Submission No 41

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: Blue Mountains City Council

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F00678 (25/198496)

Parliament NSW

Legislative Council

On-line submission portal

Dear Sir/Madam

Inquiry into rural housing and second dwellings reform

Thank you for the opportunity to make a submission into the Rural Housing and Second Dwellings Reform Inquiry announced in August 2025.

The submission from Blue Mountains City Council is attached to this letter. While it is unclear which areas will be affected by the proposed reforms, concerns are raised that the proposed approach would not recognise local environmental values or risks and could lead to poor development outcomes with significant environmental impacts. These concerns have been outlined in the attached submission, which has been organised against the terms of reference for the inquiry.

Should you have any questions or wish to discuss the matter further, Council's contact for this submission is Kim Barrett, Manager City Planning, who can be contacted on or via .

Yours faithfully

WILL LANGEVAD

Environment and Planning Services Director

(1) That a select committee be established to inquire into and report on reforms to facilitate the construction of second dwellings in rural zones, and in particular:

> ***(a) planning instruments and development controls to facilitate the construction of second dwellings in rural zones in New South Wales, excluding Greater Sydney, with an emphasis on Outer Metropolitan Local Government Areas, and in particular the document entitled "State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025"***

The terms of reference introduce a new term 'second dwelling'. The tabled document entitled 'State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025' provides a definition of 'second dwelling' which appears to align with the existing definition of secondary dwelling however removes restrictions so the development would take the form of a dual occupancy. It is unclear of why a new term is proposed and if it's meant to reference secondary dwellings or dual occupancies. Nevertheless, a new residential term is not necessary and will likely create confusion with the existing residential terms.

Further, it is unclear which areas will be affected by the proposed reforms. The terms of reference indicate that the purpose of the reforms is to facilitate the construction of second dwellings in rural zones in NSW, excluding Greater Sydney (which would exclude the Blue Mountains LGA). However, the tabled document indicates that second dwellings will be permitted with consent on land zoned RU1, RU2, RU4, RU5, RU6, C3 & C4 by any Local Environmental Plan in NSW.

While not a rural area in the context of NSW, the Blue Mountains has land zoned RU2, RU4, C3 and C4. Due to the constrained nature of the Blue Mountains - being surrounded by a World Heritage National Park, bushfire risk, being within the Sydney Water Drinking Catchment, and the considerable extent of environmentally sensitive land – the use of these zones differs significantly from other LGAs and would not be appropriate for the complying development pathway proposed by the proposed reforms.

The Blue Mountains Local Environmental Plan 2015 includes bespoke provisions that seek to set the overall size of the development based on the environmental sensitivity of the land, allowing a modest scale of the development while preserving and enhancing the natural features of the site and surrounds. Allowing for the Housing SEPP and/or Codes SEPP to override these local provisions, particularly in the most constrained areas (i.e. in environmental zones) is inappropriate and could have a detrimental effect to the sensitive environmental areas and put people and property at risk.

(b) potential amendments to the State Environmental Planning Policy (Housing) 2021 (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

The SI LEP already includes the flexibility to allow 'second dwellings' in the form either secondary dwellings or dual occupancies in rural areas, and to set locally appropriate standards for their size and configuration. A complying development pathway and/or State level policy is not needed to facilitate this outcome.

A blunt one-size-fits-all approach that doesn't recognise local environmental values or risks could lead to poor development outcomes with significant environmental impact. Such an approach also limits the ability to set key development standards and criteria to realise the potential positive benefits of this housing type. Specifically, secondary dwellings provide a more affordable housing option. Having no floor space limit allowing extensive new development that does not contribute to housing diversity or affordability, which would otherwise be a potential benefit of secondary dwellings or dual occupancies.

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

There are potential benefits to secondary dwellings and/or dual occupancies on rural and conservation zoned land. However, the SI LEP already includes the flexibility to do this and set locally appropriate standards. A complying development pathway is not needed to realise these benefits.

A blunt one-size-fits-all approach that doesn't recognise local environmental values or risks could lead to poor development outcomes with significant environmental impact. Such an approach also limits the ability to set key development standards and criteria to realise the potential positive benefits of this housing type. For example, having no floor space limit allowing extensive new development that does not contribute to housing diversity or affordability, which would otherwise be a potential benefit of secondary dwellings or dual occupancies.

In addition to limiting the realisation of potential benefits from secondary dwellings, a new complying development pathway or blanket permissibility without limitation on the size or scale of development, would likely have significant impacts particularly in the context of an area like the Blue Mountains, as outlined below.

<u>Environmental Impact</u>

The Blue Mountains local policy context is supported by decades of fine-grained spatial planning and focuses on the protection of the natural environment and the surrounding World Heritage Area.

Council's LEP and DCP contain detailed environmental controls, which appropriately respond to the unique and environmentally sensitive location of the city of the Blue Mountains within a World Heritage Area and within the Sydney Drinking Water Catchment. These controls work with the carefully crafted place-based controls on development permissibility and density, seeking to ensure that development does not adversely impact on the sensitive receiving environment.

The planning framework of the Blue Mountains is based on extensive mapping of underlying constraints. This constraint mapping informs land use zoning and protected areas in Local Environmental Plan (LEP) 2015. Some of the key constraints are bushfire, significant vegetation, riparian lands connecting urban areas to the Blue Mountains World Heritage Area, and steep slopes.

Allowing the Housing SEPP and/or Codes SEPP to override these local provisions, particularly in the most constrained areas (i.e. in environmental zones) is inappropriate and could have a detrimental effect to the sensitive environmental areas and put people and property at risk.

Stormwater Management

The urban areas of the Blue Mountains drain into the surrounding World Heritage Area and ultimately into Sydney's drinking water catchment. The management of stormwater on a plateau is supported by best practice, local stormwater controls in Blue Mountains LEP 2015. This is directed at both the quality and quantity of stormwater leaving a site.

In place for 20 years (first implemented under LEP 2005), these controls are reflected in clause 6.9 of LEP 2015 and are critical for managing the effects of stormwater runoff. A complying development pathway would bypass these provisions and could have significant impacts on stormwater management (particularly the volume of water leaving the site), adversely affecting the receiving environment of the World Heritage National Park.

Further, the draft SEPP amendment details that the development standards will be identical to Part 3A of the Rural Housing Code except for front setbacks. Many of these standards would be inappropriate within the Blue Mountains context in terms of cumulative impact and increase in impervious area that could impact on the quality and quantity of stormwater runoff.

Bushfire Risk

The Blue Mountains is one of, if not the most, bushfire prone areas of Australia and the current planning controls have been carefully developed in response to the local environmental conditions. They take into account the bushfire risk to communities, allowing for forms of development and a level of population density suitable for a setting characterised by ridge top development in small, isolated towns and villages, all of which are surrounded by bushland. In this regard, dual occupancies are a prohibited land use in the rural and environmental zones under Blue Mountains LEP 2015.

Changes to permissibility to allow second dwellings (dual occupancies) in the rural and environmental zones through the SEPP bypass the usual checks and balances which are fundamental to strategic land use planning at local level. This includes the consideration for residents to evacuate safely during a bushfire emergency which is a key consideration for the Blue Mountains given the limited evacuation routes.

Loss of Character

Due to the constrained nature of the Blue Mountains - being surrounded by a World Heritage National Park, the bushfire risk, being within the Sydney Water Drinking Catchment, and considerable amounts environmentally sensitive land – a significant portion of urban land is zoned C3 or C4 and comprises of low-density residential housing.

These areas have a strong established character of significant importance to the community, and almost all sit on the interface with surrounding bushland and the

National Park beyond. This significantly contributes to the character and appeal of these areas, but also to the environmental sensitivity and bushfire risk.

Council's LEP and DCP contain place-based provisions which are aimed at protecting the unique values and characteristics of the Blue Mountains, and ensuring the sense of place is retained. The proposed complying development pathway would bypass these local provisions and could result in the detrimental loss of character to these established residential areas.

(d) the suitable interaction between the Housing SEPP and/or Codes SEPP and provisions in Local Environmental Plans under section 3.28 of the Environmental Planning and Assessment Act 1979

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Further, the draft SEPP amendment details that the development standards will be identical to Part 3A of the Rural Housing Code except for front setbacks. Many of these standards would be inappropriate within the Blue Mountains context in terms of cumulative impact and increase in impervious area that could impact on the quality and quantity of stormwater runoff.

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Changes to permissibility to allow second dwellings (dual occupancies) in the rural and environmental zones through the SEPP bypass the usual checks and balances which are fundamental to strategic land use planning at local level. This includes the consideration for residents to evacuate safely during a bushfire emergency which is a key consideration for the Blue Mountains given the limited evacuation routes.

(e) the impact of removing restrictions on dwelling size, attachment, and internal lot distance and implications of enabling second dwellings to be larger than, or function as, the primary dwelling

The terms of reference introduce a new term 'second dwelling'. The tabled document entitled 'State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025' provides a definition of 'second dwelling' which appears to align with the existing definition of secondary dwelling however removes restrictions so the development would take the form of a dual occupancy. It is unclear of why a new term is proposed and if it's meant to reference secondary dwellings or dual occupancies. Nevertheless, a new residential term is not necessary and will likely create confusion with the existing residential terms.

If 'second dwelling' references secondary dwellings, Council has concerns with the size restriction being removed. Secondary dwellings are a key component of the housing within the Blue Mountains and are a good form of alternative housing. Given the size limit, they provide an opportunity to increase housing diversity through the provision of small, predominantly one bedroom housing. Limiting the size of secondary dwelling has the potential to contribute to housing affordability, when these dwellings are made available on the long-term rental market.

Further, removing the size restriction would enable a secondary dwelling to function as a dual occupancy, which is prohibited land use in the rural and environmental zones under Blue Mountains LEP 2015.

The Blue Mountains current planning controls have been carefully developed in response to the local environmental conditions. They take into account the bushfire risk to communities, allowing for forms of development and a level of population density suitable for a setting characterised by ridge top development in small, isolated towns and villages, all of which are surrounded by bushland.

Changes to permissibility to allow second dwellings (dual occupancies) in the rural and environmental zones through the SEPP bypass the usual checks and balances which are fundamental to strategic land use planning at local level. This includes the consideration for residents to evacuate safely during a bushfire emergency which is a key consideration for the Blue Mountains given the limited evacuation routes.

While Council's LEP does not require that secondary dwellings be attached to or be within a certain distance from the principal dwelling, it does contain bespoke provisions to ensure that the footprint of development is contained to a single area limiting the environmental impact. A complying development pathway would bypass these local provisions and increase environmental impacts on land that is highly constrained and sensitive.

(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 (e.g., elevation certification), other land-based hazards and environmental impacts

Whilst the terms of reference focus on flooding, there are other significant hazards and potential environmental impacts. These are complex matters that can not readily or appropriately be dealt with through simple criteria. Performance based solutions and streamlined or complying development are not compatible. By its nature, complying development requires simple numerical controls that can be easily assessed. The merit based assessment of performance based criteria can't work within a complying development framework. A Pathway already exists through a DA to consider performance-based solutions.

Complying development should only be used for low risk low impact development. Land subject to natural hazard or with areas of environmental value are not low risk or potentially low impact. Following is a more comprehensive overview of the hazards and potential environmental impacts that require management through appropriate development controls and assessment in the Blue Mountains.

<u>Environmental Impacts</u>

The Blue Mountains local policy context is supported by decades of fine-grained spatial planning and focuses on the protection of the natural environment and the surrounding World Heritage Area.

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The planning framework of the Blue Mountains is based on extensive mapping of underlying constraints. This constraint mapping informs land use zoning and protected areas in Local Environmental Plan (LEP) 2015. Some of the key constraints are bushfire, significant vegetation, riparian lands connecting urban areas to the Blue Mountains World Heritage Area, and steep slopes.

Allowing for the Housing SEPP and/or Codes SEPP to override these local provisions, particularly in the most constrained areas (i.e. in environmental zones) is inappropriate and could have a detrimental effect to the sensitive environmental areas.

<u>Stormwater Management</u>

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Further, the draft SEPP amendment details that the development standards will be identical to Part 3A of the Rural Housing Code except for front setbacks. Many of these standards would be inappropriate within the Blue Mountains context in terms of cumulative impact and increase in impervious area that could impact on the quality and quantity of stormwater runoff.

Bushfire Risk

The Blue Mountains is one of, if not the most, bushfire prone areas of Australia and the current planning controls have been carefully developed in response to the local environmental conditions. They take into account the bushfire risk to communities, allowing for forms of development and a level of population density suitable for a setting characterised by ridge top development in small, isolated towns and villages, all of which are surrounded by bushland. In this regard, dual occupancies are a prohibited land use in the rural and environmental zones under Blue Mountains LEP 2015.

Changes to permissibility to allow second dwellings (dual occupancies) in the rural and environmental zones through the SEPP bypass the usual checks and balances which are fundamental to strategic land use planning at local level. This includes the consideration for residents to evacuate safely during a bushfire emergency which is a key consideration for the Blue Mountains given the limited evacuation routes.

(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

Response: NA

(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

Any form of ad-hoc subdivision or rural land is opposed. This impacts on the agricultural potential of the area, transitioning it to rural lifestyle residential living. Premature subdivision also limits the future potential residential use of the land by allowing ad-hoc large lot subdivision that makes large scale future residential subdivision and infrastructure provision difficult.

It is unclear of what areas will be affected by the proposed reforms. The terms of reference indicate that the purpose of the reforms is to facilitate the construction of second dwellings in rural zones in NSW, excluding Greater Sydney (which would exclude the Blue Mountains LGA). However, the document titled 'State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025' indicate that second dwellings will be permitted with consent on land zoned RU1, RU2, RU4, RU5, RU6, C3 & C4 by any LEP in NSW.

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(i) mechanisms to streamline the development application and Complying Development Certificate (CDC) processes

Response: NA

(j) the adequacy of existing infrastructure (eg sewerage, access roads) for servicing second dwellings and potential impacts of reforms on housing affordability, multigenerational living, and rural population growth

Water, Sewer and Electricity

Urban areas of the Blue Mountains face significant limitations on both water and sewer services. For example, Sydney Water has recently advised that there are no further sewer connections available in Mount Victoria, and that other areas within the Priority Sewage Program are reaching capacity. Water supply also relies in recharging of water storage tanks servicing the existing villages. Mount Victoria and other areas within the Priority Sewage Program contain large areas of land zoned C3 and C4 which would be impacted by the proposed reforms. This has implications not only for the day-to-day water supply, but for the availability of water for bushfire suppression.

The current Sydney Water development plans for both sewer and water services are focussed on metropolitan Sydney and the new airport growth areas. There are no plans to augment services within the Blue Mountains LGA.

Endeavour Energy has also recently advised of electricity supply and connection issues in the Blue Mountains, with these issues expected to arise more frequently, as much of the electricity infrastructure in the Blue Mountains overhead and aging.

Stormwater

Approximately half of the urban area within the Blue Mountains (southern side of the Great Western Highway) drains into the Sydney Drinking Water Catchment. Runoff from the City as a whole, flows into the sensitive receiving environment of the Greater Blue Mountains World Heritage National Park.

Stormwater treatment is therefore fundamental to the management of urban land within the Blue Mountains and is primarily addressed through local planning controls for on-site infiltration and treatment. The draft SEPP amendment details that the development standards for complying development will be identical to Part 3A of the Rural Housing Code which will allow for greater site coverage and less pervious area. This would reduce the level of stormwater treatment and impact on the surrounding sensitive receiving environments.

(k) transitional arrangements and monitoring of policy outcomes, and

Response: NA

(l) any other related matters.

Response: NA