelling or a farm stay), which include:

- A dual occupancy that can be either attached or detached under the standard LEP, which are variously defined as:

  dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not

dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

There are generally additional restrictions that apply via a separate LEP clause that can include requirements such as:

- the development will not impair the use of the land or adjoining land for agriculture or rural industries, and
- each dwelling will use the same vehicular point of access to and from a public road, and
- the land is physically suitable for the development, and
- the land will accommodate the on-site disposal and management of sewage for each dwelling.
- A maximum separation distance between the dwellings
- to provide alternative accommodation for rural families and workers,

- A secondary dwelling which is defined to mean:

secondary dwelling means a self-contained dwelling that—

(a) is established in conjunction with another dwelling (the ***principal dwelling***), and

(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling.

The permissibility of a secondary dwelling and the limitation on size, and separation from the primary dwelling is specified in clause 5.5 of an LEP. The size restriction is often 60m2 and the separation distance varying between 60m to no distance.

Each LGA has a different approach to the permissibility of a dual occupancies and/or a secondary dwelling in the main rural zone (RU1) in its LEP. The approach adopted by various non-metropolitan LGAs is summarised as follows:

- Dual occupancies and secondary dwellings prohibited– Baldranald, Bogan Cessnock, Coonamble, Deniliquin, Goulburn-Wulwaree, Gundagai LEPs.
- Only secondary dwellings permissible – Bathurst, Coolamon, Dubbo, Forbes, Kiama
- Only Attached Dual occupancies permissible – Cootamundra, Cowra, Bland, Bombala, Bewarrina, Broken Hill, Central Darling, Gwydir, Hawkesbury, Hay, Lachlan, Lake Macquarie, Liverpool Plains, Lockhart LEPs
- Attached dual occupancies & Secondary dwellings permissible – Gunnadah, Junee, Forbes
- Attached and detached dual occupancies permissible – Armidale, Berrigan, Bland, Blayney, Bombala, Bourke, Cobonne, Carrathool, Cobar, Coffs Harbour, Conargo, Cooma-Manaro, Corowa, Dungog, Gilgandra, Glen Innes, Greater Hume, Griffith, Guyra, Inverell, Jerilderie, Kyogle, Leeton, Lismore, Lithgow, Maitland, Mid-West, Moree.
- Attached and detached dwellings and secondary dwellings permissible – Albury, Bega, Berrigan, Byron Bay, Clarence Valley, Eurobadalla, Glouster, Great Lakes, Greater Taree, Hilltop

Use of Rural land for Housing

The continued push to use rural land to solve housing demand outside a rural residential zoning strategy is extremely short sighted and contrary to good planning, as it has the potential to result in the:

a. Over-capitalisation of farmland – which makes farm amalgamation more costly. In most cases the ability to construction an additional dwelling will increase the price of a property by more than $100,000 depending on location.
b. Increased point sources of conflict with existing and future unknown agricultural uses.
c. The unrealistic proposition that it will assist farm income by providing an additional income (rental), which is inconsistence with objectives of reducing non-agricultural uses in the rural area.
d. The increased demand for the upgrading of rural roads by an increase in the rural population without any increase in rates income for local government, and thus there is the potential for urban properties to subsidise rural properties. While Council may wish to rational their road networks, uncontrolled doubling of rural population will result in uncontrollable cost impost on local governments.
e. The directing of limited professional and trade resources to the rural area for the construction of houses, instead of supporting and encouraging growth in the existing centres that will support existing infrastructure i.e. the water and sewer fund.
f. The increase in the potential burden on limited bushfire resources during critical fire events.
g. The increase of biosecurity incursions and impact on native vegetation.
h. The social impact on a more distributed population in terms of travel time and costs in accessing employment, schools, shops, health services etc. Rural locations are the last places that people with limited means should be encouraged to settle.

Tiny homes/Caravans

At present there is a range of structures that are being marketed as “dwellings” that can be established without any Council approval.

These products include tiny homes, same-day granny flats, fold-out-houses, container homes and other similar products that are being shipped in from China. These products generally have no certification that they comply with the mandatory National Construction Code for a habitable building.

These products are essentially “deluxe caravans” and provided they have still on wheels, as with any vehicle, are entitled to be parked anywhere on private property. However, what the sellers of these products often fail to make clear, is that there are significant restrictions on their use under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2021* (LG Regulation).

There are a very limited number of exemptions under Clause 77 of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2021* (LG Regulation) that allow for the use of a "caravan" on private land without approval. These include the use of a caravan as:

- a self-contained living unit on a temporary basis – no more than 2 consecutive days and no more than 60 day a year
- an overflow living area for an existing dwelling by the residence of that dwelling
- workers accommodation by a person employed in pastoral or agricultural operations on a seasonal basis.
- As accommodation for person displaced as the result of a natural disaster for up to 2 years.

As an aside, the need for appropriate sanitation and disposal of wastewater is not highlighted under these provisions.

The use of these structures for permanent residential use has been proliferating throughout the rural area causing significant compliance issue for Councils. The current legislation does not give Council's any legislative pathway to approval these for residential use either on a permanent or temporary basis within residential, rural residential or rural areas.

Under the LG Regulation, Council can only issue a S68 approval under the *Local Government Act 1993* for the permanent use of a caravan in an approved caravan park, which must be a minimum of 1 ha areas and have all the specified caravan park infrastructure and facilities.

The NSW Planning Department advertised reforms for this LG Regulation in December 2023 and there has been no progress since.

It would be of assistance if Councils had the ability to approval a single caravan on a vacant lot (that comply with the minimum lot size for dwellings) as a temporary arrangement pending its replacement with a permanent dwelling. I don't believe that Councils have this ability at present.

<u>Sheds</u>

In tandem with the use of tiny homes/caravans as an option for affordable living, it is also becoming common for people to build and live in a shed without approval as a last option until such time that they can afford the erection of a dwelling. Unfortunately, there is no ability for Councils to approve a shed for residential purposes, even temporarily, due to the requirements for a habitable building under the National Construction Code. We laud the early settlers surviving in "wattle and daub" huts but would rather people sleep in cars than live in a thermally uncomfortable shed.

<u>Housing Affordability</u>

Housing affordability has been compromised for most Australians because of failed government policy over a generation. Some of the key issues include:

1. The financial deregulation of banks by the Federal Government, whereby Australians are competing for limited resources (land/housing) in Australia with unlimited foreign capital.

2. Negative Gearing tax treatment by the Federal Government that allows investors to pay more for residential properties than owner-occupiers.
3. The unsustainable levels of annual immigration intakes and the cumulative impact. Any benefits from immigration are being offset by greater costs in economic terms in government spending on health, police, education, infrastructure, and housing. This is part of the theme of the Australian governance system, the Federal Govt cost shifts to the State Governments, and the State Governments reduces services and/or cost shift to Local Government.
4. The growth of urban settlements has long ago reached a stage that the easy growth options leveraged off spare capacity with existing infrastructure is no longer available.
5. The withdrawal of NSW Government funding of the augmentation of infrastructure. It is noted that there was a general 50% funding by the former NSW Public Works Department for sewer, water and drainage schemes for new urban areas and I believe for regional settlements. This was abandoned for a "user pay" system.
6. The exiting of NSW Government from undertaking land development and housing.
7. The opening up of building certification to private enterprise and loss of confidence and consumer protections once overseen effectively by local government. This has increased the cost of certification by allowing private certifiers to pick the easy jobs, while the State Government compels local government to do the more complex jobs without the ability to average costs across a larger portfolio (an example cost shifting to local government).
8. The ever-expanding requirements for residential buildings under the National Construction Code, which has resulted in the embedding of sectional professional interest at the expense of a more wholistic framework. An example of this, is the obsession with energy efficient housing, which fails to recognise that residents can control thermal comfort by a range of means, as they have been doing since time immemorial. The "wrapping up" of houses (with insulation) may achieve thermal ratings, but it may also result in an unhealth dwellings in many climate zones because of the lack of ability of the dwellings to be able to breath and thus improved the conditions for mould.
9. The reliance on Australian Standards for buildings that are not readily accessible. These standards are very expensive to subscribe to and are effectively a barrier to the promotion and adherence to National Standards. It is a disgrace that Australian Standards, which have been developed over many years by voluntary expert input, have been sold to foreign interests and is now behind a paywall. These standards represent the underpinning of national infrastructure that should be the basis of technical subject in schools.

Conclusion

In conclusion:

1. Most rural LEP already allow some form of secondary dwelling.
2. Any reform should restrict the distance of a second dwelling to 30 metres from a primary dwelling to encourage its use by family members and not encourage the commercialisation of rural land and the general uplifting of rural land values by an additional development right.
3. Any increase in rural housing should be undertaken by rezoning rural land to R5- Large Lot Subdivision based on a rural residential strategy, which ensures such land is located close to existing settlements, minimise potential landuse conflicts and optimises existing services (i.e. located to maximise existing road infrastructure).
4. The proposed second dwelling and rural reform as a means of increasing housing supply is an exercise in ignores more critical issues surrounding the ability to build reasonably priced housing.

5. The National Construction Code and the building certification system needs to be reformed.
6. Greater flexibility needs to be given to Local Governments to permit the permanent or temporary use of tiny homes and sheds as the principal dwelling on vacant lots that have a “dwelling entitlement.”

I trust my comments will assist the enquiry.

Thanks