Submission No 94

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Organisation: Goulburn Mulwaree Council

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GOULBURN MULWAREE COUNCIL

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The Hon John Ruddick MLC
Chair
Select Committee Inquiry into Rural Housing and Second Dwellings Reform
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Dear Minister Ruddick

Select Committee Inquiry into Rural Housing and Second Dwellings Reform

Background

The Goulburn Mulwaree Council (GMC) local government area (LGA) is in the Southern Tablelands of NSW, approximately 1½-2 hours from Western Sydney and less than 1 hour from Canberra. It is home to approximately 33,000 residents, spread between the regional city of Goulburn, the villages of Marulan, Tarago and Bungonia as well as across a diverse rural area.

In the past, secondary rural dwellings have been an important tool to keeping farming families on the land, or as an alternative to rural workers accommodation. However, the proximity to major centres such as Sydney and Canberra has made the LGA attractive to those seeking a rural lifestyle. This attractiveness and popularity have accelerated following the COVID-19 Pandemic. The ability to construct a secondary dwelling has meant that lifestyle changes can be more affordable, especially as it allows multiple generations to live in separate dwellings on the same land but with the ability to share the costs.

Response to the Terms of Reference

- GMC supports "secondary dwellings" as defined by the Standard Instrument Local Environmental Plan and the Goulburn Mulwaree Local Environmental Plan 2009. The definition of "secondary dwelling" is:

  a self-contained dwelling that—

  (a) is established in conjunction with another dwelling (the principal dwelling), and

  (b) is on the same lot of land as the principal dwelling, and

  (c) is located within, or is attached to, or is separate from, the principal dwelling.

  Note— See clauses 5.4 and 5.5 for controls relating to the total floor area of secondary dwellings.

GMC supports secondary dwellings as defined above as this definition links the secondary dwelling to a principal dwelling being within the same lot of land. This is an important component to the definition and distinguishes this type of development from a dual occupancy or multi dwelling housing. Furthermore, a secondary dwelling cannot be subdivided from the lot which contains the principal dwelling. GMC's approach to the use of this definition in the land use tables for relevant rural and environmental zones has been carefully applied.

One of the fundamental considerations for rural land use planning is ensuring the integrity of rural areas and environmental areas for the purpose for which they are primarily zoned. One of the main threats to both zones is the fragmentation of land which may lead to loss of agricultural viability and loss of environmental integrity. This is a damaging, cumulative issue which most NSW rural and regional councils grapple with.

Permissible uses in these zones must be carefully considered in conjunction with other LEP clauses such as minimum lot size, dwelling entitlements, and provisions around strata or community title.

GMC is concerned the Terms of Reference for the Inquiry refer to "second dwellings". This concern relates to the very specific meanings associated to definitions in the NSW Environmental Planning and Assessment Act, 1979 and in environmental planning instruments and the implications any confusion due to alteration of the description of these definitions which may arise. Any alteration to the definitions may result in the planning provision framework for rural and environmental zones being fundamentally undermined.

- GMC already permits secondary dwellings within most rural (RU1, RU2, RU5, and RU6) and environmental zones (C3 and C4) where dwelling houses are permitted – as either a nominate or innominate use in the land use tables to *Goulburn Mulwaree Local Environmental Plan (LEP) 2009*. GMC would not object to secondary dwellings becoming a specifically nominated use more broadly.

- GMC prohibits dual occupancies in each of the above zones listed except for the RU5 Village zone. This was a deliberate decision to ensure that subdivision of the second dwelling from the principal dwelling could not be undertaken.

- GMC has not adopted the *Standard Instrument* Clause 5.5 within the *Goulburn Mulwaree Local Environmental Plan (LEP) 2009*. This clause adds controls on secondary dwellings in rural zones such as size and distance between dwellings. The exclusion of this standard clause provides flexibility when assessing a development application (DA) and relies upon an assessment of the specific constraints of the land in relation to what is being proposed.

- There is a lack of complete and relevant data in relation to land constraints in regional and rural areas. For example, flood mapping in the GMC LGA is limited to urban areas only. This is generally due to a lack of feasibility in developing widespread flood mapping given the limited development potential and the sheer size and scale of the rural area involved.

  Accurate contour mapping is a further example of this issue. Currently, the non-urban areas of GMC are restricted to 5m (based on spatial data made available from the NSW Government) contour mapping which is highly inaccurate and does not facilitate good planning outcomes based on desk top assessments of available data.

- The variability in rural economies and the function of rural areas between LGAs is substantial and often incomparable. Depending on the location across the State, small lots and rural holdings may have some viability relating to the dominant local rural economy. For example, the ratio of accommodation requirements to productive land will differ for a berry farm in Dorrigo compared to a broadacre farm in the Goulburn area, or an industrial-scale intensive horticulture enterprise in the Riverina. In other words, a one-size-fits-all approach, such as a complying development approval pathway, is unlikely to be successful.

- There needs to be an appreciation as to what the underlying objectives of the rural or environmental zone are for. For example, most rural zones are established for the purposes of facilitating and protecting agriculture in the first instance, but may also facilitate other primary industries such as extractive industries or waste management facilities. These land uses will often conflict with residential development.

- Many councils have structured their Local Environmental Plans (LEPs) to utilise rural zones as a de facto means to limit or prevent residential development in certain areas. For example, flood liable areas within the urban area of Goulburn are mapped as RU2 – Rural Landscape with a 100ha minimum lot size. This allows some small-scale agricultural uses which assist in maintaining the land, ensuring the land does not become sterilised, however the minimum lot size provisions ensure that dwellings are not able to be constructed. Typically, areas with this zone in urban areas are within the 1% annual exceedance probability (AEP) event, and these controls are providing a flood mitigation response.

- The entirety of the GMC LGA (outside of the urban area) is classified as bushfire prone land. Whilst higher levels of construction could be standardised and minimum asset protection zones adopted, other matters such as access (for both residents and emergency responders) are less straight-forward and significantly increases risk. Many rural "roads", which are often only poorly formed access corridors, remain under the ownership of the Crown. Councils are not responsible for the construction, upgrading or maintenance of such roads but regularly struggle with uninformed landholders who purchase land with an expectation that the road will be council managed.

  There are also local examples where development applications could not proceed based on substandard access to a locality, despite the proposed dwelling site itself meeting the relevant site-related development controls.

  Maintaining existing development assessment considerations ensures the long-term safety of future occupants, the safety of emergency responders and limits the risk of high-value assets, such as dwellings, being undefendable in the event of a bushfire.

- GMC is unaware of anything at present that prevents co-ownership or leasing/sub-leasing in relation to rural land.

  Currently, the Goulburn Mulwaree Local Environmental Plan 2009 (GMLEP) contains several clauses that limit the use of strata and community title subdivision to manage unplanned rural residential development given the infrastructure that would otherwise be required to support the intensification of land use. Clause 4.1AA limits community-title subdivision lots to the minimum lot size applicable for the zone, whilst Clause 4.2B limits strata for residential or tourist development for rural and environmental zones to the minimum allotment size.

GMC's experience with community title subdivisions of rural land is that such proposals do not wholly align with the zone objectives, which once again seek to prioritise agriculture and industry, and recognises residential development as an ancillary land use only. Opening further opportunities for residential strata could undermine other strategic approaches to housing delivery.

- A common constraint on rural land is the need for vegetation clearing, but the *State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008* do not include exemptions for clearing. Clearing approval must be sought through other means, such as Development Applications (DAs) or permits made available via council Development Control Plans (DCPs). These approval pathways still entail an assessment of biodiversity impacts and depending on what is present on any individual property, may not result in an approval. This puts a lot of pressure on this process and increases the temptation to illegally clear land to negate the need for vegetation clearing approval. GMC is already struggling to regulate illegal clearing in rural areas across the LGA, much of which is home to known and mapped critically endangered ecological communities. Permitting further complying development pathways for secondary dwellings is likely to make this problem worse.

  The GMC LGA is also located within the Sydney Drinking Water Catchment. This is captured under the *State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021* within the NSW planning framework, this status can limit the ability for complying development pathways to be utilised owing to the complexities of ensuring that the proposed development will meet the required 'Neutral or Beneficial Effect on water quality' assessment.

  Ultimately, any changes to the planning framework would need to consider the relationship between numerous SEPPs and other legislation, not just the relationship between the NSW *Environmental Planning & Assessment Act, 1979*, Housing SEPP and Codes SEPP. In GMC's experience, the Agritourism reforms did a poor job of this, and as a result, several planning 'loopholes' have opened which are currently resulting in poor planning outcomes, environmental impacts and land use conflict between neighbours.

- Quite often, the subdivision of rural land results in the creation of specific building envelopes of a limited size and location. The specific nature of the building envelope is generally based upon an assessment relating to matters such as the ability to dispose onsite wastewater or safeguard against bushfire, for example. In most cases, these building envelopes would likely limit the size and location of a secondary dwelling. Once again, a merits-based assessment via the development application process allows matters such as this to be appropriately considered and assessed.

- GMC is currently preparing an *Employment and Rural Land Strategy* which is focusing on actions to protect rural land and facilitate the rural economy. GMC considers that residential development is ancillary to the agricultural use of land and should remain this way.

  GMC has an *Urban and Fringe Housing Strategy* which focuses residential development growth on the 2 serviced urban areas in the LGA (Goulburn and Marulan) which provide better access for residents to services such as medical, education, shopping and recreation infrastructure. Intensifying development outside of these areas places additional pressure on residents trying to access such services, as well as additional pressure on Government-funded services, such as emergency services, school buses and telecommunications.

- Encouraging further densification of relatively large-scale rural areas will have an economic impact on GMC's ability to maintain what are essentially limited services and access. In addition, doing so would be a direct contravention of Section 1.3(c) of the EP&A Act, which seeks to promote the orderly and economic use and development of land.

  Furthermore, intensification of land use via mechanisms such as secondary dwellings places additional strain on GMCs limited financial resources, especially whilst income is constrained within a rate-capped environment, as additional land rates are unable to be levied to help pay for activities such as rural road maintenance. Whilst developer contributions can assist, they are effectively only a one-off "sugar hit" to the bottom line and don't address long term financial sustainability targets.

- Unauthorised dwellings within the rural area are an issue that GMC is continually contending with, consuming valuable staff and financial resources. It should be noted that GMC does not have the capacity to proactively seek out unauthorised dwellings, but rather addresses them individually as they are identified. Similarly, a risk-based approach is used to triage each matter. These matters are never straight-forward, with investigations taking significant time, and the available resources required to follow through being disproportionate to any penalty that can be recovered or deterrent being put in place.

  The issue is often compounded by large tracts of rural land that don't attract dwelling entitlement due to underlying constraints such as access, biodiversity or natural hazards (fire, flood, etc.).

  Dwelling entitlement searches can be a complex task that would be extremely difficult to accommodate within a complying development framework. There is also a risk of unauthorised dwellings receiving tacit approval resulting from complying development certificates issued for secondary dwellings should this planning pathway be created.

  The cumulative impact is that no regularisation pathway exists for the many unauthorised dwellings leading to the displacement of occupants, conflict between landholders, conflict with GMC as a regulator and the need for costly rectification works.

- There are many legacy issues confronted by Local Government in rural areas including the presence of "paper subdivisions". GMC has had many experiences of these lots being sold off individually without a dwelling entitlement, without access, without capacity for onsite sewage management and fully constrained by biodiversity and bushfire. It is also evident that paper subdivisions manifest a high rate of unauthorised activity, such as illegal dwellings and land clearing because of the occupier being "out of sight, out of mind".

Summary and Recommendations

GMC is not opposed to secondary dwellings in rural and environmental zones (excluding the C1 and C2 zones). GMC's longstanding approach to this land use via its adopted planning instruments is a testament to this position. However, it must be made clear that this approach is underpinned by the ability to carry out detailed assessments via the development application process. This is in recognition of the many constraints that apply to rural land, both physically and in terms of available information in which an informed assessment can be based, such as flood mapping data.

GMC would welcome moves by the NSW Government to bring greater consistency to the permissibility of secondary dwellings in rural areas across the State but also cautions against the pitfalls of enabling such development to be made available via complying development pathways.

GMC also cautions about the long-term viability and sustainability of permitting rural land to be used for the primary purpose of a rural-residential lifestyle.

It is therefore recommended that the NSW Government:

1. Provides clarity in relation to the Terms of Reference on what it meant by a "second dwelling" as opposed to a "secondary dwelling", noting the significant implications associated with the different interpretation.
2. Acknowledges the need to find a balance between the use of dwellings on rural land as a means of achieving housing diversity and availability with the need to protect productive agricultural land and ensure its sustainability into the future.
3. Does not expand the use of Complying Development provisions for the purposes of enabling secondary dwellings on rural land, recognising that information that is vital in the assessment of proposed rural dwellings is often lacking (such as contour or flood mapping) and therefore does not contribute to safe or effective planning outcomes.
4. Addresses difficult issues such as dwelling entitlements, paper subdivisions and restrictions on land title (which can often only be varied by a council) in any proposed policy change.

In the meantime, GMC thanks the Committee for the opportunity to provide input and looks forward to the findings being handed down. If the Committee have any questions and/or requests for information, GMC would be more than happy to respond to said questions and/or requests.

Yours sincerely

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