Submission No 91

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: The Hills Shire Council

Date Received: 10 October 2025

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10 October 2025

The Director
Select Committee on Rural Housing and Second Dwellings
Parliament House
Macquarie Street
SYDNEY NSW 2000
Via email: ruralhousing@parliament.nsw.gov.au

Our Ref: FP243, FP85

Dear Director,

Submission – Parliamentary Inquiry - Rural Housing and Second Dwellings Reform

Thank you for the opportunity to make a submission regarding the inquiry into rural housing and second dwellings reform (the Inquiry), intended to make it easier for landowners to build second dwellings in rural zones in NSW. This submission has been prepared having regard to previous resolutions of The Hills Shire Council but has not itself been reported to or formally endorsed by the elected Council. The submission may be published on the Inquiry website as it is intended to provide input to the matters relating to the Terms of Reference.

The submission does not seek to address all items listed within the terms of reference. Rather, it only addresses those where Council's experience and viewpoint may assist the Committee in their investigations.

The comments provided herein have regard to the policy framework provided by Council's Community Strategic Plan, Local Strategic Planning Statement (LSPS), Rural Strategy, Environment Strategy and Housing Strategy. By way of context, The Hills Shire has more than 27,600 hectares of rural zoned land, making up 70% of the local government area. Our rural area is highly valued for its biodiversity and scenic qualities as well as its productive capacity. With the population growth that is occurring across Sydney, the role of the rural areas in the economy and providing fresh produce and building materials for Sydney and the wider region should not be undervalued. Key industries in the region consist of fruit and vegetable production, poultry farming, nurseries and animal grazing. Extractive industries around Maroota in the north produce sand and materials for construction and landscape supply.

Our focus for the rural areas is managing and protecting the rural-urban interface, retaining and managing the Shires productive capacity and encouraging support activities and tourism. We are working to safeguard the health of Hawkesbury River and rural landscapes which helps provide a foundation for the visitor economy. Work is ongoing to build resilience to natural hazard events such as bushfires and flooding.

In terms of housing, our rural lands are intended as minimal growth locations, noting that substantial zoned capacity is available across our greenfield areas and the Sydney Metro Northwest corridor for more than 50,000 homes to be delivered, depending on the capacity of the market and construction industry. Limiting the extent of residential development to urban locations, is a key policy position that helps to create liveable and connected neighbourhoods, close to public transport hubs and services, that can be most efficiently serviced by infrastructure. Outside of the Shire's growth precincts, the rural areas of the Shire continue to provide an option for residents seeking larger homes or properties that meet their

needs and lifestyles. This contributes to the Shire's diverse mix of housing along with allowance for secondary dwellings, attached dual occupancies and rural cluster subdivision which help provide opportunities for a sought after semi-rural lifestyle, relatively close to the strategic centres of Castle Hill and Rouse Hill.

The controls in place for rural cluster subdivision and secondary dwellings in our rural area have been developed over a number of years in response to local circumstances and seek to balance limited rural residential development with the environmental, scenic and productive qualities of the rural area.

The Rural Cluster subdivision provisions in our local environmental plan (LEP) permits lower subdivision lot sizes for land zoned RU6 Transition or RU2 Rural Landscape, where development is subdivided through a community title scheme to achieve a particular environmental conservation outcome. Our LEP also permits secondary dwellings in our RU1 Primary Production, RU2 Rural Landscape and RU6 Transition zones up to 110m^2 total floor area or 20% of the total floor area of the principal dwelling whichever is the greater. The controls now in place strike the right balance between allowing some housing choice and protecting the important values of our rural areas.

In response to the terms of reference, caution is urged around removing all restrictions and seeking to streamline approval pathways for secondary dwellings. There is already suitable flexibility within the Standard Instrument LEP framework that allows councils to tailor controls to ensure locally appropriate development whilst also protecting productive agricultural lands, minimising land use conflict, supporting rural industries and maintaining the character of rural areas. A broad-brush, one size fits all approach would compromise the years of investigations and rural strategy work that have informed the controls now in place.

Furthermore, concern is raised around exploring the use of legal *frameworks for tenancy in common, co-ownership and strata like arrangements on rural lands* (terms of reference h). It is unclear whether the intention is to open the door to some form of subdivision of rural land which is contrary to all strategic planning principles. Fragmenting rural land by any of the mechanisms mentioned would increase pressures for more widespread land release which would be beyond the environmental capacity, noting much of the rural land is constrained in some form and requires careful planning to protect the environmental values and manage hazards. In addition, noting the peri urban location, it would exacerbate local and regional infrastructure issues at a time when the Government has not been able to keep pace with the essential infrastructure needed to support existing urban growth areas.

If the Government were to seek to move away from the current strategic framework that limits the permissible density of land within rural zones, there needs to be a clear and logical State or Council led process, that is strategic and coordinated (not on an ad-hoc basis). Clear criteria for evaluation of land for urban investigation would need to be set, which would address environmental, social and economic issues and only facilitate development which can be feasibly serviced by necessary utilities, roads, transport, stormwater, recreation and other social infrastructure.

Further detail on the response to the specific terms of reference are provided in Attachment 1. Council trusts this information is of assistance to the Inquiry. Should you wish to discuss matters relating to this submission, please contact me on

Yours faithfully,

Mark Colburt
ACTING GENERAL MANAGER

ATTACHMENTS:
1. Response to the Terms of Reference

ATTACHMENT 1

Comments are provided on the following aspects of the terms of reference for consideration:

(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"

Application of Inquiry

- The Hills is part of the Greater Sydney Region and based on an initial reading would be excluded from consideration as part of the Inquiry. However, references to 'Outer Metropolitan' Local Government Areas (undefined) and rural and conservation zones that apply across the State would indicate that the intention is to encompass regional LGAs along with at least parts of Greater Sydney LGAs.

Planning Instruments

- For the rural and conservation zones mentioned in the terms of reference and draft State Policy, the permissibility for the relevant land use terms under The Hills Local Environmental Plan 2019 is as follows:

ZONE	Dwelling houses	Dual occupancies (attached)	Dual occupancies (detached)	Secondary dwellings
RU1 Primary Production	√	√	X	√
RU2 Rural Landscape	√	√	X	√
RU6 Transition	√	√	X	√
RU5 Village	√	X	X	X
C2 Environmental Conservation	X	X	X	X
C3 Environmental Management	√	X	X	X
C4 Environmental Living	√	√	X	√

- Any recommendations that arise from the Inquiry should provide greater clarity in relation to the specifically included or excluded LGAs and applicable land use zones. Insufficient clarity could result in parts of the Greater Sydney Region being inadvertently affected by any future changes to the legislation, with unintended consequences.

- For example, under The Hills LEP 2019 dwelling houses and other residential development is prohibited in the C2 Environmental Conservation zone recognising it applies to locations of high ecological significance. Likewise, the C3 Environmental Management zone only allows for dwelling houses and prohibits other forms of residential development recognising specific geotechnical constraints. Liberalising 'second dwellings' in these zones would be contrary to the objectives of the zone and how such zones have been applied in our LGA.

- The document entitled *SEPP (Rural Housing) Amendment (Second Dwellings in Rural Zones)* seeks to define a new term 'second dwelling' with the stated purpose to remove requirements for second dwellings to be attached to the principal dwelling, allowing the second dwelling to be equal to or larger than the principal dwelling or function as the principal dwelling. A new definition is not considered necessary to address the intended outcomes.

- The Standard Instrument terms of *dual occupancy (attached), dual occupancy (detached)* and *secondary dwelling* already cover the dwelling outcomes intended by the terms of reference and these land uses are not explicitly prohibited in the nominated zones under the Standard

Instrument LEP. It would be open to individual councils to undertake a planning proposal to permit or prohibit such uses and justify this based on their local circumstances and land use context.

- Adding a new definition would add unnecessary complexity to the planning system, noting also that a second dwelling can already be considered as the principal dwelling as part of the development assessment process.

Planning controls

- Considerable work and investigations were carried out around 5 years ago resulting in changes to the previously restrictive requirements of the Standard Instrument as contained in clause 5.4 *Controls relating to miscellaneous permitted use.* These changes to the Standard Instrument essentially separated out the size limitations for secondary dwellings in rural zones from the limitations for urban zones.

- Under the relatively new optional Standard Instrument clause 5.5, secondary dwellings in the Shire's rural zones are permitted to be up to 110m^2 floor or 20% of the total floor area of the principal dwelling whichever is the greater. These changes were made in August 2021 and were an increase on the previous 60m^2 or 20% of the total floor area of the principal dwelling, that applied across the urban and rural zones of the Shire.

- The revised size controls for secondary dwellings have enabled a more feasible and attractive opportunity for rural landowners to construct a reasonably sized secondary dwelling where some landowners were previously limited by the modest size of their existing principal dwelling. Rural sites (when compared to urban locations) present fewer constraints to the siting of a secondary dwelling with larger lot sizes able to comfortably accommodate the principal and secondary dwelling within site coverage requirements whilst providing sufficient private open space and negligible amenity impacts within the site and to adjoining properties.

- The controls now in place are considered to strike the right balance between allowing some housing choice and protecting the important values of our rural areas with priorities related to managing and protecting the rural-urban interface, retaining and managing the Shires productive capacity and encouraging support activities and tourism.

- The current regulatory framework provided by the Standard Instrument LEP is considered to provide flexibility for local councils to tailors controls to ensure locally appropriate development whilst also protecting productive agricultural lands, minimising land use conflict, support rural industries and maintaining the character of rural areas. Removing all restrictive controls as flagged in the document entitled *SEPP (Rural Housing) Amendment (Second Dwellings in Rural Zones),* would compromise the years of investigations and rural strategy work that underpin the controls now in place in our LGA.

(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 Shire's rural land is heavily vegetated and at risk of bushfire. Much of this land is also steeply sloping and at risk of geotechnical instability or have areas of productive rural lands. The range of controls we have landed on over time from zones, permitted uses, and development controls seek to manage and balance the rural values allowing for a number of housing options, addressing rural character, managing rural productive capacity, protecting areas of high environmental value and managing risks and hazards.

- The current development application approval pathway for secondary dwellings in rural zones allows for appropriate merit assessment particularly managing the balance between ecological

issues and bushfire hazard management. The complying pathway is intended for simple straightforward development. Given the variety of constraints that apply in rural areas, the implementation of a complying pathway in practice could prove problematic and would make it difficult to achieve suitable outcomes.

- Concerns are also raised in relation to the role of private certifiers and the implications for Council when errors are made. The private certification system has been a constant issue since its introduction in 1998. The inherent conflicts of interest, problems with accreditation and the lack of responsive investigation and enforcement have led to a lack of confidence in the system. There are fundamental flaws in having privately commissioned individuals perform tasks on behalf of the public interest.

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

- As outlined in response to terms of reference a) secondary dwellings are already permitted across the RU1 Primary Production, RU2 Rural Landscape and RU6 Transition zones and are subject to appropriate size controls under clause 5.5 of the LEP, that balance housing choice with management of rural values.

- The RU5 Village zone is currently applied across the rural village centres where the intent is for small scale retail and local services to support the rural locality. This was a translation as part of the 2022 NSW Government employment zone reforms, noting that the village centres had previously been zoned B1 Neighbourhood Centre. The exclusion of residential development, apart from mandated permitted uses, for these locations was a deliberate policy response as part of the reforms seeking to ensure that these small centres can continue to fulfil their intended role in the hierarchy of centres. Permitting secondary dwellings in this zone could compromise the intention of the zone to support the retail and service needs of the rural localities.

- The C3 Environmental Management zone is used sparingly in our LEP and relates to land that is subject to very specific constraints regarding land slip. Providing more flexibility for this zone to permit a use currently prohibited would be contrary to the geotechnical investigations that informed the use of the zone and would not be supported.

- The C4 Environmental Living intent is for low impact residential development. Secondary dwellings and attached dual occupancies are permitted under our LEP and would be subject to the appropriate size restrictions set out in clause 5.4. Noting the environmental constraints that apply in this zone, allowance for a complying development pathway is not supported.

(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

- Complexity already exists with multiple layers of legislation relating to housing permissibility across the two SEPPs and the Standard Instrument. If any change is to be made State-wide to permissibility, the logical instrument would be the Standard Instrument LEP which is what it was intended for.

- Council's LEP, based on the Standard Instrument and tailored to local circumstances, should be the only document consulted to understand what needs consent. There is a need to simplify the framework to remove multiple SEPPs that continue make it unclear what planning instrument prevails over the other.

(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 capacity already exists under the Standard Instrument optional clause to determine suitable local approaches. Total removal of controls is not supported noting typical site constraints such as bushfire, vegetation and effluent disposal areas. Currently, bushfire requirements and asset protection zones (APZs) are based on bushfire attack level 29 which already creates challenges with biodiversity requirements.

- Onsite sewage management constraints in rural areas, particularly on smaller or topographically constrained lots, are present on most sites and the ability to install compliant onsite sewage management systems is often limited. Factors such as poor soil, rocky outcrops which have no permeability, proximity to watercourses, steep slopes, and limited available land can prevent the safe discharge for effluent disposal. Without adequate infrastructure or oversight, this poses risks to public health, groundwater quality, and surrounding ecosystems.

- The requirement to establish APZs for new dwellings often necessitates extensive vegetation clearing, which can have significant ecological consequences: loss of native flora and fauna habitat, including areas supporting threatened species and ecological communities; fragmentation of habitat corridors; reducing connectivity and resilience of biodiversity; disruption of soil profiles and hydrology, leading to erosion and degradation of adjacent ecosystems.

(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

- The implementation of the NSW Government's flood prone land package in 2021 included changes to the Environmental Planning and Assessment Regulation to revise the matters to be specified in a planning certificate issued under section 10.7 for land subject to flood-related development controls. This includes a requirement to identify if land is within the flood planning area and subject to flood related development controls and if land is between the flood planning area and probable maximum flood and subject to flood related development controls.

- For The Hills Shire, additional modelling and mapping is required to effectively respond to the requirements. In accordance with guidance provided in NSW Government Planning Circular PS21-006 this necessitates an 'unknown' response on planning certificates for many properties pending the preparation of the necessary modelling and mapping that is progressively being prepared under a staged program.

- Given the foregoing, reliance on criteria related to 1 in 100 year mapping is likely to be problematic to implement on a State wide basis.

- Other land based hazards and environmental impacts are discussed under terms of reference (e).

(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

- Development for the purposes of secondary dwellings is already allowed in rural zones under The Hills LEP 2019, and it is recognised that a cautious approach is needed to protect rural character and rural productive capacity. This has necessitated the specific parameters around the permitted uses as contained in clause 5.5 of The Hills LEP 2019.

- In addition, The Hills LEP 2019 includes optional Standard Instrument clause 5.16 which supports the consideration of existing and proposed surrounding land uses, as well as whether any subdivision of land or erection of dwellings would significantly impact on land uses that are likely to be preferred. The objective of this clause is to minimise potential land use conflict particularly between residential land uses and other rural land uses giving greater prominence to agricultural and primary production use.

- Allowing for a more liberalised pathway for secondary dwellings without any limitation on size would likely be inconsistent with the land-use objectives and controls that have been established for our rural zones and could impact the productive capacity of rural lands. Any reviews should carefully consider land-use conflicts and potential impacts on rural activities and agriculture.

(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

- Complying development should not be focused on merit based assessment. The nature of the complying development pathway requires development to be simple and straightforward, considering the role of certifiers. It is considered that the DA pathway be preferred given the prevailing constraints in rural area. Further comments on the complying pathway may be found in response to terms of reference (b).

- Concern is raised around exploring the use of *legal frameworks for tenancy in common, co-ownership and strata like arrangements on rural lands*. It is unclear whether the intention is to open the door to some form of subdivision of rural land which is entirely contrary to all strategic planning principles.

- Fragmenting rural land by any of the mechanisms mentioned would increase pressures for more widespread land release which would be beyond the environmental capacity, noting much of the rural land is constrained in some form and requires careful planning to protect the environmental values and manage hazards.

- In addition, noting the peri urban location, it would exacerbate local and regional infrastructure issues at a time when the Government has not been able to keep pace with the essential infrastructure needed to support existing growth areas.

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

- Comments on the complying pathway may be found in response to terms of reference (b) and (h).

(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

- Our rural lands are intended as minimal growth locations, noting that substantial zoned capacity is available across our greenfield areas and the Sydney Metro Northwest corridor for more than 50,000 homes to be delivered, depending on the capacity of the market and construction industry.

- Limiting the extent of residential development to urban locations, is a key policy position that helps to create liveable and connected neighbourhoods, close to public transport hubs and services, that can be most efficiently serviced by infrastructure.

- The capacity of essential utility infrastructure such as reticulated sewage, drinking water, gas, electricity and telecommunications is limited or not available in most rural areas.

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

(l) any other related matters.

The rural lands should not be seen in any way as a solution to the housing supply crisis. If the Government were to seek to move away from the current strategic framework that limits the permissible density of land within rural zones, there needs to be a clear and logical State or Council led process, that is strategic and coordinated, not on an ad-hoc basis, that sets clear criteria for evaluation of land for urban investigation including addressing environmental, social and economic issues and can be feasibly serviced by necessary utilities, roads, transport, stormwater, recreation and other social infrastructure.