

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON RURAL HOUSING AND SECOND DWELLINGS REFORM

INQUIRY INTO RURAL HOUSING AND SECOND DWELLINGS REFORM

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At Preston Stanley Room, Parliament House, Sydney, on Tuesday 16 December 2025

The Committee met at 9:15.

PRESENT

The Hon. John Ruddick (Chair)
The Hon. Scott Farlow (Deputy Chair)
Ms Sue Higginson
The Hon. Emily Suvaal

PRESENT VIA VIDEOCONFERENCE

The Hon. Anthony D'Adam
The Hon. Wes Fang

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The CHAIR: Welcome to the third hearing of the Committee's inquiry into rural housing and second dwellings reform. My name is John Ruddick and I am the Chair of the Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media and/or others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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Mr TOM LOOMES, Executive Director, Strategic Planning and Policy, Department of Planning, Housing and Infrastructure, affirmed and examined

The CHAIR: We are joined by our first witness. Welcome, and thank you for taking the time to give evidence. Thank you for your detailed submission. We would now like to invite you to make an opening statement, if that's of interest.

TOM LOOMES: I think it's all well articulated in the New South Wales Government submission. I'll just make a very brief comment that what's being put forward by the Select Committee I think has great intent. We have done a significant amount of housing reform as a government over the last two years. My team has been leading the vast bulk of that. The housing SEPP has sort of had no stone unturned, with the exception of secondary dwellings. We're very interested to see what comes of the report from the Select Committee, because that will help us to navigate any reforms for secondary dwellings that might be necessary.

The CHAIR: Across New South Wales there are a lot of unauthorised second dwellings in existence. It's hard to quantify how many there are. If the suggestions of this Committee do move forward, what would be your view about an amnesty for these existing dwellings? Because a lot of people are in a bit of limbo and there's a feeling of insecurity about it. I'm guessing most of these residences, or almost all of them, are safe and stable. What would you say about a transitional arrangement for those properties?

TOM LOOMES: I think we'd have to work it through, based on some of the issues that might face some of those secondary dwellings. We have, in the past, seen unapproved or unauthorised dwellings come to light usually in a hazard-based situation when there's been floods and fires. That is when they're being accounted for: when they've been destroyed and people are displaced. I think any approach to approval or for recognising those dwellings would need to be done through the lens of what risks that dwelling may face, whether it is environmental or it is hazard based. As we go through the policy reform process, we would be looking at what those potential risks could be and how such a process could be rolled out—a transitional arrangement, if required.

The CHAIR: Can I ask, Mr Loomes, how long have you been employed by the department of planning?

TOM LOOMES: I have been at the department of planning since August 2023, but I was there previous to that as well, from October 2020 until, I think, March 2022.

The CHAIR: The reason I ask is, in your submission on page 3, you've said:

Until 2009, secondary dwellings in NSW were primarily regulated by local councils through Local Environment Plans (LEPs) and Development Control Plans ... Secondary dwellings became a recognised development type with the introduction of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* ...

Are you familiar with what was the cause of that change in 2009 and what impacts it had in relation to the second dwellings?

TOM LOOMES: I'm not familiar with the cause, unfortunately. I wasn't in the department at the time. I'm happy to find out and provide more information on notice. I do think that there is benefit in the housing SEPP and the standard instrument, providing certain rules around secondary dwellings and all residential development types. I think you've seen more of that recently, particularly with dual occupancy reform, which I think nestles quite well into the terms of reference of this inquiry. I think there is an intent from government for us to have a stronger hand in how the rules are set, particularly around housing.

The CHAIR: And then, on the next page, on page 4, you have said:

Clause 5.5 of the Standard Instrument was introduced in 2020 as an optional clause that enables councils to set certain controls for secondary dwellings on land in rural zones. By adopting Clause 5.5 into their LEPs, councils have the discretion to set both a maximum size on secondary dwellings and a minimum distance between the secondary and principal dwelling.

I know that was in the middle of COVID in 2020, but do you think that reform that was introduced in 2020 has had a positive or a negative effect?

TOM LOOMES: Because it's an optional clause, councils have to go through a process to establish what are the best rules for their area. As they're doing the strategic planning—and this was around the same time they were doing their local strategic planning statements, which was a really important strategic planning document which every council now has—they can establish where there is the possibility for additional flexibility in housing rules in different zones and what's permitted under the standard instrument. I think in one of our appendices you'll see a table of where those rules have been taken up by certain councils.

Some councils have far more generous floor space requirements than what's permitted under the SEPP. They also have different distances as well. Some of them have taken up the distances and some of them haven't.

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We've also got councils who, for instance—on that page as well you'll see the Central Coast, Dubbo, Port Macquarie and Queanbeyan, who have established, where it is possible in their local government area, for that flexibility to be balanced with potential impacts, like potential impacts on rural zones or in conservation zones. Some of them are being very flexible in their primary rural zones, the RU1 and RU2 zones, and some also in their conservation zones, particularly the environmental living.

The CHAIR: If there are a significant number of additional homes being built in rural New South Wales, what's your view on what we can do and what the local councils can do about raising rates to fund these additional people and the services required?

TOM LOOMES: Rates are obviously outside the planning system. They're dealt with through the Minister for Local Government and the Office of Local Government. I'm not too sure. I probably can't answer your question on behalf of either of those two groups. But I'm happy to take it on notice and get some further information from my colleagues in the department who work in the Office of Local Government.

The Hon. SCOTT FARLOW: Thank you, Mr Loomes, for your presence here today and for your submission as well. I think it's very interesting to look through the appendixes and the variances that exist between councils that have implemented clause 5.5. That goes from Albury right at the top with a 100-square-metre limit or 120 at Griffith, right down to 10 in Port Stephens, which seems like a very constrictive secondary dwelling existing there. I'm interested in what work the department does with councils when they're actually incorporating this into their LEP. Are there any checks or balances from the department, or is it purely at the council's discretion as to what they implement?

TOM LOOMES: No, it's part of an LEP amendment. You would have to go through, essentially, a planning proposal or a rezoning process, in plain terms. It's not something that can just be done straightaway. Because it's an optional clause, it goes into their LEP with whatever specifications they've got. Through the planning proposal process, there are always checks and balances. There would be a gateway process where that basically sets the terms of what the department will be looking for, as well as the consultation required, not just with the community but also with the agencies that might be affected. Those agencies will be people like the department of primary industries as well as the RFS and any other response or emergency services agency about where they're proposing to permit or expand the permissibility of certain types of dwellings in different zones.

In terms of the maximum square metreage or the distances, council would be required to provide evidence as to how this is not going to have a significant impact on the primary purpose of those zones—so, depending on whether it's the RU zone or the conservation zone, how they're going to limit that impact and make sure that they are balancing the needs of that zone also with the intent of providing more housing. Some of that would be things like the maximum distance and what the intent of the secondary dwelling reform is. If it's to provide more key worker housing, to enable some of the uses in the RU zone; people who come up and are seasonal workers, if it's to enable that, obviously there's a different approach to how if you're going to use it for a tourism purpose, which is somewhat a very different need for a different maximum distance between those dwellings. Each council will have gone through that process individually. They'll have tested the maximum floor space that they think is appropriate for their areas, based on the lot sizes and where they're looking to expand those secondary dwellings.

The Hon. SCOTT FARLOW: I'll put to you some of the challenges we've heard through the inquiry so far, to see if the department has any view. One of the areas of frustration from many landholders has been the requirement to have an attached secondary dwelling on a premises rather than a detached secondary dwelling. I'm interested in whether the department has a view in terms of attached secondary dwellings versus detached, and what sort of mischief could be made in terms of having a detached secondary dwelling in comparison to an attached one?

TOM LOOMES: I think there is a reticence for detached secondary dwellings in some cases because of that. It's multi reasons. Some of that is there could be an impact on the environment. There could also be an impact on the primary use of that lot. If it's for agriculture, the further that secondary dwelling might be from the primary dwelling, you might be reaching into some of that productive land. There's also the hazard-based issue that generally the primary dwelling has—it mitigates some of those hazards with asset protection zones, essentially, to try to prevent significant damage in the case of a hazard. Also, usually, the primary dwelling might be positioned in the lot in a place that could also avoid hazards—for instance, things like flooding.

The further that secondary dwelling gets away from the primary dwelling, I understand that that's some of the risk that certain councils may feel can be mitigated by only permitting attached. It is one of the key issues that the department is very aware of, though. It's one of the primary opportunities, I think, in the housing SEPP to really look at how that could be better explained and better managed. We've done it through the dual occupancy reforms as well, because there was an inconsistency across local government areas and their LEPs. Some councils only permitted attached dual occupancies, not detached. Through that reform, we've obviously cleared that up.

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The Hon. SCOTT FARLOW: We've heard from two angles. Some who are primary producers on very large parcels of land say that in order to be able to maintain agriculture on their land, having a secondary dwelling is imperative to either maintain a family farming practice or to have additional workers onsite. And then, at the other end of the scale, we've also had people who have come to us who live on relatively small, rural lots that can't be used for farming, but who say it is still a large block of land and having a secondary dwelling would be beneficial to being able to address housing in the area or being able to have family, for instance. We heard some stories in the Tweed of being able to accommodate family on the site. From the department's perspective, in both those cases, what would be the detriment of having a secondary dwelling on those sites?

TOM LOOMES: I guess it's less a detriment but more what the opportunities could present themselves as. We really rely on councils, through their strategic planning, to identify where that flexibility could go. Parts of the Murray are not the same as Ballina. While the zones might look similar or say the same thing, how they're used, what they look like, their lot sizes and what they're producing on those lots as well is very different. I think there is an opportunity for councils, with the guidance of the department, to be able to really closely look at not just all lots zoned RU1 or RU2 but, more specifically, where in those zoned areas there could be more flexibility for secondary dwellings. There are immense housing stresses in the regions, and I think that is driven by multiple factors. It has been around for much longer than COVID but was obviously exacerbated by that, and since then continues. There is a real opportunity for us to look at secondary dwellings as part of the cure in a bespoke way in certain parts of the State. The intent of it being for multigenerational housing or for it to be a downsizer option, while also still staying engaged with the family business on a farm, is absolutely a potential.

I think there are always risks in land use tensions, and we see it all the time, not just between agricultural and residential but in many, many different scenarios. But when there is more of that intensive agriculture, which has some impacts which we have to assess, quite clearly, intensifying residential around those intensive agricultural practices will create a land use conflict that isn't beneficial, necessarily, to the agricultural sector, and we have to be mindful of that. Similarly, with conservation land as well, we have to really look at what the conservation purpose is for land in a local area and use that as an opportunity to see what flexibility could be allowed in there without having significant impacts on that local environment. I still think there is a real opportunity, though, for us to consider more flexibility in a lot of these scenarios, particularly in the RU5 and RU6 zones—the rural village zone, the transitional zones—where we see more of this rebalancing of that land use change. I think there is real opportunity there.

The Hon. WES FANG: In relation to the discussion you were having with my colleague about rural land use and the like, where does the department receive its advice in relation to prime agricultural land and what impacts may occur on it, should a second dwelling be built? My experience is that bureaucrats often have a view, but they don't have a practical implementation consideration. I'm just trying to understand where the department gains its information from that perspective.

TOM LOOMES: This was a whole-of-government submission, Mr Fang, and it was informed also by our colleagues at the Department of Primary Industries and Regional Development. Through the creating of an environmental planning instrument, we consult with the department of primary industries. I think it's under section 3.25—something, which I can get back to you on. If a council is putting forward the opportunity to expand, say, the permissibility of secondary dwellings into rural zones, it will be one of the agencies that that council needs to consult with as it goes through that process, before the finalisation of the LEP amendment that permits that.

On a case-by-case DA process, if it is permitted with consent, it will be up to council to then consult further, if it chooses to, with the respective agencies. I think also councils know their local area very well and, in some cases, may choose not to. But there are concurrence and referral requirements set out in multiple places in multiple SEPPs and the reg, so it is very likely that DPIRD and the Agricultural Commissioner will have views. The Agricultural Commissioner, as you've seen in our submission, is doing further work on State significant agricultural land and how we obviously balance some of those land use conflicts, which is not just residential. Obviously, there are many. We will take her advice in those instances because she leads a team of foremost experts in the agricultural practices of the State.

The Hon. WES FANG: I guess that leads into some of the evidence we heard last week when we were up in the Tweed. I don't want to characterise the evidence that we heard, but I wasn't exactly impressed with some of the views of, say, the mayor of the Tweed shire in relation to what she considered would be impacts on prime agricultural land from second dwellings. I wasn't sure as to what the Government position was in relation to allowing councils to make their own determination. You've sort of answered that in your response. But where a council is perhaps unwilling to adopt measures around second dwellings and the view of the department is that the experts are saying that this will or will not have an impact in a certain area, is it fair to say that the department can, or should, override local government in relation to their objections, where they are not fact based?

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TOM LOOMES: The department has a regulatory role through the planning proposal process and, I guess, runs that check and balance. There is a role at the gateway stage, which is very early on, to set the terms of reference, let's call it, of how this is going to go and things that must be considered and consultation that must be done. In some cases, it can set very clear rules. I will say that it is possible to set up the RUIs, the primary production zones and the rural landscape zones, to allow for secondary dwellings—with the right intent. We've got councils that already have that. Obviously that's been through a process of consultation and that has been implemented. It is possible.

I would be really keen to see the outcomes of this inquiry and what recommendations come out of it about certain zones. Like I said, I think there are certain rural zones where that land use conflict can be managed, where there might be an ability for the housing sector to play a greater role in setting those clear expectations in certain rural zones. But I think we will take the evidence that is provided from the Committee and, obviously, come up through our own policy work what that looks like. It's more than just a permissibility issue as well. It then gets down into the development standards and what is right for certain zones. We know what is right for the residential zones. We are less clear on the rural zones. I think that gives us an opportunity to set some of those ground rules, if that is what is pursued by the Government.

Ms SUE HIGGINSON: Thank you so much, Mr Loomes, for your evidence and giving time today. I know you live, breathe and digest planning on a daily basis. I understand what that feels like a little bit. Your understanding is that there are some local government areas and LEPs that chose early on in the discussions around standard LEPs not to integrate conservation zones into their LEPs?

TOM LOOMES: I believe, through the conservation zone changes that were fairly recent, there are some that still have the legacy zones, from my understanding. I'll find out what they are for you. I'm not sure whether they chose or whether there was a complexity that might have led to a deferral. Let me find out and I'll come back to you. But there are definitely still some legacy zones out there.

Ms SUE HIGGINSON: I think this Committee would benefit from understanding that some LGAs across the State, due to whatever political make-up of their councils, have made decisions not to have the original E zones, as they were when the standard instrument first came, and then the conservation zones as they developed. In terms of land use conflict, particularly in relation to rural land and rural landholders, are you aware of a project that the DPI undertook a number of years ago now that related to the land use conflict matrix that they developed? It was referred to as the *Land Use Conflict Risk Assessment Guide*. It was the DPI, and I'm not sure whether that guide is still in use. It was developed probably 10 years ago, or possibly over 10 years ago now.

TOM LOOMES: I've definitely heard of it. I don't think I've seen it in recent years. I can find out if it's still in effect, though.

Ms SUE HIGGINSON: That would be good. I know that it was worked on quite intensively by the DPI Wollongbar institute. One of the things that they identified about land use conflict, particularly in the Northern Rivers and Tweed area, is that rural landholders and primary producers and agriculturalists—of which I am one—sometimes create massive land use conflict in the way they operate their enterprises, such as tractors and machinery going 24 hours a day for up to seven days a week in blocks whilst harvest is on or during production. If there was a secondary dwelling close to a boundary of a property—possibly even a large property—would the department, councils, an inquiry like this or a committee understand what that actually means in real terms, do you think?

TOM LOOMES: It would be case by case, which I think is part of the challenge of the planning system. I think part of the earlier questioning about why some councils only permit attached is to try to avoid some of those neighbouring land use conflicts, not just on a lot but also on the neighbouring lot as well—to move away from having secondary dwellings close to the boundary, where the impacts on a neighbouring lot or for a neighbouring lot as well could be avoided.

Ms SUE HIGGINSON: Say, for example, I'm a macadamia farmer and I have a processing facility on my farm, which means for four months of the year I'm grinding nuts very loudly. That's my entire business and livelihood. It's only a small thing. If I had a neighbour who wanted to build a secondary dwelling on one of those little lots that never got a dwelling entitlement, but it was only five hectares in amongst a few big 40- or 60-hectare properties—if somebody was proposing a secondary dwelling on that five-hectare lot, would it not be the case that it's possible the only way a council or the department or somebody would know of the heightened potential for land use conflict would be through a development application and notifying the neighbours? They could write in and say, "Hey, I'm really worried if a dwelling was there, and there was a small baby or an elderly person, that person may not be able to sleep for six months of the year."

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TOM LOOMES: They're the types of land use conflicts that I was outlining earlier. It's not just in agriculture. It also happens in industrial land, where we have to be mindful of what the off-site impacts are but also what those neighbouring lots may—they also may come under stress as a result. The area that you're talking about, if its primary use is rural and agricultural uses, extensive or intensive—we are mindful of that. What I've been leaning on throughout today is that councils need to do that strategic planning work so that they can identify whether the macadamia farming area and the processing really is the place where we want to see additional residential development. If so, it's setting up development standards so that those sorts of impacts can be avoided, so that they are not putting secondary dwellings on the boundary near the processing plant for the macadamias and then exposing both parties to risk.

Then, if approved through the LEP, a development application would be one of the key checks and balances. It could lead to land use conflict and neighbour conflict as well. It happens in a variety of circumstances, not just agriculture. That would be one of the checks and balances. That might result in the secondary dwelling being brought further away from the boundary. It might result in further changes to what's proposed under that development application, or it might result in a refusal. It's up to the councils to decide that, in this hypothetical, but that is absolutely a risk. That's why we need to get the very front end of the system right, with the strategic planning about where these should go and what types of zones they should be permitted in.

Ms SUE HIGGINSON: Is it the case that when planners are planning and councils' planning staff are working, in all of their professionalism, they are not just looking at the current landowners' desires to have their vision, view or rights imposed upon their land at that particular time, but your responsibility and your job is to consider land use conflict for the next owners and the next generation, and the people after that, and that sometimes may be misunderstood in the community, particularly if a landholder thinks that they're being unfairly dealt with? Is that something that is real for you as expert planners?

TOM LOOMES: Absolutely. Strategic planning really takes that long-term look. It's not the one to five years; it's really that 10 to 20. When we do strategic planning, we look at all of these factors where the economic uses for land are going to continue on into the future. They might change. They do change quite dynamically in a long period of time, or economic uses may be retreating and other uses can start to move in. We're seeing it in the post-mining landscape. We're seeing it in different parts of agriculture. I feel like that's what good strategic planners do: try to balance out that long term with the short-term requirements of, say, the housing crisis or whatever it might be at that time.

We can do that in a lot of ways, but I would say that in regional and rural New South Wales, one of the big factors that we have to consider—perhaps very differently to how we do it in the metropolitan regions—is infrastructure provision. The councils and the local governments are water, wastewater and roads providers as well. That is a really big thing. Where something has been planned for 20, 40 or 60 years to provide those services to an agricultural sector that has a certain amount of needs and may not have significant wastewater needs, council needs to plan for the infrastructure well in advance of significant change, which is why that council-led strategic planning is very important.

Ms SUE HIGGINSON: I've got two quick questions to finish on. In terms of what you've just given in answer to that question, is it the same for biodiversity and conservation? For example, landscapes are changing. Threatened species may be protected, but the only way they can not be threatened species anymore is if they are able to expand in their habitat needs. This is also very relevant to where we're putting new homes and that ability for us to regenerate and increase biodiversity across the landscape.

TOM LOOMES: Yes, absolutely. I think with the C4 zone, which is the Environmental Living zone, it's very different in Pittwater and Mosman than it is in Ballina or in Bega. I think there are some really key biodiversity values in our landscapes in regional New South Wales where the conservation zones have been implemented. They're not implemented wantonly, I would say, by the department. They are done through a very robust process which goes through with our colleagues in DCCEEW, and National Parks and Wildlife.

But I do think there are parts of New South Wales, and we've seen that with some councils—particularly the Central Coast, which is constantly wrestling with its biodiversity values and its need for new housing—where there are strategically located parts of the C4 zone or other parts where you could co-locate those and you can manage them through the development standards themselves. That's why, when I was talking about the attached versus detached—limiting the impact on the biodiversity value of a lot or an area can be managed through development standards in some cases, not in all, but the council will be able to figure that out. It might not be every single lot that's zoned C4 or C3. It might be only some mapped areas where there is that flexibility. But, yes, it's a very similar struggle.

Ms SUE HIGGINSON: My last question is, from a planning and a strategic planning perspective, would you think that it would be counter to good planning outcomes if there was just a blanket provision—I think this is

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consistent with your evidence—in a SEPP that said any lot over four acres can have a secondary dwelling anywhere?

TOM LOOMES: I won't prejudge what the Committee finds.

Ms SUE HIGGINSON: I wasn't asking that. I was asking for your expertise in terms of good planning outcomes for the State.

TOM LOOMES: I think there is a lot of flexibility in the standard instrument clauses and the optional clauses at the moment, but I also understand that they're not taken up consistently by councils where they could. I think there is an opportunity for us to be a bit more firm in certain zones where the risks in the land use conflicts could be managed. We've outlined in our submission that the RU5/RU6 zones may present a better opportunity than others. I also take up the evidence that I heard from the previous hearings where there are struggles with certain councils to actually get them to even consider using the optional clauses in the standard instrument. I think there's a role for the Government to play a guiding hand with those councils to make sure they are, as they're doing their LEP updates, to consider what could be done to help ameliorate some of the significant housing stresses in their local areas.

Ms SUE HIGGINSON: Sorry, can I just—

The Hon. EMILY SUVAAL: I do have a number of questions.

Ms SUE HIGGINSON: I've got one clarifying point, sorry. This is all.

The Hon. EMILY SUVAAL: If the Chair's happy to do an extension of time.

Ms SUE HIGGINSON: It's only one clarifying point.

The CHAIR: Let's do it, quick. We can look at an extension, Emily.

Ms SUE HIGGINSON: Just clarifying, in relation to my question about a land lot and size, your preferred approach, or your expertise, suggests that the zoning is actually the best place to start and then look at the other factors.

TOM LOOMES: That's right, and we could get to the development standards later.

Ms SUE HIGGINSON: Thank you. Sorry.

The Hon. EMILY SUVAAL: That's okay. All good. It's a nice dovetail to some of the questions I have to ask. In the Government submission, it talks about the State Environmental Planning Policy (Housing) 2021 definition of secondary dwellings, which says:

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

We heard a lot of evidence in Tweed around some of the frustrations rural landowners have there, because currently the approach from council is that it must be attached. Is that one of the areas of reform that this Committee could possibly look at?

TOM LOOMES: Absolutely, and it's something we're considering in other zones that are not being looked at by the Committee, so yes, absolutely.

The Hon. EMILY SUVAAL: The other two things that came up—in particular in Tweed but also in the first hearing that we've had—were around having to have it on the same lot when, particularly in rural lands that are quite large, it may have been more appropriate and safer to put it on a different lot. The other provision is that it must be a smaller size, given that a number of dwellings that are on these rural lands are quite old—three-bedroom, one-bathroom weatherboard homes. Are there areas that we could also look at? What safeguards do you envisage would need to be in place if we were to start looking at that?

TOM LOOMES: The secondary dwelling versus a dual occupancy is something that the Committee should consider through its evidence. The purpose of the secondary dwelling, obviously, is meant to be as a secondary dwelling to that primary dwelling. It really is not meant to, in its intent, be able to be subdivided or split from that primary dwelling, whereas the dual occupancy has that flexibility and that opportunity. Some of the things that are described in the draft SEPP that's obviously been put forward really do bring themselves more to the dual occupancy. I'm more than happy if the Committee wants to make recommendations or consider the role of the dual occupancy as well as the secondary dwelling. We've done a lot of reform in dual occs recently, but only in the resi zones, not outside of those.

The Hon. EMILY SUVAAL: Why are people fixated on trying to get a secondary dwelling when they've got this other avenue that they could possibly be using around a dual occ?

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TOM LOOMES: Secondary dwellings are probably better known, generally. They also, in the residential zones, have for some time had the complying development pathway. Also, there are providers out there who are able to basically build you a secondary dwelling very quickly. Also, the intent of the secondary dwelling really has been to house older family members or younger family members and to keep them close to home. The dual occupancy is becoming a much more popular development type. Some councils have actually permitted dual occupancies in their rural zones and—

The Hon. EMILY SUVAAL: I think mine's one of them.

TOM LOOMES: Great, and I think there is a real opportunity. If councils are considering secondary dwellings, they may want to consider dual occupancies, as well, to give those people that flexibility to be able to decide. If you want to subdivide and split the lot, the dual occupancy perhaps is the best way forward. So, yes, looking more at that.

The Hon. EMILY SUVAAL: How could the dual occupancy reforms apply to rural zones that you've spoken about?

TOM LOOMES: What we've done previously is we've permitted, or we've mandated, dual occupancies in all of the low-rise residential zone—which is the RU2 zone—in every LGA in the State, with the exception of a couple that had some really significant hazard issues. There could be an opportunity through the housing SEPP to consider, if the Committee is putting forward that perhaps the Government considers mandating secondary dwellings in the RU5 or RU6 zones, that there is an opportunity to consider something like dual occupancies as well. They will roughly have the same infrastructure impact, land-take impact, but councils will need to consider what that looks like for them in terms of the future of their local area as well.

The Hon. EMILY SUVAAL: From a dual occupancy perspective, it sounds like there is a little more flexibility around what the dwelling would look like.

TOM LOOMES: Yes.

The Hon. EMILY SUVAAL: It can be the same size.

TOM LOOMES: Bigger.

The Hon. EMILY SUVAAL: It can be bigger. It can be detached, for example. It's interesting, because I don't think this is something that councils, at least, have provided in some of their evidence to the Committee so far. Are there any opportunities in terms of the complying development pathway, as well, for secondary dwellings?

TOM LOOMES: The complying development pathway is currently only enabled in certain residential zones. If we went down this policy route, we could look at how it could be expanded further. We would do that alongside the permissibility, and what some of the development standards and risks would be. I don't want to prejudge what the Government might decide on that. But if there are certain zones where the impacts can be managed through a CDC, I think that is an opportunity, absolutely.

The Hon. EMILY SUVAAL: In terms of any unintended or otherwise implications, has the department done any work to consider what might be the short- and long-term tax implications of putting a secondary dwelling on, in particular, primary producer land?

TOM LOOMES: I'm not aware of any work that has been done.

The Hon. EMILY SUVAAL: Are you able to perhaps take on notice whether or not that might be something the department could consider looking at?

TOM LOOMES: Absolutely.

The CHAIR: Mr Loomes, thank you very much for appearing today.

TOM LOOMES: Thanks for having me.

(The witness withdrew.)

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Mr ALISTAIR KNOX, Chair, Environmental Planning and Development Committee, Law Society of New South Wales, affirmed and examined

Ms ROSLYN McCULLOCH, Deputy Chair, Environmental Planning and Development Committee, Law Society of New South Wales, sworn and examined

The CHAIR: Welcome, and thank you for making the time to give evidence. Would either or both of you like to make a joint opening statement?

ALISTAIR KNOX: Thank you for inviting the Law Society to give evidence at today's hearing. Our committee members who contributed to the Law Society's submission to the inquiry comprise a cross-section of specialist planning lawyers, some of whom act for councils or are in-house council lawyers, while other members act for developers and landowners. In our own practices, Ms McCulloch predominantly acts for local councils, and I predominantly act for landowners and developers. I refer the Select Committee to the Law Society's submission dated 20 October 2025. In that submission, we support in-principle reforms to facilitate the construction of second dwellings in rural zones. Our submission did not seek to comment on all of the terms of reference for the inquiry.

I highlight the following from our submission—firstly, the location in the planning regime. In our view, the proposed changes should be made by amending the housing SEPP, the code SEPP and the standard instrument LEP. 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 retains a clause which is always overridden by the State instrument should be avoided. Impacted zones—the terms of reference at paragraph (1) (c) refers to permitting second dwellings on RU1 to RU6, C3 and C4 zoned lands. We suggest that the new policy, if implemented, should only extend to RU1, RU2, RU4, RU5 and RU6.

Given the objectives of zone C3, environmental management, and C4, environmental living, we do not regard it as appropriate to extend the new policy to land zoned environmental management and environmental living because of the objectives of those zones. The objectives of 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.

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.

On that basis, we take a narrower view of the appropriate application of the proposed reforms. Our submission also raised a number of technical points and matters for further consideration. Firstly, with respect to strata-like agreements and arrangements, the terms of reference and the draft instrument refer to strata-like agreements and arrangements. It is not clear what is intended by these references, and we suggest that this should be further considered. 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.

Secondly, the definitions of second and principal dwelling—page 2 of the draft instrument provides a definition of "second dwelling". However, there is an existing definition of "secondary dwelling" in the dictionary to the standard instrument LEP. We suggest that adding a new definition for "second dwelling" should be avoided. 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.

Thirdly, consideration of rural workers' dwellings—arguably, the standard instrument LEP permits more than one rural workers' dwelling to be built on land in certain zones. Some LEPs, such as 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 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 workers' 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, there may be no utility in maintaining the rural workers' dwelling as a separate category.

The fourth point is rural land sharing communities. Given the nature of the inquiry, we suggest that State Environmental Planning Policy (Primary Production) 2021, schedule 5 "Rural land sharing communities", is also relevant. Schedule 5 is the main provision that allows community or multiple-occupancy living in some rural

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areas, carried over from earlier State environmental planning policies. In our view, any interaction of the new policy with provisions in respect of the rural land sharing communities should be considered. We also note there are limited zones where new rural land sharing communities 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, clause 4.2D (2) (b) of Byron Local Environmental Plan 2014. Setbacks—we suggest that three-metre side and rear minimum setbacks, as provided 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 lot width. Thank you again for the opportunity to appear before the Committee today.

The CHAIR: Thank you, Mr Knox. You have said in your submission that the Law Society does, in principle, support the concept of liberalising the second dwellings in rural properties. If this Committee or this inquiry and this Parliament comes to that same view, then the question is how do we actually tackle the planning regime to bring about these reforms? You have said that, in your view, we should change the housing SEPP, the codes SEPP and the standard instrument LEP. Could you elaborate on that point, please?

ALISTAIR KNOX: Certainly. It's suggested in—I don't know what the term of the document that you've prepared is—the draft model instrument that the preference would be to include it as a new chapter to the housing SEPP. In principle, as a matter of consolidating clauses relating to rural dual occupancies into one place, that's sensible. There's also a suggestion that there may be provisions relating to complying development, which would go into the exempt and complying development SEPP. Again, if that is a policy decision which is made, then that would be something which would logically go into the code SEPP. There is an existing clause within local environmental planning clause 5.1, which is a standard instrument clause which relates to rural dual occupancies. The point we make in the submission is that there shouldn't be clauses in the LEP which are always overridden by the State instrument, because that just creates confusion when somebody reads the LEP as the first point of reference without being aware of what's happening in the State policy, the housing SEPP.

The Hon. EMILY SUVAAL: I want to start by thanking you for your very detailed and quite technical submission. I did appreciate it. In the submission you mention setbacks, which you've said could be unnecessarily small for a large lot. You've suggested we consider a sliding scale. What could that look like in a draftable instrument? Have you got any suggestions?

ROSLYN McCULLOCH: The idea of a sliding scale is to make the setback proportionate to, say, the width of the lot. You could say that it would be a certain proportion of the width of the lot on either side. If it was to do with the area of the lot, there might be a more complicated calculation to figure out the sliding scale. But often in a rural context, three metres is very close, so that's why we're suggesting that it might be better to be able to have an instrument provision that's sufficiently flexible to take account of smaller lots and larger lots.

ALISTAIR KNOX: I think where you often see that in existing LEPs is a sliding scale for floorspace ratio for dwelling houses. In many LEPs, you'll see that, rather than a flat 0.5 to one, for example.

The Hon. EMILY SUVAAL: You've also mentioned in terms of the impacted zones that you don't regard it as appropriate to extend the policy to C3 and C4. Could you expand on that a bit more in terms of the objectives?

ROSLYN McCULLOCH: Just because of the objectives of those zones, particularly if you're allowing a complying development, which doesn't have to have regard to any of those objectives, they could effectively be ignored for the purpose of a complying development. Those are particularly sensitive areas that need to be considered on a case-by-case basis.

The Hon. EMILY SUVAAL: We heard from a witness this morning—I'm not sure if you were here to hear the evidence—that the RU5 and RU6 may present better opportunities than others for some of these secondary dwellings reforms that we're looking at. I just wondered if the Law Society had anything to proffer on that?

ALISTAIR KNOX: Not from the Law Society's submission. From my own personal experience, I am just not so familiar with specific rural LEPs so I just don't know the prevalence of those RU5 and RU6 zoned lands.

The Hon. EMILY SUVAAL: The other thing that I was interested in, and the Chair's obviously touched on this as well, but having an LEP with a clause that can always be overridden by the State instrument, are there any other suggestions that you have for the Committee in terms of what we could look at? You've mentioned clause 5.5 in particular. How should those instruments be amended? If we're looking at new policies or new reforms, what steps would you suggest the Committee take to avoid any of those sorts of clashes, if you like?

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ALISTAIR KNOX: That's a good question. On top of the clause—and I think I might have incorrectly said 5.1 before; it's clause 5.5—there's a note in here about the interaction of the definitions of "second dwelling" which may arise—"secondary dwellings", "rural workers dwellings" and "dual occupancies". Doing work, even in metropolitan areas, the nuanced differences between those different definitions when it comes to having one or two or three dwellings on one lot of land often becomes quite difficult. A particular consideration of how those definitions are intended to operate together, and even potentially considering them becoming mutually exclusive sorts of definitions—so if you are a rural dual occupancy, you're not a secondary dwelling or a rural workers dwelling—should be considered. A matter which I've come across personally is where you have more than two dwellings—for example, if you had a principal dwelling and two rural workers dwellings—you have three dwellings on one lot of land and then you fall into the territory of multi-dwelling housing, so there also needs to be consideration of how the definition of multi-dwelling housing operates with those other definitions.

The Hon. EMILY SUVAAL: Ms McCulloch, I think in your opening statement you mentioned you had some expertise in working with local government in this space.

ROSLYN McCULLOCH: Yes.

The Hon. EMILY SUVAAL: At a very top level, can you relay to the Committee some of the challenges based on your experience in that field of work?

ROSLYN McCULLOCH: I wouldn't say I have a lot of experience in that area, but one of the things that councils are very concerned about is not allowing fragmentation of agricultural land and to ensure that any new dwellings—at the moment the regime is a little different—are related to the agricultural use of the land and are not going to just become an Airbnb for somebody to use, that they're actually providing housing for people in the regions.

Ms SUE HIGGINSON: Thank you both for being here. I know that I have had dealings with Ms McCulloch in a previous life on the Environment and Planning Law Association's committees. Ms McCulloch, I'm curious about working with councils and that view of councils. Is it fair to say that councils, in terms of planning their instruments and LEPs, work incredibly hard with their local community to make sure that their instruments do reflect in the best way possible the local character of their communities?

ROSLYN McCULLOCH: Yes, I'd say that's correct. Most of them take years in planning and then they get nuanced and tweaked along the way over time.

Ms SUE HIGGINSON: And particularly there's quite a degree of consultation that goes into the making of those instruments.

ROSLYN McCULLOCH: Yes, a lot more than would go into the making of a SEPP.

Ms SUE HIGGINSON: These may be questions that you could answer too, Mr Knox. You've presented on that potential inconsistency in definitions with dual occupancies, secondary dwellings, second dwellings and so forth. Is your evidence that these things and matters need clearer definition and better reconciliation in terms of the impacts that they will generate across the landscape and on a lot-by-lot basis?

ALISTAIR KNOX: From my perspective, it's more of a legal consideration, reconciling those definitions, than the impacts which arise. But that is to say that sometimes confusion about definitions and entitlements on permissibility do give rise to unforeseen and unintended development applications resulting in more dwellings than can be accommodated on the land, for example. Although I'm strictly going to the legal point, confusion on the legal point can result in unintended environmental impacts, certainly.

Ms SUE HIGGINSON: The evidence about conservation zones not being the most appropriate zoning just to have—for want of a better term—an overriding principle that allows complying development that says, "Yes, you can have a second dwelling," do you have any awareness in terms of the uptake of conservation zones across New South Wales by each council in your interactions? For example, my understanding is that there are some councils that chose not to apply conservation zones to their LEPs. Do you have any awareness of any particular councils that you may have worked with or proponents within LGA areas where there aren't conservation zones?

ALISTAIR KNOX: I will let Ms McCulloch answer this specifically from the perspectives of the councils that she represents. From my perspective, the majority of my work is naturally in metropolitan council areas. I do have occasional matters in the regional areas, but for the metropolitan council areas, you rarely see the RU zoning, but you do often see the conservation zoning. That's the only observation I would make. You do see C3 and C4 zoned land; you don't see rural zoned land very often.

Ms SUE HIGGINSON: Do you have any—

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ROSLYN McCULLOCH: I wasn't actually aware that there had been some LEPs with no conservation zones. I guess it may depend on the quality of the landscapes in those areas, but certainly the councils that I've dealt with have all had conservation zones in their LEPs.

Ms SUE HIGGINSON: I recall there was a real politicisation when the standard instrument came in with the E zones. I know all the councils in the north didn't impose or introduce any, and they had all these deferred areas. Do you deal with many deferred areas anymore in terms of zoning?

ROSLYN McCULLOCH: There's still a few pockets, interestingly. I know northern beaches had a pocket in the Oxford Falls area. I don't know if that's been resolved yet. It makes for bad planning because you have multiple instruments applying in the same local government area, and it's hard to get them to work together.

The Hon. SCOTT FARLOW: Is part of that northern beaches problem the amalgamation? I know, looking at a couple of different zones in the northern beaches, there are also the challenges of what was the old Pittwater LEP, the Manly one, and the Warringah one as well.

ROSLYN McCULLOCH: That's just an added layer of challenge.

The Hon. SCOTT FARLOW: Fair enough. Good for the clarification.

ROSLYN McCULLOCH: The deferred is really a hangover from where it just got too hard, I think, to decide what to do with an area. There was a lot of pressure to get the standard instrument LEPs through. Rather than make a decision on whatever the problem was—I think with Oxford Falls it was topography, bushfire, ecological issues, access. There are a lot of issues down there. It was a very difficult area to plan for, but leaving it for so long as a deferred matter wasn't very helpful.

Ms SUE HIGGINSON: But it's fair to say, for this Committee's purpose and this inquiry, it would be important to be cognisant of the fact that there may be those deferred zonings that could have relevance—in terms of our recommendations in relation to any changes—to how "secondary dwellings" might apply across New South Wales?

ROSLYN McCULLOCH: It could, yes. I don't think it's contemplated in the draft document, but it could.

Ms SUE HIGGINSON: In terms of those more metropolitan conservation zones, I know your recommendation is that we probably shouldn't be having secondary dwellings in those places without some form of assessment process taking place. Do you see that these things need to take into effect other requirements for housing, such as asset protection zones, and that that—likewise with rural zones—could have significant impacts on the environment? Again, that's one of those unintended consequences, possibly.

ALISTAIR KNOX: I certainly think it is. I suppose if this is the difference between it being permitted as a development application and as complying development, then that is crucial. Asset protection zones, obviously, are very important. Biodiversity conservation layers are quite important. Existing services—sewer and stormwater—are very important.

ROSLYN McCULLOCH: And flooding.

ALISTAIR KNOX: And flooding.

The Hon. SCOTT FARLOW: Thank you, Mr Knox and Ms McCulloch, for your attendance here today and for your very extensive submission. It's very much appreciated and speaks for itself in large part due to the technical issues that you've raised in it. In terms of the motivation of the committee to come down on the side of supporting changes in this area, is this a problem that members of your committee have encountered regularly as they're trying to work with the settings for secondary dwellings across New South Wales?

ALISTAIR KNOX: I can speak for myself personally on this point, because I did contribute to this submission on behalf of the Law Society. The point with respect to rural workers dwellings, secondary dwellings and multi-dwelling housing is a point which I have had run through the Land and Environment Court—a matter of interpretation on those different clauses. That point was specifically raised by me in my contribution to the submission. Otherwise, I think your question started by saying that the Law Society is generally supportive of the proposition. I suppose that comes from a base understanding from the Committee members that there is a housing crisis and that steps need to be taken to address that housing crisis. The question of the nuances in the legal detail and where that housing is most appropriately located is more of a policy-related question.

The Hon. SCOTT FARLOW: One of the challenges that we've encountered throughout this inquiry is people who have sought to have a secondary dwelling put on rural land. Under the council's laws, it may be permissible to have a secondary dwelling, but then they have encountered further problems, being either in terms of the size of the site or the requirement to have that secondary dwelling as an attached dwelling rather than a

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detached dwelling. Are these the kinds of issues that some of your clients are facing as well, as they're navigating the system?

ALISTAIR KNOX: In answering the previous question, I mentioned some litigation that I'd been involved in. That was litigation on behalf of a landowner-developer seeking to regularise some existing dwellings which existed on the land, in fact, prior to them becoming the landowners. There was difficulty in regularising the land use of those additional dwellings where, in that case, it purely came down to a permissibility question for the additional dwellings. There were no contentions relating to unacceptable impact. Obviously, even on interpretation of these terms and permissibility, it can sometimes be difficult to obtain approval for these things through councils.

The CHAIR: Thank you very much for joining us.

(The witnesses withdrew.)

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Mr PAUL RILEY, Chair and Director, Lydia's Legacy Southern Highlands Homelessness, sworn and examined

Dr RAYMOND KHOURY, Director, Lydia's Legacy Southern Highlands Homelessness, sworn and examined

The CHAIR: We're now joined by two representatives of Lydia's Legacy, which is a Southern Highlands based charity for homeless people. Do either or both of you have an opening statement?

PAUL RILEY: I do. Thank you and good morning to everyone. Lydia's Legacy is from the Southern Highlands. We are registering as Lydia's Legacy Southern Highlands Homelessness. It started basically as a group of many of the churches in the area looking to how we can specifically help the issue of homelessness. We've realised that there is a lot done by churches in the area for various aspects of homelessness, and we realise now that the actual problem of accommodation, medium to long term, is the biggest issue. We know that there are around 80 people per night that are doing it tough in the Highlands. I asked the head of Vinnies what she thought of that number. It sounded too high to me. She said that in the first three months of this year, there were 300 inquiries trying to find a home for people—obviously an overflow from Sydney.

Because of the predominance of larger properties in the Highlands, this is where we've come up with this idea of putting tiny homes onto properties. It's interesting listening to the previous people who've spoken, especially from the Law Society, that the words "tiny homes" conjure different things in different people's minds. For us, we are talking about a vehicle that is on wheels and can be towed to the site. We are setting up as a charitable organisation, and we realise that government is not the only place where we can go for help in this. We are looking for philanthropists to pay for the model that we have chosen.

We are expecting that we will be able to put a tiny home on a property, and for 10 years that tiny home will be used for the purpose of housing homeless people. In that time, the person who owns the property will have minimal impact and minimal cost to them in terms of purchasing. They won't even have to spend any of their own money on purchasing that tiny home. That's part of our model. We're partnering with Argyle Housing, who is the community housing provider in the area. That is currently happening, even as we speak. One of the things that we are very aware of in the area—we had the mayor from the shire come and speak to us and he used the term "nimby" quite often. I'm sure you've all heard the term by now. That's why we think larger properties enable us to put tiny homes onto the properties with minimal impact on other people. We know that that's a big consideration, probably, for any council.

Our biggest issue and the subject of our submission was clause 77 of local government regulation 2021 and some of the limitations. If those limitations with regard to occupancy of tiny homes were to be altered just for the purpose of addressing homelessness, we believe we could solve a massive problem, not just across our area but as a model that could be used in many parts of the State. We're looking to put people in tiny homes—not for a specific time, but we envisage it would be months, not years—because we want people to get back on their feet and to move into affordable housing as they go. The affordable housing model that we are looking at is probably more specific to this Committee, in that we would look at some of the larger properties to be able to put a couple of tiny homes on them, and people could move to them and start paying a little bit more for that. But that's a model further down the track.

The CHAIR: When we think of the Southern Highlands, we generally think of it as a relatively affluent area. You're saying that there is an increasing homelessness problem, but this is people leaving Sydney to go to the Southern Highlands. Have I got that correct?

PAUL RILEY: We don't know. One of the biggest aspects that a lot of the people that have gathered data on this have said is there are a lot of people that are sleeping in overcrowded accommodation. So they're couch-surfing. It is very hard to capture that information. We know that there are young people sleeping on the trains, which finish at about 4.00 a.m. But in wintertime, they're nice and warm. A lot of people are sleeping in their cars; they have a job and are sleeping in cars. Anybody here that drives south would know that Sally Corner servo is the Shell service station. That's probably about an hour and a bit from here. A lot of people are sleeping there in their cars because they can use the bathroom facilities at the service station. We know also that the largest cohort of people that are now becoming homeless are older women and women escaping domestic violence. These would be the predominance of people that we would be looking to try and help.

The CHAIR: Do you think a large part of the solution is these mobile tiny homes, which are small but someone can live in it and it has all the facilities that they need?

PAUL RILEY: Yes.

The CHAIR: Have we got landowners that are prepared to house these tiny homes?

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PAUL RILEY: It's funny. I went on the radio recently asking for people to give us a property that we could just use as an example to give the council, and all of the people that rang were outside of the Wingecarribee shire. They were really willing, and they were really keen to be able to do it. We believe that there would be a lot of people because of the model that we want to use, where philanthropists will pay for the tiny home. The value of that we're looking at is somewhere between \$90,000 to \$120,000—\$120,000 buys you a pretty nice tiny home. That's a great example, we think, of something that could be quite adequate for people for quite some time as well and why it would be a good solution to a longer term housing crisis.

The CHAIR: The impediment to these tiny homes being a solution to the homeless crisis is this rule that a tiny home cannot be occupied for more than two consecutive days—it's basically looking at an Airbnb-style accommodation—or not more than 60 days in a 12-month period. If we remove that, do you think that there will be a significant increase in the amount of these tiny homes and that it will solve your homeless problem?

PAUL RILEY: The bigger part of those clauses—I think there are five that we've addressed, or several that we've addressed. The 60 days is one aspect. You can have people stay longer in a tiny home if it's a farm property and you've got your farm workers staying there; so it's for a seasonal use. But it says also that somebody has to be part of the household. Now, it doesn't say "family", but it says "household". It's why we would like to be involved with choosing who goes into a tiny home and the people who would house the tiny home. We want people who are willing to be a bit considerate and do welfare checks for people who are going to stay in these tiny homes so that they would not feel like they are just a tenant but somebody who is being a bit looked after by the people who own the property. We can't do that because the regulation actually prohibits that unless they're part of the household.

It's a definition. I noticed the previous gentleman was saying that some of the issues are about definition, and that's one for us. The other one, and one that we would like probably a bit of flexibility on, is that the last of the issues with clause 77 is you can stay there indefinitely if you're escaping disaster. It might be a stretch, it might not, but we consider homelessness to be a disaster on a personal level. It is certainly a disaster for those people. Can that generally be considered for this purpose? We don't necessarily even need anything changed, just an understanding that, for the purpose of getting homelessness down, we could actually put people into these tiny homes quite easily, quite simply now if we could have an interpretation of those regulations that enable us to.

The Hon. SCOTT FARLOW: Mr Riley and Mr Khoury, thank you and your organisation for the work that you do and for the intention that you have in the Southern Highlands. I want to pick up on the Chair's point of the perceived affluence of the Southern Highlands. My wife is from Mittagong. She was a former councillor on Wingecarribee council. The circumstances you speak of, I think, are ones that very closely confronted her family as her mother and father went through a divorce. They'd had a suburban house in Mittagong, but then her mum ended up getting a fairly small accommodation in Welby down the road. I think many of those lots don't exist. But when we first encountered each other, my perception of her was that she came from Mittagong so she must live on some large acreage or the like.

That isn't the case for everybody in the Southern Highlands, particularly with challenges for the haves and the have-nots in the Southern Highlands, where you can have large properties and people with wealth and affluence, but then the people who service them can't necessarily afford to live in the region. I commend you on your work. In terms of your proposition, I've had some interactions with the manufacturers of these premises as well, whether they be tiny homes or caravan homes or the like. This is a problem generally across New South Wales. The argument from many councils is that you can have this, but it requires the development application to be made. As you're outlining in your submission, while that may be the case, you find that it's two years. Is that the case for that to be able to get through council?

PAUL RILEY: We know that it can be a lengthy process. On that issue, I can understand where this problem comes for council. I started work as a mechanic many years ago. I worked in the automotive industry for a long time. The automotive industry has specific rules for the construction of vehicles and sale of vehicles in this country. They're Australian design rules. I've actually worked on some of these when I worked for Jaguar. That is the standard that the automotive industry uses for quality. When it's building, it's a very different animal. I understand why council has the reticence that it does with tiny homes, because here's one standard but here's another.

They don't necessarily know much about the automotive side of it and whether it's a decent standard when it becomes applicable to housing. I can kind of get that. If there was some way of marrying those two together or for recognition of the fact that you don't need a DA—because a DA is a development application—for a tiny home where it's being built to a very high quality standard, that's all we're looking at. We're not looking at overseas-manufactured tiny homes that are cheap and nasty, which some are; we're looking at the tiny homes that are very good quality. Any inspection of these will reveal that they are very well produced.

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The Hon. SCOTT FARLOW: In terms of the appetite that you've got in the region, are there many landowners who are coming forward who are happy to accommodate these premises on site?

PAUL RILEY: We haven't asked specific people yet to come and volunteer, only because we don't want to get people's interest up and then say, "It's going to be another couple of years before anything happens." Talking generally, we've both talked to a lot of people about it, and a lot of people are very keen. We do have people coming to our meetings now. A gentleman came last time; I hadn't seen him before. We have meetings about every six weeks. I said, "I haven't seen you here before." He said, "I've got 50 acres just out of town. I'm just keen to do this." He'd heard from other people. We've been on the radio and talked about it. People have come to us and said that they are interested. If that's an indication, I would say that there is enough interest. If we were looking at 80 people a night homeless, if we aim for half of that number in tiny homes, it's not a lot of homes and it's not a lot of people that we'd need to have. Out of a population of about 50,000, I think we could probably find—

The Hon. SCOTT FARLOW: Eighty, or 40 if you had two on the property. Mr Riley, you mentioned the current classification in terms of section 77, and that largely it's there as a prohibition for Airbnb-type accommodation, which is prolific in the Southern Highlands as well. Would you think that overturning the operation of section 77 would be warranted, or do you think that there should be some exemptions to that?

PAUL RILEY: I reckon exemptions. I'll let Raymond talk to that one, because Raymond's the one who put our submission together in this regard.

RAYMOND KHOURY: It wouldn't need much in order to alter regulation 77, in the sense that where it excludes those escaping natural disaster, one could easily just include "and homelessness". That would resolve it to a large extent. The second factor is also zoning. When we discuss with council, the first question they ask is, "What is the zoning?" They're not focusing on regulation 77; they're aiming for zoning. We need to address the zoning factor and also the exemption within regulation 77. We hope that would be sufficient. But based on past experience, no doubt council will raise some other regulation or whatever. But if we can address zoning and regulation 77, hopefully that will open the doorway for us.

The Hon. SCOTT FARLOW: I guess the model instrument that the Chair has exhibited takes care of the zoning question from your perspective? Is that correct?

RAYMOND KHOURY: I'm not familiar with what's been proposed so far.

Ms SUE HIGGINSON: I echo the comments and really appreciate the work that you're doing in amongst the community. In the region I come from, the Northern Rivers, we've seen—I think some of that was featured on an *Australian Story* piece. Particularly in the wake of disaster, women with young children or women over the age of 50 were being able to access, for the first time in a long time some, independence and freedom to exist in a place they can call home. These homes were these tiny homes on rural land. Do you think that, if we are to suggest and recommend going down this path, there are some requirements that we should be addressing up-front and early to make sure—and to assist you—that there are planning precautions to make sure that wherever we're placing people, they are safe and have the expectations and needs fulfilled for those homes to be safe and sustainable in terms of things like access and sewerage needs, safety from further disaster and those sort of needs? If so, how do you think we are best to do that?

PAUL RILEY: That is a good question, and it's one that we have thought a lot about. I think as far as regulation goes, you can regulate all you like, but you're never going to fix the entire problem. The fact that we've got lots of churches together on this, we're very excited by. It was funny; the pastor of our church first asked the question, "Do you think other people would be interested in getting together and seeing what we could do?" Because other people were doing quite a lot themselves, we thought, "Well, they might not be interested," but they all jumped at it, because it was something that was going to be for the entire community. I say that to say that we're looking at it in terms of—as I said before, we want the right people who own the homes to put a tiny home on their property, so it's not somebody that's just going to leave this person alone and not look after them.

If somebody's escaping domestic violence, they need to just have some checks on them. We want to have security cameras on all of the tiny homes just for the people that live in there. We want to have the people that live in the house to give some consideration to these people, not necessarily be their best friend but at least be part of their life. We want the tiny home to be of good quality, so possibly with solar panels, almost self-sustaining. It'll have to be connected to sewer because council have told us that that's the way it would go, and electricity and water—all of those things. In terms of the entire package, we want people who are going to continue to support these people. That's why we want to be with Argyle Housing, because they have their own process for selecting people and making sure that things are okay in terms of whether it's the right person for the property.

We want to be part of that process, and we want to look after things like gas bottles. When the gas bottle gets low, we'll have somebody that will go around and change that and just have a visit. Raymond works with one

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of the food agencies, and he said, "Once we've got somebody in, we would have people delivering food for these people," so we wouldn't have a problem in that regard. We think it's a complete package and not just one that legislation fixes. I don't know whether that answers your question thoroughly enough, but in terms of the size, it's manageable for us. If there were 40 of these tiny homes, it wouldn't be too much for all of the churches in the area to be looking after these people, considering them part of their own. That's what we're hoping for, not just putting a tiny home on it and saying, "You're on your own."

Ms SUE HIGGINSON: In terms of the location, clearly the social settings need to be appropriate in terms of those physical, environmental—at the moment, you're saying you look to council for that guidance, but you think council may need some extra tools and help to be able to help you. That's kind of where we are.

PAUL RILEY: I'm a very simple person.

Ms SUE HIGGINSON: Planning law is not simple.

PAUL RILEY: No, it is not, I know. I've looked through it, and all of the regulations that there are for people in council, and I understand why they have them. People just look to them to be the responsible person so, if something goes wrong, they're going to go to council and say, "Well, this is your fault." And that's not the case. When we made this submission, we were just asking for a little bit of consideration in terms of some aspects of this—like the clause 77—because it would mean that we would have far less work to do and far less time to do it to get somebody into a tiny home. That's all we really want from council. We know that considerations can be given, and leniency—for want of a better word—can be used or given, and I guess that's what we're after. We're trying to come part way to them.

We're not trying to do this to make any money. We've got a constitution where—Raymond was the one who said, "We want a constitution that never allows anybody, any of us on the board, to make money out of this." Some charitable organisations can ultimately do that. We've done that because we want it always to be a volunteer organisation. We want all of the money to go to these people. None of us are making anything out of this and we don't want to. We're not trying to sound better because of this, but we're just trying to say we want the best for these people and want to do it as quickly as we can. That's all.

The Hon. EMILY SUVAAL: Thank you to you both for appearing today and for travelling up to give your evidence. It may be a silly question, but I've tried to find out why you're called Lydia's Legacy. If it's appropriate, could you share with us?

PAUL RILEY: I certainly could. It's funny because it's a question that's been asked many times, and it allows us to explain what it is. Because it was predominantly church organisations—we're not just church organisations now—Lydia was mentioned in chapter 16 of the Book of Acts. She was a woman that was well-to-do. For a woman to be so highly regarded in the times that the Bible was written was quite outstanding. She had a couple of properties in a couple of towns. She was a woman who dealt in purple garments, which indicates she was an upper echelon person, but she helped her fellow human beings. We wanted to make it her legacy because she did so much for people who were on the down-and-out, and she was obviously a wealthy woman. All of that is to say that's where Lydia's Legacy came from.

The Hon. EMILY SUVAAL: Obviously exposing that I'm not familiar with the Book of Acts.

PAUL RILEY: That's okay.

The Hon. EMILY SUVAAL: Thank you for clarifying that for us. In terms of the organisations that you have represented in Lydia's Legacy, there are a number of them. I think you've already mentioned that some of them are doing their own work within the space. Has there been any work done to identify perhaps any surplus land or otherwise that these organisations may have that could assist with what you're doing in your pursuits?

PAUL RILEY: Funny you should say that but, yes, we are looking and hope to get churches to put some of their land—for example, the Seventh Day Adventist Church in Bowral is on one of the streets that runs into the main street. It's about 1½ kilometres from the centre of town. It's two acres. They have a church and a childcare facility—or I think it might be a kindergarten—on it. They are willing and keen to talk. They just haven't had the opportunity yet, but they're keen to talk about using that land for a tiny home. We are too. Again, we want to get all our ducks in a row before we can actually say to somebody, "Okay, are you willing to do this?" Other churches, yes, there's certainly plenty of room around a lot of the churches, and we'd love to be able to do that.

The Hon. EMILY SUVAAL: So whether it's worthwhile the Committee looking at perhaps the possibility of—because obviously there are the current restrictions, which you've mentioned, around tiny homes and the inhabitants of them. But whether it's worthwhile looking at tiny homes that are located on certain properties to perhaps have some increased flexibility—I'm not sure.

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PAUL RILEY: That'd be good, but it would limit things because, for example, the Baptist church where I go is where this all started. It started, funnily enough—the minister there is a part-time minister, and he likes to keep the door open because it's near the main street. People come in all the time to use the bathrooms or just sit down and chat and whatever. It was a fellow who came in that was in need. He thought, "Where am I going to go for this guy?" He started ringing churches, and that's how he got the idea of "This church is doing this and this one is doing this." We've now created a resource list that council have put on their website, and it's updated fairly often. It shows what's available and where.

The problem would be that this particular church doesn't have any room, because it's in the middle of town and it's a relatively small block, and a few of them are. In the middle of town, that would probably not be suitable for the zoning that there already is. We've looked at our R1 to R5, which are smaller blocks than what this Committee is looking at. Yes, certainly where churches could—and in some of the outlying areas. We do have people in the outlying areas, too, that have got larger blocks that would like to do this. They're just waiting for us to clear the way.

The Hon. EMILY SUVAAL: I have a final question just around some of those constraints with the tiny homes at the moment. I think you might have mentioned earlier in your evidence about the challenges with Airbnb properties. That's something we heard up in the Tweed—we had a hearing up in the Northern Rivers—about some of the challenges that's posing. Is that something we should look at as a Committee—as opposed to trying to clamp down on the regulation of existing tiny homes, but looking at other opportunities to restrict or curtail Airbnbs and how that is enforced? I know that obviously Byron Bay council has done some work in that space, but is there opportunity for us to do something more in there?

PAUL RILEY: Yes. I'll let Raymond talk to this in a moment, but I think there is. Without having more and more legislation, you could facilitate this without opening the door for Airbnbs. I know people exploit things all the time. They'll see a loophole and they'll go for it. But that's why we're asking for this specifically. As Raymond said, you could add a piece that just said "or homelessness". Somebody might want to cheat the system there, too, but I think there would be less opportunity. I don't know whether that helps or answers your question.

RAYMOND KHOURY: There shouldn't be any inhibition on the other types of accommodation. I don't see a clash between what they're doing and what we're proposing.

The CHAIR: Thank you very much for what you're doing. We're very grateful. I don't think you've taken anything on notice, but stay tuned for our final report.

(The witnesses withdrew.)

(Short adjournment)

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Mr NEIL MUMME, Director, Progressive Project Solutions, affirmed and examined

The CHAIR: I welcome our next witness, Mr Neil Mumme. Would you like to make an opening statement?

NEIL MUMME: I run a small DA consultancy business on the New South Wales South Coast that operates statewide. We've done work in approximately 40 LGAs over the last five years. Firstly, thank you for the opportunity to come and present to this Committee. Perhaps I can offer some insight as to what goes on at the grassroots level with planning, as far as the DA approval process. Our work involves everything from deck extensions for people through to large subdivisions. We've got multiple different types of clients—mums and dads, big developers—and I guess that puts us at the coalface of planning throughout the State. Our biggest client is a manufactured home company in Western Sydney that provides manufactured homes to the bottom end of the market. When I say the bottom end, I say that with respect. It's a cheaper alternative for housing. There are certain frustrations around manufactured dwellings that we've spent three years trying to highlight to government because of some inconsistencies in LEPs across the State. The information or the evidence I give you today is based around the grassroots issues around DA planning through councils.

The CHAIR: I think you've worked with 40 local government areas—

NEIL MUMME: Correct.

The CHAIR: —about the modular homes et cetera. Can you give the inquiry some idea of your interaction with councils when it comes to the development control plans?

NEIL MUMME: Development control plans, I personally believe, are the biggest handbrake to development in the State. They're complex. They are the bottom planning scheme, as everybody knows. They're basically a wish list of what councils want their local government areas to look like. They're onerous on many occasions. I can give you an example. For example, Blue Mountains City Council's DCP is 902 pages. Shoalhaven is 64 chapters. All of those chapters—while some of them are specific to certain developments, they still have to be read in conjunction with one another. It's quite a convoluted process. DCPs is the area where councils push back all the time.

The CHAIR: Why are the councils opposed to these modular homes, or reluctant?

NEIL MUMME: I had a conversation with someone at the planning department about 18 months ago. There was a notion that this particular officer said to me—and I can't recall his name. He said to me, "We don't want the State to have developments that have caravan park dongas, so to speak, throughout the State," which is kind of a rhetorical statement, because they've come a long way since then. We do some work for a company out of Victoria into New South Wales, and they've won Victorian awards for their designs and things like that. Manufactured homes have come a long way since the traditional caravan park dwelling you'd see 30 or 40 years ago. Once they're installed and established, it's fairly hard to tell them from a normal dwelling.

The CHAIR: How have you found the NSW Planning Portal? What's working and what's not working?

NEIL MUMME: Apart from the fact a lot of the time it's dysfunctional; it just won't work. You can sit there while the thing spins between screens then go and make a cup of coffee and come back, and it might have loaded the next page. It doesn't interact well with each part of it. The construction certificate part doesn't interact with the section 68, doesn't interact with the DP. You're constantly uploading different information and actually cheating the system to get it to accept it. The other thing that's become apparent in the last six months is—I'm not sure when it happened on specific dates, but the planning Minister put a directive out to councils that they had to accept DAs within seven days of lodgement. There is logic in that, but at the same time it's forced councils to find a minor error and reject a DA without even contacting—I had one yesterday at Shoalhaven. I've had this issue with them before, where the owner's consent had, for example, "J Smith", the rates notice has "Joe Smith" on it and they throw it out of the portal because it hasn't got the full names on it.

Some of the councils also operate outside the requirements of the EP&A Act as far as lodgements, and they use that as an excuse at lodgement stage. That effectively slows the whole process down again. The other thing with the Planning Portal I think councils hide behind is, once they accept an application, they can sit on it for three, four or five months and then they'll send what they call a "request for further information" and they expect it to be answered within seven days. In some cases, it has to go back to a consultant. It's just impractical to make that happen. The portal is good and bad. I can understand why the Government uses it, but at the same time it has got its drawbacks.

The CHAIR: Am I correct in thinking I read in your submission that New South Wales is the least friendly out of the six Australian States towards these manufactured homes?

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NEIL MUMME: One hundred per cent. They're go-ahead full-on in Queensland, Victoria, Western Australia, South Australia—everywhere. But the problem with New South Wales is an anomaly in the LEP that drills down to definitions. There's half a dozen, an increasing number of councils that are using that as a reason to push back against manufactured homes.

The CHAIR: In the other States—you mentioned Queensland—is this a growing industry or something that's just a niche industry? What are the negative consequences that we've seen from the other States?

NEIL MUMME: I couldn't talk for the other States, but certainly in New South Wales there's a lot of room for growth. For example, the company I work for in Western Sydney would turn away four or five a week because we know the councils won't allow those types of applications. Particularly, there's one big south-western Sydney council who even refuses to take secondary dwellings. By law they're supposed to, but they just refuse to take it.

The CHAIR: We've just heard some advocates in favour of tiny homes. Just so we can get our head around what these modular homes look like, what would be the typical cost for a standard modular home—not the land, but in terms of the construction costs?

NEIL MUMME: A three bedroom, one bathroom, which is a standard type of home, between \$250,000 and \$300,000, installed.

The CHAIR: What challenges to development have you experienced from biodiversity conservation strategies and bushfire conditions in proposed development zones?

NEIL MUMME: Bushfire and biodiversity are conflicting interests at either ends of the scale, as you would understand. But I think we've got a situation where, on some residential blocks that have been established for many years in certain local government areas, if someone needs to take a tree down to install a home or build a home, even a traditional build, councils are asking for arborist reports and imposing all these extra costs or tests of significance that I think is grossly unfair when that land's been zoned for residential. We're talking 500 or 600 square metre blocks, this happens, which have been in residential areas forever and a day. There is total conflict between biodiversity and bushfire. I understand the need for both. Bushfire's probably something that councils do have to hang their hat on more than biodiversity. Then again, it depends what local government area you're in. For example, in the Blue Mountains you cannot lodge a DA without an arborist's report—doesn't matter what's on the block, even if it's a small bush—and a landscaping plan, which adds between \$8,000 and \$10,000 to the cost of an application for the owner.

The Hon. EMILY SUVAAL: Thank you, Mr Mumme, for appearing today and for the submission that you provided. You mentioned in your opening statement some of the challenges in getting modular housing or manufactured homes permitted. Can you expand on that? Do you have any suggestions for the Committee to make?

NEIL MUMME: I think the biggest issue is that the original Building Commissioner made a statement about two years ago that he doesn't like manufactured homes. That could be for a personal reason—I don't know. Certainly, manufactured homes are not controlled as much as a regular build by a builder on a site. But the main issue that exists in this State at the moment is the LEP. Every council has an LEP that sits above, which is a mandated State document. There's an anomaly in that LEP under definitions, where it drills down through what's the permissible use in a zone, then it goes down. It will say dwelling house. You go to the dictionary, the definitions, it will say dwelling house—everything except a manufactured home. I've suggested this to the planning department and various Ministers. I haven't had a response, but I understand that because it's not a—

The Hon. EMILY SUVAAL: You can suggest it to us.

NEIL MUMME: The simple way or the easiest way to deal with manufactured homes is to treat them like any other home—as in mandate critical stage inspections in the factory that are normally done onsite, take them out of consumer law and make them subject to home owners warranty, and make them comply with BASIX. That instantly levels up the playing field and eliminates all those grey areas about critical stage inspections and how they are handled. That would be a simple way forward. I know it's not as simple as just writing that and doing that, but that's the basis of how to bring it up to make them accepted in every council area.

The Hon. EMILY SUVAAL: Obviously, the State Government, through Homes NSW, has looked at and is building modular homes as a way of addressing some of the issues with the homelessness and housing crisis. Would there be any other opportunities or avenues that you could see, in terms of what's contained within the LEPs or otherwise?

NEIL MUMME: I was encouraged to see the Planning circular that came out recently that effectively has removed manufactured homes, I think, from the building reforms. I'm assuming they're going to be handled

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different. They could be done under a SEPP. The other issue they have is they're subject to the Local Government Act, which instantly creates confusion between the Local Government Act and the EP&A Act. To simplify it and take it—they're installed by way of a section 68 under the Local Government Act, which is tied up to the manufactured homes and caravan parks, which is, in itself, confusing. It has got a different set of rules to a council LEP.

At the moment I've got a certifier in Shoalhaven who wants to apply that Act, and the planner wants to apply the DCP, so there's total confusion within that building as to how to handle the application. But, yes, it could be simplified. It's easy because I sit on the outside. I don't understand the complexities of legislation, but what I see is there is a simple fix: Mandate critical stage inspections. If you have a house built on the site, make them comply with BASIX, make them pay home owners warranty. A level playing field—all bets are off. But it will take a change to every LEP to remove that anomaly.

The Hon. EMILY SUVAAL: In your earlier remarks you also mentioned a south-western Sydney council not permitting secondary dwellings. Why would that be the case?

NEIL MUMME: They're hanging their hat on that LEP anomaly, even though a dwelling house is a separate definition to a secondary dwelling, and a secondary dwelling doesn't prohibit manufactured homes. But this council has just had a "no" attitude forever.

The Hon. SCOTT FARLOW: To clarify, is that just with respect to a manufactured secondary dwelling?

NEIL MUMME: Correct.

The Hon. SCOTT FARLOW: But they are permitting other secondary—

NEIL MUMME: Correct.

The Hon. EMILY SUVAAL: That's a very important clarification. Thank you for that.

NEIL MUMME: The manufactured home for secondary dwellings is a great solution. It's fast.

The Hon. EMILY SUVAAL: Which council is this?

NEIL MUMME: Am I allowed to say it?

The CHAIR: Yes.

NEIL MUMME: Campbelltown. You've also got Wingecarribee, my own council, Eurobodalla, and there were a couple of others. I can't remember them, but it's an increasing number.

The Hon. EMILY SUVAAL: So it's not an isolated thing. Potentially, it's something the Committee should look at, if it's a widespread issue across a number of councils where they're just having a blanket—

NEIL MUMME: It's a growing number, and all I can assume is that, when council planners go to their annual conferences, they all talk about it because they seem to be lining up and falling over, which is a concern. As far as secondary dwellings are concerned, they're a great solution and a quick fix to housing.

The Hon. EMILY SUVAAL: They're good as a primary dwelling.

NEIL MUMME: So are manufactured dwellings, because they're fast. I was the mayor at Eurobodalla from 2005 to 2008. I took an active interest in planning because that was when the then Minister, Frank Sartor, brought out the LEP template. I've seen that now watered down across every council. Maybe the LEP standard template needs to be looked at again. It also would be great if we could have standard DCP conditions within reason. I understand that each local government has got its own issues, but setbacks, heights and things like that could all be standardised.

Ms SUE HIGGINSON: I remember the old introduction of the standard instrument very well. I saw that. I think we heard evidence earlier about how—and I'm asking you this question. You do see that some localisation of those standard instruments can drive good, localised planning outcomes?

NEIL MUMME: For sure—100 per cent.

Ms SUE HIGGINSON: One of the things I wanted to clear up—and I've seen this—is where council will write to proponents and say, "These are the things you've got to address. You've got seven days." With that, it is your understanding that you have seven days but, if you don't provide in seven days, it's all okay. But the clock stops and then you have further time to provide that material. Is that the case?

NEIL MUMME: We've got situations where they've asked for extra information and given 14 days. We've written back to council to say we cannot physically supply that because the engineer is away on holidays.

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Their answer is, "If we don't get it within 14 days, we'll refuse the DA". Or they'll continue the assessment with the information they had, which will end up in refusal. What's really frustrating about that is you have a planner who's doing a DA. They'll just up and go on holidays for a month, and nothing happens. There's nothing to see here. But they send us an RFI and give us this time frame, so there's inconsistency. It's not equitable in that respect. But I think it goes back to DCP and a lot of the issues too. For example, Upper Lachlan is in the process now of revising their DCP. Now that's a council that will probably get 40 DAs a year. Their draft DCP is 200 pages. Every DA needs to go through it. You just get to the point where you go, "This doesn't work with that and doesn't work with that. Sorry, we can't do it."

Ms SUE HIGGINSON: I think that goes back to those Sartor days when there was that provision that a council may only have one DCP. I think the intention was to streamline them but, instead, all the councils just put all their DCPs into one giant document.

NEIL MUMME: Like I said, Blue Mountains is 902 pages. Shoalhaven is 67 chapters. They're ones we work in quite regularly with manufactured homes. It just gets to the point where the approach is so blinkered. It even gets down to where a letterbox has to go. They'll come back and say, with an RFI, "That letterbox is not right and that garbage storage area." You think, "Who is going to go and check this after the house is built?" It's the same with landscape plants. They mandate all this stuff. The house gets built and people plant the plants but they don't water them. Who goes and checks it?

Ms SUE HIGGINSON: Can I ask two quick things? With your evidence, where you talked about—and I've never understood this either—the Local Government Act and the planning Act in terms of manufactured dwellings and caravan parks and so forth. From your expertise, is it your preference to see it all go into the Environmental Planning and Assessment Act now?

NEIL MUMME: If they could roll the manufactured home situation into a SEPP, that instantly overrides an LEP. That solves the problem with permissibility because a SEPP sits above it. I think a SEPP would have the opportunity to set out the guidelines, where it's all set out really clearly. If you meet that you're fine, because it's impossible to alter a SEPP. You have to stick by the guidelines of the SEPP. If the SEPP sets out the guidelines and they're fair and reasonable, that is the solution. Add to that, mandate the critical stage inspections, home owners warranty and BASIX compliance—problem solved.

Ms SUE HIGGINSON: Just finally, I know you gave evidence about the single tree. Would you also appreciate the fact that, from time to time, if there is a proposal to remove a single tree in a particular neighbourhood, that could have some quite significant impacts in terms of amenity, habitat values and neighbour desires as well?

NEIL MUMME: Don't get me wrong, I've got great respect for biodiversity.

Ms SUE HIGGINSON: I hear that.

NEIL MUMME: I think there's been some really poor examples of people that have cleared stuff. That is reprehensible behaviour. When you have situations, particularly in the regions, where you've got, say, for example, 2,000-square metre blocks or five-hectare blocks, there's no biodiversity mapping on it and it's bushfire prone—so you add that thing to it—and you have to put an onsite management system in for wastewater, like a traditional septic for wastewater management, you effectively need an asset protection zone of about 5,000 square metres. Some councils, even with the recent subdivision—this should have been addressed at subdivision, but it wasn't—with proper building envelopes, the owner of that property, unbeknownst to them, because they're not advised properly by conveyancers at the time of purchase, have to go and get a test of significance and in some States a biodiversity report. In some instances they have to pay offsets.

All of a sudden these people see the cost going up. They buy their dream block of land and they haven't done the true due diligence—or their conveyancer hasn't—but they're up for tens of thousands of dollars just to get the site ready for a house. I think it's an error of conveyancers, but it's also an error of councils and planning because these things should be addressed at subdivision and they should be in perpetuity, but they're not. They're revisited by councils quite often, which I think is grossly unfair to the landowner. I take your point about significant trees and things like that and totally respect that, but very rarely do they turn up on residential blocks. They might be on a nature strip or something like that.

The Hon. SCOTT FARLOW: Thank you very much, Mr Mumme, for your submission, for being here today, and for your lived experience with the system and being able to help us navigate it. You are going through the litany of challenges that people are facing in the system. You were outlining to the Chair that the typical cost of a manufactured three-bedroom, one-bathroom home is 250 to 300. From your experience, what are you paying in consultancy reports and the like to be able to actually get it approved and get it on a block?

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NEIL MUMME: Keep in mind that GST is a separate issue on everything, but that's a given cost. If it's a straightforward, clear block with no issues, it's about—the council fees vary from council to council. If they've got to put a septic system in, for example, there's one council that charges \$4,000. All the others are between \$500 and \$1,000. There's so much inconsistency across every LGA with costings. But to get back to your question, we would say allow between \$12,000 and \$15,000 to get to an approval.

The Hon. SCOTT FARLOW: I take your point about what the Building Commissioner might have said a few years ago. I know the former Building Commissioner came before one of our inquiries and he made the point with manufactured homes that he didn't want to see two classes, effectively, in terms of building regulations. I think what you're proposing addresses that issue in being able to have those checks at similar points and being able to ensure standards are in place.

NEIL MUMME: The Building Commissioner has two standards of homes. Manufactured homes are built to comply with the BCA. So the BCA is the overriding document that dictates how they build. I don't know how we got to get to that. I would say he's done that because of the inspection regime, or in factories they're signed off by engineers. An engineer technically can't do a critical stage inspection. It's got to be a certifier. I'd say that's where he's got the two classes of buildings, but they are built to comply with the BCA.

The Hon. SCOTT FARLOW: Going back to your point, though, in terms of that regime that you would put in place, would you see that being run by the Building Commissioner in terms of those inspections and the like?

NEIL MUMME: If say, for example, in the ideal world a SEPP was created for manufactured homes and it had to comply with all the BCA issues, which they do, it really becomes a private certifier issue, because they would be retained by the manufactured home company to go and undertake the critical stage inspections in the same way that a builder does in a traditional build. So they'd have to pay a certifier to do that.

The Hon. SCOTT FARLOW: With respect to the demand that exists at the moment for secondary dwellings—and, of course, we're looking at secondary dwellings on rural properties, largely—are you seeing that most are looking at going the way of manufactured homes on their sites or a preference for that vehicle, rather than going for a traditional bricks-and-mortar property?

NEIL MUMME: I couldn't comment for bricks and mortar, but I'd say most secondary dwellings are limited in size, under an LEP restriction, to 60 square metres. That's the benchmark, which is two bedrooms, one bathroom and one lounge room kind of thing. So 60 square metres is not a big dwelling. I guess it's your traditional granny flat size. The company I work for, 60 per cent of the work would be secondary dwellings. But in regional areas, this is where the LEP is broken down across the template. Some zonings don't allow it in some of the regional areas. I'm just dumbfounded at why they're not. We try and rely on the housing SEPP to do that, but councils won't accept that in a lot of cases. For example, in C4 in some local government areas—that environmental zoning—they won't allow secondary dwelling. But if you look at some of the permitted uses, it doesn't make sense why they don't allow that. Another problem is the permissibility under the zoning is not consistent.

The Hon. SCOTT FARLOW: I'll declare a conflict here that I live in C4 myself. I think we've heard quite a bit of commentary from people coming before this inquiry, cautioning us in terms of any application on C3- or C4-zoned land. I'm just interested in your perspective. You obviously have a different view in that regard and think that it could be a permissible use.

NEIL MUMME: If you've got C3 and C4 land that a dwelling is permitted on or a dual occupancy is committed on, there's no logic or—there's no merit in the argument. You can't have a secondary dwelling because, by their very nature, a secondary dwelling is a small footprint. It's not a big building.

The Hon. SCOTT FARLOW: Would you constrain that to a property of a certain size?

NEIL MUMME: You could, but most C3 and C4 land is 1,000 square metres plus. They're big blocks, by and large. The smaller blocks are all R2 and R3—which are your medium- to high-density and R2 your low-density zones—where you might have a 550-square metre block that permits a secondary dwelling. You might have a C4 block that's 5,000 square metres that doesn't, but it will permit a dual occupancy. There are inconsistencies there, too. I know you can't have a one-size-fits-all, but I think the LEPs themselves need to be looked at and try to be standardised a bit more than what they are, because what works for this LGA doesn't work for that.

It's particularly rampant in regional New South Wales, where they're all different, and it just becomes challenging. I don't think it's conducive to sensible development where, for example, a secondary dwelling can be placed close to a primary dwelling and provide elderly parents somewhere to live to keep them out of care as long

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as you can. There are a bunch of positives why secondary dwellings should be permitted almost anywhere. There are certain places they can't, which is obvious, but I think there needs to be a more pragmatic look at how and where they're accepted—basically because of their size. They're not big. They're not a big footprint.

The CHAIR: Just before we wrap up, Mr Mumme, I'd like to just read out your conclusion in your submission:

Modular housing provides a vital and immediate opportunity to address the housing crisis, particularly in regional NSW ... However, without urgent legislative clarification and consistency across LEPs, this sector faces extinction in NSW.

If we do nothing, at what point would your industry be facing extinction?

NEIL MUMME: My fear is the way that the councils are slowly but surely crawling up this anomaly in the LEP—it will have a snowball effect, because more and more will jump on board. For example, Eurobodalla came on board only this year because there was an issue—someone objected to one, and they had a high-level planner write the objection, which deliberately went to that thing in the LEP. Some councils overlook it. They just say, "We're not concerned about that because we're concerned about our ratepayers and our residents. We want to look after them." But when they become a problem, councils just fall over and say, "No. No more." That concerns me.

The CHAIR: Thank you for your valuable contribution. Our time has come to an end.

(The witness withdrew.)

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Mr ANDREW KEARNS, Manager Strategic Planning, Hawkesbury City Council, affirmed and examined

The CHAIR: We welcome our final witness for the day. Would you like to start by making an opening statement?

ANDREW KEARNS: Yes, thank you. I'm addressing the Select Committee today as a representative of Hawkesbury City Council. I would like to thank the Select Committee on Rural Housing and Second Dwellings Reform for this opportunity. As detailed in our submission, Hawkesbury City Council welcomes the inquiry supporting efforts to improve housing options in rural and peri-urban areas whilst also recognising the importance of maintaining the productivity, amenity and character of rural areas. Hawkesbury City Council supports the introduction of detached dual occupancies and secondary dwellings in rural zones. That's evidenced through council resolving recently to prepare a planning proposal for detached dual occupancy development in certain rural and environmental zones. That has very recently received a gateway determination from the department of planning to proceed, subject to conditions.

Council is also seeking the introduction of the standard instrument clause 5.5 in relation to secondary dwellings in rural zones. In actual fact, whilst being sought through this current planning proposal, council has been seeking to permit detached dual occupancies and secondary dwellings in rural and environmental zones since our efforts in 2015 and 2016, which did not proceed past the gateway determination stage. Council recognises the numerous benefits of permitting dual occupancies and secondary dwellings in rural areas, which will assist with housing affordability, housing diversity and options; support multigenerational living; potentially strengthen the rural economy; and provide cost-effective housing solutions without the need for subdivision and associated infrastructure. Through council's research in preparing our current planning proposal to permit detached dual occupancies, this is identified.

There are a number of Sydney metropolitan councils and other councils in New South Wales that do currently permit detached dual occupancies in rural zones. As such, the permissibility of such uses is not uncommon and can be managed through specific development controls, including DCP provisions, to particularly avoid fragmentation of land and avoid land use conflicts, recognising that the primary use of that rural land is agricultural. In terms of potential impact on population, we don't really see a difference between attached and detached dual occupancies. Detached can provide additional housing and maintains a lower density appearance. It can preserve rural character and minimise environmental impacts.

As mentioned earlier, potential negative impacts can be mitigated through DCP controls or provisions. Those controls could relate to sighting, size, distance between dwellings, driveways and access and, in terms of environmental hazards, ensure controls in relation to flooding and bushfire management. In closing, it's also worth noting that last week the New South Wales Government released the draft Sydney plan and discussion paper, *A new approach to strategic planning*. That exhibition runs until the end of February next year. Depending on the timing of the findings and recommendations of this inquiry, there may be an opportunity to input into the draft plan and future State land use plan. Doing so ensures a clear and consistent line of sight between strategic and statutory planning in New South Wales.

The CHAIR: It is possible now in the Hawkesbury to build a second dwelling, as long as it's attached to the existing home. Is that correct?

ANDREW KEARNS: A dual occupancy, yes. The distinction is between dual occupancy and secondary dwelling. They're different land use definitions in the LEP. Dual occupancies are permitted if they are attached, yes.

The CHAIR: It's possible, but how popular has it been? People don't want to live right next door to another family. Has it been taken up?

ANDREW KEARNS: We don't have high numbers in terms of applications in rural areas for those uses as yet. In our planning proposal that we submitted to the department of planning, we provided the numbers going back 10 or 12 years, in terms of numbers that we provided—relatively low numbers, in terms of that.

The CHAIR: About 10 years ago, the council did write to the planning department and did request that you would be permitted to build a second dwelling that was not attached. Was that request made to change your LEP or was it the SEPP?

ANDREW KEARNS: In 2015 and 2016, council applied for planning proposals for detached dual occupancies and secondary dwellings in all rural and certain environmental zones. So it was through council, that planning proposal.

The CHAIR: Why did the department refuse that request?

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ANDREW KEARNS: Both requests didn't proceed past gateway stage because of concerns about regional flood evacuation issues, potential increases in population and impacts to evacuation in the Hawkesbury-Nepean Valley.

The CHAIR: We know that the Nepean-Hawkesbury has flooded for hundreds of years from time to time, but it's quite a big council, and some of it is a long way away from the river and elevated. What did you think of that decision by the planning department? Did you think that was too arbitrary, to make that apply to the entire council area?

ANDREW KEARNS: You're right. There's, I guess, a significant portion of the local government in an area that is not directly flood-affected. Obviously, there are some areas that, whilst they're not directly flood-affected, they do have secondary impacts from flooding in terms of isolation, cutting off of services and so forth. But I guess dealing with the matter on such a broad scale, we did find problematic, yes.

The CHAIR: If these reforms do come in and people in your area were allowed to build a detached home, how does the council feel about the situation of raising rates? Would you ideally like to see an increase in rates if there was two homes on the one property?

ANDREW KEARNS: I'm not an expert in terms of rates. My expertise is in terms of strategic planning and policy and strategy. Rates, I won't comment on.

The CHAIR: I understand.

The Hon. SCOTT FARLOW: Thank you very much, Mr Kearns, for your attendance here today. I'm just interested in terms of the decision you've made with respect to C3 and C4 as well, for the policy to apply to those lands. Can you just walk us through what sort of considerations the council made in making that determination?

ANDREW KEARNS: Yes, so that's a consistent approach that we had in our 2015 and 2016 planning proposals: include the rural zones and both of those environmental zones. Essentially, the uses that are permitted in those zones include dwellings and dual occupancy, so we thought there was merit in proceeding on that basis.

The Hon. SCOTT FARLOW: So dual occupancies are already permitted?

ANDREW KEARNS: If they're attached, yes.

The Hon. SCOTT FARLOW: And with respect to the appetite that exists in the community, now that you're looking at changing the policy and have gone through the gateway determination to have detached secondary dwellings, do you think there's a lot more interest in landholders proceeding to have a secondary dwelling on their property in a detached setting?

ANDREW KEARNS: Yes, definitely. Obviously, since the council resolution to proceed with that planning proposal, there's been an increase in the number of inquiries about when people can potentially make an application for those uses. Obviously, it's still a process to go through with the LEP amendments, but, yes, there has been a marked increase in inquiries in that respect.

The Hon. SCOTT FARLOW: When do you expect this to now be in place, following your gateway determination?

ANDREW KEARNS: We have, as I say, very recently received the gateway determination. That includes a number of requirements to update the planning proposal and supporting documentation, also a referral with a number of public agencies, as part of that process, and then public exhibition. Council's been provided until August next year to finalise that LEP amendment, but it's obviously in our interest that we proceed through that process as quickly as we can.

The Hon. SCOTT FARLOW: Thank you. While it will be permissible in those zones, applicants will still have to go through the development application process, will they?

Yes. This is basically to make those detached dual occupancies and secondary dwellings in the rural and nominated environmental zones permissible, so it will go through a development application process.

The Hon. SCOTT FARLOW: You heard the evidence before of Mr Mumme with respect to modern methods of construction or manufactured homes. What's the approach of Hawkesbury council when it comes to such dwellings?

ANDREW KEARNS: There are similar challenges. Obviously, we're dealing with the same State legislation in terms of the manufactured homes being under separate legislation. Previous witnesses would have talked about the challenges as an applicant, but there are also challenges as a regulatory authority, as well, with

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dealing with different legislation and different requirements for land use and for the buildings through the manufactured homes. There is the opportunity to potentially look at some sort of legislative reform in regard to how manufactured homes are dealt with.

The Hon. SCOTT FARLOW: Does Hawkesbury council take the approach or the view at the moment that they are permissible, in terms of manufactured homes?

ANDREW KEARNS: For manufactured homes we have a local approvals policy, responding to the Local Government Act. The particular challenge for us is where there is interest in manufactured homes, they've primarily been on the flood plain, and particularly as part of caravan parks. They're obviously heavily flood affected. Our local approvals policy has a number of criteria that need to be considered and responded to by any applicants under that.

Ms SUE HIGGINSON: Mr Kearns, I just wanted to raise the concerns that the department put to you in relation to the planning proposal. The evacuation capacity of certain parts of the Hawkesbury LGA is very real, isn't it?

ANDREW KEARNS: Most definitely, yes.

Ms SUE HIGGINSON: I had the benefit of being on a previous inquiry a couple of years ago that was after some of the flooding. I was taken to a number of locations and it was quite—I'm from Lismore, so I know a lot about flooding, but I couldn't believe some of those areas and the matters that you as a council had to grapple with in terms of proposed increases of population in certain areas. Was there ever any initiative on the part of council to go back to, with an altered planning proposal, about perhaps limiting some of the areas where the secondary dwelling could apply in the LGA, or was it just kind of shelved for now?

ANDREW KEARNS: The 2015 and 2016 planning proposals were across the whole LGA, and they were the ones that the department didn't allow past the gateway determination. As part of our LEP review planning proposal that we have, we looked at that on the basis of applying those provisions above the flood planning level, so above the one in 100. For context, for Hawkesbury—particularly in and around Richmond and Windsor—our one-in-100 flood level is in the order of 17.3 metres. Our probable maximum flood is now over 30 metres, so we're talking about some very significant depths of floodwaters. The State Government's Resilient Valley, Resilient Communities strategy for the Hawkesbury and Nepean Valley actually describes our valley as probably the highest flood risk in New South Wales, if not Australia.

Ms SUE HIGGINSON: Your submission makes it very clear that, while you are proposing that potentially second dwellings would be applicable in particular zones, you say, however, development consent is something that should be in the mix with this because of all of these variations and factors.

ANDREW KEARNS: Yes, certainly for a number of environmental hazards—particularly flooding for us, but obviously bushfire hazard—that I think are critical. For local government areas, there's enough distinction between the rural areas of different local government areas to warrant having nuanced controls for each local government area—that would obviously be through development control plan provisions—and then allow assessment of applications under that particular development control plan.

Ms SUE HIGGINSON: Maybe the Chair put this to you, but do you think that there is any role, potentially, for a State environmental planning policy, or do you think it's best done with the with the LEPS and the DCPs?

ANDREW KEARNS: I think through the LEPs, but there is obviously the opportunity for an overriding SEPP that amends all LEPs, rather than each council having to go through an LEP process. So if there were findings from the inquiry that made recommendations in terms of certain provisions, they could essentially be applied through an amending SEPP that amended all LEPs, rather than each council having to go through a process to do that.

Ms SUE HIGGINSON: Like an enabling SEPP, to then operationalise?

ANDREW KEARNS: Yes, that's right.

Ms SUE HIGGINSON: Just in terms of Hawkesbury, do you have biodiversity mapping overlays?

ANDREW KEARNS: Yes.

Ms SUE HIGGINSON: Do you consider your biodiversity mapping overlays up to date, fit for purpose and proving to be well-informing overlays?

ANDREW KEARNS: Yes. We've have some very recent mapping and work that has been undertaken in the last 12 to 18 months that is very up to date and has very fine-grained detail in terms of that.

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Ms SUE HIGGINSON: Just one other final thing. I think you are the area that is first cab off the rank in terms of the Reconstruction Authority's adaptation plans?

ANDREW KEARNS: Disaster adaptation plans, yes.

Ms SUE HIGGINSON: That's right. How are you going with that? Where are you up to?

ANDREW KEARNS: Obviously the Reconstruction Authority is preparing the disaster adaptation plans. I think it has been delayed somewhat. We're quite keen to see where that lands. I also understand that they have taken out the land use planning controls from that process and are undertaking that as part of a separate process. There'll be an adaptation plan, but the land use planning will be dealt with separately.

Ms SUE HIGGINSON: Is there any information you've been provided about the rationale for separating those two tranches of work?

ANDREW KEARNS: It's probably just the complexities and challenges that do exist. The Hawkesbury-Nepean Valley is quite a different valley in terms of the impacts of flooding within the valley. At Penrith, for example, a lot of the flood is contained within the banks of the river. It's only higher events that it spills out over the banks; whereas when you come to the Hawkesbury, you basically end up with a bathtub effect, where the floodwaters just spread out so far.

Ms SUE HIGGINSON: We just need some plugs, don't we?

ANDREW KEARNS: Yes.

The Hon. EMILY SUVAAL: Mr Kearns, thank you for appearing today and for your evidence so far. I want to ask you about the introduction of the new planning proposal in regard to detached dual occupancies. I think you're aware that the Committee's undertaking some site visits this afternoon out in the Hawkesbury. In terms of areas where they have onsite effluent management—so septic systems—has there been consideration of how that will interact with the new planning proposal in relation to dual occupancies?

ANDREW KEARNS: The gateway determination that we've received from the Planning department has required us to prepare a draft development control plan chapter, and that will be one of the considerations as part of that. There's a whole raft of other considerations as part of that chapter, but obviously servicing, both in terms of sewer and water treatment onsite—our preference is for onsite treatment as opposed to pump-out-type systems.

The Hon. EMILY SUVAAL: In terms of the secondary dwellings, I noticed your submission also suggested clear differentiation between the two. That's towards the bottom of page 3 of your submission, in terms of the term "second dwellings", which could conflate dual occupancies and secondary dwellings. Are there any suggestions that you have for the Committee in terms of better trying to differentiate between the two? It seems to be consistently coming up in the evidence we receive from councils, whereby secondary dwellings in many cases have to be at that subordinate size, as you've referenced in your submission. But dual occupancies seem to have more flexibility opportunity, perhaps. It's interesting why more people aren't using that as an avenue to get their development or additional property.

ANDREW KEARNS: I've said that these particular terms are standard instrument definitions. Every council has to apply those definitions so that each council doesn't have definitions for each of those uses. For the Committee to understand that there are distinct differences between those defined uses—the secondary dwelling versus the dual occupancy—as you said, the secondary dwelling is more of that subordinate nature, whereas there's a bit more flexibility with the dual occupancy.

The Hon. EMILY SUVAAL: With Hawkesbury council, what is currently permitted in terms of secondary dwellings?

ANDREW KEARNS: Secondary dwellings are primarily made permissible through the housing SEPP, and that's primarily limited to more urban areas rather than the rural areas.

The Hon. EMILY SUVAAL: I noticed you also provided us with a helpful table describing some of the councils that currently have the detached dual occupancy permissibility in rural and environmental zones. There seem to be many differences, and it's interesting to see quite a diverse range of councils. The State Government, obviously, could look to perhaps play a role in facilitating that or making that easier for local councils, but there clearly still needs to be that localised decision-making. Are there ways that the Committee could look at suggesting, for example, a mechanism to encourage more councils to take up that opportunity?

ANDREW KEARNS: Yes. I think there is an opportunity for model development control plan type provisions relating to these types of uses that could be applied by councils. If there was a decision by the State to

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include all of these uses as permitted uses through an overriding SEPP, then obviously that model code would assist councils in responding to that.

The Hon. EMILY SUVAAL: In your submission, you also seek some clarification around the scope of this inquiry, particularly regarding the inclusion of outer metropolitan local government areas. That's something that was highlighted also in the submission from the New South Wales Government. Do you think that we need to take a somewhat different approach when looking at the outer metropolitan versus some of those more rural councils, or should it be something that we open up to all?

ANDREW KEARNS: Just in terms of clarity, in terms of what specific local government areas these findings or recommendations would relate to so that there's no ambiguity in terms of that, yes.

The CHAIR: I've got one last question. Across New South Wales there are reports that there are a lot of unauthorised second dwellings in existence already. Is that much of an issue in the Hawkesbury area?

ANDREW KEARNS: Potentially. I don't have any figures around that, and it's not something that we, in an active sense, pursue on a compliance regime.

The CHAIR: That's good to hear you're not actively persecuting them. But, if the proposed changes to the SEPP make the current unauthorised dwellings legal, for lack of a better word, would your council grant amnesty to these dwellings?

ANDREW KEARNS: I think council would certainly consider that. I don't know what the outcome would be, but there's going to be an appetite for consideration of that.

The CHAIR: I'm pleased to hear that. What would be the mechanism for that? Would that be a resolution of the council? How would we go about giving these people certainty about what the physical reality is?

ANDREW KEARNS: For us, it would be a resolution of council.

The CHAIR: Thank you very much for coming along, Mr Kearns. We enjoyed your submission, and we will be visiting your wonderful local council area later this afternoon.

(The witness withdrew.)

The Committee adjourned at 12:10.