Submission No 89

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: Cessnock City Council

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Select Committee on Rural Housing and Second Dwellings Reform
On-Line Submission

Contact: John Ruddick (LP, LC Member)
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Your Ref: Their Ref

Submission _ Rural Housing and Second Dwellings Reform

Introductory Position And Local Context

Opening remarks

Cessnock City Council (Council) welcomes the Select Committee's attention on this issue and is committed to **optimise planning controls to ensure equitable housing futures in rural housing areas**. Reform in this area is vital to addressing the unique challenges of the rural housing crisis (distinct from urban housing market issues), with key benefits supporting intergenerational living, facilitating farm succession, and housing the local rural workforce.

Council notes the Committee's focus on facilitating "second homes" (any additional dwelling) and, in preparing this submission, has assumed that the reforms to be considered by the Committee will not be restricted to the legal definition of a "Secondary Dwelling" – a land use term applying to environmental planning instruments meaning an ancillary unit subservient to a principal dwelling – but will also apply to a range of dwelling types appropriate to rural areas.

Cessnock's Unique Rural Housing Market

Over two-thirds of the Cessnock LGA is rural land, supporting industries like agriculture, viticulture, tourism, and rural living. In planning for these areas, Council is acutely aware that housing challenges and policy solutions must be viewed through the lens of localised housing market dynamics in conjunction with localised environmental and economic lenses. For context, Cessnock's rural housing market is characterised by unique drivers, such as the following, which generate distinct housing needs:

- **Wine Tourism & Viticulture:** As home to the Hunter Valley Vineyards, this sector creates housing needs arising from the aging vigneron profile (vineyard succession), the local workforce (viticulture and hospitality), visitor accommodation (including Short-Term Rental Accommodation pressure), and high-value 'lifestyle' accommodation (e.g., executive housing and retirement communities).
- **Metro Fringe Paradox:** Cessnock's accessibility to the Greater Newcastle area and wider Hunter Region simultaneously positions it as a competitive labour market hub and fresh food production. This dynamic generates demand from people seeking a rural outlook with urban proximity, those priced out of urban areas (e.g., Manufactured Home Estates), as well as residential projects that struggle to compete

with market land prices in established centres (e.g., Seniors Housing) as well as commercial scale food production facilities.

Current Local Planning Strategies and Provisions – Overview

Council acknowledges the Committee's interest in permissible residential uses for land zoned RU1-RU6 as well as C3 and C4. In preparing this submission, Council has **excluded** discussion of four zones of interest for the following reasons:

- **RU1 – Primary Production.** This zone is not currently allocated under the Cessnock LEP.
- **RU3 – Forestry.** This zone is reserved exclusively for activities authorised under the Forestry Act 2012 or under Part 5B (Private native forestry) of the Local Land Services Act 2013, and is not considered suitable for residential intensification.
- **RU5 – Village.** This zone is allocated under the Cessnock LEP but reflects rural towns and villages, which typically have a more urbanised form and function than the rural areas understood to be relevant to the Committee's fundamental aim.
- **RU6 – Transition.** This zone is not allocated under the Cessnock LEP.

Through its local strategic planning work program, Council is already proactively considering pathways to enabling an appropriate range of housing types in its rural areas. This is guided by overarching Planning Priorities set out in *Our Plan, Our Future, Our Cessnock,* Council's Local Strategic Planning Statement prepared in consultation with the community in 2020. The priorities include:

- **Planning Priority 8: Our rural land is protected from incompatible development.** The LSPS defines 5 rural precincts, each with distinct landscape elements, land use and topographical characteristics for the purpose of fine-tuning local controls.
- **Planning Priority 22: Our rural landscape is retained and enhanced, and Planning Priority 23: The scenic and rural landscape of our Vineyards District is preserved.** Collectively, these emphasise the need for planning controls to protect scenic values, and make an explicit link between the scenic quality in the Vineyards District and the visitor experience in supporting growth in wine tourism. Planning Priority 22 includes principles to minimise the visual impact of dwellings located in rural areas and ensure dwelling entitlement provisions reflect the rural amenity.

This year, two key strategy initiatives are underway which will influence adjustments to controls applying in Cessnock's rural areas.

Vineyards District Place Strategy.

In 2022, the Hunter Valley Vineyards District was designated a Regionally Significant Growth Area under the Hunter Regional Plan 2041, and Council is in the process of finalising a Vineyards District Place Strategy (draft exhibited March – May 2025).

This strategy will inform Council-led changes to the **RU4 Primary Production Small Lot** zone, which, under the Cessnock LEP, has been allocated exclusively to the Hunter Valley Vineyards District.

It also supports the use of **additional permitted use overlays** and/or **allocation of alternative zonings** to concentrate non-viticultural uses into designated nodes within the district. These nodes include locations that have already been released and are managed through a **Special Purpose Zone (SP3)** for boutique lifestyle accommodation (e.g., the

Vintage and Lovedale Farm), which will provide a significant stock of permanent residential opportunities within the Vineyards.

Cessnock Rural Lands Strategy.

Council is currently in the process of reviewing and updating its 2017 Rural Lands Study (described below) to prepare a strategy to rethink how rural areas are managed. This strategy is responding to overlapping issues relating to changing economic conditions, new technologies, environmental challenges, and urban growth pressures.

Within the scope of this study are areas under provisions made under the **RU2 Rural Landscape, C3 Environmental Management, C4 Environmental Living, and R5 Large Lot Residential** zones within the Cessnock LGA.

A summary of the residential uses currently permitted under zones applying in Cessnock's rural areas is provided in the following table for context.

Zone	Commentary on general zoning application	Residential Use Permissibility (all with consent)
RU4 Small Lot Primary Production	Hunter Valley Vineyards District (significant wine tourism area)	Dwelling houses Secondary dwellings Rural workers' dwellings
SP3 Tourist	Designated nodes (Lovedale Farm and The Vintage) within the Hunter Valley Vineyards District providing a range of tourism and lifestyle products	Dwelling houses Exhibition homes Semi-detached dwellings
SP3 + Additional Permitted Use	Designated node (The Vintage) within the Hunter Valley Vineyards District providing a range of tourism and lifestyle products	*As per SP3 above, plus* Dual Occupancies Exhibition villages Multi dwelling housing
C3 Environmental Management	Areas with high ecological sensitivity and associated hazard risks	Dwelling houses
C4 Enviro Living	Areas with high ecological sensitivity and associated hazard risks	Dwelling houses
RU2 Rural Landscape	Reflects the balance of rural land in the Cessnock LGA. This approach was taken to elevate the importance of scenic and visual qualities across the LGA and should not suggest the land is	Dwelling houses Dual occupancies Secondary dwellings

	less ‘valuable’ for primary production purposes.	

The table demonstrates that **permissibility is not the primary obstacle** to enabling additional dwelling entitlements in Cessnock’s rural areas. Instead, the issue is around the unique combination of considerations required to determine the appropriateness of development at both site- and cumulative-scales, as detailed in Part 2.

Council’s strategic position

Council has proactively made the effort to work with its communities in understanding the severe risks associated with rural land fragmentation. This evidence-based approach has consistently revealed an inability to employ a "one-size-fits-all," top-down approach to developing balanced pathways for rural housing, even within the Cessnock local government area itself.

On the basis of this local evidence, Council strongly opposes any State Environmental Planning Policy (SEPP) that overrides local planning controls addressing fundamental health, safety, and environmental risks. This top-down approach fundamentally fails to acknowledge the highly localised nature of infrastructure capacity, land use conflict, and hazard management, all of which require local, merit-based assessment.

Section 2 of this submission provides the rationale for Council’s strategic position, and Section 3 explores State-led alternatives to achieving the underlying aim of optimising planning controls to ensure equitable housing futures in rural housing areas.

FUNDAMENTAL PROBLEMS AND RISKS OF A TOP-DOWN APPROACH

Informed by Years of Local Research and Engagement

The rationale underpinning Council’s strategic position against a blanket codified approach is informed by a range of background research, community engagement exercises and strategy development work undertaken over several years. The issue of permitting residential land uses in rural areas has been considered through the following initiatives.

- 2017 Rural Lands Study (RMCG) and Vineyards Study (RMCG): These studies both utilised a risk assessment methodology underpinned by stakeholder engagement. Both concluded that overly permissive changes to dwelling entitlements in RU2 and RU4 zones posed a severe risk due to fragmentation and land use conflict, which would lead to the sterilisation of agricultural / viticultural operations. Crucially, the expectation of residential entitlement in these zones **artificially inflates land values** beyond agricultural profitability, **economically driving out** genuine primary production. The studies strongly favoured an approach that retained local control and protected primary production.
- 2020 LEP/DCP Comprehensive Review - Rural Lands Issues Paper: This Technical Planning Review explicitly links the importance of minimum lot size standards (MLS) tailored to mitigate potential for land use conflict and ensure the sufficiency of On-Site Sewage Management (OSSM) systems.
- 2025 Villages Strategy. This adopted strategy was developed in consultation with local residents and provides community-endorsed evidence for Council’s strategic position for the need to maintain locally developed merit-based controls. The strategy strongly emphasises the importance of local character to Cessnock’s

communities. This underpins a low tolerance for intensification in areas that have high environmental or heritage values and a mandate to prioritise people's health and safety in relation to various hazards (e.g., flooding and bushfire).

Collectively, these initiatives consistently conclude that additional dwelling entitlements are supportable only when assessed 'on merit' via a DA pathway because it is the only pathway providing the necessary mechanism to weigh the severity and probability of risks and apply site-specific mitigation measures.

Unsuitability of Fixed Standards for Risk

Codified pathways rely on fixed, objective standards and the availability of 'decision-ready' mapped information. This approach is not conducive to the risk assessments required for critical site-level assessments, as illustrated below for some of the many important issues relevant in rural areas:

- **Biodiversity:** Following recent State-led updates to the Biodiversity Values Map (BV Map), approximately 31% of land in the LGA triggers the **Biodiversity Offset Scheme (BOS)** and the **Serious and Irreversible Impacts (SAII)** provisions of the *Biodiversity Conservation Act, 2016*. Unmanaged residential intensification in rural areas risks compromising this ecological integrity both at the site-level (e.g., through clearing of vegetation in Asset Protection Zones around additional dwellings) and cumulatively diminishes the potential for more efficient future urban development in less constrained areas.
- **On-Site Sewage Management (OSSM):** The capacity of a lot to safely carry two OSSM systems (a requirement for second dwellings) is non-negotiable for public health. This requires site-specific assessment of soil, slope, and groundwater alongside the technical specifications of the OSSM system being employed. A codified process cannot reliably assess OSSM capacity and must defer to Council's health and planning controls.
- **Bushfire and Flood Risk:** Much of Cessnock's rural land is affected by bushfire and/or flooding. Streamlined pathways bypass the crucial site-specific analysis required to determine suitable mitigations measures like Asset Protection Zones (APZs) or finished floor levels for individual sites.
- **Scenic and Visual:** Unmanaged residential intensification directly threatens the scenic quality of the rural landscape through the construction of new dwellings and associated clearing for Asset Protection Zones, ancillary structures, and services. The cumulative visual impact erodes the rural amenity that is fundamental to the character of the LGA, particularly within the Vineyards District.

Cumulatively, streamlined pathways imposed on Councils (rather than developed by them) also bypass broader strategic emergency management planning input and place an intolerable compliance and risk burden on Council. Any approval pathway must be conditional on certified, site-specific professional reports (e.g., geotechnical, sewage design, bushfire consultants), effectively making the process too complex to be truly "Exempt" or "Complying."

Conflict, Fragmentation, and Sterilisation of Productive Land

The core function of rural zones is to protect non-urban values and particularly primary production. An unregulated increase in residential development jeopardises this function:

- **Land Sterilisation:** The primary risk of increased rural density is the introduction of residential neighbours unconnected to the land's productive purpose. This residential expectation immediately increases land values beyond what can be sustained by agricultural income, leading to economic displacement of farming enterprises. Furthermore, these new residents generate Land Use Conflict (LUC) (e.g., complaints regarding odour/smells, chemical spray, dust) which ultimately forces existing farmers to self-limit operations, leading to the sterilisation of productive land in the metro-fringe environment.
- **Subdivision:** Council strongly opposes any blanket relaxation of existing controls relating to Torrens or Strata subdivision in primary production zones (RU2, RU4). Subdivision fragments the land into parcels below the critical mass required for economic viability and permanently exacerbates land use conflict.
- **Risk of Use Conversion:** Streamlined approval pathways make no distinction between the dwelling's initial intent (family/worker) and its ongoing use. Without enforcement, second dwellings are likely to be converted into permanent rural-residential holdings or lucrative Short-Term Rental Accommodation (STRA), further eroding the intended housing stock benefit and intensifying land use conflict.
- **Sterilisation of Future Urban Land:** Unregulated fragmentation of well-located rural land (i.e., land near existing services but outside high-constraint areas) by dispersed residential development pre-empts the Council's ability to achieve its housing targets through efficient urban growth. This permanently removes viable, low-constraint land that should be reserved for future urban investigation and rezoning, especially given Cessnock's significant biodiversity constraints which limit other expansion options.

Putting the issues described in 2.2 and 2.3 above into context, the State's **Important Agricultural Land Mapping** initiatives have been ongoing for several years. Various projects' aims explicitly highlight that the **loss of access to agricultural resources and increased incidence of agricultural land use conflict** can lead to operational inefficiency and net loss of production value. Whilst this mapping is available as in input to inform decisions as a strategic planning tool, it is not suitable as a 'decision-ready' regulatory tool. In essence, the State's mapping provides the "Why" (protect agriculture), but it's only decision-ready when Councils can definitively show "Where Not" (exclusionary mapping layers) to ensure safe and conflict-free housing delivery. For example, decisions would still requires granular local layers, such as:

- Land Use Conflict Buffers – Operational setbacks distances are required to high-intensity uses (e.g., viticulture, orchards, poultry, etc.) to protect residential neighbours from common farm activities like chemical spraying, noise, odour, and dust. Contamination buffers are also required around existing or historic high-risk activities that may pose a risk to future residents.
- Health and Safety / Hazard Constraints – such as OSSM, bushfire and flooding.

Infrastructure Capacity and Unfunded Deficit

Increased density in low-serviced rural areas also creates an unfunded deficit for local government:

- **Funding Gap:** Increased second dwellings place immediate pressure on local rural roads (often unsealed and low-standard), waste collection, and other centralised Council services.

- **Erosion of Revenue:** Codified pathways enabled through SEPPs carry a policy risk in overriding Council's ability to levy and collect Section 7.11/7.12 Local Infrastructure Contributions. This shifts the entire financial burden of servicing new residents onto the existing, dispersed rate base.
- **Inefficient Infrastructure Investment:** Maintaining low-density, dispersed rural infrastructure (such as unsealed roads and extended utilities) represents an inefficient allocation of Council's limited maintenance budget. Prioritising funding towards higher-density residential outcomes in existing urban areas offers a far greater return on investment per dwelling, ensuring long-term financial sustainability.
- **Rate Base Inequity:** Council rates are based on the unmodified land value. A second dwelling does not significantly increase this value, meaning the density increase does not proportionally boost Council's recurring revenue required to service the area.

OPTIONS FOR REFORM & CONSTRUCTIVE ALTERNATIVES

Council offers the following constructive recommendations to achieve the Inquiry's aims while protecting local controls and ensuring financial sustainability.

The Need for a Collaborative "Enabling Framework"

Council advocates for a strategy where the State acts as an enabler, not a mandate, for streamlined rural housing. The key failing of a top-down approach is that it is done to Councils, not with them.

The top-down approach envisaged in the Committee's TOR and the model instrument tabled for the Committee to consider would fail to recognise the unique local context and the varying organisational challenges facing different Council types—from Fringe Regional Metro (like Cessnock) to rural to remote rural, and Coastal to Inland—which are vastly different from those within the core Sydney Metropolitan area.

Council observes that the State dedicates significant resources to the quality assurance (QA) and endorsement of strategic planning tools (e.g., Local Housing Strategies and Local Strategic Planning Statements) primarily within the Sydney Metropolitan context. This process is supported by grant funding, process and practice guidelines, and useful templates. This essential strategic capability support rarely extends with the same urgency to regional Councils.

A more sustainable and effective use of State funding and resources would be to empower Councils to bring their strategic planning into a contemporary frame, rather than overriding local strategic planning and control via a SEPP. This requires direct investment to help Councils develop strategic planning tools that can, in turn, be used to create decision-ready regulatory tools.

Recommendation: Establish a Rural Housing Enabling Framework

The example provided in 2.3 above about the State's production of high-level agricultural mapping shows how State-led initiatives can give Councils a starting point with strategic planning tools, but more work is still required for Councils to layer local granular constraints (OSSM capacity, local bushfire/flood, viticulture buffers) on top for this to function as a decision-ready regulatory tool.

State investment should be directed toward strengthening rural and regional Councils' capability and evidence base, including funding for high-resolution hazard mapping (bushfire, flood, mine subsidence) and enforcement resources required to monitor compliance (especially non-compliant OSSM and unapproved STRA conversion). A State-established Rural Housing Enabling Framework (or similar) could provide the necessary strategic support and funding for Councils to safely 'switch on' flexible standards locally. This requires:

1. Funding for Exclusionary Criteria Mapping: State funding for high-resolution, site-specific mapping of non-negotiable exclusionary criteria (e.g., maximum OSSM capacity, high-risk bushfire/flood areas, prime agricultural land buffers).
2. Local Opt-In Mechanism: Once a Council has completed and certified this strategic planning work, it should be empowered to formally 'opt-in' to the new flexible standards (e.g., removing secondary dwelling size limits and relaxing distance standards) via an amendment to its Local Environmental Plan (LEP) or Development Control Plan (DCP).
3. The State must also fund resources for ongoing compliance and enforcement required to monitor breaches, particularly non-compliant OSSM and unapproved STRA conversion.

This decentralised model ensures housing needs are met with greater flexibility, but only where public health, safety, and core agricultural production have been strategically safeguarded by the local authority.

Maintaining Merit-Based Assessment Pathways

While Council is committed to efficient housing outcomes, it is critical that the State avoids any mechanism that bypasses the necessary merit-based assessment of non-negotiable risks, including those for health and safety, ecological integrity, and primary production.

Options the Committee may consider could include:

- Process-based solutions to assist local Councils in speeding up assessment timeframes without compromising on the quality of decisions.
- A local mechanism similar to a Site Compatibility Certificate (SCC) or Gateway process to "switch on" a codified pathway for rural housing within the local planning instrument (LEP).

Both of these options would rely on the aforementioned need to fund and produce the definitive local exclusionary maps (as recommended in 3.4).

Guarantee Financial Equity

Increased rural density, even if streamlined, must be financially equitable for the local community.

- Recommendation: Rating Reform. The Committee must investigate Rating Reform to enable councils to capture the cost of additional service delivery associated with secondary dwellings, addressing the inherent subsidy currently placed upon existing ratepayers.
- Recommendation: Infrastructure Contributions. If any new, overriding pathway is implemented, the accompanying SEPP must contain a mandatory, explicit legal mechanism to ensure Councils retain the ability to levy and collect Section 7.11/7.12 Local Infrastructure Contributions for every new second dwelling.

CONCLUSION AND OFFER OF COLLABORATION

Cessnock City Council welcomes the opportunity to engage further with the Select Committee and the Department of Planning, Housing and Infrastructure on the development of policy options arising from this inquiry.

We believe that our high-constraint, Metro Fringe context makes Cessnock LGA an ideal candidate to participate in a **pilot project** for the development and implementation of the proposed **Rural Housing Enabling Framework**. By working collaboratively, we can develop effective, evidence-based policy tools that ensure housing supply is delivered safely, sustainably, and equitably across regional NSW.

If you require any further information, please do not hesitate to contact me on telephone or via email council@cessnock.nsw.gov.au.

Yours faithfully

Martin Johnson
Strategic Planning Manager