To: Graham Irvine.

NEW SOUTH WALES

MINISTER FOR URBAN AFFAIRS AND PLANNING

MINISTER FOR HOUSING

Level 33
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Phone: (02) 228 4469
Fax: (02) 228 3774

YOUR REF

OUR REF **RML 67258**

- 3 JUN 1997

Mr Mark Norris
Acting General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Dear Mr Norris

The Hon Craig Knowles MP, Minister for Urban Affairs and Planning and Minister for Housing, has asked me to respond on his behalf to your letter of 5 March 1997 regarding rating levies for Multiple Occupancies. You have asked the Minister to request the Hon Ernie Page MP, Minister for Local Government, to introduce amendments to the Local Government Act which will enable Councils to levy an appropriate rate for individual dwellings on Multiple Occupancies.

The issue of a rating structure for individual dwellings on Multiple Occupancies is recognised as potentially significant for the provision and cost of local services. I understand however that many MO communities operate at a level of self-sufficiency in relation to service provision which reduces their demand and distinguishes them from other forms of conventional rural residential sub-division.

The Minister is unable to accede to your request at this time. You may wish to express your views by writing directly to the Minister for Local Government

Thank you for bringing this matter to my attention.

Yours sincerely

Paul Levins
Chief of Staff

NIMBIN ENVIRONMENT CENTRE'S PRELIMINARY SUBMISSION TO THE NIMBIN DEVELOPMENT CONTROL PLAN

June 1991

BUILDING DESIGN

The character of the Nimbin village should be preserved and new buildings and renovations should respect the existing streetscape. The main features of the village shopping area i.e. colonnaded awnings of timber posts or poles and parapet walls extending above the awnings decorated with murals, should be preserved. Shopfronts should generally be timber with stained or painted finish. Use of aluminium shopfronts and suspended awnings should not be permitted. Ne buildings should also respect the scale of existing buildings. Height should be restricted to 2 storeys above ground level.

The existing public toilets with their face brick facade in the main street are an example of poor planning and design while the new Police Station is an example of sympatehtic design.

Buildings that should be considered to have heritage value (not necessarily worthy of heritage listing):

Freemasons Hotel, Cullen St. (identified in Lismore's L.E.P.)
Nimbin Hall, Cullen St.
Uniting Church, Cullen St.
Anglican Church & Manse, Cullen St.
Catholic Church, Cullen St.
Presbyterian Church, Cullen St.
Nimbin Community School, Cullen St.
Tomato Sauce Building, Cullen St.
Westpac Bank including the Doctor's surgery, Cullen St.

DEVELOPMENT OF THE CENTRAL BUSINESS DISTRICT

There is a need in Nimbin for office space, small rooms, shops and parking. The undeveloped land behind the Nimbin Hall and the public toilets could be commercially developed for this purpose and the toilets relocated in the process. The ownership of this land should be retained by the Nimbin community with a long term lease being offered to a developer(s) in return for sufficient income to repair and maintain the Hall. Such development should be integrated with the development of adjacent privately owned land. The area of land behind the Freemason's Hotel, the beer garden and beyond, should be retained as open space.

On the west side of Cullen St. vacant land at the rear of existing shops could be developed with the existing laneways paved and landscaped to provide a pleasant pedestrian access. Developers of these sites would have to contribute to the cost of providing parking elsewhere in the village. These areas are used for parking at present but are unsatisfactory for this purpose because of restricted access. If a service lane is considered necessary for these developments it could be provided along the back of the shops on land currently owned by the Dept. of Education, subject to negotiation.

Outdoor eating areas in the CBD should be encouraged and attractively designed. (Caddies and Au Peche Mignon in Carrington St. are examples of this).

All buildings and community facilities must allow easy access for disabled people.

Signs: Signs should be complimentary to the building on which they are placed and should not detract from nor dominate the architectural features nor prejudice the appearance of adjacent buildings or the village in general. We do not consider neon signs or large billboards to be appropriate.

LIGHT INDUSTRIAL

It would seem appropriate to us that this continue to be developed on Sibley St., past existing residential developments, provided this does not adversely effect existing housing in the area. Landscaping of these areas to avoid the unpleasant appearance of many light industrial areas is essential. Trees and gardens are desirable and such planning should be part of development approval.

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RESIDENTIAL DEVELOPMENT

Nimbin has a need for housing and rental accommodation. Residential subdivisions around the village should incorporate lots of varying sizes to cater for different needs e.g. ¼ acre minimum to 1 acre plus. We feel ¼ acre lots are too small but recognise some people may desire a small, low-maintenance block. Developers seeking to provide low-cost housing should be encouraged and supported. Development of flats and units should be kept to a minimum.

Most of the land surrounding the village is low-lying and boggy and not suitable for residential development. This land should be used to provide greenbelts around the village. Suitable areas that exist around the village for residential development are on higher ground such as land to the south of Cecil St., land to the west of Nimbin Pre-School, land on the western side of Cullen St. at the southern end. All residential development should be low-density so as to avoid the "urban sprawl" in years to come. All residential developments should give consideration to open space and greenbelts. Buildings should be compatible with existing, adjacent housing, shouldn't intrude on the privacy of neighbours, should provide off-street parking and amenities for residents. Buildings should not be permitted on ridge lines.

Ecologically sensitive housing and use of environmentally "friendly" building materials should be encouraged. For example, use of plantation timber rather than imported rainforest species. Also use of passive solar design, energy efficiency, waste treatment and use of local materials.

Planning provision should be made to permit appropriate development on rural land in proximity of the village. An example of this type of development is an appropriate technology centre which may combine manufacturing, wholesale, retailing, tourism and educational functions. Another example is a Permaculture Centre which may combine education facilities, agricultural activities, tourism and accommodation both permanent or for visitors.

ROADS AND MOVEMENT SYSTEMS

Roads should be located with minimum impact and disturbance to the environment and landscape. Significant individual trees and stands of vegetation should be preserved where possible. Roads should generally follow contours and ridges and avoid steep sections and cuts.

The D.C.P. should investigate the option of a second through road or by-pass.

Pedestrian paths:

Existing roads and new roads should give pedestrians adequate freedom and safety. Not acceptable for instance is Cullen bridge which crosses Mulgum Creek. This is the only pedestrian access from the village to the Bush Theatre but it is very narrow and has no walkway for pedestrians. Also, Cecil St. which leads to the Nimbin Pre-School, Nimbin market and the Showgrounds does not have safe pedestrian walkways along its length. This should be provided. From the Central and Community Schools there is no safe walkway to the Hall, the playing fields on the eastern side of Sibley St and the swimming pool. There is also no walkway from High St. into Nimbin village.

Cycleways & Horse Riding Tracks:

New road systems should be integrated with cycleways and horse riding trails where possible. Consideration should be given to the provision of safe cycleways and horse trails and parking thereof in the village to people who enter Nimbin from Crofton Rd., Gungas Rd., Blue Knob Rd. and Tuntable Falls either by bike or horse.

Speed restriction and pedestrian safety:

Cullen St. should be redesigned with variations in paving of the road surface to encourage speed reduction and with landscaped areas replacing some of the parking spaces e.g. outside the Rainbow Cafe, the Youth Club and the Media Centre. In addition the community should be encouraged to request a reduction in the speed of through traffic along Cullen St. to 30kph. A pedestrian crossing should be provided to cross Cullen St. opposite the Nimbin Hall.

The intersection of Cullen & Cecil Sts needs upgrading with improved visibility. At the intersection of Sibley & Cullen Sts a landscaped roundabout or traffic island should be constructed.

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Parking:
Provision of public parking areas should be a condition of commercial development behind the Nimbin Hall and on the existing vacant lot next to the Hall. All commercial developments should contribute to parking space somewhere. Areas that could be considered for parking are Council owned land adjacent to the swimming pool and relocation of the basketball courts to allow for parking off Sibley St. The latter would be appropriate if the Dept. of Education consolidates the location of school facilities. There is also privately owned land close to the village that could be appropriate for parking to accommodate people who bring their cars to town for the whole day. People working in the CBD should be encouraged to park away from the main village area to accommodate parking by shoppers, visitors and the like. Parking spaces should be set aside in the centre of the village for disabled people.

WATER SUPPLY
Before considering expansion of the village thought must be given to an adequate, clean water supply. We support the principles listed in Nimplan I, namely:
To minimise and seek to avoid the addition of chemicals.
To improve the reticulation system to avoid contamination and failures.
To filter the water to remove salt and turbidity.
To monitor water quality for contamination or organisms which genuinely endanger public health.
To support the use of rainwater tanks to minimise demand.

A rainwater tank in Allsop Park would be desirable. In addition we would wish to see the use of water saving devices encouraged, especially in new developments.

SEWAGE
The Nimbin Environment Centre continues to support the principle of on-site sewage disposal. This should remain an option for those not wishing to be part of a centralised scheme. In view of Council's decision to proceed with a centralised scheme the sewerage treatment tanks and ponds should be landscaped so as not to be visible from the village and their operation adequately monitored.

WASTE MANAGEMENT
Consideration needs to be given to a Council constructed recycling depot and waste transfer station. As Council has advised that the existing tip site is unsuitable for building permanent structures other sites need to be considered. Possible sites are off Sibley or Cecil Sts past existing residential areas. It is not appropriate that Nimbin residents transport their garbage to Lismore. Provision must be made within Nimbin for waste disposal once the existing tip closes. Consideration must also be given to rehabilitation of the existing landfill site in a manner that complies with Government regulations and is aesthetically pleasing.

OPEN SPACE AND RECREATION
Open space that provides for the widest possible range of passive and active recreational pursuits is an extremely valuable community resource. All areas of open space that exist at present for this purpose, whether owned by Council or community organisations should be retained. These include the Showgrounds, the Headers sporting ground, Allsop Park, the tennis courts, the swimming pool and surrounds, the school grounds on the western side of Cullen St and on the eastern side of Sibley St. Most of these areas presently need landscaping and this should be supported. There should also be provision for open space along the eastern side of Cullen St. (land that is currently privately owned).
Around the village generally open space is very important, partly to provide a buffer zone between the village and residential development, partly to ensure that we have open space for recreational purposes and partly to assist in creating an aesthetically pleasing environment. At present there is a need for a well-designed, centrally located playground for young children.

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REAFFORESTATION AND LANDSCAPING

This should be encouraged in all water courses and gullies. Access roads to Nimbin need trees planted. Footpath plantings should be encouraged where practical. Where power lines are involved small trees and shrubs could be planted. Powerlines should be underground where possible on new developments so as not to interfere with tree planting and to lessen their visual impact. For detailed information regarding tree types and locations we refer you to a letter sent to Mr. P. Ashley of Lismore City Council on 9th October, 1989, concerning the beautification of Nimbin.

TOURISM

The Environment Centre is keen to promote the type of tourism that enables people who visit to better understand Nimbin and encourages care for the environment in an ecologically sustainable manner.

We are interested in promoting local initiatives, especially those that focus on the alternate lifestyle so many have moved to Nimbin to pursue. Whilst the ideas of a Permaculture Centre, a permanent market site and a stopping place for coaches at a focal point near the village have merit they need careful consideration. We believe that the caravan park should be retained and extended, perhaps relocated, and its economic viability be thoroughly investigated by council in consultation with the community. Perhaps the economic viability of the caravan park could be enhanced by the provision of a public access laundry and hot showers, both much needed in Nimbin at present.

Large motel developments are not appropriate within the village. The site currently occupied by Granny's Farm should be retained as accommodation for visitors as it encourages backpackers and provides relatively cheap accommodation for people who wish to spend some time in and around Nimbin.

COMMUNITY FACILITIES

Nimbin needs more community facilities and space must be left for provision of facilities as money becomes available. Land ownership is obviously a concern when identifying and securing sites for possible future use by the community.

The DCP should look at the possibility of upgrading existing community facilities by utilising Section 94 contributions required for new subdivisions or developments, to support the anticipated population growth. Special provision should be made by Council to assist the community in the repair and restoration of the Nimbin Hall. In addition, when approving new developments in areas near the village consideration could be given to provision of land for community facilities as part of the development approval.

We feel it imperative that existing community facilities be preserved for community use. These include the sporting grounds we currently have, including the tennis courts which badly need upgrading, the schools, the Tomato Sauce building, the Media Centre, the A & I Society grounds and buildings, the Community Health Centre & Hospital, the Police Station, the Hall, the Fire Station, etc. In addition, should the house next to Allsop Park (currently Police Dept.) and the secondary school site be vacated we would like to see these sites retained for community use.

NIMBIN WASTEBUSTERS

54 CULLEN ST. NIMBIN N.S.W. 2480 PH 066891529

29th May, 1991

Mr. Paul Muldoon,
General Manager/ Town Clerk,
Lismore City Council,
P.O. Box 23A,
LISMORE 2480

Dear Mr. Muldoon,

During last year it became known to the Nimbin community that the life of the current tip will end in December 1991. We were advised by Mr. Bob Hanby that a new tip face was out of the question due to the cost of an Environmental Impact Statement and that a Council run waste transfer station was also not feasible due to cost. In light of this and out of concern for our environment Nimbin Wastebusters was formed. As you are probably aware, among the aims of Wastebusters are operation of a recycling depot at the Nimbin tip (building on the work of Charlie Soward), use of the tip face while it exists (in consultation with Charlie), and ultimately, the establishment of a waste disposal option for Nimbin once the tip closes, on the existing landfill site.

In early April 1991, after working at the tip on an entirely voluntary basis to assist Charlie, Wastebusters entered into an informal arrangement with Charlie whereby he handle the aluminium at the depot, we handle the glass, metals and other recyclables and assist Charlie to keep the tip face clear. As you know, Charlie is 77 years of age and no longer able to look after the tip and maximise recycling on his own. Currently we staff the tip morning and afternoon most days under very difficult circumstances. We have no area under cover, we do not have a clearly established area for recyclables, we are unable to supervise use as the tip is open 24 hours a day, 7 days a week, we have to handle hazardous wastes and the tip is set fire to regularly which restricts working hours.

Late last year Council allocated $2500 to fence and cover the existing tip site once the life of the tip ended. We were advised by Bob Hanby that this money could be used to provide us with a levelled and gravelled area for a depot with a cyclone proof fence and gate, as per our design. A site was selected but we were subsequently advised that this was not an option as Council were not clear where the tip boundaries were located. We then selected a new site. What is the position in relation to tip boundaries at present? Is it correct that landfill has been deposited on Crown land?

Early in March we were advised that we could not have a cyclone proof fence but would be provided with a cattle proof fence with a lockable gate, that Council would grade and level the site when equipment was in the area and put in a water line to the site. Whilst a cattle proof fence is unlikely to keep people out we agreed to accept this to at least have a clearly defined area. Our selected site has been clear since early April, Council equipment has been in the area since then but no work has commenced at the tip. We have repeatedly requested an estimate of when the work will be done. At the end of April we were advised that we could not erect a permanent shed on a landfill site. It took Council 6 months to advise us of this. Obviously this throws the future of a recycling depot on that site into question as a permanent, dry space is essential if the recycling potential of the tip is to be maximised. How do Council perceive a recycling depot working without a dry space for storage? What can we erect on the site?

On April 22nd we requested 6 signs from Council to be erected at the tip. We had been advised that Council would provide us with some signs at no cost. In May, on inquiring about the progress with the signs we were advised that Council had no money to produce signs and that they would have to be funded out of the $2500, allocated by Council to fence and cover the existing site. We asked Bob Hanby to proceed with 3 signs. What is the situation in relation to payment for the signs and the provision of them?

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Wastebusters wish to stop the open access to the tip and instead to open the tip at regular times up to 7 days a week. Unless we can monitor its operation in this way we cannot stop the dumping of hazardous wastes, we cannot stop trucks from outside the area which are still dumping large quantities of unsorted rubbish there, we cannot supervise general use of the tip or secure sorted recyclables and working implements. At the end of April we were advised that we cannot close the tip and cannot charge for dumping although we can request donations. Previously we had been advised that we could stop open access to the tip with community support and charge fees, so long as they were not higher than fees charged at Wyrallah Road and this action met with Council approval. Now we've been told we cannot do this unless the running of the tip is put up for tender. Please clarify the situation for us. In addition would you please advise of the situation in relation to public liability insurance and worker's compensation for Charlie Soward and Wastebusters who work under him? We have been advised by Council that this is currently their responsibility and will remain so until management of the tip is put up for tender. Could you please confirm this?

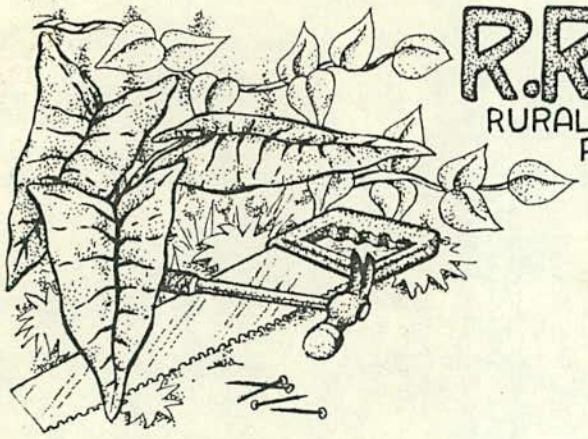
In view of the D.C.P. currently being drawn up for Nimbin and the envisaged expansion of the village and surrounding areas, what are Council's plans for waste disposal for the whole area? It would seem unrealistic to be considering expansion without a comprehensive waste management program. Also, what plans does Council have for rehabilitation of the tip site when it finally closes?

We would appreciate your answers to all of the above as soon as possible. There is no doubt that the activities of Nimbin Wastebusters have extended the life of the tip face but it is extremely difficult to sustain the initiatives of voluntary workers without clear directions from Council which have not been forthcoming to date.

Yours sincerely,

Diana Roberts

Diana Roberts
on behalf of Nimbin Wastebusters



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.

RRTF MULTIPLE OCCUPANCY NEWS

Tweed Inquiry Report This has now been released and is available from the Commissioners of Inquiry, G.P.O. Box 3415, Sydney 2001 for $5. In general terms we agreed with about 3/4 of the recommendations, but not with all of them. We were disappointed that he did not generally give reasons for his conclusions. However, a sumary or critique of it would be too lengthy for an article such as this. If interested, order the Report!

Community Titles Act Senior officers from the Land Titles Office visited communities up & down the coast. All agreed the meetings were a fruitful exchange of views and ideas. It was agreed that the proposals would suit some but not all communities and no existing (or future) communities would be required to adopt the structure. Without going into the philisophical considerations, some of the main advantages would be: easy FHOS Grants & mortgages, security of tenure, ease of transfer, disputes resolved economically by a Commis-sioner & (probably) phone connection for standard fee. The disadvantages might include little or no control over who might buy a title (share), payment of individual Council rates, for future applicants (probably) an onerous & expensive rezoning application and stringent Council conditions. For existing approved communities this Council approval may or may not be difficult/costly. Costs of surveying etc. would also add to the cost. If interested you can request present and future printed material from Steve McFadzean, Supervising Legal Officer, Land Titles Office, Queens Square, Sydney 2000.

FHOS Grants No resolution of this problem has occured as yet. The RRTF (& we suggest you should also write) to the (Federal) Minister for Housing & Construction (Stewart West) Canberra with perhaps a copy to the State Minister for Housing (Frank Walker).

LandCom/Wadeville Project Despite earlier promises that it would go ahead "on the fast track" the bureaucracy is making little evident progress. Sigh!

Builders Licensing Board They are now questionning the security of title of individual shareholders to determine if they are "owners" within the meaning of their Act & therefore eligible for an Owner Builders License. If you are not eligible then you need a Licensed Builder to build your home! The RRTF has written to the Minister for Consumer Affairs (Bob Carr) about this new Catch 22 problem. We suggest concerned communities do likewise.

Telecom Charges Pinpuna Community has made a very good submission to the Commonwealth Ombudsman who is actively considering the pricing policies of Telecom with respect to M.O., particularly the possible discrimination suffered by M.O. homeowners as compared with those on an ordinary subdivision. We suggest your community write to:Mr N Bridger, Asst. Commonwealth Ombudsman, 6th Floor, Aldersgate House, 405 Collins Street, Melbourne 3000.

S.E.P.P. #15 Latest sources indicate 2 changes from previous views about the policy which may not please many people. The first is that it is now believed that the policy will specify 100% common ownership instead of the former 80 - 20% The reasons appear to be a backlash against some types of developers (such as some in the Tweed Shire); a belief that the proposed Community Titles Act will serve those who want security of tenure; and the legal complexities of allowing any form of 'defacto' subdivision.

The 2nd change is a cooling off by the Dept and/or Minister towards the idea of setting a maximum s.94 levy that Councils may impose on new developments. There is still an appeal possible in the Court for individual cases).

I fear that these latest 2 changes will do a lot to virtually end M.O. development in the future. That is, it will limit it to those who really want **communal** development and can afford costly Council conditions or appeals. If you are concerned, write to the D.E.P. Minister, Bob Carr.

Our Supporters We sincerely thank the 16 communities and 4 individuals who have donated a total of $1828 to support our work. These supporters will receive a short newsheet and revised Bibliography of available resource material every few months. If you want more info or wish to support us contact me at the Neighbourhood Centre on Wednesdays or write to: P.O. Box 62, Nimbin 2480.

15/6/86. Dave L.

Department of Housing and Construction

In reply please quote E85/0872 (22/39)
Contact

Mr David Spain
PO Box 16
NIMBIN NSW 2480

Dear David,

I apologise for the delay in writing to you following your letter of 18 January 1986. Nevertheless, your conversations with myself and with Jose Marques have no doubt clarified the reason for the delay.

In preparing material for the Spilsbury case and in examining the proposal by the Department of Environment and Planning on Multiple Occupancy it became apparent that a substantial legal difficulty arose from the operation of the NSW Local Government Act in relation to unapproved subdivisions.

You will note from the Spilsbury decision that a similar difficulty arises in Queensland. Counsel's opinion, obtained earlier this year advised that the legal difficulty arising from the NSW Local Government Act prevented payment of assistance to multiple occupancy participants including those at Co-ordination Co-operative.

Given that the issues were before the Federal Court at the time no action was taken on the Opinion in case the Federal Court took a different view. That was not to be. Therefore, it is apparent that the only solution remaining is political. As I explained on the phone, the Minister has now written to the Minister for Environment and Planning suggesting that the matter be resolved so that FHOS benefits can flow to applicants in Multiple Occupancy communities.

... A copy of the Spilsbury decision is attached.

R. Gallimore
for First Assistant Secretary
Housing Policy Division

23 April 1986

Central Office
470 Northbourne Avenue, Dickson ACT 2602
PO Box 111 Dickson ACT 2602
Telephone: (062) 436111, Telegrams: COCON, Telex: 62441

and had direct implications, for the North Coast.

The Ombudsman received a complaint from a civil rights association in a country town about low-flying by a police helicopter searching for Indian hemp plantations on the North Coast.

Mr Masterman, reporting on the complaint by 45 people, said:

One couple said they were naked and asleep in bed with their skylight window open when the noise of a police helicopter woke them. They saw two people in the helicopter, one with a pair of binoculars, peering into the room. The helicopter was so close that its down-draft blew debris into the house.

The police officer who was said that it flew as low as 10 metres above the undergrowth, and occasionally as low as 15 to 20 metres above the ground while photographs were taken. He denied that there had been any peering into a bedroom.

There was evidence, supported by a Forestry Commission employee, that the helicopter flew close to children playing in an open field, about 10 to 12 metres above their heads. It then landed only 30 to 40 metres away from the children.

A child became frightened by the helicopter's noise and started to scream.

Officers of the Forestry Commission and the Far North Coast County Council told the Ombudsman they had seen and been in the police helicopter while it flew close to houses.

They thought that it was unnecessary to fly in certain areas, particularly where there were people on the ground, and houses. On one occasion, the helicopter flew so low that the down-draft blew down papaw trees.

The Ombudsman, in a draft report, last year made recommendations on drug searches by police helicopters to the former Minister for Police, Mr Anderson.

They were: That the Police Department should not give approval for police helicopters to search private properties (except for search and rescue operations) at altitudes below 500 metres in cities, towns and populous areas, or 160 metres in other areas, unless authorised by warrant. Helicopters should not fly below these altitudes for any purpose not stated in the warrant.

A spokesman for Mr Anderson's successor, Mr Paciullo, said that the Minister had not seen the recommendations, but would consider them 'in due course'.

Speaking from Los Angeles last week, Mr Paciullo said that the NSW Police Force would get a $9 million air division of fixed wing planes and helicopters to help catch speeding motorists.

He said the division, operational by the end of this year, also would be used for rescue and criminal detection work.

But others have a different view: "George Orwell's novel 1984 was not far wrong: Helicopters flush out the small-time dope growers who make police statistics look good."

This is the opinion of John, a local professional man in his 30s who has been breaking the law by smoking Indian hemp since he was 17.

Part of Northern Star article 13 June 86

MAYOR'S MESSAGE
ILLEGAL BUILDINGS AMNESTY

There has been quite a good response to the Council's decision to give people who have constructed buildings anywhere in the city area without prior approval an opportunity to legalise them without penalty.

Several have come before the Council recently and every effort is being made to accommodate them. To do so is not always easy, especially where the zoning of the area prohibits a particular type of building. Some of these might need substantial alteration to gain compliance.

The important thing is, however, that where the owner comes forward before the end of June, and brings his problem to the Council to try to get a solution, there will be no prosecution for illegal building per se. Those who do NOT come forward, however, will not be protected after June 30. The Council has adopted a policy that they be prosecuted without fear or favour whenever they are detected. And of course it has several inspectors in the field all the time.

The amnesty applies to all illegal buildings, whether in town or in the country. The policy about subsequent prosecution also applies equally to both.

It is in everybody's interests, both the owner or occupier and the community at large, that buildings comply with the standards laid down. Those standards are there to protect your health and your safety.

Anyone who is aware of an illegal building on his or her property is urged to come forward and get it rectified NOW. It could prove very costly if you don't act before June 30.

V.S. 10 May 86

Regards,
BOB SCULLIN,
MAYOR

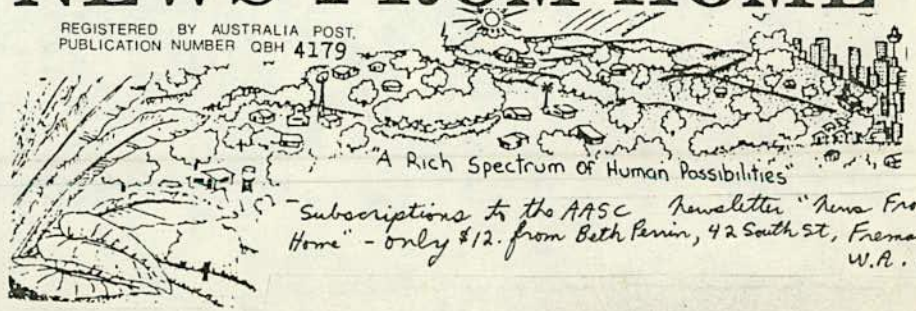
Rural Resettlement Task Force,
P.O. Box 62
Nimbin. N.S.W. 2480

We are always on the lookout for new listings for our Bibliography or short news items for this Newssheet. In general, we are only looking for material of direct relevance to Multiple Occupancy

Dave L.

NEWS FROM HOME

REGISTERED BY AUSTRALIA POST.
PUBLICATION NUMBER QBH 4179



"Subscriptions to the AASC Newsletter "News From Home" - only $12. from Beth Penin, 42 South St, Fremantle W.A. 6160

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
COURT OF APPEAL

C.A. 40854 of 2001
L&EC 40043 of 2000

DETALA PTY LTD
Appellant
BYRON COUNCIL
Respondent

In the Court below
BYRON SHIRE COUNCIL
Applicant
DETALA PTY LTD
Respondent

RESPONDENT'S ADDITIONAL SUBMISSIONS

SEVERANCE

1. The purported subdivision approval cannot be severed.

2. The following assumptions are made for the purposes of these submissions:

   (a) application for subdivision approval under Part 12 was lodged by or on behalf of Detala Pty Ltd;

   (b) it was not accompanied by owner's consent on the part of the Crown;

   (c) the application related to both Crown and the Detala land;

Filed for the Respondent by:

Wilshire Webb
379 Kent Street
SYDNEY NSW 2000
DX 13027).Sydney Market Street)

Tel;(02)9299 3311, Fax:(02)9290 2114
Ref: Ken Webber

(d) Council's approval was signified by the approval stamp on the plans submitted with the application referred to in para (a) above,

3 The plans for which an approval was sought related to the rehabilitation of an erosion gutter, partly on Crown land and partly on the Detala land, the extension of a public road on Crown land and the construction of an internal subdivision road, wholly an the Detala land. The physical works which were the subject of the purported approval were to be staged, with stage 1 to be the construction of a sediment basin. That basin was to be constructed almost wholly on the Crown land, with a small part to be located on Detala's land.

4. The appellant relies upon the letter of 22 December 1998 as the application for subdivision approval under Part 12 of the ***Local Government Act*** 1919. That letter notes that the first stage of the development works required "approval to carry out works to arrest erosion and rehabilitate Detala's land so that development may proceed" and that that work made it necessary "to rehabilitate at least part of the eroded gully on land which is the designated Crown land and other Crown land over which there is a native title claim[1]. The letter enclosed a report by Dames & Moore, consulting engineers, which is entitled "Report to Support Plans for Stage 1 Construction of Community Titles Subdivision of Lot 1DP 42428 in Portion 173 for Detala Pty Ltd[2]. The mood contains the specification for the sedimentation and run-off control basin. The report notes that;

(a) the basin will be constructed prior to commencement of construction of the road works as it provides the sediment control during further construction stages,[3]

(b) the basin will consist of a sediment and run-off control basin mainly contained within the Crown road reserve,[4]

(c) the basin had been sized to completely trap the first 9mm of runoff from the catchment, with a view to treat the runoff by removing fine sediments, thereby achieving a high standard of protection for the SEPP 14 wetland,[5]

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1 Blue AB 8/894.
2 Blue AB 8/959.
3 Blu3 AB 8/966V.
4 Blue AB 8/966G.
5 Blue AB 8/9660

(d) the basin is to be constructed of boulders placed in the basin banks as a landscaped wa11,[6] and

(e) a number of areas within the head of the gully are to be filled and rehabilitated including its western most extension on Detala's land.[7]

5. Work done on the site on 14 March 2000 to establish commencement comprised "the commencement of the construction of a footing against which the head of the sediment basin will be formed up".[8] The approved plans reflect these works and show the basin as a· continuous structure.[9] The appellant's oral evidence about how integral and interdependent the work of constructing the
retaining wall was to the construction of the basin:

> *"The retaining wall was required to hold the fill and to form the substantial consolidated fill for the headworks on the [sedimentation] Basin. ...*[10]
>
> *···we designed a sediment basin and gully rehabilitation structure ... using very large... boulders ... so what you see them is a ... depiction of the large boulders that would be forming the headworks of the gully, of the sedimentation basin*[11] *... because of the weight and the size and the diameter of the boulders, the only way to support those is with fill behind that wall...*[12]
>
> *Q. Do you have any understanding as to why the retaining wall was included in stage 1, in conjunction with the sedimentation basin?*
>
> *A. ... they were required ... for construction of the said basin,*
>
> *Q. Not just to retain the fill but to hold up the boulder wall?*
>
> *A. That's right*
>
> *... I took extreme measures... with the works that were undertaken finally on 14 March... to specify they were not to go anywhere beyond that bit of the wall, the retaining wall, that was required simply for the sedimentation basin".*[13]

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6 Blue AB 8/972E.
7 Blue AB 819721-K.
8 Blue AB 8/883K.
9 The approved plan to which the Court has been taken by the appellant at 31255R is not the plan of the works which were commenced an the subject land. That plan indicates that the stage 1 works were to be designed by others ("sediment basin (designed by others)"), and the detailed design of the sediment basin was undertaken by Dames & Moore as discussed in its report to which earlier reference was made. The plan of the sediment basin is 3/255ZE and 255ZF.
10 Black Book 1/2006I-L.
11 Black Book 1/206S-Vl-L.
12 Black Book 1/207D-F.
13 Black Book 1/208J-R.

6. Both the application and the approved plans concern the construction of a structure which straddled the private and public lands. The implementation of the subdivision was both physically and legally dependent upon the completion of that drainage structure before any further stage could be commenced. The subject land is on the side slope of a hill, It slopes to the easeast, in the direction of the erosion gutter. The gutter as reconstructed in stage 1 as a drainage work is to drain the Detala land and in particular the road which is not to be constructed until the drainage work has been completed. The works which were commenced in Match 2000 are part of a single work: to view it as a disembodied head, partially constructed on the Detala land, with neither trunk nor tail, is to adopt a perspective artificially constrained by the "commencement" works. A similar error pervades the submissions relating to the tree condition: to argue that no trees would be removed by this work is to ignore what was involved in the work, its purpose and the "work" which it was to produce, a large concrete drain capable of holding run-off from a specified storm event to achieve sedimentation of larger particles prior to the release of the waters into the downstream swamp. No conventional approach to the severance question could produce a valid residue which was not substantially different from the subject matter of the application and the approval. What would be left of the drainage works would be a wall with a concrete base performing no function relevant to the development. It would be a work unto itself.

7. Severance questions are "notoriously difficult"'.[14] The first problem is to identity that for which severance is sought. Is it the application (para 2(a) above), the approved plan (para 2(d) above) or both?

8. The first is not an instrument within s,32 of the ***Interpretation Act*** because It is not "made" under an Act in the relevant sense: see s.3(1), ***Interpretation Act***.[15] If the application is not an instrument it cannot be read down in the manner authorised by s.32 and must survive as a severed document, if at all, by reference to common law principles.

9. The approval on the other hand is analogous to a development consent. Consents have been held to be instruments within s.32.[16] It is plainly arguable that an instrument must be of a legislative character to fall within s.32. There Is a

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14 *Harrington v. Lowe*(1996) 190CLR311 at 329 per plurality,

15 *Glasson v. Parkes Rural Distributors Pty Ltd* (1984) 155CLR 234. The act is not the source of authority for the application. The source of authority for preparing the application war Detala Pty Ltd: ***Timbarra Protection Coalition Inc v, Ross Mining NL*** (1999) 46 NSWLR 55 at 65 [48] per Spigelman CJ, Mason P and Meagher JA agreeing,

difference of opinion in the Federal Court on this question.[17] It is submitted that a subdivision approval is not an instrument of a legislative character and hence is not an instrument within the meaning of s.32 of the ***Interpretation Act***; Section 3(1) of the Act requires an instrument to be "made" under an Act or an instrument made under an Act. "Make" is defined to include issue or grant; s.21. This supports a construction favouring an expansive application of s.32 to consents.[18]

10. Although a subdivision approval is like a development consent, it is not identical with it. A development consent may for certain purposes constitute the EPA Act. For example, a breach of a condition of development consent is a breach of the EPA Act.[19] A development consent is an enduring interest in land (although not proprietary).[20] The relationship between a development consent, which stipulates enforceable rules of conduct for carrying on the defined development on a particular allotment, and the making of legislation is more intimate than a subdivision approval. A development consent has the same force as a legislative enactment by dint of sub-delegated power which binds any person who seeks to use land for a purpose encompassed by the consent. The grant of consent is accompanied by attendant formality.[21]

11. Unlike a development consent, a subdivision approval does not lay dawn rules for the conduct of a particular land use but on the contrary is in the nature of a project approval which will be exhausted upon completion of the project and does not endure beyond the division of the land into parts which is effected upon registration of the plan of subdivision. It is not dear whether a subdivision approval is personal to an applicant, but even if it is not, it relates to the first stage of the process of subdivision whose completion is signified by the issue of the Clerk's certificate that the subdivider has complied with the ***Local Government Act*** 1919 in relation to the subdivision and the creation of separate marketable titles for the allotments yielded by the division of the land into parts. A subdivision approval endures for the life of the project and does not purport to bind any person other than the person to whom it is issued or, arguably, the person implementing the subdivision. There is no form for its grant (the highly

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16 ***Wechsler v. Auburn Council,*** unreported, Talbot J, S March 1997 (No. 40123 of 1996); ***MLC Properties Pty LM v, Camden Council*** (1997) 96 LGERA 52.

17 ***Australian Capital Equity Pty LM v. Beale*** (1993) 41 FCR 242; Re ***Brian Lawlor***(1978) 1 ALD 187 at 171;a difference of opinion which the Full Federal Court noticed but declined to resolve In ***Leung v. Minister for Immigration*** (1997)79 FCR400 at 410C-D.

18 ***MLC Properties*** supra at 59.

19 See ss.122 and 125, EPA Act and footnote 38 below.

20 ***Winn v. Director-General of National Parks and Wildlife & Ors*** [2001] NSWCA 13 at [4] per Spigelman CJ; at [199] per Stein JA.

21 [This footnote missing. PH]

formal procedures commence with the certification of the plan of subdivision). That is not the case with a development consent.

12. The decisions which have treated consents as instruments are therefore distinguishable, because a development consent does have, for some purposes, legislative force. Subdivision approval does not share that characteristic and is properly characterised as an administrative decision which is not in itself an instrument.

13. As will appear, the application of s.3S would not in any event save the approval from invalidity.

14. Owner's consent to the lodgment of the development application is a mandatory pre-condition to a valid oonsent,[22] and there is no, reason to suppose that any different rule would apply to subdivision approvals.[23] Indeed, the latter provision appears to have been the model for the former, and no doubt the same underlying principle which respects the owner's right to control the use of its property infuses both of them. The right to withhold consent is a power of veto, not merely a right of consultation[24] nor can it be dismissed as a mere formality,[25] It is not merely a condition precedent to a valid approval but to a valid application; unless the condition is fulfilled, no application within the meaning of s.331(1) of the ***Local Government Act*** 1919 has been submitted to Council.[26]

15. If owner's consent is a pre-condition to the lodgment of a valid application, then no question of severance can arise because here the question is a lack of power to make the application or give the approval by reason of a failure to comply

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22 It was the premise of ***North Sydney Council v. Ligon 302 Pry Ltd*** (1996) 185 CLR 470, has long been held to be so in the Land and Environment Court (see Stein JA (with whom Handley JA agreed) in ***Botany Bay City Council v. Remath, Investment Pty Ltd*** (2000) 111 LGERA 446 at 449-450) and is consistent with Handley JA's discussion of the obligatory requirements; of the former s.77 of the EPA Act in ***Helman v. Byron Shire Council*** (1995) 87 LGERA 349 in which his Honour said "Parliament has prohibited other persons from making such applications and any consent thus obtained would probably be void": at 355.8.

23 See the extensive discussion by the WA Supreme Court in ***Pacesetter Homes Pty Ltd v. State Planning Commission*** (1993)84 LGERA 71.

24 *Ligon* supra at 477.8, 478.7; ***Mulyan Pty Ltd v, Cowra Shire Council*** (1999) 105 LGERA 26 at 35 per Lloyd J.

25 *Muiyan* ibid; ***Pacesetter Homes*** supra at 85.1 per Murray J.

26 *Mulyan* ibid at 35[4]; *Remath* supra. It can of course be remedied before approval whereupon it "feeds" the application and gives it validity; *Remath* at [47] per Fitzgerald JA, Handley and Stein JJA agreeing.

with the condition precedent.[27] The legal consequence is total invalidity not partial invalidity.[28]

16. Even if the principles of statutory severance are theoretically applicable, the rules developed to guide their application would exclude severance in the circumstances of this case.

17 At common law, the presumption is that where invalidity affects an instrument, it is invalid, unless it can be saved by severance of the invalid part.[29] Textual severability (the blue pencil test) can only apply if the document, once the invalid portion is removed, contains freestanding provisions intended to operate and capable of operating independently of the ultra vires portion.[30] This does not involve any modification of the residue. What is produced must be a comprehensible document, which operates no differently to the original. The second test is one of substantial severability, that is, where the residue is different in substance to the original, then no severance is permitted. Severance is available to save the instrument, even where the text must be modified but no change can be worked to the substantial purpose and effect of the residue.[31] The question is whether severance would produce a different document "as to the subject matter dealt with".[32] The problem here is the "physical blending" as Issacs J graphically described the inextricability of provisions which cannot be severed.[33] The early rejection in Australia of the relative invalidity or reading down doctrine (of which s.32 is a species of the genus) as a common law principle of severance was recently confirmed by the High Court, and for the United Kingdom by the House of Lords.[34]

18. Let us assume that the subdivision approval is an instrument within s.32 of the ***Interpretation Act***, and that that provision extends the common law severability test by authorising the reading down of the approval to save it from invalidity.

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27 By analogy with ***Timbarra Protection Coalition Inc v. Ross Mining NL*** (1999) 46 NSWLR55: owner's consent was an essential preliminary to the determination process and hence is jurisdictional.

28 ***Darling Casino Ltd v. Minister for Planning & Anor*** (1995) 86 LGERA 186 at 207 per Pearlman J.

29 ***DPP v, Hutchinson*** [1990] 2AC783 at 819 per Lord Lowry.

30 ***Hutchinson*** supra at 804E per Lord Bridge.

31 ***Hutchinson*** supra at 811 per Lord Bridge.

32 ***R v. Commonwealth Court of Conciliation and Arbitration, Ex parte Whybrow & Co*** (1910)11 CLR 1 at 27; ***Hutchinson*** supra at 813 per Lord Bridge.

33 ***Whybrow*** supra at 54.

35 Hutchinson, supra: ***Harrington v. Lowe*** (1996)190CLR311 at 327.

The residue must not operate differently upon the persons, matters or things falling under it or in some other way produce a different result[35]

19. If an authority (perhaps a search warrant)[36] is given to an officer to collect items A, B and C, and the decision-maker could not lawfully authorise the collection of C, then the deletion of C will not cause the authority to operate any differently nor alter its substance. It merely restricts its scope, and it so operates because A, B, and C are separate items. If, however, collection of only one item was authorised, and that item comprised several parts which were interdependent, the authority could not be read down or applied distributively for some but not all of the component parts of the item. That is the case here.

20. Our view at the authorities yields the following questions:

(a) if an application for approval of these works was lodged relating solely to Detala's land, could Council have approved it, and

(b) would Council's approval be substantially different to the approval given to the plans as submitted on behalf of Detala, or operate differently upon its subject matter after severance of the public land, compared with the results produced by implementing the works in accordance with the defective approval?

If (a) is answered no or if(b) is answered yes, then no severance can lawfully be effected.

21. We respectfully submit that Council could not have lawfully approved a plan for the construction of part of a drainage work, but even if it could have done so, the work which would have been produced from its construction would be substantially different to the work approved by Council in the submitted plans. → why?

22. No lawful approval could be given because owner consent is a condition precedent, and its absence spells total invalidity.[37] In addition s.331(7) of the ***Local Government Act*** 1919 provided;

> *"Notwithstanding subsection (2), the Council shall disapprove an application where the subdivision referred to therein would, if carried out, result in a contravention of...the Environmental Flaming and Assessment*

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35 ***Bank of New South Wales v. Commonwealth*** (1948)76CLR1 at 371 per Dixon J; Coleman v. Gray (1994) 55FCR412: ***Slonae v. MacDonald Industries (Sales) Pty Ltd*** (1989) 17 NSWLR(86 at 99-101 per Cole J.

36 See Parker v Churchill(1986) 9FCR 334 at 350

37 See para 14 above.

Act 1979, whether arising in relation to that subdivision or any other development. "

It is a contravention of the EPA Act to contravene or fail to comply with a condition of development consent.[38] If an application for subdivision was lodged solely relating to the Detala land, Council was obliged to disapprove it because it would, if carried out, have resulted in a breach of the development consent. The works were to be conducted in accordance with the approved plans[39] and those plans showed that the site would drain to the gully which was to be rehabilitated "to prevent further scar and erosion and to provide filtration for stormwater run-off.[40] The drainage of subdivision land and roads is well within the purview of the subdivision decision-maker,[41] and any implementation of the subdivision which severed the head of the drainage basin from its tail would produce an approved plan not in compliance with the development consent and hence cause a breach of the EPA Act, if those works were to be implemented. In our respectful submission, this constitutes an impenetrable legal barrier to the severance argument.

23 Let us assume that s.331(7) does not prohibit the approval. Even so, the head of the basin is inextricably linked with its tail: it is, as Issacs J said in *Whybrow*, physically blended because it straddles the boundary and simply cannot function for the four-fold purpose for which consent to the drainage work was granted unless fully constructed: sedimentation basin, detention pond, erosion mitigation and drainage works.[42] It is not a case where a consent may be granted for development on one lot which cannot be implemented without a further development consent on a neighbouring lot (eg for road access). Unlike that example, in this case development consent has been granted for each of the lots on which work will be necessary to implement the subdivision, the drainage works straddled the lots (by reason of further erosion since the grant of development consent in 1995) and hence no severance is possible. The Court did not consent to, nor did Council approve, half a detention basin.

24 It does not matter which doctrine of severance is applied: none yields a result which would save the subdivision approval.

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38 See s.122(a)(i); (b)(iii); s.12S(1); and see ***Rao v. Canterbury City Council*** (2000)112 LGERA 360 for criminal contraventions and ***Sahade v. Mosman Municipal Council*** [2000] NSWCA 251 for civil breaches; the Court of Appeal has under reservation in ***Wilkie v. Blacktown City Council & Ors*** CA No. 41026 of 2001 an aspect of the holding in ***Sahade***.

39 Blue AB 2/244, 245

40 Blue AB 2/245

41 Section 333(1)(f), ***Local Government Act*** 1919

42 See paras 3-6 above.

THE REMOVAL OF TREES

25. We are invited to address a point which arose in the course of an argument put as follows:

(a) Condition 23 required the appellant to obtain an approval before it removed any trees;

(b) the "commencement" works did not involve any work on trees;

(c) the tree preservation order ("TPO") referred to in the first sentence of Condition 23 applied to heath;

(d) the reference to "tree" in the second sentence of Condition 23 might, in context, refer to the vegetation protected by the TPO including heath;

(e) therefore the appellant was in breach of Condition 23 by failing to obtain the approval of the Planning Manager for the tree plan showing the heath proposed to be removed.

26. Mr Tobias QC submitted that:

(a) the reference to "tree" in Condition 23 does not include heath but only "tree", presumably because the TPO in his words "only referred to trees exceeding 3 metres" (L25, T.150)[48]

(b) no trees were removed in the course of the commencement works";

(c) there was a factual dispute as to whether any heath had been removed by those works.

27. As to the submission by Mr Tobias in para (c) above, the best evidence of the cutting out of heath for the purpose of constructing the head of the drainage basin is supplied by the coloured photographs and plans shown on Exhibit 7 which are reproduced in the Appeal Book and were handed up during argument.[44] The second plan describes "dwarf heathland removed on portion 173 approx 8.5 metres square. Measurements by Dr Anne Clements 4.12.99"[45]. Dr Clements gave evidence and was not cross-examined on the

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43 With respect, we respond to this erroneous submission in our final footnote below,

44 Blue AB 274.

45 Blue AB 276.

accuracy of her measurements or descriptions.46 The first vegetation clearing plan submitted by Detala showed coastal heath in the area of construction of the headworks to the basin.[47] Photo 1 shows the excavated trench surrounded by "pristine dwarf heathland". Photo 5 shows the end of the trench excavation "showing mutilated dwarf heathland".[48] Mr Jack's response to this evidence did not deny that pristine dwarf heathland was removed in the area of the trench and formwork shown on photo 1. He did, however, deny that there was any heath at the time the works were undertaken immediately to the east of the formwork because that area was within the erosion gully, and no heath was taken from such of the works as were within the gully.[49] Mr, Fanning, the appellant's expert, agreed that heath was removed:

> "Q. *And heathland would have been removed to create all the trenches that we can see in that photograph,[50] wouldn't it?*
>
> A *I can't recall exactly - not all Of the trenches I would suggest, but a substantial proportion of that area."*

Dr Clements said that the trenching took place in the dwarf heathland and not in the erosion gutter (by comparing aerial photographs, her site observations and the photographs).[52] She saw the heath that had been removed, because It had been placed upslope of the works when she inspected the site.[53] It is dear that heath was removed.

28. Mr Tobias further submits (in para (b) above) that no trees were removed in the course of the "commencement" works. This submission places us at a significant disadvantage in the appeal. The short answer to it is that the expert evidence established that it was not possible to remove the heath in the course of the development works without damaging or destroying trees.[54] It was common ground between the parties, however, that the issues raised in the application and cross-claim, which depended upon whether some heathland plants were "trees", was not part of the appeal, but that if those questions were necessary to decide, they would be remitted to his Honour,His Honour declined to make any findings on the issues. At trial, experts were cross-

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46 Black Book 1/34, 2/397.
47 Blue AB3/277.
48 Blue AB3/282.
49 Blue AB 5/833L-N.
50 He was being shown Exhibit S in the Dames a Moors proceedings, which became Exhibit 7 in the Detala proceedings: the folder of photographs which we took to Court to in oral argument:
51 Black Book 1/20P-R.
52 Black Book 1/30M-31E.
53 Black Book 4/487D.
54 Clements, Blue Book 4/488U.

examined, the trial judge had the opportunity of seeing them give evidence, an attack was made upon the qualifications of one expert, and a credit attack was made on another. Exhibits, including the principal affidavit upon which the respondent relied in the Court below and books of authority on botanical science and tree identification, were not included in the Appeal Books because of the common understanding between the parties that the issue was not to be ventilated an appeal.[55]

29. It is inappropriate for this Court now to resolve factual questions concerning the matter which Mr Tobias has raised.

30. The questions of construction raised by Mr Tobias (in para (a) above) and by the Court about the second limb of condition 23 are in a different category. Those questions do not depend upon the evidence, except to the extent that the application of the preferred construction requires consideration of evidentiary material.

31. If contrary to our oral submissions condition 23 is not ambulatory, and a refers to the 1991 TPO, then it picks up and applies that TPO as it "stands in the printers copy, rather than as a validly made instrument"[56] The validity of the TPO would then be irrelevant and validity could be assumed for the purpose of determining whether the second limb of condition 23 should be construed with the first. If that is the correct analysis, then the 1991 TPO plainly extends its protection to coastal heathland of whatever height and not only to trees exceeding 3 metres. The reference to "trees" in the second limb of condition 23 must be understood as including heath, because that is how the TPO expresses it. No question arises here of Council's power to decide, as a fact, that the heath comprises trees; and there is no evidence or other material an which this Court could determine that it did so irrationally or capriciously, even if the validity of TPO was in issue, which it is not for the purposes of this argument

32. The alternative construction is that the word "tree" is not confined to trees of a certain height, but of any height. In other words, the reference to heath has the effect of removing the minimum height limit of 3 metres on trees protected by the TPO, so that its protection extends to the plants growing in the heathland which in every respect other than their height are trees. These species (oaks,

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55 For example, the Black Book records the tendering of the affidavit of Professor Derek John Anderson as Exhibit 11 and his CV is Exhibit 12: Black AB Part 2, 368. The affidavit is not reproduced.

banksias, tea-trees, bloodwoods and so on) were co-dominants and present throughout the heath and, it would be inferred, in the heathland removed by the works. There was extensive expert and photographic evidence in the Court below identifying such species, not all of it reproduced for the appeal.51 This does raise a question of fact which the parties accept may need to be. determined, if at all, an remitter and for the reasons explained above we do not address it now.

33. The respondent does not adopt the construction suggested in the preceding paragraphs, except in the alternative. It prefers the literal approach to construction and sees no warrant for departing from the express words of the condition, The somewhat convoluted alternative constructions and the uncertainty of their application demonstrate with force the preference which should be accorded to the simple, direct and clear construction of the second limb of condition 23 for which we contend. Even if the appellant's construction is correct, and only prohibits works involving tree removal, the works commenced by the appellant would have removed trees.[58] So much is common ground because they are shown on both the second tree clearing plan in the way of the drainage works and on Mr Fanning's plan submitted for the purpose of the class 1 proceedings. Despite the appellant's attempt to explain away this difficulty by asserting Fanning had included trees between 2 and 3 metres in height, many of the trees shown to be removed in the erosion gutter exceeded 3 metres in height.[59] Dr Clements conducted surveys (her spot locations C-G)[60] in the erosion gutter which recorded tree species.[61] The evidence in the Dames & Moore proceedings of the appellant's expert, Mr Leonard, was tendered in the Detala case. He said:

> *"... this tree survey was carried out because of condition 23 which basically required descriptions and location of the trees requiring removal*

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56 Brown v. Green (1951) 84 CLR 285; ***Baulkham Hills Shire Council v. Land Commission or New South Wales***(1985) 1 NSWLR 479 at 485; ***STAN Constructions Pty Ltd v. Williams***(1981) 55 ALJR 466

57 One example is at Blue Book 5/775, para6.1, Table.

58 The appellant's claim that no trees were removed by the "commencement" works invites the riposte "how would we know without a tree removal plan?" No plan was submitted to Council before the excavation work commenced in October 1999! The first plan did not even show any trees! The appellant's assertion is vigorously contested, but rather makes our point about the need to approve a proper plan before starting work.

59 See Blue Book 4/618. Trees 19, 20, 21 and 24 are all over 3 metres as are numerous others in the trunk and toe of the sedimentation basin: see Fanning's Table at 4/624. Those trees are in the centre of the drainage works: compare the "approved" plan of the stage 1 works at 3/255ZE, and para 7 of our submissions in chief.

60 Shown in plan at Blue Book 4/469 and described at Blue Book 4/487G.

61 See her Table 2 Blue Book 4/474-477.

and comments indicating the best way to remove the trees without causing any disturbances...

...the access down through the drainage line, for instance, is going to be important for removal of quite a few of the trees, where the actual drainage work is going to be carried out.[62]

Date: 23 August 2002

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62 Black Book T151.

State Environmental Planning Policy No 15—Multiple Occupancy of Rural Land

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Urban Affairs and Planning.

Minister for Urban Affairs and Planning

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State Environmental Planning Policy No 15—Multiple Occupancy of Rural Land

1 Name of Policy

This Policy is the *State Environmental Planning Policy No 15—Multiple Occupancy of Rural Land.*

2 Aims of Policy

This Policy aims:

(a) to encourage a community based and environmentally sensitive approach to rural settlement, and

(b) to enable:

(i) people to collectively own a single allotment of land and use it as their principal place of residence, and

(ii) the erection of multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment, and

(iii) the pooling of resources, particularly where low incomes are involved, to economically develop a wide range of communal rural living opportunities, including the construction of low cost buildings, and

(c) to facilitate development, preferably in a clustered style:

(i) in a manner that both protects the environment and does not create a demand for the unreasonable or uneconomic provision of public amenities or public services by the State or Commonwealth governments, a council or other public authorities, and

(ii) in a manner that does not involve subdivision, strata title or any other form of separate land title, and in a manner that does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements, and

(iii) to create opportunities for an increase in the rural population in areas that are suffering or are likely to suffer from a decline in services due to rural population loss, and

(d) to repeal *State Environmental Planning Policy No 42—Multiple Occupancy of Rural Land (Repeal)*.

3 Land to which this Policy applies

(1) This Policy applies to land within the areas specified in Schedule 1, except as provided by this clause.

(2) This Policy does not apply to land specified in Schedule 2.

4 Definitions

(1) In this Policy:

council, in relation to the carrying out of development, means the council of the area in which the development is to be carried out.

dwelling means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

ground level means the level of a site before development is carried out on the site pursuant to this Policy.

height of a building means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

home improvement area means the area of land, not exceeding 5 000 square metres, around a dwelling.

prime crop and pasture land means land within an area:

(a) identified, on a map prepared before the commencement of this Policy by or on behalf of the Director-General of Agriculture and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses, or

(b) identified, on a map prepared after the commencement of this Policy by or on behalf of the Director-General of Agriculture marked "Agricultural Land Classification Map" and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land for special agricultural uses, or

(c) certified by the Director-General of Agriculture, and notified in writing by or on behalf of the Director-General of Agriculture to the council, to be prime crop and pasture land for the purposes of this Policy.

(2) For the purposes of this Policy, the council may, in respect of development proposed to be carried out pursuant to this Policy, treat two or more dwellings as a single dwelling if it is satisfied that, having regard to the sharing of any cooking or other facilities and any other relevant matter, the dwellings comprise a single household.

5 Relationship to other planning instruments

In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before, on or after the day on which this Policy takes effect, this Policy prevails to the extent of the inconsistency.

6 Repeal of SEPP No 42

State Environmental Planning Policy No 42—Multiple Occupancy of Rural Land (Repeal) is repealed.

7 Multiple occupancy

(1) Despite any provision in an environmental planning instrument concerned with the use of land for the purposes only of a dwelling or dwellings (as the case may be) in rural or non-urban zones, development may, with the consent of the council, be carried out for the purposes of 3 or more dwellings on land to which this Policy applies within such a zone if:

(a) the land comprises a single allotment not subdivided under the *Conveyancing Act 1919* or the *Strata Titles Act 1973*, and

(b) the land has an area of not less than 10 hectares, and

(c) the height of any building on the land does not exceed 8 metres, and

(d) not more than 25 per cent of the land consists of prime crop and pasture land, and

(e) the part of the land on which any dwelling is situated is not prime crop and pasture land, and

(f) the development is not carried out of the purposes of a motel, hotel, caravan park or any other type of holiday, tourist or weekend residential accommodation, except where development for such purposes is permissible under the provisions of another environmental planning instrument in the zone, and

(g) slopes in excess of 18 degrees do not occur on more than 80 per cent of the land, and

(h) the aims of this Policy are met.

(2) The council may consent to an application made in pursuance of this clause for the carrying out of development whether or not it may consent to an application for the carrying out of that development pursuant to any other environmental planning instrument.

(3) Nothing in subclause (1) (b) is to be construed as authorising the subdivision of land for the purpose of carrying out development pursuant to this Policy.

8 Notice of development applications—advertised development

Sections 84, 85, 86, 87 (1) and 90 of the *Environmental Planning and Assessment Act 1979* (which provide for the giving of notice, and for the making and consideration of submissions, about proposed development) apply to development referred to in clause 7.

9 Matters for council to consider

(1) A council must not consent to an application made in pursuance of clause 7 unless it has taken into consideration such of the following matters as are of relevance to the development the subject of the application:

(a) the means proposed for establishing land ownership, dwelling occupancy rights, environmental and community management to ensure the aims and objectives of this Policy are met,

(b) the area or areas proposed for erection of buildings, including any proposals for the clustering of buildings,

(c) the area or areas proposed for community use (other than areas for residential accommodation and home improvement areas),

(d) the need for any proposed development for community use that is ancillary to the use of the land,

(e) the availability and standard of public road access to the land,

(f) the availability of a water supply to the land for domestic, agricultural and fire fighting purposes and, where a proposed water supply is from a river, creek, dam or other waterway, the effect upon other users of that water supply,

(g) if required by the applicant, the availability of electricity and telephone services,

(h) the availability of community facilities and services to meet the needs of the occupants of the land,

(i) whether adequate provision has been made for waste disposal from the land,

(j) the impact on the vegetation cover of the land and any measures proposed for environmental protection, site rehabilitation or reafforestation,

(k) whether the land is subject to bushfires, flooding, soil erosion or slip and, if so, the adequacy of any measures proposed to protect occupants, buildings, internal access roads, service installations, and land adjoining the development from any such hazard,

(l) the visual impact of the proposed development on the landscape,

(m) the effect of the proposed development on the present and potential use, including agricultural use, of the land and of lands in the vicinity, including the need for separation and buffers to avoid land use conflicts,

(n) whether resources of coal, sand, gravel, petroleum or other mineral or extractive deposits will be sterilised by the proposed development,

(o) the effect of the proposed development on the quality of the water resources in the vicinity,

(p) any land claims by local Aborigines and the presence of any Aboriginal relics and sites,

(q) whether the land has been identified by the council as being required for future urban or rural residential expansion,

(r) whether the development would benefit an existing village centre suffering from a declining population base or a decreasing use of the services provided in that centre.

(2) A council must not consent to an application made in pursuance of clause 7 unless it has taken into consideration a site analysis that:

(a) contains information about the site and its surrounds as described in Schedule 3, and

(b) is accompanied by a written statement explaining how the design of the proposed development has regard to the site analysis.

10 Management plan

A council must not consent to an application made in pursuance of clause 7 unless the applicant has submitted a management plan for the development that makes adequate provision for:

(a) bushfire management, and

(b) control of noxious weeds, and

(c) provision and maintenance of internal roads, water reticulation, service corridors for telephone and electricity cables and similar matters.

11 Density of development

(1) Subject to subclause (2), a council must not consent to an application made in pursuance of clause 7 for the carrying out of development on land unless the number of proposed dwellings on

the land, together with any existing dwellings on the land, does not exceed the number calculated in accordance with the formula specified in Column 2 of the Table to this clause opposite the area of the land specified in Column 1 of that Table.

(2) If the number calculated in accordance with the formula as referred to in subclause (1) includes a fraction, the number is to be rounded up to the nearest whole number in the case of a fraction of one-half or more or rounded down to the nearest whole number in the case of a fraction of less than one-half.

Table

Column 1	Column 2
Area of land	Number of dwellings where A represents the area of the land the subject of the application (measured in hectares)
Not less than 10 hectares but not more than 210 hectares	$4 + \frac{(A - 10)}{4}$
More than 210 hectares but not more than 360 hectares	$54 + \frac{(A - 210)}{6}$
More than 360 hectares	80

(3) Even if the number of proposed dwellings on land the subject of an application made in pursuance of clause 7 together with any existing dwellings on the land does not exceed the maximum number of dwellings permitted by subclause (1), the council must not consent to the application if those dwellings are so designed that they could, in the opinion of the council, reasonably accommodate in total more people than the number calculated by multiplying that maximum number of dwelling by 4.

12 Subdivision prohibited

(1) If development is carried out on land pursuant to this Policy, the issue of a certificate of the general manager of a council, under the *Local Government Act 1919*, or of a council's certificate under the *Strata Titles Act 1973*, required for the subdivision of the land is prohibited.

(2) Subclause (1) does not apply with respect to the subdivision of land for the purpose of any one or more of the following:

(a) widening a public road,

(b) making an adjustment to a boundary between allotments, being an adjustment that does not involve the creation of any additional allotment,

(c) rectifying an encroachment upon an allotment,

(d) creating a public reserve,

(e) consolidating allotments,

(f) excising from an allotment land that is, or is intended to be, used for public purposes, including drainage purposes, bush fire brigade or other rescue service purposes or public conveniences.

13 Monitoring of applications

If a council receives an application made in pursuance of clause 7, the council must, within 30 days of determining the application, forward a copy of the application to the Secretary together with a copy of the notice of the determination of the application.

14 Suspension of certain laws

(1) For the purpose of enabling development to be carried out in accordance with this Policy or in accordance with a consent granted under the *Environmental Planning and Assessment Act 1979* in relation to development carried out in accordance with this Policy:

(a) section 37 of the *Strata Titles Act 1973*, and

(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of land for certain purposes,

to the extent necessary to serve that purpose, does not apply to the development.

(2) Pursuant to section 28 of the *Environmental Planning and Assessment Act 1979*, before the making of this clause:

(a) the Governor approved of subclause (1), and

(b) the Minister for the time being administering the provision of the *Strata Titles Act 1973* referred to in subclause (1) concurred in writing in the recommendation for the approval of the Governor of that subclause.

Schedule 1 Land to which this Policy applies

(Clause 3)

Armidale
Ballina
Barraba
Bathurst
Bega Valley
Bellingen
Bingara
Blayney
Bombala
Casino
City of Greater Cessnock
City of Greater Lithgow
City of Maitland
City of Shoalhaven
Coffs Harbour
Cooma-Monaro
Copmanhurst
Cowra
Dumaresq
Dungog
Eurobodalla
Evans
Glen Innes
Gloucester
Goulburn
Grafton
Great Lakes
Greater Taree
Guyra
Inverell
Kempsey
Kyogle
Lake Macquarie
Lismore
Maclean
Manilla
Merriwa
Mudgee
Mulwaree
Murrurundi
Muswellbrook
Nundle
Nymboida
Oberon
Orange
Parry
Port Stephens
Quirindi
Richmond River
Rylstone
Scone
Singleton
Tallaganda
Tamworth
Tenterfield
Tweed
Ulmarra
Uralla
Walcha
Yallaroi

Schedule 2 Specified land to which this Policy does not apply

(Clause 3)

Land that is a national park, historic site, State recreation area, nature reserve, State game reserve, karst conservation reserve, wilderness area, Aboriginal area, protected archaeological area, wildlife refuge, wildlife management area, land to which a conservation agreement relates or Aboriginal place, within the meaning of the *National Parks and Wildlife Act 1974*.

Land to which a wilderness protection agreement under the *Wilderness Act 1987* relates.

Land that is a reserve within the meaning of the *Crown Lands Act 1989*.

Land that is subject to the *Western Lands Act 1901*.

Land that is a State forest, flora reserve or timber reserve within the meaning of the *Forestry Act 1916*.

Land that, under an environmental planning instrument, is within an area or zone (within the meaning of that instrument) identified in that instrument by the description:

(a) Coastal lands acquisition, or

(b) Coastal lands protection, or

(c) Conservation, or

(d) Escarpment, or

(e) Environment protection, or

(f) Environmental protection, or

(g) Open space, or

(h) Rural environmental protection, or

(i) Scenic, or

(j) Scenic protection, or

(k) Water catchment, or

(l) Proposed national park,

or identified in that instrument by a word or words cognate with any word or words used in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) or by a description including a word or words so used and any other word or words.

Land to which *Eurobodalla Rural Local Environmental Plan 1987* applies.

Schedule 3 Site analysis

(Clause 9 (2) (a))

The following information, where appropriate, is to be shown in a site analysis:

With regard to the site:

- site dimensions and site area,
- spot levels, contours and north point,
- watercourses,
- natural drainage,
- orientation, micro climates, significant noise sources,
- prevailing winds,
- easements for drainage services,
- location of buildings and other structures,
- indicative footprint of the proposed buildings,
- location of fences, boundaries and any other notable features (natural or historical),
- any areas of the land to be used for development other than for dwellings,
- heritage features, including archaeology,
- vegetated areas requiring environmental protection or areas where rehabilitation or reafforestation will be carried out,
- any part of the land that is subject to a risk of flooding, bush fire, landslip or erosion or any other physical constraint to development of the land in accordance with this Policy,
- views to and from the site,
- identification of previous use and any contaminated soils or filled areas,
- any part of the land that is prime crop and pasture land,
- source and capacity of any water supply, electricity, telephone and waste disposal systems for the dwellings,
- proposed access from a public road to the area or areas in which the dwellings are to be situated.

With regard to the land surrounding the site:

- heritage significance of surrounding buildings and landscape,
- characteristics of any adjacent public land,
- directions and distances to local shops, schools, public transport, parks and community facilities.

Interview with Bob Carr, (then Minister for Planning in the Wran Government) **by Graham Irvine** on Saturday 13 May 1985, following a meeting of the ***Home Builders Association*** at ***Bodhi Farm*** MO in connection with the introduction of ***State Environmental Planning Policy - 15*** for "Multiple Occupancy".

Bob Carr was accompanied by a Secretary, a Ministerial Advisor and David Kanaley, then employed by the Department of Planning, Grafton Office . There were in all, about a dozen people present at this meeting.

This meeting took place in Mac Nicholson's house (now occupied by John Revington). Graham Irvine is a member of the *Moondani* M.O. Community in Nimbin and is an ABC freelance Journalist.

Transcribed and edited by Peter Hamilton 12.1.2003 from tape held in the **Rainbow Archive**.

.....

Irvine: "When will the new ***State Environmental Planning Policy*** **Number 15**, (SEPP-15) come into effect?"

Carr: "SEPP-15 should be placed on public exhibition within a couple of weeks and will be on public exhibition for three months to enable people to comment on it before I sign it. It will then be Gazetted and hence a ***State Policy***."

Irvine "In rural areas on the North Coast, Councils are often a hindrance rather than a help to your Department. Under the proposed new legislation will the balance of power change between Local Government and the State?"

Carr: "We are giving Council's more power on matters of routine rezonings but on the other hand we are giving residents right of appeal to the ***Land and Environment Court*** which is something that they have not got at the present time when a Council undertakes a rezoning to which there is community objection."

It also provided that where a resident doesn't like a rezoning proposal by the Council, the resident can have a Commission of Inquiry examine the case before the Council makes its decision.

Irvine: "What did you take out of this meeting today?"

Carr: "I have come away with the urgency of bringing down the Draft Policy on MO and also a strong impression of the positive contribution that MO's can make to environmentally sound practices.

I'd like to think that they are the way to the future for much of NSW and that what's happening now, will be in the history books in one hundred and two hundred years time, as an example of people coming together and pioneering a much more responsible approach to land use in our continent."

Irvine: "What concrete support will your Department be giving to MO's?"

Carr: "We believe that SEPP-15 will enable the establishment of new MO's and will assist those that have already established."

Irvine: "Thanks Bob for talking to us today, please come again soon."

Carr: "It is marvelous to be here and I look forward to coming again whenever I can get the chance."

End of interview.

Parcom243

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Our Reference: G93/00210

15 OCT 2001

Dear Mr Doolan

Thank your for your letter of 6 August 2001 requesting clarification of requirements in relation to the lodgement of a development application under State Environmental Planning Policy No 15 for a rural landsharing community development.

In July 1998, the Environmental Planning and Assessment Act 1979 (the Act) was amended to incorporate construction and related provisions into the Act. The result of this amendment was to remove the need for a building permit and incorporate such provisions into the development application and the resulting consent. To allow consideration of the total development, section 50 of the Environmental Planning and Assessment Regulation 1980, requires certain information to be lodged with a development application including information specified in Part 1 of Schedule 1. Such information under section 3 of that part includes:

- floor plans of any proposed building showing layout, partitioning, room sizes and intended uses of each part of the building; and
- elevations and sections showing proposed external finishes and heights of any proposed buildings.

It would appear that Lismore Council's new approach reflects the recent amendments to the Act. To address your client's concerns, where it is not able to provide details of all houses to be erected on the land, it should consider and canvas with Council the possibility of undertaking a staged development under section 80(4) of the Act. This could require further development applications to be lodged with Council for further stages of the development, such as future houses.

I trust this is of assistance to you.

Yours sincerely

Malcolm Imrie
Assistant Director
(North Coast)

Planning for a better environment, jobs and livable communities

PAN COM WORKSHOP SAT. 9TH SEPT 1999, DHARMANANDA COMMUNITY, TERANIA CREEK

LEGAL ASPECTS OF INTENTIONAL COMMUNITIES

I have been asked to speak with you today on various legal aspects of forming and maintaining intentional communities in Australia.

My own connection with IC's goes back to 1973 when I became one of the first shareholders in the oldest and largest of all IC's – the Tuntable Falls Co-ordination Co-op at Nimbin.

Following that I was briefly a Dharmananda resident and later worked with the founders of Bodhi Farm community up here on the ridge above us.

After returning from overseas I joined one of the oldest IC's in NSW, "Moondani", where I still live.

I have been quite active on the executive of the Pan Community Council for some years now and have been part of delegations and submissions to government Ministers leading to the re-instatement of the NSW State Environmental Planning Policy on Rural Landsharing Communities.

My legal background began at Melbourne University Law School but I never graduated and it was not until 1995 that I graduated with an Honours Law degree from Lismore's Southern Cross University where I submitted a thesis on Multiple Occupancy Communities in Australia.

Since graduating I have worked for the Aboriginal Legal Service, the Northern Rivers Community Legal Centre and in private practice in Mullumbimby, Murwillumbah and on the Gold Coast and am presently running a practice at Nimbin.

Over this time I have had various IC clients and am currently acting for several communities.

However, before moving on to the substantive part of the topic I do want to stress that I do NOT hold myself out to be an expert on IC law which straddles several very

complex and unclear areas of both common law and statute. In a session such as this I am unable to take your instructions in order to give any detailed advice and so you rely on what I say at your own risk and I can only stress the importance of obtaining detailed legal advice from your own solicitor which is tailor-made to your own situation.

NSW is the only state to legislatively recognise IC's, which are called Rural Landsharing Communities in SEPP 15 under the Environmental Planning & Assessment Act 1979.

Some states such as Tasmania and South Australia deal with IC's on a local government level whilst others like Victoria and Queensland have drawn up legislation similar to NSW's Community Land Development Act 1989 and Western Aust. is apparently considering its own legislation to cover IC's.

Whilst de facto IC's exist in every state I will confine my remarks to NSW as this is where IC law has developed furthest.

<u>Why is a legal structure necessary?</u>

The historical models for today's IC's tend to come from long-established tribal societies. But whereas these communities evolved over many generations, thus allowing them to progressively evolve principles and behavioural norms which enabled them to establish the rules of the community, today's IC's do not have the luxury of such extended time and so must impose rules from the start.

Some communards still adopt the position that love and goodwill will obviate the need for rules, which they see as antithetical to their self-styled anarchist stance. However the experience in this area, after 20 years of IC's, is that idealism does not usually survive the turnover of the initial members and leaving important matters of peoples' rights up to the vagaries of unwritten understandings is a recipe for disaster. Moreover there is no contradiction between an anarchist position and formal rules.

On the other hand an appropriate legal structure will regularise important communal issues such as allocation of areas for individual and communal living and working; protection of private and communal assets; rentals and sales of interests; decision-making and discipline on the community and the allocation of assets following death of members or dissolution of the community.

Types of IC Legal Structures

1.Strata Title

Although there is one example of this legislation being used for an IC in this area, the consensus among its members seems to be that they find the structure unduly restrictive and inconvenient. The Strata Titles Act was intended to apply to high-rise flats and not broad acre communities. However it is possible to structure an IC so that each member has an individual title over their house and curtilage, whilst contributing in cash or kind to the body corporate which is responsible for overall supervision and management of the IC.

2. Community Title

This law enables de facto subdivision of land into separate lots with their own title held amongst common property. The group which initially buys the land can thus retain control over common lands and internal roads rather than have that control pass to the local council.

But locally, councils have demanded from these communities much the same standards of development as those which are required of formal subdivisions which results in very substantial set-up costs, usually passed on to individual buyers of blocks. The upshot can be that block holders end up paying virtually freehold prices for their lots.

An advantage of CT is that it enables a very wide range of possible internal arrangements concerning e.g. communal facilities, rules re ideology, farming practices, conservation, pets, building standards etc..

Yet the ideology of this legislation, being largely developer-driven, militates against the development of a community ethos in that it promotes the interests of the individual lot holders at the expense of the community. Unless this is catered for in the internal regulation of the IC it can lead to the overtaking of the community by speculators whose interests lie in profit-taking rather than the establishment of a genuine community.

3. Company Structures

Companies are perhaps the most suitable structures for aspiring IC's because of their ease of set up, flexibility and limited liability of members for any debts of the

company itself. Unlike CT structures they can be set up for as little as about $1500.00, with annual company returns of about $200.

Possible pitfalls include the danger that unless restraints are put in place governing share transfers and the price of shares and improvements, normal market forces may operate such that the IC has little control over who buys into the community with a consequent loss of communal identity and functions.

4. Co-operative Structures

In ideological terms co-ops are probably the most suitable vehicles for the formation of an IC. They are ideally democratic, self-help organisations which exist to provide services to members rather than profits and thus lend themselves to the purpose of setting up an IC.

Under the 1993 NSW Co-operatives Act the powers and duties of co-ops are potentially wide and detailed and can allow for the operation of businesses, buying groups and other activities.

A particular advantage of the co-op structure is the comprehensive safety net provided by the Act which covers common problems which may arise, such as disputes between members and liabilities of the co-op

5. Tenants-in- Common Structures

This structure enables a group of people to buy land together but also obtain separate title, entitling them to a nominated proportion of shares. All tic's are entitled to use all of the land and to gain their proportion of any rents over it but they do not have any entitlement to possession of any particular part of the property, though they are empowered to lease parts of it for up to 5 years (renewable).

The land can only be sold or mortgaged with the agreement of all tic's and any structures erected belong equally to all. The inherent danger here is that if such agreement cannot be arrived at, a court may order the sale or partition of the property. Although members can make internal agreements between themselves they cannot override the above restrictions relating to the land or fixtures themselves.

6. Joint Tenancy Structures

This structure is similar to Tenancy-in-Common except that on the death of one party their interest passes to the other/s. Generally this structure could not be recommended for aspiring IC's.

7. Trust Structures

Under this structure a person, group or company can hold the legal title over land for the benefit of others (the beneficiaries). Any change in the trustees requires a change to the Certificate of Title over the land held with consequent legal and registration costs.

A particular danger of this structure may be that unless the trustee/s are a part of the IC and living on the land they may be or become distant from the ideals and needs of those living there and this could cause legal problems as they have control over the trust property.

Recent changes to the law mean that many of the financial advantages of trusts relating to distribution of trust income and tax rates no longer favour trusts over companies and other legal structures.

8. Unit Trust Structures

In the past this form of structure has been used to overcome the prohibition against subdivision but the ways in which they have attempted to achieve this are of very dubious legality and may well not survive a challenge in the courts.

Under this structure the community's land is held in trust by a company from which shareholders hold leases over their blocks for periods of less than 5 years which are

theoretically renewable. They are relatively expensive to set up and were never designed for use by IC's.

9. Incorporated Association Structures

It is possible for a group to set up an Association to hold land providing it does not engage in profit-making or trading. However it makes no provision for individuals to sell their interests in the property unless members have some arrangement whereby they lend money to the Association on terms which satisfactorily cover their financial interests. Although such Associations are relatively simple and cheap to set up and grant limited liability for individuals, the capacity to sue and perpetual succession they were not intended for the purposes of IC's and may be disallowed by the state authorities for this purpose.

10. Extended Family Structures

Some years ago a case in NSW established that "family" did not have to constitute blood relations but can be made up of unrelated individuals provided that they all eat together and demonstrate other aspects of family life. Council planning instruments provide that a family home need not be just one structure but may consist of several

detached but physically related buildings as long as the separate buildings do not have separate kitchens or bathrooms

However such structures have not, to my knowledge, ever been tried for rural landsharing communities and confer no legal rights on family members, such that there is no easy way for individual members to recoup any money or "sweat equity" they may have contributed in the event of them wanting to leave.

In conclusion then, if forced to choose which of these structures is generally the most suitable for IC's, my experience suggests that companies are likely to best fit the bill where the number of intending communards is less than, say, 10. For larger groups the co-op structure is likely to be more suitable.

However my experience also suggests that, above all, the legal structure chosen is only as good as the people constituting it so that an internally cohesive group always has a better chance of making an IC work almost regardless of the IC" legal structure. In contrast no legal structure will protect your community from dispute and expense if the communards are not of like mind and interests. This suggests that it is best to gather the foundation group together first and find the land you want once you are confident in the ability of all the members to work and live together, rather than the

other way around. This process is facilitated by the common adoption of some ideological, political or spiritual principles by the foundation group which has the effect of keeping the group together and laying down universally agreed principles of living together.

Finally, let me say that despite all the potential pitfalls, I would recommend IC's as being the best way for like-minded people to live together in sustainable harmony with consequent benefits for the members and for the planet generally.

The Multiple Occupancy Residents Survey:

Results and Commentary

In the week of 17th to 24th July 1995 members of NSW MO's were surveyed by telephone by the writer.

The survey interview schedule is at Appendix A.

The question forms were used alternately, i.e. the first respondent would be asked "Do you agree..." whilst the next would be asked "Do you disagree...." This was done to eliminate any suggestibility associated with the "response set" phenomenon.

The MO's represented comprised 40 from the North Coast region, 9 from the Bellingen area and one from the Parry Shire, near Tamworth. Separate analysis of the two main regions revealed no significant discrepancies in responses.

Question one demonstrated overwhelming condemnation of the decision to repeal SEPP 15 and support for its reinstatement. Most comments stressed its importance as the only instrument enabling low-cost rural housing, while others felt that MO's are an environmentally and socially responsible land-

use; that a SEPP is necessary to prevent councils breaking MO's unfairly and for state wide consistency of policy.

Question 2 was unanimously answered in that all respondents wanted enablement of low-cost housing as an aim in a new SEPP. When asked why most pointed to the difficulty for low income groups, particularly young people and single parents of affording their own rural home. Others felt that provision of low-cost housing was one of the major achievements of SEPP 15, or that it encouraged efficient and ecologically responsible use of resources; or that it was essential to retain MO land use as most members cannot qualify for housing loans; or that it encouraged reverse migration from cities to rural areas.

Question 3 revealed that half those surveyed were opposed to subdivision; just over one-third supported it and some 16% weren't sure or did not know. It should be noted that no attempt was made by the interviewer to explain the implications of allowing subdivision on MO's in terms of the continued coherence and functioning of the MO community. The "anti" comments pointed to subdivision on MO's as a contradiction in terms; the dangers of opening MO's to exploitation by developers; the increase in MO house and land prices and the dangers of subdivision undermining the integrity of the community. The pro-subdivision respondents spoke of greater security; availability to obtain housing loans; the effect that lack of a title has in frightening people away from MO's. Several people mentioned Community Title or Strata Title as an alternative to subdivision.

Question 4 found respondents fairly evenly split between those who had seen or foresaw an effect on their MO from SEPP 15's abolition (37.5%) and those not (45%), with the remainder undecided. Comments from those who believed their MO's had been and would be unaffected were mainly that repeal would not affect them because their community was full and approved whilst those seeing an affect talked of making it harder to sell shares without further house sites available or because prices would increase; less legal security; the possible effect on divorce and wills property settlements; their inability to cater for their children's' future housing; the alienation from government experienced when SEPP 15 was abandoned; prevention of future development and the disadvantages of having to rush preparation of DA's for more sites before abolition and now having to develop these within two years when they are not yet needed.

Question 5 found respondents overwhelmingly against individual householders on MO's selling their sites or houses without the approval of other members of the MO. Most comments emphasised that community control over member intake is a fundamental principle of MO's and that newcomers know of this when they join; that it was necessary to have members whom you can trust and work with as members live closely with oneanother and must be compatible to maintain the feeling and spirit of community; that otherwise developments may gain control and MO's become like suburbs. The few who thought otherwise mentioned that there

are circumstances where people have to sell regardless of the community and two others spoke of individual rights.

Question 6 elicited a variety of suggestions for improvements on SEPP 15. The more common were the need for a new step to legalise and protect MO's; a different system of rating for MO's; a way to prevent councils' unreasonable consent conditions; the need to enable housing loans; more flexibility of the SEPP in adopting to different types of MO's such as those for the unemployed or for more middle-class people; the need to prevent speculative development and the need for model provisions for internal community rules. Other interesting suggestions included clarification of MO liability in the event of accident, death or divorce; the need to monitor councils' dealings with MO's; the need to take into account the nature of the land under the SEPP density formula; reform of land tenure legislation to adapt it to MO's; repeal of the prohibition of MO's on prime agricultural land; the mandating of ecologically responsible land management; and the suggestion that leases be available on MO's as an affordable type of Community Title.

Conclusions

It is clear that there is overwhelming support for a MO SEPP which has as one of its aims the enabling of low-cost rural housing. Substantial numbers had been, or think they will be, adversely affected by SEPP 15's repeal. Again an overwhelming majority want community approval of incoming members and this also came out in their suggestions for change to the MO planning instrument.

Although there was widespread ignorance about the details of MO law, the proportion of "don't know" responses indicates a generally high level of awareness of the major MO issues. As the MO residents saw them, these were issues relating to low-cost housing; the need for more co-operative, less money-driven lifestyles; the need to protect MO's from speculators and councils; different rating systems; the need for legally enforceable community rules; and needs for community control over incoming members and for housing finance.

FAX DOCUMENT FROM PETER HAMILTON

1/50 Paterson Street, Byron Bay, 2481 (02) 6685 8648 (F/T) email: peterh@nor.com.au

TO Glenn Irving

FAX No: ..... DATE: 29-8-03

Number of pages (including this sheet): 2

SUBJECT: "Deductible Gift" provisions for RAA

COMMENTS

Herewith is discussed particulars of the above for your consideration for inclusion in RAA Article.

Regards

Peter

Nimbin Aquarius Foundation Inc.,
P.O. Box 12 Nimbin 2480
15th August 2003

NOTICE OF ANNUAL GENERAL MEETING

Please take note of A.G.M. of Nimbin Aquarius Foundation Inc. to be held
Date: 11a.m. on Monday 1st September 2003
Venue: Comschool Room, Nimbin Community Centre

Business to be considered:

i) confirmation of previous minutes
ii) receive reports
iii) election of office-bearers
iv) Special resolution: That we include Public Fund clauses 1-5 (see copy below) in our Rules of Association to allow N.A.F.I. to become a Tax Deductible Gift Recipient.

We need a quorum to consider these matters so please try to come.

The Committee, N.A.F.I.
Ph: 6689 1938

Public Fund

(1) Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Association and will only be used to further the Association's objects. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

(2) The fund will be administered by a management committee or a subcommittee of the management, a majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of .....

(3) No monies/assets in this fund will be distributed to members or office bearers of the Association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

(4) If upon the winding up or dissolution of the public fund, there remains after satisfaction of all its debts and liabilities, and property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997* (the Act) and listed on the Register of Cultural Organisations maintained under the Act.

(5) Any proposed amendments or alterations to provisions for the public fund will be notified to the Department responsible for the administration of the Register of Cultural Organisations to assess the effect of any amendments on the public fund's continuing deductible gift recipient status.

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Office of Fair Trading
NSW Consumer Protection Agency ABN 54 625 095 406

Application for Incorporation of Association

Associations Incorporation Act, 1984
Section 9

FORM 1

PLEASE COMPLETE USING BLOCK LETTERS

N2242777

FEE $94 (GST Free)

I, GRAHAM OLIVER IRVINE of 199 FALLS ROAD NIMBIN Postcode 2480
Fiull name of applicant *Residential address of applicant*

Apply to incorporate AQUARIAN ~~RAINBOW~~ ARCHIVE Incorporated
under the provisions of the Associations Incorporation Act, 1984.
The above name is reserved in accordance with the Act.
The reservation number is _____ and the expiry date of the reservation is _____

This is: ☑ a new association, or ☐ an association forming from an unincorporated group known as:

The principal place of administration of the Association will be: 199 FALLS ROAD, NIMBIN
Postcode: 2480
address

The Association will adopt: ☑ Model Rules ☐ Model Rules with changes ☐ Own Rules
You must include a copy of the association's rules if you make changes to the model rules or adopt your own rules

The objects of the Association will be: See attached Appendix A.

The principal activities of the Association will be: The pursuit of the Association's objectives, by means of research + publicity.

The assets, liabilities, annual income and expenditure of the Association are estimated to be:

Income: c$5,000 Assets: c.$5,000

Expenditure: c. $4,000 Liabilities: nil.

The sources of the income of the Association will be from: Donations + grants

The financial year of the Association will end on: 30th June.
If you do not nominate a date, we will assume the financial year ends on 30 June

LISMORE
DEPT OF FAIR TRADING
13 FEB 2004
RECEIVED

Lodging Party: Provide the name and address of person/corporation lodging this application
Graham Irvine, 199 Falls Rd, Nimbin

P/Code: 2480 Telephone: 0266 891 666

AssocF1 July 2002 AP226A 06/03

FORM BM1AA

How many paid employees will the Association have? None

The person or organisations with which the Association will deal are: Donors, researchers, archivists, librarians

Is the Association registered as a charity or exempt from registration as a charity under the Charitable Fundraising Act, 1991 or has an application for registratrion or exemption been made? ☐ Yes ☑ No

Is a person, holding any property, other than in trust, for and on behalf of the Association? ☐ Yes ☑ No

If Yes, please attach a statement giving a description and approximate value of the property, and the name and address of the person holding that property.

Are there any mortgages, charges or other securities of any description affecting any property of the Association? ☐ Yes ☑ No

If Yes, please attach a statement giving a description of the mortgage or other security, a description of the property affected, the outstanding amount of the mortgage or security at the date of application and the name and address of the mortgage or security holder.

Statement under the Privacy and Personal Information Protection Act, 1998:

The applicant:

1. Authorises the Office of Fair Trading to make any enquiries and to receive and disclose any information which is relevant to the applicant's initial and ongoing eligibility to hold this registration.
2. Acknowledges that information will be placed on a register open to the public in accordance with the Associations Incorporation Act, 1984,
3. Accepts that failure to supply information required on this application form may delay the processing of the application,
4. Has a right to seek access to and correction of information supplied.

Statement by Applicant

I, of

- Am authorised to apply for the incorporation of the above named association
- Confirm that the rules of the association accompanying this application comply with the requirements of the Associations Incorporation Act, 1984 by providing for those matters specified in Schedule 1.
- Have placed an identifying mark on each annexure to this application, and the pages of each annexure are numbered consecutively
- Have read and understand the Statement under the Privacy and Personal Information Protection Act, 1998.

And make the following **Statutory Declaration**

I solemnly and sincerely declare that:

- The particulars contained within this application are true,
- The rules of the association signed by me and accompanying this application are a true copy of the document of which it purports to be a copy.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

Subscribed and declared by me at Lismore this 13th day of Feb 2004

G C Irvine before me Justice of the Peace

Signature of applicant *Signature of Justice of the Peace*

Name of AApplicant G.C. IRVINE *Name of Justice of the Peace* Rowan Bruce Brantley

Enquiries
Enquiries relating to the completion of this form should be directed to the Office of Fair Trading, Registry of Co-operatives & Associations on (02) 6333 1400 or freecall 1800 502 042.

Lodging this Document
You may lodge this form in person at any of the Office's Fair Trading Centres. For the address of your nearest Fair Trading Centre, please telephone 133 220. You may also lodge this document by mail addressed Office of Fair Trading, Registry of Co-operatives & Associations, PO Box 22, BATHURST NSW 2795.

Appendix A

AQUARIAN
~~RAINBOW~~ ARCHIVE INCORPORATED ASSOCIATION

Objectives

1. To provide a repository of collected materials relevant to the cultural impact o the new settler movement in the Rainbow Region, (comprising all council areas from Bellingen to the Queensland Border and west to Kyogle) and for these materials to be collected, preserved and made available to students and scholar for research, exhibition and related uses.

2. To seek funds from heritage,library and other relevant sources to further the aims of 1. above.

3. To encourage individual holders of relevant archival materials to either depos them with the Archive or arrange to bequeath them in their will or, in the case of business entities, to donate same upon the winding up or termination of the leg entity.

4. To carry on such other activities or take such other actions as may assist the achievement of the abovementioned objectives.

Yahoo! Movies
- What's on at your local cinema?

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To learn more about how we use your information, see our Privacy Policy

RAINBOW ARCHIVE INCORPORATED ASSOCIATION

Objectives

1. To provide a repository of collected materials relevant to the cultural impact o the new settler movement in the Rainbow Region, (comprising all council areas from Bellingen to the Queensland Border and west to Kyogle) and for these materials to be collected, preserved and made available to students and scholar for research, exhibition and related uses.

2. To seek funds from heritage,library and other relevant sources to further the aims of 1. above.

For inclusion in Rainbow Archive bc.

We're keen to canvass your opinion on t most suitable name for t archive
So please tick t box beside yr. preferred choice or write in yr. o' name below.

Option 1: Rainbow Archive
" 2: " Region Archive
" 3: Alternative Lifestyle Archive
" 4: PanArch.
→ " 5: The Aquarian ~~Settlers~~ Archive

Peter Hamilton

From: "Peter Hamilton" <peterh@nor.com.au>
To: "Paul Brunton" <pbrunton@sl.nsw.gov.au>
Cc: "Pip Wilson" <almanac@acay.com.au>
Sent: Tuesday, 9 December 2003 12:48 PM
Attach: Pancom269 Bacground to MO.doc; RAA24 Belonging SCU Flyer.doc
Subject: Archiving in the Rainbow Region

Dear Paul,

Please see Attachment PC269 for background information of Pan Community Council.

As discussed, herewith extract from an email receive from Fiona Martin:-

(The ABC Radio National) ... programme, "Life Matters" has just told us they will be re-playing the series
(Re-Imagining Utopia") from December 25th onwards, every Thursday for 6 weeks sometime between 9am and 10am. For the occasion we are overhauling the website http://www.abc.net.au/rn/utopias and adding new material. This will include Countercycle, a history of ideas associated with Australia's intentional communities; a series of brief interviews with new communards; and a catalogue of quotations summarising the significant changes people have noticed on their communities in the last 30 years or so. These updates will be uploaded in a couple of weeks.

If you have time please leave a message in the guestbook "Your Stories" so the ABC people know what you think of the site.

In even better news, the overall project - radio programs and website - won the University's Vice Chancellor's award for excellence in research and scholarship. Just under half of the $10,000 prize money will go to help set up the Rainbow Archives, an attempt to collect and catalogue materials relating to post-Aquarian social movements in the Northern Rivers region. The rest will go to further research projects, books, conference fees etc for the team members who pulled this together. Your enthusiasm and generosity made this possible. Thanks for trusting 'the media' one more time.

best wishes,
Fiona

Fiona Martin
Lecturer in Journalism and Media Production
School of Arts, Southern Cross University
PO Box 157, Lismore, NSW, 2480 Australia

PTO

Phone: +61 2 6620 3126
Fax: +61 2 6622 1683
Email: fmartin@scu.edu.au

In Attachment RAA24 is the Flyer for the recent publication by the Southern Cross University Press, "Belonging in the Rainbow region". See in particular the "Introduction" by Prof. Helen Wilson on an overview of the present interests in the cultural impact of the Intentionsl Communities in this region.

Kind regards

Peter Hamilton

RAINBOW ARCHIVE ASSOCIATION INTERIM EMAIL LIST AS AT 9.3.2003

Arthur Pike, artpike@nimnet.asn.au

Bill Metcalf w.metcalf@mailbox.gu.edu.au

Boyd Warren boyd@byronit.com

Chris Dean cdean@hotkey.net.au

Chris Dean cdean@thursdayplantation.com

Colin James fell@arch.usyd.edu.au

Dave Yarnall yarnall@lis.net.au Rainbow

David Kemp dnkemp@telstra.com

David Spain dspain@spains.com.au

Denis Fulford fully@mullum.com.au

Diana Roberts dianar@nor.com.au Pimpuna

Dorin Hart dorinhart@hotmail.com

Dudley Leggett sri@nrg.com.au

Eddie Buivids buivids@dingoblue.net

Fiona Martin fmartin@scu.edu.au

Gloria Constine gloriaconstine@hotmail.com Co-ord. Co-op.

Graham Irvine grairv@yahoo.com.au

Hugh/Nan Nicholson terania@nrg.com.au

Jan Barham jbarham@nor.com.au

Jan Oliver ohliver@bigpond.com.au

Janelle Saffin (Lismore) jasaffin@nor.com.au

Jill Jordan jjordan@sun.big.net.au

Nona Harvey nona@harvey.dk, Toorumkee Pastoral Co, Kempsey 65628004

John Seed jseed@ozemail.com.au Jeelunga, McLelland Rd Nimbin

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Lisa Yeats annelisa@nimnet.asn.au

Paul Joseph pj@rainbowregion.com.au

Paul Tait gaiafilm@mullum.com.au

? Peach Darval peachdarvall@hotmail.com

Peter Cock Peter.Cock@arts.monash.edu.au

Peter Cuming team@sustainablefutures.com.au

Peter Hamilton peterh@nor.com.au

Pip Wilson almanac@acay.com.au

Rhonda Ellis rellis@scu.edu.au

Rob Doolan balanced@lis.net.au Joegeroo

Robin Buckley robin@computer.org

Simon Cough simonclo@nor.com.au Dhammananda

Stuart Anderson stuart@nor.com.au Bodhi

Tein McDonald Teinm@ozemail.com.au

Terri Nicholson terrinicholson@hotmail.com

Veda Turner parijat@wellness.net.au

Warwick Fisher wfisher@scu.edu.au

xxxxx

NCOSS News, August 2003

Review of Associations Incorporation Act 1984

by Liz Priestly

Recently the Office of Fair Trading conducted a review into the Associations Incorporation Act 1984, and NCOSS, who along with many other organisations submitted a response to that review.

The issues highlighter for consideration included:

- Annual statements
- Audit requirements
- Public Officer
- Disclosure of interest
- Association rules
- Common seal
- Changing of name

The following is a summary of NCOSS's recommendations to the Review:

- That the Model Rules provide detailed guidelines for the resolution of disputes between individual committee members and/or between factions within the committee.

- That the position of Public Officer is abolished and where the wording l public officer' appears in the Act or Models Rules, it is replaced with one of the following: 'a person nominated by the Association' or 'the Association'

- That the Model Rules include details on the distribution of surplus property/funds in instances where the Association is voluntarily wound up. While this is mentioned in the Act (Part 8), there is no reference to this in the model rules.

- That the model rules be changed to ensure the privacy of members' details. The rules should state that a register of members will be kept at the office and contact details be made available only with the written permission of the person concerned.

- That the $33 fee for alteration of objects or rules is dropped and no fee be charged.

- That the current Ministerial powers in regards to preventing registration of an association name, remain as is and that no further powers be provided to the Minister to direct an association to change its name following its registration.

- •That the requirement for an association to have a common seal is abolished and that all references to a common seal in the Act and in the model rules are deleted.

- That the Act be altered to require Incorporated Associations to hold their Annual General Meeting within five months of the Associations financial year.

- That there be compulsory disclosure of all relevant interests by individual committee members at the Annual General Meeting of the Association and on an on-going basis as required to ensure ethical standards are maintained.

- That all associations be required to provide audited financial statements to the Department in return for one of the following options:

  Option 1: the provision of a subsidised auditing service for associations with funds less than $100,000 and who have no funds specifically earmarked for the cost of auditing.

  Option 2: the requirement that associations with an income less than $100,000 have the option of having their accounts audited by a citizen who has the status and experience to do the task, but may not be a CPA.

- That Associations are not required to take out a prescribed level of public liability or other insurances as a requirement of incorporation. That Associations are strongly advised to take out all relevant insurances as part of prudent risk management.

For a full copy of the NCOSS submission contact the MSU.

The MSU would like to thank those interested people who provided information that became the basis for the NCOSS submission.

To: grairv@yahoo.com.au, girvine@scu.edu.au
Subject: Rainbow Region website

http://hmcs.scu.edu.au/rainbow/

--

Fiona Martin
Lecturer in Journalism and Media Production
School of Arts
Southern Cross University
PO Box 157
Lismore, NSW, 2480
Australia

Phone: +61 2 6620 3126
Fax: +61 2 6622 1683
Email: fmartin@scu.edu.au

To: peterh@nor.com.au
Subject: VC's Prize - many thanks
Cc: w.metcalf@griffith.edu.au, rofford@scu.edu.au, mheyward@uts.edu.au,
girvine@scu.edu.au, wfisher@scu.edu.au, arickett@scu.edu.au,
simonclo@nor.com.au, sclough@scu.edu.au, erda@nor.com.au,
dkanaley@ozemail.com.au, kfisher@scu.edu.au, jledgar@scu.edu.au,

Dear Friends,

Thanks to your support, and the hard work of the Re-imagining Utopia team, we have won the SCU VC's award for excellence in research and scholarship. We only had four names on the application - but like the best community gigs this involved so many people that I wanted to thank you all for your enthusiaism and generosity. We couldn't have achieved this outcome without your contributions and your positive reviews.

Just over half of the $10,000 prize money will be split among the team members for individual research work, with $500 going towards more work on the website, and about $3500-$4,000 going towards the Rainbow Archive project. This will be an attempt to collect and catalogue materials relating to post-Aquarian social movements in the Northern Rivers region. I hope to employ someone to write grant applications for seed money so we can define the scope of the collection and find it a home.

Please spread the word, and thank anyone I've left off the list.

best,
Fiona
--
Fiona Martin
Lecturer in Journalism and Media Production
School of Arts
Southern Cross University
PO Box 157
Lismore, NSW, 2480
Australia

Phone: +61 2 6620 3126
Fax: +61 2 6622 1683
Email: fmartin@scu.edu.au

Neil & Linnet Pike
PO Box 76
Nimbin NSW 2480

Kookaburra
Terania Creek Road
The Channon NSW 2480

Nimbin Rocks Coop
C/- Michael Edwards
Lot 1 Smiths Creek Road
Stokers Siding NSW 2484

Jo and Merle Rankin
C/- PO Rosebank
Rosebank NSW 2480

Johnathan, Theana & Others
PO Box 1029
Lismore NSW 2480

Bombala Bob
Wallace Road
The Channon NSW 2480

Michael and Bronwyn Wright
PO Box 95
Nimbin NSW 2480

Dale and Lee Bryce
PO Box 95
Nimbin NSW 2480

Stephen Gunther
"Ananda Rainjana"
Chelmsford Road
Wongavale NSW 2480

Crystal Community
Wallace Road
The Channon NSW 2480

Meta Co
PO Box 57
Nimbin NSW 2480

Turkey Creek Community
Dunoon Road
Rosebank NSW 2480

Jagera Community
Whian Whian Road
Whian Whian NSW 2480

Max Crawford
Newton Drive
Mt Nardi NSW 2480

Goat Ranch
Dorroughby Road
Dorroughby NSW 2480

Mark Saulwick
Newton Drive
Mt Nardi NSW 2480

Jenny Kelly
Lawler Road
The Channon NSW 2480

Michael Philipson, D & O Waterfall
399 Gungas Road
Nimbin NSW 2480

Suzanne Olley and Gary Atkinson Mitchell Road
Georgica NSW 2480

S Mills and C Pauling
Parmenter Road
Coffee Camp NSW 2480

Robb Farm
Robb Road
Lillian Rock NSW 2480

M Maso, Smart, Patchin & Well
Fox's Road
Rosebank NSW 2480

Tait and Kendall
RMB 116
Blue Knob Road

Nimbin NSW 2480

John Reid and Louise Neal
Davis Road
Jiggi NSW 2480

Mark Anson
C/- PO The Channon
The Channon NSW 2480

Devolka
Hensen Road
Nimbin NSW 2480

Soaring Woodhelven
Crofton Road
Nimbin NSW 2480

Mebbin Rocks P/L
Cadell Road
Mt Burrell NSW 2484

Misty Mountain
Collins Creek
via Kyogle NSW 2474

Black Horse Creek
Whites Road
Eden Creek via Kyogle NSW 2474

Whatt Community
Hetherington Road
Wadeville via Kyogle NSW 2474

Scott Sledge and Danielle Voinot Creemont
RMB
Lillian Rock Road
Lillian Rock NSW 2480

Mobiton P/L
Roseberry Creek Road
via Grevillea NSW 2474

R & D Taeni
Yulunga
McClelland Road

Barker's Vale via Kyogle NSW 2480

Sphinx Rock Community
Sphinx Rock
via Uki NSW 2484

Avalon Community
Lot 1 Stoney Shute Road
Wadeville via Kyogle NSW 2480

Nmbngee Community
C/- Alan Hill
PO Box 347
Nimbin NSW 2480

Nullum Coop
Ferndale Community
Rolands Creek Road
Uki NSW 2484

Lillifield Community
Murwillumbah Road
Lillian Rock via Kyogle NSW 2480

Barjuma
Lillian Rock Road
Lillian Rock NSW 2480

Brian Barkworth
7 Smiths Creek Road
Uki NSW 2484

Kay Holmes
Williams Road
Barker's Vale via Kyogle NSW 2474

D Aberdeen
White's Road
Eden Creek via Kyogle NSW 2474

Pretty Gully
Byrill Creek Road
via Uki NSW 2484

Gwyndelup Community
Toonumbah Forest Road

via Kyogle NSW 2474

Mebbin Springs Community
Murwillumbah Road
Uki NSW 2484

Rivendale Community
Williams Road
via Kyogle NSW 2474

Twin Pines Community
Williams Road
Barker's Vale via Kyogle NSW 2474

Couchy Creek Community
via Chillingham NSW 2484

Woodhelvin Community
Chowan Road
Uki NSW 2484

Sherry's Bridge Community
Main Arm Road
Mullumbimby NSW 2482

Motts Road Community
Upper Main Arm
Mullumbimby NSW 2482

Serendipity
Broken Head
via Byron Bay NSW 2481

Byrill Creek Hamlet
c/- PO Uki
Uki NSW 2484

Robb Road Community
Robb Road
Lillian Rock NSW 2480

Sonia and Hauk Manussen
Clear Springs
Collins Creek Road
via Kyogle NSW 2474

Horseshoe Creek Community

Sam's Gully
C/- P. Scott
Hensen Road
Nimbin NSW 2480

G. Pimm, D. Busby, C. Brash
Davis Road
Jiggi NSW 2480

Hugh and Nan Nicholson
Terania Creek Road
The Channon NSW 2480

Billen Cliffs
Martin Road
Larnook NSW 2480

Young Road Community
Young Road
Tuntable Creek NSW 2480

Bodhi Farm
Wallace Road
The Channon NSW 2480

Coordination Cooperative
Tuntable Falls
via Nimbin NSW 2480

Dar-Es-Salaam
818 Blue Knob Road
Nimbin NSW 2480

Drarmananda
Ross Road
The Channon NSW 2480

Elysian Farm
Mulvena Road
Larnook NSW 2480

Peter Jeffrey, Erni Shan
Crofton Road
Nimbin NSW 2480

Freecloud

Wallace Road
The Channon NSW 2480

Cornucopia
Stangers Road
Stoney Shute NSW 2480

Pimpuna
Zouch Road
Stoney Shute NSW 2480

Rainbow Falls Coop
Terania Creek Road
The Channon NSW 2480

Paradise Valley
Crofton Road
Nimbin NSW 2480

Wirrega Community
Gungas Road
Nimbin NSW 2480

Walagala
Upper Tuntable Falls Road
Nimbin NSW 2480

Dingo Ridge
Gungas Road
Nimbin NSW 2480

Webster's Creek Community
Blue Knob Road
Blue Knob via Nimbin NSW 2480

Blue Springs Community
PO Box 69
Nimbin NSW 2480

Moondani
PO Box 15
Nimbin NSW 2480

Mackellar Range Trust
PO Rock Valley
Rock Valley NSW 2480

Information on Multiple Occupancies in Byron Shire

Table 1: Determination of applications for Multiple Occupancies in Byron Shire between 1988 and 1998.

Year determined	Number of MOs approved	Number of MOs refused
1988	1	0
1989	0	0
1990	1	0
1991	0	0
1992	5	1
1993	3	1
1994	4	0
1995	4	2
1996	6	0
1997	6	4
1998	0	1
Total	**30**	**9**

Of the above applications in 1997, one was approved by the Land and Environment Court.

Of the MOs refused, 1 was later approved, 1 as referred to above was approved by the Land and Environment Court and 7 were never approved.

There have been no applications for MO development since 1998. (ie. 1999-Dec. 2003 = Nil.)

Table 2: Approved Multiple Occupancies between 1988 and 1998 by location.

Location	Number of MOs approved
Bangalow	1
Billinudgel	2
Binna Burra	1
Broken Head	1
Byron Bay	1
Coopers Shoot	2
Coorabell	1
Federal	1
Goonengerry	3
Huonbrook	2
Main Arm	1
Mullumbimby	10
Myocum	1
Tyagarah	2
Yelgun	1
Total	**30**