Submission No 53

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: Tyalgum District Community Association

Date Received: 9 October 2025

The Hon John Ruddick MLC

NSW Parliament House

Macquarie St, Sydney NSW

Select Committee on Rural Housing and Second Dwellings Reform

To Committee Chairman

The Tyalgum District Community Association appreciates the opportunity to submit its comments to the committee on Rural Housing and Second Dwelling Reform.

Overview

The Tyalgum District Community Association (TDCA) has not yet had enough time to develop a detailed formal policy on this issue. However, the association has long supported second dwellings on RU1 and RU2 properties and has been highly critical of Tweed Shire Council for its strong stance against detached second dwellings, which prevents landholders from accommodating extended families and others in need. Likewise, the association strongly criticises the Council's lack of regard for the hardships caused by the housing shortage in the Shire. At a recent meeting, the Draft Model Instrument (DMI), presented to the Select Committee by the Hon John Ruddick MLC, was discussed. There was general agreement that the association should support that Draft Instrument, and therefore, this submission is approved for the Inquiry.

TDCA's Primary Objective

The TDCA's primary objective is for NSW legislation to be enacted, guaranteeing all rural landholders – but particularly those in Tweed Shire have an absolute, statutory right to build a detached second dwelling on their land.

The only grounds Councils may use to refuse a detached second dwelling are;

(1) If the dwelling presents a significant risk to a person's safety or well-being, or if the building, of itself, is structurally non-compliant, unstable, or prone to flooding, collapse, or land slips (fire risk must be managed as required).

(2) If the total dwelling areas exceed a statutory dwelling/land ratio.

The legislation should allow Councils to temporarily amend, alter, or waive existing land use controls as needed to facilitate the proper placement and construction of a detached second dwelling.

The detached second dwelling placement must;

a) Not cause any real reduction in commercial primary production or
b) Not cause irreversible, significant, tangible harm to matters such as the environment, heritage, habitat, or scenic features.
c) If Council claims that a detached second dwelling would breach the above a) or b) provisions, Council must bear the onus of proving that a detached second dwelling would, in fact, reduce commercial primary production or cause irreversible, significant, tangible harm to matters such as the environment, heritage, habitat, or scenic features.

Comment: The Tweed Shire Council has a well-known tendency to make vested land use decisions to shape outcomes that keep the Council's dominance over the rural area. The Council does not back down from its decisions. It readily engages in legal action to defend any land use decision. Individual landholders simply cannot challenge the Council's unlimited resources**.**

Under this proposal, landholders' absolute right to have a detached second dwelling has precedence, and therefore, the onus is on the Council to prove (at their expense) that the dwelling would, unequivocally, diminish commercial primary production or cause irreversible, significant, tangible harm to matters such as the environment, heritage, habitat, or scenic features

Ancillary Objectives

The Tweed Council must amend all relevant legislation, plans, and strategies to permit second dwellings on all RU1 and RU2 properties and to take additional steps to extend the same entitlement to all other rural land holdings (i.e., RU3 - RU6 plus C3 and C4).

Failing all else, Tweed Shire Council must be obliged to hold an exclusive ballot of RU1 and RU2 landholders (the affected community) to determine if they wish to have the right to build a second dwelling on their properties. The ballot should specify that the size of the second dwelling is limited to no more than 1% of the landholding.

Endorsement of the Draft Model Instrument (DMI) objectives

Mr Ruddick's DMI media release outlines objectives, which are generally supported by the TDCA.

It is agreed that the objectives, if implemented, would encourage families to "live closer, especially near elderly parents, easing the demand on aged care and childcare". The objectives are "not a handout or a subsidy". "It's about giving rural property owners the freedom to ... build" detached second dwellings. Permitting landholders to use their land to construct a second dwelling and then cover the costs of water, sewage, and electricity is seen as "the simplest, lowest-cost solution to ease the housing crisis in New South Wales". It could achieve this "without costing taxpayers a cent".

In particular, the DMI's proposed Chapter 7 Rural Dual Occupancy SEPP (Housing) 2021 reference to "Non-discretionary development standards" needs to be emphasised. This should mean that councils must interpret the intention to provide "Rural housing" as the primary goal, and any uncertainty on any matter must favour permission to build a second dwelling.

Issues re the Draft Model Instrument.

a) A new State Environmental Planning Policy (SEPP) (Housing) Chapter 7: Rural Dual Occupancies (Housing) policy is necessary and essential.
b) b) Second Dwellings should not exceed 180m2, unless the existing primary dwelling is 180m2 or less – in which case, the original primary dwelling could serve as the second dwelling, and the new dwelling could become the primary dwelling.
c) The combined area of the primary and detached second dwellings must not exceed 420m² and should not cover more than 5% of the property,- with dwelling areas excluding structures such as awnings, verandas, patios, carports, garages, and garden sheds.

d) The title for all dwellings on a property must stay in the landholder's name. Having a title for a dwelling on land owned by someone else would be unworkable and destabilising for both parties.
e) The DMI “Relationship with Other Planning Instruments” provisions should be thoroughly implemented and enforced as quickly as possible.
f) The detached second dwelling can be rented out, but only for periods of at least 6 months. Until the critical housing shortage eases, short-term rentals or AirB&B stays should be banned.
g) The minimum size of any detached second dwelling should solely depend on providing adequate facilities such as a bed, water, toilet, shower, laundry, food preparation area, storage, and space for personal belongings.

Necessary Complementary provisions.

h) Councils with Local Environment Plans (LEPS) that prohibit second dwellings on rural properties (RU1 to RU6 + C3 and C4) must offer amnesty to all landowners with unapproved second dwellings on their land, regardless of how they are classified. A history of previous unapproved second dwellings should not affect any future applications for a detached second dwelling.
i) Councils with LEPs that prohibit detached second dwellings, which before this inquiry had implicitly approved or allowed non-approved detached structures to be used as second dwellings, must create a register of these approvals and grants. This register should specify the reasons for each approval or grant.
j) Councils with LEPs that ban detached Second Dwellings but have “turned a blind eye” to or given tacit approval for the ongoing use of unapproved second dwellings must publicly explain their conduct.

Scope of Submission

The Tyalgum District Community Association oversees one of the largest rural regions in Tweed Shire. The Association generally supports land policies preferred by most rural landowners in the shire.

Rural land makes up 73.5% of the shire, covering 97,000 hectares. Within the shire, there are 767 RU1 Primary Production properties and 4,194 RU2 Landscape holdings. Most RU1 farms that are commercially productive, such as sugarcane farms, are larger than 40 hectares. While many of these large cane farms already qualify for a rural farm workers' cottage, they often still need a detached second dwelling for family use or extra income. Additionally, most cane farms are located near the flat, urban eastern part of the shire, in contrast to the undulating west and southern regions where most RU1 primary production (Cattle/Dairy) farms and RU2 Landscape properties are found.

Out of the 767 RU1 properties, 51% are 5ha or smaller. As a result, most are unlikely to support sustainable commercial primary production, though some might be used as a supplementary income source. Most of these properties do not meet the threshold to be considered as having any “dominant” commercial use – a term describing "productive primary production” as outlined in the Tweed 2019-2036 Rural Land Strategy.

There are 4,194 RU2 properties, with 2,458 or 58% being less than 5 hectares. RU2 landscape properties have already been officially designated as “Landscape” because they are not considered capable of sustainable commercial primary production and are only deemed suitable for a “lifestyle living” in rural areas. Most landholders who purchase a rural landscape property aim to live with personal space around their homes. Therefore, there is a preference for any second dwelling to be detached.

Although this enquiry covers all rural sectors (RU1 to RU6 plus C3 and C4), this submission focuses on RU1 Primary Production and RU2 Landscape holdings as representative of most landholders and properties affected.

In 2013, the Council amended the 2014 Local Environment Plan (LEP) so that only attached second dwellings are allowed. There are other provisions for Rural workers' cottages and farm stay accommodation, but all other second dwellings are banned on RU1 and RU2 properties.

Almost all Tweed RU1 cane farms are large and situated on flat land east of the Murwillumbah urban areas. The larger RU1 properties located west and south of Murwillumbah are on more undulating terrain suitable for cattle, dairy, and pig farming. Smaller RU1 properties in the same areas are generally only suitable for small-scale or boutique farming, such as local market produce, and they are few and far between.

Conversely, the RU2 rural properties in the shires' west and southern hinterland are mostly situated on hilly terrain. This hilly environment affects RU2 Landscape opportunities for building second dwellings. Specifically, the rugged landscape makes it very difficult to place a second dwelling near an existing one. Most landholders would prefer to build a second dwelling some distance away from the primary residence. If that weren't the case, more landholders would have taken the opportunity to build an attached second dwelling onto the primary house.

The area used by any detached second dwelling is no threat to any other possible land use.

For example, a 120m2 two-bedroom second dwelling on a RU2 2.5ha property only occupies 0.48% of the land. On RU1 5.0Ha property, a 120m2 second dwelling only occupies 0.24%

On a property of 0.8 hectares (8,000m2) (as proposed by the DMI), a 120m2 second dwelling only occupies 1.5% of the property. Assuming the primary dwelling is 200m2, the total dwelling area would be 4% leaving 96% for any other purpose.

Historical pursuit of Tweed’s Detached Second Dwellings 2013 to 2025

In 2013, a representative group of RU1 and RU2 Landholders organised as the Tweed Rural Sustainability Alliance (TRSA). The group included business owners, primary producers (such as sugar cane growers, farmers, dairy operators, beef breeders), local business owners, and representatives from most local community organisations.

Their goal was to present a case to the Council regarding the Rural Land Strategy. From 2013 to 2016, TRSA made countless personal and written submissions to the Council seeking permission for detached second dwellings on RU1 and RU2 properties.

A petition with over 3,000 signatures supporting detached Second Dwellings was presented to the Council. Eventually, the Council recognised that approximately 2000 were valid petitions from community residents, while the rest supported that policy.

In 2016, the Council produced the Rural Land Strategy. All the pleas from TRSA were ignored. No detached second dwellings were allowed. No reasons were given for these decisions.

The TRSA continued with their original goal. Around 2019, the Council agreed to establish a Growth Management and Housing inquiry. However, little was done about the housing situation from 2019 until about 2025, when the Council noted that they had considered the issue and might, in due course, permit secondary (urban-type) dwellings, such as 60m2 Granny flats, on properties of 10ha or more.

So, after two lengthy inquiries and over 12 years of pleading, Tweed Council advises that RU1 and RU2 properties might, at some point, allow 10ha and larger blocks to have a 60m2 urban-created “Granny flat”.

Out of the 5,961 RU1 and RU2 properties in the Tweed, only 629 are 10 hectares or larger. This means just 10.5% of RU1 and RU2 properties are eligible for a ‘granny flat’ on their land.

From 2013 to 2025, there has been little to no change in the Tweed Council policy of preventing any detached second dwellings on RU1-RU6 plus C3 and C4 properties.

That policy largely explains why there is a deplorable housing shortage in Tweed.

Status quo.

The Tweed Shire has the highest homelessness rate in the state, and possibly in Australia. Most of those affected are women, many with children, along with older, unwell, unemployed individuals. However, there are also many young families — husbands, wives, and children — suffering the same hardship. Some Councillors and council staff have known about this unacceptable situation for years but have taken little or no meaningful action to resolve it.

Instead, two Councillors, with eager support from Council officers, have concentrated on commercial housing estate developments, most of which have failed to materialise, would be costly, and would take years to establish, if ever. Another Councillor objects to any second dwellings under any circumstances, if it involves cutting down a tree on a rural property. Most other Councillors quibble over any matter in accordance with their political positioning.

Prior to the floods in 2022, council officers and some past councillors acknowledged that there are at least 1500 to 2000 illegally built second dwellings in the Tweed Shire's rural areas. To avoid obtaining proof of this, the council has not conducted an audit of illegally constructed second dwellings for over 15 years. However, the council recently carried out a lidar scan of the shire and could easily identify every illegally built second dwelling if it chose to do so.

These illegally built unauthorised dwellings include modified shipping containers, sheds, garages, caravans, derelict trucks, lean-tos, and 2- or 3-bedroom well-fitted homes. None of these basic shelters have toilets or running water. Some of the dwellings are fitted with toilets and adequate water supplies, but most lack them.

That critical situation has deteriorated even further since the last two floods. More homes, illegal dwellings, and rough camps have become uninhabitable. Even areas used for rough sleeping have diminished, and there's been a spillover of people from Lismore flood victims coming to the Tweed.

Through the methods outlined above, the council has been led by council officers and a few councillors to block legal or authorised detached second dwellings, while turning a blind eye to numerous substandard, third-world level shacks or worse.

Critique of Tweed Council concerning second dwellings

It is crucial to challenge the misdirection and misinformation used by the Tweed Council to justify their ongoing opposition to rural detached second. dwellings.

Although Tweed Council is generally regarded as effective and efficient, including in the rural village sector, it completely fails when it comes to the rural land housing sector. The bias against any housing development in rural land areas is obvious and significant.

The council uses a variety of biased reasoning and cunning tactics to block the construction of rural detached second dwellings.

Issue 1: Tweed Council enforces a range of bylaws, strategies, and plans that generally hinder the development of dwelling houses across the rural sector. Workers' cottages, farm stays, and attached second dwellings are permitted, but few exist. All efforts to allow detached second dwellings on rural land holdings are rejected**.**

Response: The five NSW Shires surrounding Tweed Shire all permit detached second dwellings. Some of these shires impose restrictions on short-term use, but overall, they all allow detached second dwellings. There is no logical or strong reason why the same isn't permitted in Tweed. The real reason appears to be a long-standing alliance between half the Councillors and council officers to block second dwellings on rural properties.

Issue 2: The State and Council have legislation, strategies, and plans that prioritise involving “affected communities” in relation to any proposed development, such as permitting detached second dwellings**.**

Response: The Environmental Planning and Assessment Act 1979, the Tweed Local Environmental Plan 2000, and the Rural Land Strategy 2018-2036 all specify that the position of “affected communities” must be considered. Some require that “affected communities” be involved in the decision-making process and that Councils must provide reasons for decisions impacting those communities' interests.

Tweed’s “affected rural communities” have been consulted and asked for their opinions about wanting detached second dwellings. Council consistently ignores or overrules those opinions without explanation or reason. The affected rural communities are never involved in the decision-making process and are never given the chance to challenge the Council’s self-serving decisions. Those “affected rural communities” never receive written reasons for the Council’s decisions.

The Council’s second tricky tactic is to use the numerical weight of the uninformed urban population to support its aim of blocking housing in rural areas. The council conducts surveys across the entire shire and invites feedback from all residents. They also hold public meetings, mostly in urban areas, to garner support for plans to “maintain the ambience, amenity and nature of the rural sector”. The council then designs a survey with self-serving questions such as “Do you want to maintain the World Heritage-listed and beautiful green rural environment?” Clearly, the entire shire and the rural sector agree with this goal. Subsequently, the council claims that most residents of the shire do not want more housing in rural areas because that would foul the rural ambience and amenity.

The Council does not ask survey questions like “Would you agree to second dwellings on rural properties that did not diminish the existing rural landscape?” or “Would you object to a rural landholder using 1% or less of their land for a second dwelling? Or “Do you want to block more housing opportunities for people struggling to find a place to live?” or “Would you agree to more rural housing in the shire if the Council and ratepayers didn’t have to pay for it?”

Issue 3. It is widely acknowledged that the Tweed bushland rural area west and south of Murwillumbah is truly beautiful countryside. Landholders go to great lengths to effectively control weeds and pests and are generally successful in this effort. Urban visitors and tourists all praise the stunning bushland rolling hill vistas, the quaint rural villages, and the peaceful atmosphere of the Tweed rural countryside**.**

Response: This beautiful natural environment persists thanks to the long-term good management by rural landholders. Each landholder has a home and work buildings that do not spoil the wide rural views. Additionally, about 1500 to 2000 landholders have various illegal second dwellings on their properties – yet, none of these have negatively affected the natural environment or the panoramic rural views. Landholders would prefer to have their second dwellings approved so that family members and others in need of shelter and comfort can do so legally. If they had been permitted, more landholders would have built a legal detached second dwelling that also respects the scenic rural views. It benefits landholders to protect the aspects of their properties that enhance their value.

Issue 4: Tweed Council points to the presence of World Heritage-listed rainforests (Wollumbin, Nightcap, and Border Ranges), suggesting that these parks' existence justifies preventing second dwellings on any rural land in the area.

Response: The Council overlooks the fact that national parks fall under the Federal Government's jurisdiction. Wollumbin (2,400ha) and Nightcap (8,000ha) National Parks cover a total of 10,400ha. The Tweed rural area spans 97,000ha, with over 80,000ha managed directly by Tweed Council. The Border Ranges National Park borders the Shire, but only a small section is part of the Tweed Shire. National parks do not influence the land controlled by the surrounding Council or local governments.

Issue 5: The council argues that detached second dwellings would prevent the development or expansion of new or existing commercially viable primary production land.

Response: Tweed farmland properties listed as farmland for tax purposes are either stagnant or declining. Few, if any, new commercially viable and sustainable farmland properties have been established in recent years. Most that are established are boutique-style and not sustainable as a sole income source.

Issue 6: The Council claims that most rural landholders do not reside on their properties, so renters occupy most rural properties. The Council refers to their “desktop survey” of rate payer notices that are addressed to PO Boxes or to Post Offices, rather than to an “owner's home” in the local area.

Response: There are no mail deliveries to rural properties outside the boundaries of rural villages. To receive mail, nearly all rural landholders must have a post office box or collect their mail directly from a post office. Due to the shortage of post office boxes, many landholders use boxes at Murwillumbah or Tweed mail hubs. Most landholders without a post office box have their mail addressed to C/o (care of) a specific post office.

Despite repeated attempts by rural landholders to correct this misinformation, the Tweed Council has persistently maintained this clearly false claim.

Issue 7. The council claims that RU2 landscape properties should be considered as potential primary agricultural land and must remain unspoiled by a detached second dwelling to uphold that policy, ideal or fantasy**.**

Refuted: Council often misrepresents RU2 Landscape properties as primary agricultural land. Council ignores the fact that such land does not and cannot meet that criterion. Council claims that all RU2 Landscape has the “potential” or “prospective” capability to be commercially productive, financially sustainable land but provides no evidence to support that claim.

Over the past 10 years, there has been no evidence of any outbreak where RU2 properties have been converted into commercially viable, productive farmland. It is concerning that the Council often refers to a NSW Ministerial Policy Directive on the protection of primary production land and claims that this policy applies to RU2 Landscape properties.

Submitted for consideration and action.

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