



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EPD:JBgl201025

20 October 2025

The Hon. John Ruddick
Chair
Select Committee on Rural Housing and Second Dwellings Reform
NSW Legislative Council

By email: ruralhousing@parliament.nsw.gov.au

Dear Chair,

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

Thank you for the opportunity to provide feedback to the Inquiry into Rural Housing and Second Dwellings Reform. The Law Society's Environmental Planning and Development Committee contributed to this submission.

The Law Society supports, in principle, reforms to facilitate the construction of second dwellings in rural zones. We set out below our comments on the document entitled "State Environmental Planning Policy (Housing) Amendment (Second Dwellings in Rural Zones) 2025", tabled by the Chair (**Draft Instrument**).

Location in Planning Regime

The Draft Instrument, and the terms of reference for the Inquiry at 1(a), pose the question as to whether the proposed changes should be made by amending the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**), the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (**Codes SEPP**) and clause 5.5 of the *Standard Instrument (Local Environmental Plans) Order 2006* (**Standard Instrument LEP**). In our view, each of those instruments should be amended. The Housing SEPP should be amended to permit the construction of second dwellings in rural zones without subdivision, the Codes SEPP should be amended to include the new requirements for such dwellings, and clause 5.5 of the Standard Instrument LEP should be amended or removed to avoid inconsistency and confusion. An approach where the Local Environmental Plan (**LEP**) retains a clause which is always overridden by the state instrument should be avoided.

Impacted zones

We note that the terms of reference at 1(c) refers to "permitting second dwellings on RU1–RU6, C3 and C4 zoned lands". We support the new policy to facilitate the construction of second dwellings in rural zones, but it should, if implemented, extend only to RU1, RU2, RU4, RU5 and RU6. Given the objectives of Zone C3

Environmental Management¹ and C4 Environmental Living,² we do not regard it as appropriate to extend the new policy to C3 and C4 zoned lands.

There are also some inconsistencies in the Draft Instrument as to the land to which the new policy will apply which need to be addressed if implemented, including:

- The relevant zones to which the policy will apply are specified on page 1 as “rural zoned land (RU1-RU6, C3 & C4)”, but page 2 refers to RU1- RU6, and C2 Environmental Conservation and C4 Environmental Living.
- The zones referred to on page 6, Schedule 1: Consequential Amendments are RU1-RU6 and C3 and C4.

Strata-like agreements/arrangements

In describing the purpose of the policy, page 1 of the Draft Instrument refers to:

...Enabling flexible legal title arrangements (e.g., tenants in common, strata-like agreements) without subdivision.

The terms of reference at paragraph 1(h) similarly refers to “strata-like arrangements”. We are unclear what is intended by the references to “strata-like agreements” and “strata-like arrangements”. These references are also confusing as the registration of a strata plan is a form of subdivision. This appears to require further consideration, but in principle we do not see any reason why strata subdivision should not be permitted as a means of providing two dwellings on rural land.

Second and Principal Dwelling

Page 2 of the Draft Instrument provides a definition for “Second dwelling”. We note that there is an existing definition of “secondary dwelling” in the Dictionary to the Standard Instrument LEP:

secondary dwelling means 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.

We suggest that adding a new definition for “second dwelling” when there is an existing definition of “secondary dwelling” should be avoided.

¹ The objectives of Zone C3 Environmental Management under the Standard Instrument LEP are “To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. To provide for a limited range of development that does not have an adverse effect on those values.”

https://legislation.nsw.gov.au/view/html/inforce/current/epi-2006-0155#sch-inc-pt-cg1.Zone_C3.

² The objectives of Zone C4 Environmental Living under the Standard Instrument LEP are “To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. To ensure that residential development does not have an adverse effect on those values.”

https://legislation.nsw.gov.au/view/html/inforce/current/epi-2006-0155#sch-inc-pt-cg1.Zone_C4.

The Draft Instrument also includes a definition for “Principal dwelling” on page 2. We query whether it is necessary to allocate one dwelling as the “Principal dwelling” in the context of permitting two dwellings per lot in rural zones.

Rural Workers’ Dwellings

Arguably the Standard Instrument LEP permits more than one rural worker’s dwelling to be built on land in certain zones. Some LEPs, such as the *Ballina Local Environmental Plan 2012*, section 4.1C, include a limit on the number of rural workers’ dwellings allowed on land within certain zones.

We query whether it is intended to permit rural workers’ dwellings in conjunction with a rural dual occupancy. If so, the “two dwelling maximum” limit should be amended. General clarification should be given as to whether more than one rural worker’s dwelling is permitted. If more than one is permitted, but only in conjunction with a single principal dwelling, then that should be made explicit. If not, then there may be no utility in maintaining the rural worker’s dwelling as a separate category.

Rural Land Sharing Communities

Given the nature of the Inquiry, we suggest *State Environmental Planning Policy (Primary Production) 2021*, Schedule 5 – Rural Land Sharing Communities (**RLSCs**) is also relevant. Schedule 5 is the main provision that allows community or multiple-occupancy living in some rural areas, carried over from earlier State Environmental Planning Policies. In our view, any interaction of the new policy with provisions in respect of RLSCs should be considered. We also note that the current RLSCs framework is quite restrictive. For example, there are limited zones where new RLSCs can be approved.

Access arrangements

As highlighted by the terms of reference at paragraph 1(j), consideration will need to be given to access arrangements. Some LEPs require a single access point for two dwellings, for example, section 4.2D(2)(b) of the *Byron Local Environmental Plan 2014*.

Setbacks

We suggest that 3m side and rear minimum setbacks as specified on page 5 of the Draft Instrument appear to be unnecessarily small for a large lot, and consideration could be given to a sliding scale based on lot size or width.



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Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely,

Jennifer Ball

President