



Memo to: Councillor Lea

Copy to: Mayor Watton, all Councillors, General Manager, Directors, Senior Leadership Group and Communications & Engagement Team

From: Sue Page, Acting Director Planning and Environment

Subject: Talleyrand Cct, Greta NSW 2334 - Development application 8/2025/896/1

Date: 4 February 2026

Reference: CRM 2564/2026 - DOC2026/019728

Dear Councillor Lea

I refer to your enquiry on behalf of residents, regarding permissibility of secondary dwellings (granny flats) at Wyndham Ridge Estate.

"I have received enquiries on behalf of a number of residents regarding DA 8/2025/896/1, Talleyrand Cct, Greta NSW 2334.

The DA description shows 'Single Storey Dwelling with Attached Garage and Detached Secondary Dwelling and Retaining Walls'. I note the construction certificate application is pending.

Nearby residents are seeking clarification of the planning laws/policies, and asking if the specifics can be supplied, around the entitlement of being able to build a detached granny flat as sales contracts for the estate state "Not more than one residence shall be erected or be permitted to remain erected on any Lot." My understanding following initial conversations is that "granny flats" under a certain size may be exempt hence the approval."

Council officers have investigated the subject matter and advise as follows:

- Talleyrand Circuit is located within the Wyndham Ridge Estate and is zoned R2-Low Density Residential under Cessnock Local Environmental Plan (LEP) 2011.
- A secondary dwelling is permitted on land zoned R2 Low Density Residential with LEP clause 5.4(9) outlining the controls. <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2011-0702#sec.5.4>
- The State Environment planning policy (Housing) SEPP 2021 clause 55 outlines requirements for a development being a principal dwelling and secondary dwelling that is considered complying development. <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0714#sec.55>

Secondary dwellings (commonly referred to as granny flats) in NSW are generally not 'exempt' from approval, but they are permitted as 'complying development' in residential areas if they meet specific

Housing SEPP 2021 standards. This means they can progress through a Complying Development Certificate via a private certifier or Council without a full development application.

In a residential zone, secondary dwellings may be carried out with consent on a lot with a minimum lot size of 450m² and if the total floor area of the secondary dwelling is no more than 60m². Only one principal house and one secondary dwelling is allowed per lot and the secondary dwelling may not be subdivided from the principal house.

For the site the subject of this enquiry, Council notes that there is an Section 88B Instrument ,under the *Conveyancing Act 1919* (NSW) registered over the parent subdivision (Wyndham Ridge Estate) which outlines a term that not more than one residence shall be erected or be permitted on any lot. An 88B Instrument is a legal instrument in NSW used in property development and subdivision by property developers to create easements, restrictions on land, etc. However, this instrument does not take precedence over legislated NSW planning provisions such as zoning, land use permissibility, and minimum lot size.

Similar to Local Environmental Plans adopted in all other NSW local government areas, the Cessnock LEP 2011 enables Council to approve a development application even where a restriction has been imposed on the land through a Section 88B Instrument. This includes restrictions applied by a developer that purport to limit the construction of more than one dwelling on a lot. The relevant provision is Clause 1.9A, *Suspension of covenants, agreements and instruments*, which allows such restrictions to be set aside for the purposes of enabling development on land in any zone to be carried out in accordance with the LEP.

Accordingly, the enforcement of any restriction contained within the Section 88B Instrument is a civil matter between the landowner and the developer, rather than a planning constraint that binds Council's assessment or determination of the application.

Further information on development permissibility for individual lots can be obtained from Council's Duty Planner.

Please note a copy of this memo will be uploaded to the Council website.