Submission No 36

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: Wingecarribee Shire Council

Date Received: 2 October 2025

Wingecarribee SHIRE COUNCIL

2 October 2025

The Secretariat
Parliamentary Inquiry into Second Dwellings in Rural Zones
NSW Parliament
Macquarie Street
Sydney NSW 2000

Subject: Wingecarribee Council Submission to the Inquiry into Second Dwellings in Rural Zones in NSW

Please find attached Wingecarribee Shire Council's submission to the Parliamentary Inquiry into the construction of second dwellings in rural zones in New South Wales. Please note, that this submission has been prepared by Council staff for the purpose of the Parliamentary Inquiry and does not necessarily reflect the views or positions of the elected Council.

Wingecarribee Shire Council welcomes the opportunity to contribute to the Inquiry and provide insight into the unique planning challenges and policy considerations associated with second dwellings in rural and environmental zones. The attached submission responds directly to the Terms of Reference and provides commentary on planning instruments, policy amendments, environmental risk, and the potential impacts of the proposed changes to development controls across rural NSW.
In summary:

- Council already supports '*Secondary dwellings'* in all but one of our rural and environmental zones via the Development Application (DA) pathway. However, inclusion of *Secondary Dwellings* or 'Second Dwellings' as Complying Development under the Codes SEPP or Housing SEPP in RU1-RU4, C3 or C4 zones is not supported.
- the inclusion of Second Dwelling as a defined term in environmental planning instruments, including the Standard Instrument Dictionary and Land Use Tables in Local Environmental Plans is not supported.
- Existing defined terms such as 'Secondary dwellings', 'Dual occupancy', and 'Rural workers' dwelling' provide established mechanisms for facilitating additional housing in rural zones.
- Council recommends excluding high-value agricultural land, drinking water catchments, and environmentally sensitive areas from any expanded development permissibility of 'Secondary dwellings' or for Second Dwellings.
- The proposed changes to planning controls have the potential to negatively impact landscape character, rural infrastructure, environmental integrity, and the potential misuse of second dwellings as short-term rental accommodation (STRA).

Civic Centre
68 Elizabeth Street
Moss Vale
Gundungurra Country
PO Box 141 Moss Vale
NSW 2577
ABN 49 546 344 354
02 4868 0888
mail@wsc.nsw.gov.au

- The submission highlights the importance of maintaining local planning discretion, especially in areas with limited infrastructure, heritage landscapes, and natural hazards such as bushfire and flooding.
- Council advocates for a regional, landscape-based strategic planning framework, potentially modelled on successful interstate or international examples (e.g., Western Australia's Leeuwin-Naturaliste State Planning Policy).
- The lack of strategic justification for broad reforms targeting rural zones as a solution to state-wide housing issues is noted.

Council urges the Committee to consider a nuanced, place-based approach to any proposed reforms, ensuring rural and environmental zones retain their integrity, productive capacity, and biodiversity values while supporting genuine rural housing needs.

Should the Committee require any further information or wish to discuss the submission in more detail, Council officers would be pleased to make themselves available.

Thank you for the opportunity to provide input into this important policy review.

Yours sincerely

Michael McCabe
Director
Communities and Place
Wingecarribee Shire Council

Attachment A:
Wingecarribee Shire Council – Submission to the Inquiry into Second Dwellings in Rural Zones in NSW (September 2025)

ATTACHMENT A: Wingecarribee Shire Council Submission to Parliamentary Inquiry on Rural Housing and Second Dwelling Reform

Executive Summary
The term 'second dwelling' is not defined in NSW planning legislation.

Under the *Wingecarribee Local Environmental Plan 2010* (WLEP), secondary dwellings are permitted with consent in all Rural and Environmental zones except RU3 (Forestry), where they are prohibited. The size and spatial relationship of secondary dwellings are controlled by Clause 5.5, ensuring they remain subordinate to the principal dwelling. It is noted that additional housing outcomes could also be achieved through expanded permissibility of dual occupancies, particularly detached dual occupancies, in rural zones. However, any such changes must preserve the primary objectives of rural zones—protecting agricultural productivity, landscape character, and environmental values.

Wingecarribee Shire Council supports merit-based assessment pathways and maintains that complying development is not appropriate for rural or conservation zones, where land use decisions require the application of context-specific planning controls.

<u>Response to Terms of Reference</u>

a) Planning instruments and development controls (such as amendments to the SEPP, Exempt and Complying Code, other instruments?) to facilitate the construction of second dwellings in rural zones in NSW, and

b) Potential amendments to the State Environmental Planning Policy (Housing SEPP), the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and related instruments to enable flexible, streamlined and liberalised approval pathways for second dwellings on rural-zoned land.

1. It is noted that the Parliamentary Inquiry Terms of Reference use the term 'second dwelling' which is not a defined term within planning legislation or regulation. However, *Secondary dwelling* is a defined term and Wingecarribee Local Environmental Plan 2010 includes four rural zones – RU1 – Primary Production, RU2 Rural Landscape, RU3-forestry, RU4 Primary Production Small Lots as well as C3-Environmental Management and C4 Environmental Living. *Dual occupancies* are also a defined term under the Standard Instrument LEP and could also constitute a 'second dwelling' on a property. *Rural worker dwellings* are also a defined term specifically relevant to a rural context and could constitute a second dwelling.

2. With specific regard to *Secondary Dwellings*, the permissibility in each of the zones named in the Terms of Reference (ToR), under the existing provisions of the *Wingecarribee Local Environmental Plan 2010,* is identified in Table 1:

Zone	**Permissibility of Secondary dwelling**
RU1 Primary Production	Permitted with consent
RU2 Rural Landscape	Permitted with consent
RU3 Forestry	Prohibited
RU4 Primary Production Small Lots	Permitted with consent
C3 Environmental Management	Permitted with consent
C4 Environmental Living	Permitted with consent

Table 1: Permissibility of Secondary Dwellings in WLEP 2010

Council notes the following Standard Instrument definition of a *secondary dwelling*:

> ***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.*
>
> ***Note.***
> *See clauses 5.4 and 5.5 for controls relating to the total floor area of secondary dwellings.*
> *Secondary dwellings are a type of* ***residential accommodation****—see the definition of that term in this Dictionary.*

Clause 5.4 of the *Wingecarribee Local Environmental Plan* 2010 does not contain any controls pertaining to secondary dwellings on rural zoned land, but Council has adopted clause 5.5 which restricts the size and spatial relationship to the principal residence of the *secondary dwelling* as follows:

> *If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—*
> *(a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*
> *(i) 60 square metres,*
> *(ii) 33% of the total floor area of the principal dwelling, and*
> *(b) the distance between the secondary dwelling and the principal dwelling must not exceed 50 metres.*

3. As evidenced by Table 1 Council does support *Secondary Dwellings*, with consent in Rural (RU1, RU2 and RU4), Environmental Conservation (C4) and Environmental Management zones (C3), although any dwelling is deemed to be an inappropriate use in a Forestry area (RU3).

4. An appropriate approach to allowing 'second dwellings' could be to broaden the permissibility of dual occupancies in rural zones. Currently, only attached dual occupancies are permissible with consent in RU1, RU2, RU4, C3 and C4, with

detached dual occupancies prohibited due to potential pressure for subsequent subdivision.

5. The purpose of allowing an additional dwelling is not clearly articulated in the draft State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025, tabled by the Hon John Ruddick MLC. The draft SEPP describes the primary intent as being to *"facilitate second dwellings on rural zoned land to support housing diversity, multi-generational living, and rural economic resilience."* There is no strategic justification provided for this targeting of non-urban land as a focus for addressing the nominated housing concerns. No basis for this proposed increase of housing in rural communities has been articulated, nor demonstrated, in locations where access, services, employment opportunities and community connections are less available than in urban locations.

6. One key concern is that the intended purpose of a 'second' dwelling cannot be guaranteed. Whilst a 'second dwelling' may originally be sought to accommodate family members, or to more broadly enhance housing diversity or affordability, Councils can only assess development applications on their merits, not on the stated intentions of the applicant, which can change due to new circumstances.

7. Facilitating an increase in diverse and/or affordable housing would require that Short Term Rental Accommodation be prohibited under any Complying Development permissibility of any second dwelling. Without that restriction, the opportunity for such housing to be used for short term rental accommodation (STRA) would remain.

c) The benefits and risks of permitting second dwellings on RU1-RU6, C3 and C4 zoned lands, including via complying development

8. Rural zones in Wingecarribee are inherently different from metropolitan residential zones as the objectives of rural zones support the productive use of land and support the retention of those characteristics of the land which are important to its economic, environmental, and social sustainability. Therefore, planning controls need to be nuanced for Rural and Environmental zones to protect those qualities. The issue of second dwellings in rural areas is complex and current debate is highlighting broader issues. Council has therefore taken this opportunity to bring to the attention of the Inquiry, planning issues facing rural councils in NSW.

9. NSW needs a stronger system for protecting, supporting, and growing important landscapes, farming activities and rural towns.

10. An Australian example of state and local government collaboration to identify and protect the character of rural landscapes is the Leeuwin-Naturaliste Ridge, in the south-west of Western Australia. The Western Australian Planning Commission (WAPC) undertook background studies to inform a Statement of Planning Policy (SPP 6.1) which underpins the local planning controls contained in the Shires of Augusta-Margaret River and Busselton planning strategies and schemes. The Policy was adopted at a time of rapid growth and change which was creating increased land use conflicts and differing views on management of natural and economic resources as well as on the level of change that would be acceptable. It is noted that the Policy

provides a Statement of Intent for each land-use and for Agriculture that statement notes that *"the continued protection and viability of agricultural land …will be supported by…ensuring that tourism and settlement patterns retain a secondary and complementary focus on agricultural land'*

11. Second dwellings are considered a discretionary use and are only appropriate where it is demonstrated to be integral to and necessary for the efficient undertaking of the agricultural activity.

12. In the Western Australian example, the WAPC and the Councils recognised that a regional planning approach was required to protect the *"unique ecological, social and landscape values and character of the policy area.'*

13. Wingecarribee, like many other rural Councils in NSW, is experiencing similar pressures and a regional approach to planning along similar lines to that introduced for the Leeuwin-Naturaliste Ridge may be appropriate as it would assist Councils and the NSW government to plan for the sustainable future of rural communities.

14. Reference is also made to the United Kingdom which has applied a hierarchy within the planning system for rural areas. In simple terms the framework consists of Areas of Outstanding Natural Beauty, Green Belts, and general Rural areas.

15. There are 46 Areas of Outstanding Natural Beauty (AONB) in the UK which are the subject of national and local planning controls. The designation is only applied after rigorous assessment and community consultation. The aims of AONBs include:
    - Conserve and enhance the natural beauty including landscape and scenic quality, wildlife and biodiversity, cultural heritage
    - Promote sustainable development including sustainable farming, forestry and tourism by supporting growth in ways that do not compromise the landscape.
    - Support the understanding and enjoyment of landscape and the countryside.
    - Protect the environment from inappropriate development by ensuring land use and management are consistent with the area's natural values.
    - Encourage local stewardship of landscapes and rural places.
    - Adapt to environmental challenges and enhance biodiversity.

    There are demonstrable benefits of such a designation including:
    - Tourism and recreation
    - Support for ongoing productive capacity of farms and growth of associated rural enterprises
    - Brand value associated with quality of landscapes and visitation.
    - Education and training – to develop skills in rural economy and conservation.

16. Any new building in an AONB requires planning permission and must blend into the landscape, respect local materials, and minimise visual impact with a design statement needed to justify visual impact and landscape sensitivity.

17. Several areas within Wingecarribee Shire have similar characteristics to those of the UK's AONBs. A State framework which provides protection for important landscapes

would ensure the ongoing sustainability of the region as a place that attracts local, national, and international visitors, has high biodiversity values, scenic qualities, agricultural capacity and cultural values.

18. Other areas across the UK are designated as Green Belt which applies to areas of open land around cities with the aim being to check unrestricted sprawl, prevent towns from merging and protect landscape. In Green Belts, construction of agricultural or forestry buildings, replacement buildings, some infill of villages, re-use of buildings and affordable housing on special sites is permissible with consent. The equivalent description of such land within the Wingecarribee Shire is 'the Green Between', a concept which has received strong community support over many years. Stronger planning controls and support for those planning controls is needed at all levels of government to ensure ongoing viability of the 'Green Between'.

19. For areas outside of an AONB and a Green Belt, but within a rural zone, in the UK, 'second dwellings' require planning permission even if they are for family or farm workers. There is a Functional and Financial test that applies to applications for dwellings for agricultural workers:(a) Is there an essential need for a worker to live on site? (b) Is the farm a viable business that can support the cost of the new dwelling? (c) Is there other suitable accommodation nearby? This approach aligns with the (now) NSW Department of Planning, Housing and Infrastructure's approach to permitting *rural worker dwellings* within certain localities when the initial iterations of the Standard Instrument Local Environmental Plan were being prepared.

20. Existing farm buildings such as sheds, outbuildings, former farm structures and redundant rural buildings can be converted to a dwelling with permission in an AONB, Green Belt or general rural area. This may be a suitable control for NSW Rural and Conservation zones as it would assist in promoting adaptive reuse of rural buildings, contribute to protection of cultural heritage as well as landscape character and tourism opportunities.

21. In the UK occupancy conditions usually apply if a second dwelling is approved, meaning that only someone employed in agriculture or forestry can live there. A condition of consent is imposed on the building that the dwelling cannot be sold or rented on the open market without first applying to remove the condition. Such conditions do, however, place a compliance burden on Council to monitor dwelling use.

22. Secondary dwellings are permitted with consent in all rural zones but the RU3 Forestry zone in Wingecarribee. This is appropriate and manageable. Allowing Secondary Dwellings as Complying Development in the RU1-RU6 and C3 and C4 zones would reduce the ability of a council, on behalf of its community, to manage potential impacts of such development, which could extend to the landscape and road networks. As Complying Development, further impacts on infrastructure may also result in impacts on the environmental sustainability of rural communities.

23. Similarly, allowing Dual Occupancies as Complying Development would need to be very tightly controlled with consideration to be given to the following matters:

- Development standards for bush fire prone land
- Development standards for flood affected lots (acknowledging that all our rural areas have not been subject to flood studies so, therefore, flooding is unknown).
- Building in a drinking water catchment and impact of on-site sewage management (OSSM).
- Restriction of separated second dwellings/dual occupancies on sites designated as high value agricultural land.
- Any second dwellings (dual occupancies) approved as Complying Development should not be able to be used for short term rental accommodation (at least for a restricted period). Whilst there is significant tourism potential associated with allowing more short-term rental accommodation the primary purpose of zones for agricultural production, environmental management or environmental conservation should be protected and not undermined by fragmentation and introduction of uses which do not support the ongoing primary land use.

24. Fragmentation of viable agricultural land is a real threat, particularly if strata or other types of subdivision are proposed. It is suggested that the Parliamentary Inquiry seek input from the Department of Primary Industries in relation to this important issue.

d) The suitable interaction between the Housing SEPP and/or Codes SEPP and provisions in the LEP under s.3.28 of the EP&A Act 1979

25. The most appropriate statutory instrument depends on the main purpose of the amendments. If the primary objective is to provide more diverse housing choices, then the Housing SEPP would be the most appropriate instrument. If the intention is to bolster rural income through short term rental accommodation then the Codes SEPP would probably be more appropriate. In both cases, the SEPP overrules a Local Environmental Plan, thereby excluding Councils from the assessment and approval pathway.

e) The impact of removing restrictions on dwelling size, attachment and internal lot distance and implication of enabling secondary dwellings to be larger than or functions the primary dwelling.

26. The size and location of secondary dwellings (or any form of Second Dwelling) does need to be the subject of planning controls, as for any dwelling in NSW. Currently, *secondary dwellings* in a rural zone in Wingecarribee must not exceed whichever of the following is greater, 60sqm or 33% of the total floor area of the principal dwelling. Council is open to considering an increase in the total floor area of a *secondary dwelling*, however it is noted that it is already possible for an existing dwelling to be classified as the *secondary dwelling* with the new larger dwelling becoming the principal dwelling, thereby addressing that issue.

27. Council is also open to considering a change in controls in relation to location of a *secondary dwelling* in the Rural zones, but not as Complying Development. Planning controls would need to be put in place to have influence over the location and access arrangements so that use of the land for settlement is secondary to the rural or

environmental management uses. Council is unlikely to support a *Secondary Dwelling* (or Second Dwelling) location that would result in fragmentation of viable agricultural land.

28. Council also notes that it has received representations to allow 'tiny homes' in rural and environmental zones. Tiny homes are generally defined, for planning purposes in NSW as a *'moveable dwelling.'* If it is permanently fixed with services (water, sewer, power) it needs to comply with controls for '*dwelling houses'* regardless of size. *Moveable dwellings* are subject to the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021.* Any amendments to permissibility of *moveable dwellings* would require corresponding amendments to the regulation.

29. Furthermore, Council does not support changes to the regulations which would allow for an increase in '*moveable dwellings'* being used as permanent dwellings in the rural or environmental zones unless they are subject to a Development Application. This is to limit proliferation of *Manufactured home estates, Caravan Parks,* and *Moveable Dwelling Estates* as de facto housing estates.

30. The interaction of secon*dary dwellings, dual occupancies* and *rural workers' dwellings* will need to be clearly articulated. For example, if there is a dual occupancy, or a principal dwelling and secondary dwelling, can there be a third dwelling in the form of a rural workers' dwelling?

f) The role of elevation criteria and 1 in 100-year flood mapping in determining permissibility and the use of performance-based solutions for flood prone lands and other land-based hazards and environmental impacts

31. Many of our rural lands have not been subject to flood studies so there can be no certainty as to flood affectation without further investigation. The Complying Development pathway may compromise that investigation and result in potentially inappropriate residential development.

32. Use of elevation criteria to locate development in appropriate flood hazard areas needs to be balanced against the relevant Local Environmental Plan or Development Control Plan controls that restrict development on ridgelines.

g) The interaction between second dwellings and potential impacts on rural activities and productive capacity of land for agriculture including feasibility and implications of allowing second dwellings without subdivision.

33. High value agricultural land should be excluded from any Complying Development pathway. Currently, such land has the potential to accommodate several dwellings for the purposes of farm stay accommodation under the Exempt and Complying SEPP. Additional permissibilities for *second dwellings* should require site specific assessment.

h) The use of non-discretionary, zone-specific development standards and their interaction with merit-based assessment in complying pathways and legal frameworks for tenancy in common, co-ownership and strata like arrangements on rural land

34. Council acknowledges that some development standards could be zone specific and non-discretionary such as floor space and height. However, Council does not support *Secondary Dwellings* as Complying Development in the RU1, RU2, RU4, C3 or C4 Zones (note that *Secondary Dwellings* are prohibited in the RU3 Forestry zone – Council does not support any form of dwelling in that zone).

35. Complying Development has a role to play in the approval of development, however it is not appropriate in the Rural (RU) or Environmental (C) zones as they are places that are particularly vulnerable to inappropriate development due to physical, visual and environmental characteristics of place. In addition, blanket controls that apply across zones may be appropriate in one LGA but are unlikely to achieve good outcomes across all peri-urban and regional areas.

i) Mechanisms to streamline the development application and Complying Development Certificate CDC processes.

36. The CDC process, by its nature, is already streamlined and no additional streamlining is considered appropriate for development in rural areas. In relation to development applications, Development Application submission checklists can be an effective way of ensuring that applications are complete thereby reducing DA assessment timeframes.

j) The adequacy of existing infrastructure (e.g. sewerage, access roads) for servicing secondary dwellings and potential impacts of reforms on housing affordability, multi-generational living, and rural population growth

37. Population growth, housing affordability and opportunities for multi-generational living are issues that need to be addressed across all areas within NSW, not only in rural areas. Despite the urgency to plan and design to meet demands arising from these issues, the NSW government is best placed to be future focused and provide deep and meaningful support to rural communities. The issues for a region such as Wingecarribee will be different to those experienced by other communities. For Wingecarribee much of its prosperity (as well as pressures) is derived from tourism associated with landscape character. Council is working hard to service the needs of residents and visitors whilst considering the needs of future generations and must do so within its financial capacity.

38. None of the rural areas in our LGA are currently serviced. In addition, the majority of the Shire is within a drinking water catchment so On-Site Sewerage Management (OSSM) can impact water quality. Provision of duplicate OSSM systems can reduce

the viable area of agricultural land and for this reason additional dwellings should be limited and subject to site specific assessment processes.

k) Transitional arrangements and monitoring of policy outcomes

39. Like many State policies, the burden of compliance falls on Councils and monitoring and enforcing complying development conditions is limited by Council resourcing.

l) Any other matters

40. In conclusion, Council recognises the need for housing diversity in order to provide housing choice and to meet varying housing needs as their occupants' needs change over time. There is an urgent need for more affordable housing to meet all sectors of the community. The proposed Rural Housing and Second Dwelling reform is not a more efficient or effective means of achieving this outcome for the reasons articulated above. Urban areas contain the appropriate zones intended to support population demand and growth. Even within rural and regional centres, residential zones are the most appropriate location for housing. Housing supply on rural properties is intended to facilitate the primary use of the land, an intention that is already being supplanted in some areas by 'rural lifestyle' housing. Crucial to the successful growth of appropriate housing on rural and environmental land will be assessment controls and a complying development pathway is not considered appropriate for this purpose.