

'A' SECTION

DIVISIONAL MANAGER-PLANNING SERVICES' REPORT

SUBJECT/FILE NO.: MULTIPLE OCCUPANCY LOCATIONAL OPTIONS
(MRS:LM: S/523, S/285)

PREPARED BY: Development Control Planner - M R Scott

REASON: Council's resolution (April 5, 1994) that a report be submitted on multiple occupancy locational options in Council's area.

OBJECTIVE: To advise Council of locational options.

CORPORATE PLAN REF: Function: Strategic Planning
Strategy: 1
Action: (j)

PROGRAMME BUDGET REF: Page: D2

CONTENT

1 Information/Background:

Council at the Ordinary Meeting held on April 5, 1994 after consideration of the following Notice of Motion to that meeting:

"That Council seek exemption from SEPP 15 - Multiple Occupancy and introduce its own planning control for multiple occupancy in Council's LEP."

resolved:

"That a report be submitted on multiple occupancy locational options in Council's area."

The following report considers locational options in terms of:

- historical context, ie what locational criteria have been used in the past and occurs now;
- multiple occupancy demand and supply by examining the characteristics of multiple occupancy approvals;
- existing multiple occupancy locations;
- Council's current position as related to other forms of rural housing, ie rural residential and detached rural dual occupancy;
- the 2020 Strategic Planning process including the broad hectare land capability studies and State of Environment Report, and
- the State Government current review of SEPP 15.

Council should recognise, as it has done with rural residential and detached rural dual occupancy, that multiple occupancy provides for a legitimate form of rural lifestyle and housing and that there is a demand, albeit small, for this form of development. In keeping with Council's corporate objective of providing a housing choice it should be acknowledged that this style of development should be permitted within appropriate locations of the City of Lismore.

This is page 33 of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on June 7, 1994.

GENERAL MANAGER

MAYOR

LISMORE CITY COUNCIL - MEETING HELD JUNE 7, 1994

DMPS REPORT - MO LOCATIONAL OPTIONS

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2 Demand/Supply:

It is presently difficult to gain an accurate estimation as to the demand for multiple occupancy. The following tables derived from Council computer records indicate for the period 1980-1994, the numbers of multiple occupancy applications dealt with by Council and the current status of multiple occupancy approvals by Council of those 23 properties approved via the introduction of the State Government Multiple Occupancy Amendment to Interim Development Order No. 1 - Shire of Terania, in February, 1980.

TABLE 1:

	NEW		ADDITIONAL SITES		REFUSAL
	No. Appln.	House Sites	No. Appln.	House Sites	
Pre-1980	1	45			
1980					
1981	2	23	1	12	1
1982			1	20	
1983	2	41			
1984	3	65			1
1985					
1986	1	11			2
1987	3	18			
1988	8	44			
1989	5	11			1
1990	5	15			
1991	3	9			
1992	4	26			
1993	2	6	2	3	1
1994					2
TOTAL	39	314	4	35	8

NOTE: EXCLUDES: 2 properties of currently unknown status.
Billen Cliffs - 128 lots approved 1982 as MO - since strata titled.

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DMPS REPORT - MO LOCATIONAL OPTIONS

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Table 1 shows the approved number of new multiple occupancies and number of sites. Also shown is the number of applications for additional sites and number of refused applications. For the period pre-1980 (from 1978 on) to date Council has approved 39 applications for multiple occupancy, creating some 314 approved sites; an additional 4 applications, creating some 35 additional sites on approved multiple occupancies (total Council approved sites - 424). Eight (8) applications have been refused.

General averaging of these figures suggests that there are 2-3 applications for multiple occupancies per year.

Since 1990 Council has approved a total of 56 dwelling sites on 14 new and existing multiple occupancies. The largest application approved was Nimbin Rocks Co-op. (16 sites), followed by Adana (14 sites) and the Ananda Marga Community (5 sites). The remainder have been smaller - 3-4 site developments.

TABLE 2:

STATUS OF IDO APPROVED MULTIPLE OCCUPANCIES			
Council consent	10	No. sites	118
No Council consent	13	No. sites	To be determined in survey and inspections
TOTAL	23		118

Table 2 shows the status of the 23 multiple occupancies approved by the Clause 13A amendment to IDO No. 1 - Shire of Terania. Of those multiple occupancies approved by the IDO, ten have subsequently submitted applications to Council creating a total of 118 sites. It is not possible at this time to determine whether or not these sites are additional to or were existing at the time of the amendment to the IDO. The inspection and survey process will clarify this. Table 1 does not include MO dwellings which have been erected without approval. Identification of illegal dwelling is currently underway.

In summary, Council has within the local government area some 62 multiple occupancies of varying sizes (2-80+ sites), comprising approximately 432 approved dwelling sites. Although it is acknowledged that a multiple occupancy application, particularly for proposed larger communities (10+ sites), may create some interest and at times controversy, the number of new applications and approved dwelling sites is not significant in the context of either the total number of development applications received by Council or development applications for rural residential forms of development.

3 Historical Context:

The amendment to IDO No. 1 - Shire of Terania in February 1980 permitted the multiple occupancy use of some 23 properties at that time used for that purpose, and multiple occupancy use of rural land in the general rural zone 1(a) within the Parishes of Boorabee, Bungabee, Jiggi, Nimbin, Hanging Rock, Terania and Whian Whian.

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DMPS REPORT - MO LOCATIONAL OPTIONS

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This "retrospective" approval of 23 properties and enabling provisions for multiple occupancy use of rural land was carried through into the provisions of IDO No. 40 - City of Lismore gazetted August, 1980. IDO No. 40 was subsequently amended at the time SEPP No. 15 was gazetted in January, 1988. At this time multiple occupancy use of rural land was then permitted, generally on rural lands subject to land capability and suitability criteria and an optimum/maximum density formula.

The attached Map No. 1 shows the approximate location of the approved multiple occupancies and the area in which they were permissible at the time of the amendment to the Terania Shire IDO No. 1.

Presently multiple occupancy is permissible, with the consent of Council, in all rural zones subject to meeting performance criteria expressed as objectives and land capability assessment criteria in SEPP No. 15 and consideration of issues under Section 90 of the Environmental Planning and Assessment Act.

Council now has in place DCP No. 20 - Multiple Occupancy which clearly establishes information and documentation to be supplied with NEW development applications for multiple occupancy development.

4 - Locational Criteria:

As previously indicated, SEPP No. 15, Section 90 and the DCP lead Council and the applicant into a land capability based assessment process for multiple occupancy.

The following is a list of criteria that is and should be applied when considering multiple occupancy forms of development. (The list is not exhaustive and not in order of preference.)

- a) Ensure development does not:
 - prevent future urban or village expansion;
 - sterilise future extractive or mineral resources;
 - conflict with existing and future intensive use of agricultural lands and preserve prime agricultural land;
 - adversely impact on water supplies in the locality.
- b) Avoid areas of:
 - high bush fire risk;
 - steep or unstable land;
 - flood prone lands;
 - ecologically sensitive lands which may contain wildlife habitat and/or endangered flora or fauna;
 - significant natural and scenic beauty;
 - areas of Aboriginal significance.
- c) Encourage development where there are already similar land uses in the locality.
- d) Considers the availability and standard of public road access to the land.
NOTE: Council's road counts currently suggest that on average multiple occupancies generate approximately half the traffic generated by conventional rural residential developments.
- e) Encourage applicants/developers to develop appropriate mechanisms for community decision making, social bonding and conflict resolution.

- f) Consider the broader social and economic impacts (positive and negative) as relate to distance to and availability of services such as:
 - education;
 - commercial centres - shops, banks, etc.;
 - public halls, sports and recreation facilities;
 - bush fire services;
 - transport;
 - social and cultural contributions to centres of population within the local community and region.
- g) Encourage development along a total catchment management or locality strategy.
- h) Consider and recognise the philosophical basis for multiple occupancy, as permitting:
 - alternative lifestyle, be it for rural retreat, land sharing, religious, cultural, agricultural or other purposes;
 - land sharing and a communal or collective form of ownership, ie not all persons in society may wish to individually own a lot/parcel, etc of land;
 - construction of low cost housing and use of non-grid energy systems.

5 Locational Options and Land Planning Mechanisms to Achieve Options:

In keeping with the locational criteria indicated above a number of locational options are available to Council to consider.

Council should note that issues like rating equity are not directly related to land use planning decision making. Although it is recognised that planning decisions impact on number of individual rateable properties and Council's rates revenue and expenditure, it is considered essential that Council address this matter through the appropriate rating mechanisms of the Local Government Act 1993.

Council should bear in mind that existing multiple occupancies are likely to remain as such, and that Council should now be prepared to work with these and future communities to redress and balance perceived problems.

The locational options are open and are as follows:

- a) Status quo.

COMMENT: This option currently permits multiple occupancy in all rural zones and is subject to the management controls of SEPP No. 15, S.90 of the Environmental Planning and Assessment Act, Lismore LEP 1992 and DCP No. 20.

This is Council's current position which was to be reviewed when the current State Government initiated review of SEPP No. 15 is complete.

- b) Contain multiple occupancy developments in particular localities.

COMMENT: This option would contain and permit multiple occupancy to specific areas which could be for example similar to that initiated at the time of the amendment to the Shire of Terania IDO No. 1.

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The above options are not listed in any order of preference. The Planning Services Division on the basis of:

- * the relatively small number of applications received by Council for multiple occupancy use of land;
- * the recent adoption of a comprehensive guidelines and policy document to manage the form of development;
- * the soon to be finalised broad hectare land capability/suitability study;
- * State review of SEPP No. 15;

is of the opinion that status quo in terms of location options be maintained for the time being.

Council staff have now commenced the process of post development control inspections of all approved multiple occupancies in the local government area. This process is to involve on-site inspections of all multiple occupancies and checking compliance with development consents issued. This assessment will address matters such as water supply, effluent disposal, fire protection, payment of levies, access provision, location and number of dwellings, building approvals, Section 94 Contributions and other matters addressed in the issued consent. This exercise will coincide with the Council survey of multiple occupancies which will utilise and build on that information previously used in the report titled "Findings of a Survey of Attitudes of the Dweller of Multiple Occupancies" by S Barker and S Knox 1985. By using this report as a benchmark Council can make a comparative assessment of the growth, development, impacts and characteristics of multiple occupancy in the City.

FINANCIAL SECTION N/A

OTHER DEPARTMENT COMMENTS Not requested.

CONCLUSION

The above report briefly identifies several locational options for multiple occupancy development in Council's area. A process of public consultation would, without doubt, refine the locational options identified and/or identify additional options and alternative means of "tackling" this sensitive issue. At this time it is premature to proceed with defining particular location or locational criteria for multiple occupancy, given the pending finalisation of the State Government review of SEPP No. 15 and broad hectare land capabilities analysis of the local government area as part of the 2020 Strategic Plan. These studies will provide information which will be of assistance in further defining locational criteria and options.

Declaration:

'I hereby declare, in accordance with Section 459 of the Local Government Act, that I do not have a pecuniary interest in the matter/s listed in this report.'

Such an approach might also use the development strategies adopted by Council for rural residential and detached dual occupancy. A multiple occupancy development concept is permissible in these areas, however it is considered appropriate that such forms of development may utilise the Community Titles Act and comply with the requirements of the LEP and DCP.

The planning strategy appropriate in this situation would be to seek exemption from SEPP No. 15, amend the LEP to provide for multiple occupancy and prepare a map appended to the DCP which describes lands potentially suitable for multiple occupancy development. The soon to be completed broad hectare analysis which considers land capability in the local government area would be of use in this respect.

- c) Contain multiple occupancy developments in particular locations and within a particular zone, eg 1(a) General Rural Zone.

COMMENT: This option is essentially the same as that described above with an exclusion to use of land zone 1(r) Riverland and 1(b) Agricultural Zone. This would restrict residential use of agricultural land and possibly minimise potential for land use conflict with existing and future intensive agricultural uses. This option restricts multiple occupancy development which may have significant agricultural focus. It is envisaged that where land the subject of a development application for multiple occupancy use is either within a 1(b) zone or contains greater than 25% prime agricultural land, it may be considered, subject to a demonstrated commitment to productive use of that agricultural land.

- d) Prohibit further multiple occupancy use of rural land.

COMMENT: As previously indicated to Council (September, 1993) this option is not considered viable or practical nor have sufficient arguments been presented in the consultation processes to support an outright prohibition of multiple occupancy. This position fails to recognise the economic, social, cultural and environmental diversity and value of people who choose to live a communal based lifestyle.

- e) Attempt to provide a specific zone for MO development based on land assessment, land use and planning issues.

COMMENT: This option would be based on a land capability/assessment criteria land use survey and recognise the various planning issues and typical locational criteria identified in section 4 of this report.

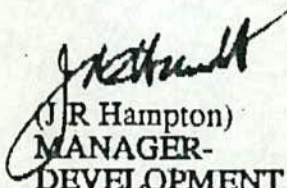
This option would necessitate an amendment to the LEP instrument and maps. The delineated area may either be way of a land use zone permitting MO use of land or designation of a mapped hatched area or locality in which MO development is permissible subject to specified requirements, eg minimum land area, dwelling densities. MO's would then not be permissible outside this identified area. A clause dealing with MO's would be inserted in the LEP and Council exempted from SEPP No. 15.

RECOMMENDATION (PLAN85)

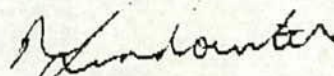
- 1 That Council not proceed, for the time being, with designating locational criteria for multiple occupancy development until such time as the completion of the:
 - a) 2020 Strategic Plan broad hectare land capability studies, and
 - b) State Government Review of SEPP No. 15.
- 2 That Council at the completion of the above studies prepare and exhibit a public consultation discussion paper on locational options for Multiple Occupancy development and seek community input as to the preferred locational options and land use planning mechanisms to achieve that option.



(M R Scott)
DEVELOPMENT
CONTROL PLANNER

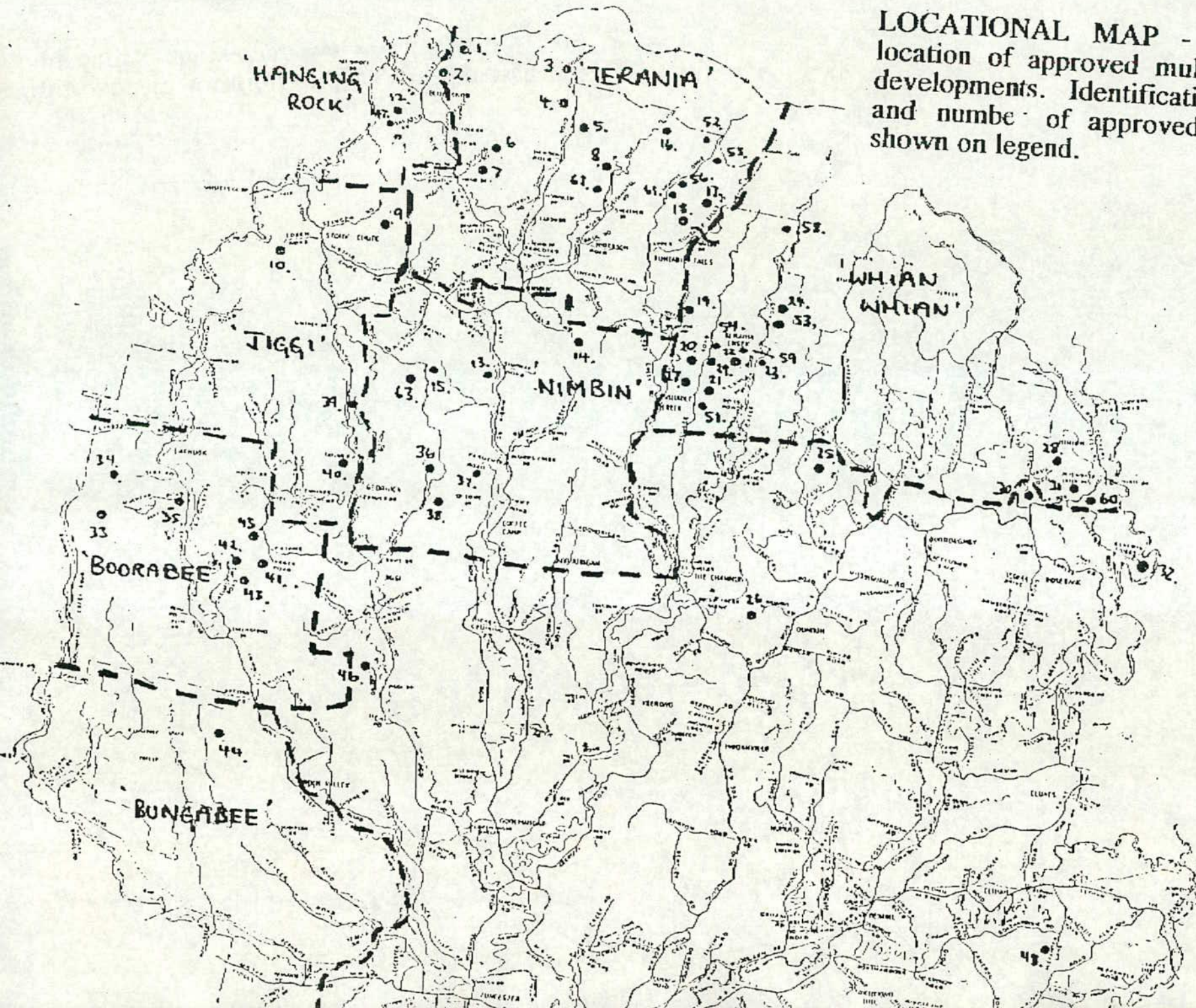


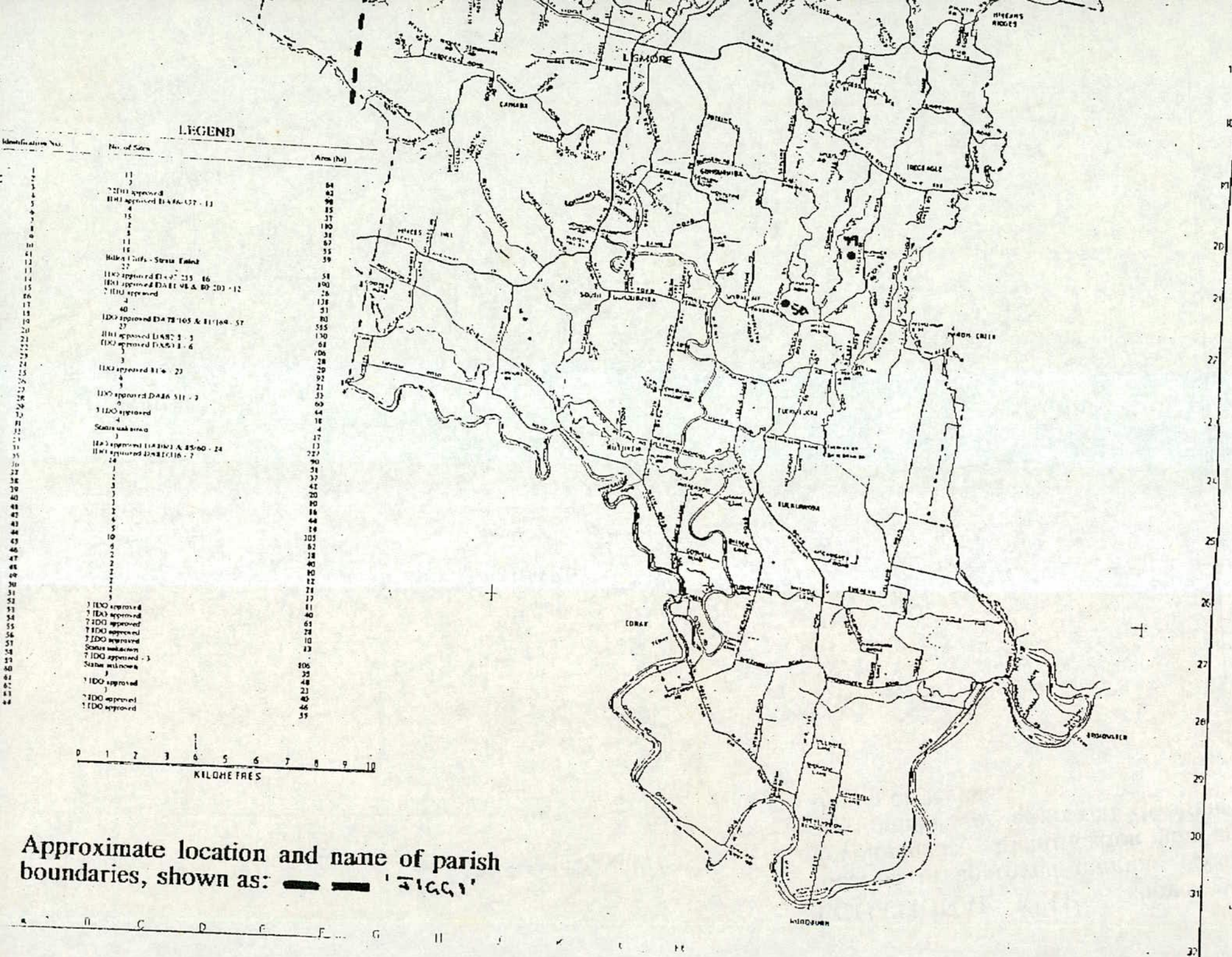
(J R Hampton)
MANAGER-
DEVELOPMENT CONTROL



(N Juradowitch)
DIVISIONAL MANAGER-
PLANNING SERVICES

LOCATIONAL MAP - shows general location of approved multiple occupancy developments. Identification number, size and number of approved dwelling sites shown on legend.





Unit 1, 50 Paterson Street,
Byron Bay, 2481
858 648

7.2.94

Attention: Nick Jeradivich,

General Manager,
Lismore City Council,
P.O. Box 23A,
LISMORE 2480

Dear Nick Jeradivich,

Re: Lismore Council Review of Multiple Occupancy

I write in connection with the Council's Review of Multiple Occupancy in respect to the prohibition of subdivision in SEPP-15 (the Policy) and in particular the following clauses:-

Aims and objectives,

2(c)(ii) ... to facilitate development ...

in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which 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;

Multiple occupancy

7 ... development may be carried out ... where ...

(1)(a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Titles Act 1973;

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

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

Subdivision prohibition

10(1) Where development is carried out on land pursuant to this Policy, the issue of a council clerk's certificate, under the Local Government Act 1919, or of a council's certificate under the Strata Titles Act 1973, required for subdivision of the land is prohibited.

Suspension of certain laws

13(1)(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 the land for certain purposes,

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

(For full extracts of these clauses see Attachment "A").

In the following questions, I am assuming that in administering Clauses 7, 10 and 13, that each of these will be read in the context of Clause 2(c)(ii).

I seek your reply to the following questions.

In regard to all of the following questions I am setting aside consideration of the Home Improvement Area of 5000 square meters as clearly this provision is not to be confused with, or to be treated as, a subdivision within the Policy.

I ask these questions notwithstanding the proposed clause 3.2.1. on "ownership" in the Draft D.C.P. currently on display.

1. How does Council satisfy itself:
 - (a) that the above requirements of the Policy are met when processing an MO DA?
 - (b) that these requirements are maintained in the case of an approved DA?
2. What documentation does Council consider should be included in an MO DA to assess if the above provisions are, or are not, met?
3. Where such documentation has not been supplied in an MO DA, has Council at any time sought additional information on which to assess if the above provisions have been met, and if so, what typical information has been sought?
4. Has Council at any time attached a condition of consent to an approved MO DA, in respect to the above provisions, and if so would you please supply details of typical wording of such a condition(s)?,
5. Has the Council at any time, had cause to seek legal opinion or advice from the D.O.P., on how the above provisions at the DA stage, should be administered and subsequently monitored, and, if so would you please supply details of same?

6. Preamble

Clause 2(c)(ii) of SEPP-15 refers to "company shares" as one way in which "separate legal right to part of the land" might conceivably be obtained.

Ownership of land by a "company" is of course, not an unusual form of ownership used by community land sharing groups.

Question

Where residents of an MO own a "company share" in the property and it is this share which carries with it entitlement to reside on the property, and, on leaving the property it is this "company share" which is sold to the incoming member, does this constitute a "separate legal right to part of the land"?

Comment

It is my opinion that this will not constitute a breach of the policy unless there has been an "agreement" or "dealing" etc providing exclusive right to a part of the land. ("Exclusive right" here may include an encumbrance on this "right" in favour of the community).

It is my opinion that the situation in respect to a company share also prevails in the case of other ownership systems such as Joint Tenants, Tenants-in-Common, Trusts and the like.

I ask the rhetoric question, "What criteria or check list of indicators is used to hold or determine, that there exists a 'separate legal right to part of the land'?"

7. *Where shares are sold on the basis of being related to a specific area of land, for example 4 acres, would Council on this evidence only, consider this to be:-*

(a) a breach of the Policy, or,

(b) prima facia evidence that there may be a breach of the Policy?

8. *Where there should be a shared title such as Joint Tenants or Tenants-in-Common, and a separate Certificate of Title (CT) exists, or by policy is to be created, for each of the tenants, would this constitute a breach of the Policy?*

9. (a) *Where an individual lease is granted for the exclusive use of a portion of the land under the NSW Local Government Act 1919 or 1993, and the lease exceeds a period of five years, would this constitute a breach of the Policy?*

(b) If the answer to question 9 is "Yes", what steps if any, has or does Council see that it can take to ensure that this situation does not prevail, such as the placing of a caveat on the land title?

10. *Where a share is related to a portion of land (not overtly stated as being for the "exclusive use" of the share holder) and:-*

(a) is a pro rata proportion of the property (but not delineated by pegs in the ground or shown on a plan of the property or the like), or,

(b) is an area pegged on the ground, or,

(c) is an area shown on a plan of the property, or,

(d) is described in some way so as to be identifiable,

would these respectively, be considered as being a breach of the Policy?

11. *Where a lease is given by the community body to a member for the exclusive use to a part of the land (subject or not, to a specific encumbrance in favour of the community) and where:-*

(a) such a lease is not registered, and,

.4.

(b) such a lease is registered,

would these respectively, be a breach of the Policy?

As a case in point in respect to the above I enclose herewith a copy of advertisements for MO shares which are related to a specified area of land.


In the context of the various advertisements by this developer, it is my opinion that the association of shares with an implied exclusive use of an area of land, is prima facie evidence that a breach of the Policy may exist, and that further documentation would be necessary to establish this one way or the other.

In view of the current statewide Review of SEPP-15 by the DOP you will no doubt appreciate that your answers to the above questions will greatly assist Pan-Com's submission to the Department in respect to their Review.

Thanking you in anticipation of your earliest answers to the above questions.

I await your reply.

Yours sincerely,


Peter Hamilton

c.c. Councillor Roberts
DOP
Jonathan

EXTRACTS OF THOSE SECTIONS IN SEPP-15
RELATING TO PROHIBITION OF SUBDIVISION

2. Aims and objectives, etc

(c)(ii) ... to facilitate development ...

in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which 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;

7. Multiple occupancy

... development may be carried out ... where ...

(1) (a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Titles Act 1973;

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

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

10. Subdivision prohibition

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

13. 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 Act 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 the land for certain purposes,

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

End

The Council of the City of Lismore

Council Chambers

43 Oliver Avenue, Goonellabah, N.S.W.

TELEPHONE (066) 25 0500
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P.O. BOX 23A,
LISMORE, 2480
DX 7761

ALL COMMUNICATIONS TO
GENERAL MANAGER

IN REPLY PLEASE QUOTE



CONTACT **Mr Scott-250565**

Planning Services

March 31, 1994

MRS:MR: S/523 94-1196

**Mr Peter Hamilton
1/50 Paterson Street
BYRON BAY 2481**

Dear Sir

RE: MULTIPLE OCCUPANCY REVIEW - WITHOUT PREJUDICE

Council refers to your letter of February 7, 1994 in which you ask several questions in relation to the subdivision prohibition within lands approved for multiple occupancy use.

The following comments are made in the light of the experience of staff currently employed by Council and their capacity as being responsible for assessing development applications for multiple occupancy and without reference to legal counsel. Comments are offered without the benefit of legal advice and are framed to respond to each of your queries on the basis of information available.

1. (a) That all the owners, as per Council records, are signatories on the DA form. That the land is known to Council as being within one lot or title (Deposited Plan), where an application involves several titles it is practice to require consolidation of titles prior to release of the first Building Application for a structure with the approved Multiple Occupancy (MO). Council as a condition/s of consent establishes a requirement prohibiting subdivision and that the development be in accordance with relevant requirements of SEPP No. 15.
- (b) No subdivision of approved MO is permitted. Although the strata subdivision of Billen Cliffs MO was permitted as a one-off experiment after the planning instrument of the day was amended to permit this to occur. The exact detail is unknown to the author of this response. Other than one case Council, again to the knowledge of the author, has not approved any MO's on land less than 10 ha.

As a general comment in relation to consent enforcement/compliance Council and staff are somewhat reliant on the "good faith" of developer/applicants to abide with approval requirements. This arrangement being somewhat of a necessity due the recent past staffing levels and work loads. Council's Planning Services Division has commenced a process of checking compliance with all DA's approved since 1990.

2. Copy of title showing all owners of the land and existing and/or proposed means of ownership (company, co-op, trust etc). Signatures and/or written concurrence of all owners of the land on the DA form. Documentation as indicated by cl. 3.2.1 of the exhibited draft DCP. Council has computer and hard copy record of property information of a general nature (eg size of holding, copy of the Deposited plan), this is included with the DA is made up.

3. Generally the above information has not been supplied with DA's. The level and detail of ownership informations tends to vary widely from application to application and is very much dependent on who prepares the application and their understanding of SEPP No. 15 and its requirements. Council has in the past requested ownership details of the applicants and documentation to that effect, particularly where it is specified or implied in the DA that the land is co-owned and only one person has submitted the application.
4. Yes, please refer to attached list of typical conditions of consent. This was attached to Council's Discussion Paper on Multiple Occupancy. Those application conditions are marked with an asterisk.
5. Council has recently sought and obtained legal opinion from both the Department, and Counsel, into various aspects of SEPP No. 15 and its administration. These opinions relate to compliance with the aims and objectives of the policy, defining home improvement areas and other aspects of DA's submitted to Council (see attached).
6. No, I agree with your comments in respect of company, tenants-in-common etc shares not be construed as a breach of the Policy. Council has not historically received copy of MO internal management and structural arrangements and have assumed that when MO's occupants prepare such documentation that this is usually undertaken with legal advice and direction conforming to the SEPP.

A simple checklist which requires evidence of ownership as supplied by the Land Titles Office and internal management statements, articles of association or similar, is desirable.

7. Council is concerned that shares sold on the basis of, or relating to, a specific area of land within an MO would constitute a breach of the policy. Council, in such instances would be prudent to request details of contract of sale, ownership entitlements and internal management statements or the like.
8. Council is of the opinion that the issuance of a separate Certificate of Title in respect of cl. 2(c)(ii) of SEPP No. 15 is a form of separate land title and therefore, breaches the policy. Council will seek legal clarification of this issue.
9. (a) Council's understanding of this issue is that where a lease is established, and exceeds a period of five years, it is deemed to be a subdivision as defined in the Local Government Acts (the 1993 Act having retained the 1989 subdivision provisions) Yes!
(b) Council has not encountered this situation, however, it would be prudent to establish a condition of consent that either the establishment of leases over land for a period exceeding five year not be permitted, or a restrictive covenant be placed on titled limiting/prohibiting leasing arrangements.
10. Yes, Council is of the opinion that the examples (b), (c), (d) given would breach the intention of clause 2(c)(ii). It may logically be assumed that such instances involve the creation of separate legal rights to parts of the land. Council would, in relation to example (a), have to examine the documentation establishing the proportioning of exclusive use of the land before forming an opinion whether or not it is in breach of the policy.
11. Council has no experience in these matters and would seek legal opinion prior to forming a definitive position. However, it is submitted that a registered lease giving a person exclusive use to a part of the land would appear to breach the intention of the subdivision prohibition provisions of the Policy.

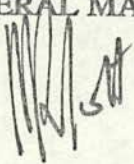
I apologise for not responding to your letter earlier, and trust the responses made are of some assistance.

Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon
GENERAL MANAGER

per:-

A handwritten signature in black ink, appearing to be 'PT Muldoon', written over the printed name and title.

JACK RILEY
DAVID M. RILEY
MATTHEW J. RILEY

ADAM D. RILEY
MELINDA L. CLARK
MR:GM

OUR REF.

HAJ:MG:DA-93/754

YOUR REF.

BONDFIELD RILEY

SOLICITORS & NOTARY

P.O. BOX 165, LISMORE, 2480
FACSIMILE (066) 21 9059
DX 7712 LISMORE

15 MOLESWORTH STREET,
LISMORE, N.S.W. 2480

TELEPHONE (086) 21 9000

19 April, 1994

URGENT

The General Manager,
Lismore City Council,
DX 7761 LISMORE

Dear Sir,

RE: MULTIPLE OCCUPANCY LOCATED ON DAVIS ROAD, JIGGI - D/A 93/754

We refer to your letter of instruction dated 31st ultimo. Counsel has advised that the answer to the following question:

Is the issue of separate titles to the property known as Lot 41 in DP802597 in contravention of the provisions of SEPP15

is strictly No.

Counsel however believes that the fact that the proprietors can apply for the issue of separate titles in the manner indicated would be a reason to refuse the present development application on the basis that the (issue) of the separate titles (and) a subsequent agreement by the proprietors to allocate rights to specific areas of land may create a subdivision thereby breaching the provisions of the SEPP.

Counsel has indicated that this area of law is largely untested.

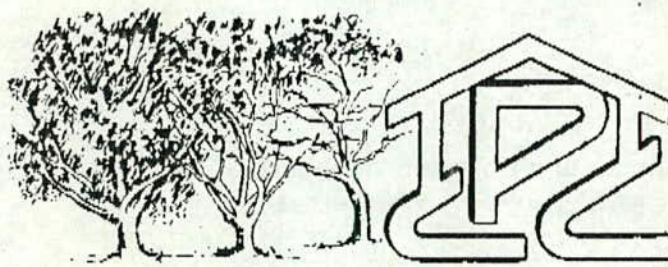
For your information we enclose a copy of Section 100(2) and (3) of the Real Property Act which indicates that the Registrar General has the right and obligation to issue separate titles to tenants in common if so requested and the appropriate fee is paid.

Please advise if further clarification is required of any matter relating to this matter.

Council might also advise if any reference has been made in the application to an internal agreement?

Yours faithfully,
BONDFIELD RILEY
Per:





75A
PAN-COMMUNITY
COUNCIL
P.O. BOX 102,
NIMBIN 2480

SPECIAL MEETING

SUNDAY 19TH JUNE

MEDIA CENTRE NIMBIN 2PM

This is a very important meeting to discuss correspondence many of you will have recently received from Lismore Council advising you either that your M.O. is illegal or that your community is shortly to be inspected to check your compliance with your development consent. We are extremely concerned about the implications of this action by Council and believe that as an organisation we need to establish some collective strategies for dealing with this.

In September 1993 Council resolved :

"1. That Council, after the adoption of matters relating to a preferred planning option (for MO), give notice of a 12 month period during which time "without prejudice" consultations are invited with a view of negotiating conditions of development consent which are currently not being met.

2. That Council upon future adoption of a preferred planning strategy, give public notice of an amnesty to enable illegal multiple occupancy developments the opportunity to formally make development applications to Council to regularise their existence in accordance with appropriate standards."

Council recently adopted development control plan (DCP) no. 20 which gives guidelines for those wishing to establish a multiple occupancy. This DCP will also operate as the basis for those wishing to negotiate development consent conditions they have not been able to comply with. We do not believe that the letter recently received by MOs in the Lismore area is in the spirit of the above resolution of Council. Entering into "without prejudice" consultations is very different to the proposed on-site inspections which are tantamount to a witch-hunt. No matter how low-key the approach of staff may be the reality is that they are having considerable

pressure put on them by some Councillors and members of the community (Nimbin in particular) to clean up the MO situation.

The special meeting has been called to discuss appropriate strategies for dealing with Council's proposed course of action. In the meantime Pan-Com will be working towards trying to ensure that negotiations will be held "without prejudice" and that no on-site inspections be conducted within the next 12 months unless individual MOs decide they are happy with that.

On a further matter, Council is currently trying to reduce the density of development allowed on MOs unless the housing is clustered. Pan-Com's position is that we are satisfied with the existing formula for calculating density and believe that each new application before Council should be looked at on its merits. In some instances the maximum density the formula allows may be quite appropriate even when issues such as environmental capability are taken into account. Similarly, clustering may not be an appropriate simply because it allows for more houses. We would urge you to write to the General Manager, Lismore Council, P.O. Box 23A with your thoughts on this matter before June 20th.

For further information on the above or any other matter related to multiple occupancy please contact:

Councillor Diana Roberts Ph. 891 529(w) 891 648(h)

Simon Clough Ph. 886217

Peter Hamilton Ph.858648

P.S. Thank you to those communities and individuals who have recently made donations to Pan-Com. Your financial support is very necessary and very much appreciated.

FROM: PAN-COMMUNITY COUNCIL
P.O. Box 102, NIMBIN 2480

TO:

NS 4.6.94

**REVIEW OF
MULTIPLE
OCCUPANCY
DEVELOPMENT
CONSULTATION IN
RESPECT OF COMPLIANCE
WITH CONSENTS AND
UNAUTHORISED
DEVELOPMENT**

Notice is given that Council has adopted a Development Control Plan for Multiple Occupancy Development of Rural Lands. The purpose of the plan is to give guidance to intending applicants in the selection of suitable land, design of multiple occupancy developments, and in making Development Applications for multiple occupancy development. Council at the Ordinary Meeting of September 7, 1993, resolved that after the adoption of the DCP notice be given of a twelve (12) month period, commencing June 4, 1994, during which 'without prejudice' consultations are invited between Council staff and Multiple Occupancy Communities to review appropriateness of conditions of development consent, particularly where such conditions are not consistent with Council's recently adopted DCP.

Council also, at that meeting, resolved to provide a period of 12 months to enable unauthorised multiple occupancy development and other forms of unauthorised rural occupation, the opportunity to lodge Development Applications with Council and seek approval in accordance with standards established in the DCP, as appropriate.

Enquiries should be directed to Council's Development Control Planner, Mr M Scott. All enquiries will be treated on a strictly confidential 'without prejudice' basis.

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'A' SECTION

DIVISIONAL MANAGER-PLANNING SERVICES' REPORT

SUBJECT/FILE NO.: MULTIPLE OCCUPANCY LOCATIONAL OPTIONS
(MRS:LM: S/523, S/285)

PREPARED BY: Development Control Planner - M R Scott

REASON: Council's resolution (April 5, 1994) that a report be submitted on multiple occupancy locational options in Council's area.

OBJECTIVE: To advise Council of locational options.

CORPORATE PLAN REF: Function: Strategic Planning
Strategy: 1
Action: (j)

PROGRAMME BUDGET REF: Page: D2

CONTENT

1 Information/Background:
Council at the Ordinary Meeting held on April 5, 1994 after consideration of the following Notice of Motion to that meeting:

"That Council seek exemption from SEPP 15 - Multiple Occupancy and introduce its own planning control for multiple occupancy in Council's LEP."

resolved:

"That a report be submitted on multiple occupancy locational options in Council's area."

The following report considers locational options in terms of:

- historical context, ie what locational criteria have been used in the past and occurs now;
- multiple occupancy demand and supply by examining the characteristics of multiple occupancy approvals;
- existing multiple occupancy locations;
- Council's current position as related to other forms of rural housing, ie rural residential and detached rural dual occupancy;
- the 2020 Strategic Planning process including the broad hectare land capability studies and State of Environment Report, and
- the State Government current review of SEPP 15.

Council should recognise, as it has done with rural residential and detached rural dual occupancy, that multiple occupancy provides for a legitimate form of rural lifestyle and housing and that there is a demand, albeit small, for this form of development. In keeping with Council's corporate objective of providing a housing choice it should be acknowledged that this style of development should be permitted within appropriate locations of the City of Lismore.

This is page 33 of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on June 7, 1994.

GENERAL MANAGER

MAYOR

LISMORE CITY COUNCIL - MEETING HELD JUNE 7, 1994

DMPS REPORT - MO LOCATIONAL OPTIONS

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2 Demand/Supply:

It is presently difficult to gain an accurate estimation as to the demand for multiple occupancy. The following tables derived from Council computer records indicate for the period 1980-1994, the numbers of multiple occupancy applications dealt with by Council and the current status of multiple occupancy approvals by Council of those 23 properties approved via the introduction of the State Government Multiple Occupancy Amendment to Interim Development Order No. 1 - Shire of Terania, in February, 1980.

TABLE 1:

	NEW		ADDITIONAL SITES		REFUSAL
	No. Appln.	House Sites	No. Appln.	House Sites	
Pre-1980	1	45			
1980					
1981	2	23	1	12	1
1982			1	20	
1983	2	41			
1984	3	65			1
1985					
1986	1	11			2
1987	3	18			
1988	8	44			
1989	5	11			1
1990	5	15			
1991	3	9			
1992	4	26			
1993	2	6	2	3	1
1994					2
TOTAL	39	314	4	35	8

NOTE: EXCLUDES: 2 properties of currently unknown status.
Billen Cliffs - 128 lots approved 1982 as MO - since strata titled.

LISMORE CITY COUNCIL - MEETING HELD JUNE 7, 1994

DMPS REPORT - MO LOCATIONAL OPTIONS

- 3 -

Table 1 shows the approved number of new multiple occupancies and number of sites. Also shown is the number of applications for additional sites and number of refused applications. For the period pre-1980 (from 1978 on) to date Council has approved 39 applications for multiple occupancy, creating some 314 approved sites; an additional 4 applications, creating some 35 additional sites on approved multiple occupancies (total Council approved sites - 424). Eight (8) applications have been refused.

General averaging of these figures suggests that there are 2-3 applications for multiple occupancies per year.

Since 1990 Council has approved a total of 56 dwelling sites on 14 new and existing multiple occupancies. The largest application approved was Nimbin Rocks Co-op. (16 sites), followed by Adama (14 sites) and the Ananda Marga Community (5 sites). The remainder have been smaller - 3-4 site developments.

TABLE 2:

STATUS OF IDO APPROVED MULTIPLE OCCUPANCIES			
Council consent	10	No. sites	118
No Council consent	13	No. sites	To be determined in survey and inspections
TOTAL	23		118

Table 2 shows the status of the 23 multiple occupancies approved by the Clause 13A amendment to IDO No. 1 - Shire of Terania. Of those multiple occupancies approved by the IDO, ten have subsequently submitted applications to Council creating a total of 118 sites. It is not possible at this time to determine whether or not these sites are additional to or were existing at the time of the amendment to the IDO. The inspection and survey process will clarify this. Table 1 does not include MO dwellings which have been erected without approval. Identification of illegal dwelling is currently underway.

In summary, Council has within the local government area some 62 multiple occupancies of varying sizes (2-80+ sites), comprising approximately 432 approved dwelling sites. Although it is acknowledged that a multiple occupancy application, particularly for proposed larger communities (10+ sites), may create some interest and at times controversy, the number of new applications and approved dwelling sites is not significant in the context of either the total number of development applications received by Council or development applications for rural residential forms of development.

3 Historical Context:

The amendment to IDO No. 1 - Shire of Terania in February 1980 permitted the multiple occupancy use of some 23 properties at that time used for that purpose, and multiple occupancy use of rural land in the general rural zone 1(a) within the Parishes of Boorabee, Bungabee, Jiggi, Nimbin, Hanging Rock, Terania and Whian Whian.

LISMORE CITY COUNCIL - MEETING HELD JUNE 7, 1994

DMPS REPORT - MO LOCATIONAL OPTIONS

- 4 -

This "retrospective" approval of 23 properties and enabling provisions for multiple occupancy use of rural land was carried through into the provisions of IDO No. 40 - City of Lismore gazetted August, 1980. IDO No. 40 was subsequently amended at the time SEPP No. 15 was gazetted in January, 1988. At this time multiple occupancy use of rural land was then permitted, generally on rural lands subject to land capability and suitability criteria and an optimum/maximum density formula.

The attached Map No. 1 shows the approximate location of the approved multiple occupancies and the area in which they were permissible at the time of the amendment to the Terania Shire IDO No. 1.

Presently multiple occupancy is permissible, with the consent of Council, in all rural zones subject to meeting performance criteria expressed as objectives and land capability assessment criteria in SEPP No. 15 and consideration of issues under Section 90 of the Environmental Planning and Assessment Act.

Council now has in place DCP No. 20 - Multiple Occupancy which clearly establishes information and documentation to be supplied with NEW development applications for multiple occupancy development.

4 - Locational Criteria:

As previously indicated, SEPP No. 15, Section 90 and the DCP lead Council and the applicant into a land capability based assessment process for multiple occupancy.

The following is a list of criteria that is and should be applied when considering multiple occupancy forms of development. (The list is not exhaustive and not in order of preference.)

- a) Ensure development does not:
 - prevent future urban or village expansion;
 - sterilise future extractive or mineral resources;
 - conflict with existing and future intensive use of agricultural lands and preserve prime agricultural land;
 - adversely impact on water supplies in the locality.
- b) Avoid areas of:
 - high bush fire risk;
 - steep or unstable land;
 - flood prone lands;
 - ecologically sensitive lands which may contain wildlife habitat and/or endangered flora or fauna;
 - significant natural and scenic beauty;
 - areas of Aboriginal significance.
- c) Encourage development where there are already similar land uses in the locality.
- d) Considers the availability and standard of public road access to the land.
NOTE: Council's road counts currently suggest that on average multiple occupancies generate approximately half the traffic generated by conventional rural residential developments.
- e) Encourage applicants/developers to develop appropriate mechanisms for community decision making, social bonding and conflict resolution.

- f) Consider the broader social and economic impacts (positive and negative) as relate to distance to and availability of services such as:
 - education;
 - commercial centres - shops, banks, etc.;
 - public halls, sports and recreation facilities;
 - bush fire services;
 - transport;
 - social and cultural contributions to centres of population within the local community and region.
- g) Encourage development along a total catchment management or locality strategy.
- h) Consider and recognise the philosophical basis for multiple occupancy, as permitting:
 - alternative lifestyle, be it for rural retreat, land sharing, religious, cultural, agricultural or other purposes;
 - land sharing and a communal or collective form of ownership, ie not all persons in society may wish to individually own a lot/parcel, etc of land;
 - construction of low cost housing and use of non-grid energy systems.

5 Locational Options and Land Planning Mechanisms to Achieve Options:

In keeping with the locational criteria indicated above a number of locational options are available to Council to consider.

Council should note that issues like rating equity are not directly related to land use planning decision making. Although it is recognised that planning decisions impact on number of individual rateable properties and Council's rates revenue and expenditure, it is considered essential that Council address this matter through the appropriate rating mechanisms of the Local Government Act 1993.

Council should bear in mind that existing multiple occupancies are likely to remain as such, and that Council should now be prepared to work with these and future communities to redress and balance perceived problems.

The locational options are open and are as follows:

- a) Status quo.

COMMENT: This option currently permits multiple occupancy in all rural zones and is subject to the management controls of SEPP No. 15, S.90 of the Environmental Planning and Assessment Act, Lismore LEP 1992 and DCP No. 20.

This is Council's current position which was to be reviewed when the current State Government initiated review of SEPP No. 15 is complete.

- b) Contain multiple occupancy developments in particular localities.

COMMENT: This option would contain and permit multiple occupancy to specific areas which could be for example similar to that initiated at the time of the amendment to the Shire of Terania IDO No. 1.

LISMORE CITY COUNCIL - MEETING HELD JUNE 7, 1994

DMPS REPORT - MO LOCATIONAL OPTIONS

- 7 -

The above options are not listed in any order of preference. The Planning Services Division on the basis of:

- * the relatively small number of applications received by Council for multiple occupancy use of land;
- * the recent adoption of a comprehensive guidelines and policy document to manage the form of development;
- * the soon to be finalised broad hectare land capability/suitability study;
- * State review of SEPP No. 15;

is of the opinion that status quo in terms of location options be maintained for the time being.

Council staff have now commenced the process of post development control inspections of all approved multiple occupancies in the local government area. This process is to involve on-site inspections of all multiple occupancies and checking compliance with development consents issued. This assessment will address matters such as water supply, effluent disposal, fire protection, payment of levies, access provision, location and number of dwellings, building approvals, Section 94 Contributions and other matters addressed in the issued consent. This exercise will coincide with the Council survey of multiple occupancies which will utilise and build on that information previously used in the report titled "Findings of a Survey of Attitudes of the Dweller of Multiple Occupancies" by S Barker and S Knox 1985. By using this report as a benchmark Council can make a comparative assessment of the growth, development, impacts and characteristics of multiple occupancy in the City.

FINANCIAL SECTION N/A

OTHER DEPARTMENT COMMENTS Not requested.

CONCLUSION

The above report briefly identifies several locational options for multiple occupancy development in Council's area. A process of public consultation would, without doubt, refine the locational options identified and/or identify additional options and alternative means of "tackling" this sensitive issue. At this time it is premature to proceed with defining particular location or locational criteria for multiple occupancy, given the pending finalisation of the State Government review of SEPP No. 15 and broad hectare land capabilities analysis of the local government area as part of the 2020 Strategic Plan. These studies will provide information which will be of assistance in further defining locational criteria and options.

Declaration:

'I hereby declare, in accordance with Section 459 of the Local Government Act, that I do not have a pecuniary interest in the matter/s listed in this report.'

Such an approach might also use the development strategies adopted by Council for rural residential and detached dual occupancy. A multiple occupancy development concept is permissible in these areas, however it is considered appropriate that such forms of development may utilise the Community Titles Act and comply with the requirements of the LEP and DCP.

The planning strategy appropriate in this situation would be to seek exemption from SEPP No. 15, amend the LEP to provide for multiple occupancy and prepare a map appended to the DCP which describes lands potentially suitable for multiple occupancy development. The soon to be completed broad hectare analysis which considers land capability in the local government area would be of use in this respect.

- c) Contain multiple occupancy developments in particular locations and within a particular zone, eg 1(a) General Rural Zone.

COMMENT: This option is essentially the same as that described above with an exclusion to use of land zone 1(r) Riverland and 1(b) Agricultural Zone. This would restrict residential use of agricultural land and possibly minimise potential for land use conflict with existing and future intensive agricultural uses. This option restricts multiple occupancy development which may have significant agricultural focus. It is envisaged that where land the subject of a development application for multiple occupancy use is either within a 1(b) zone or contains greater than 25% prime agricultural land, it may be considered, subject to a demonstrated commitment to productive use of that agricultural land.

- d) Prohibit further multiple occupancy use of rural land.

COMMENT: As previously indicated to Council (September, 1993) this option is not considered viable or practical nor have sufficient arguments been presented in the consultation processes to support an outright prohibition of multiple occupancy. This position fails to recognise the economic, social, cultural and environmental diversity and value of people who choose to live a communal based lifestyle.

- e) Attempt to provide a specific zone for MO development based on land assessment, land use and planning issues.

COMMENT: This option would be based on a land capability/assessment criteria land use survey and recognise the various planning issues and typical locational criteria identified in section 4 of this report.

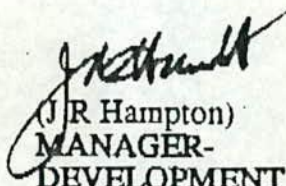
This option would necessitate an amendment to the LEP instrument and maps. The delineated area may either be way of a land use zone permitting MO use of land or designation of a mapped hatched area or locality in which MO development is permissible subject to specified requirements, eg minimum land area, dwelling densities. MO's would then not be permissible outside this identified area. A clause dealing with MO's would be inserted in the LEP and Council exempted from SEPP No. 15.

RECOMMENDATION (PLAN85)

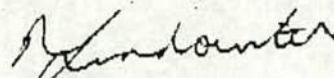
- 1 That Council not proceed, for the time being, with designating locational criteria for multiple occupancy development until such time as the completion of the:
 - a) 2020 Strategic Plan broad hectare land capability studies, and
 - b) State Government Review of SEPP No. 15.
- 2 That Council at the completion of the above studies prepare and exhibit a public consultation discussion paper on locational options for Multiple Occupancy development and seek community input as to the preferred locational options and land use planning mechanisms to achieve that option.



(M R Scott)
DEVELOPMENT
CONTROL PLANNER

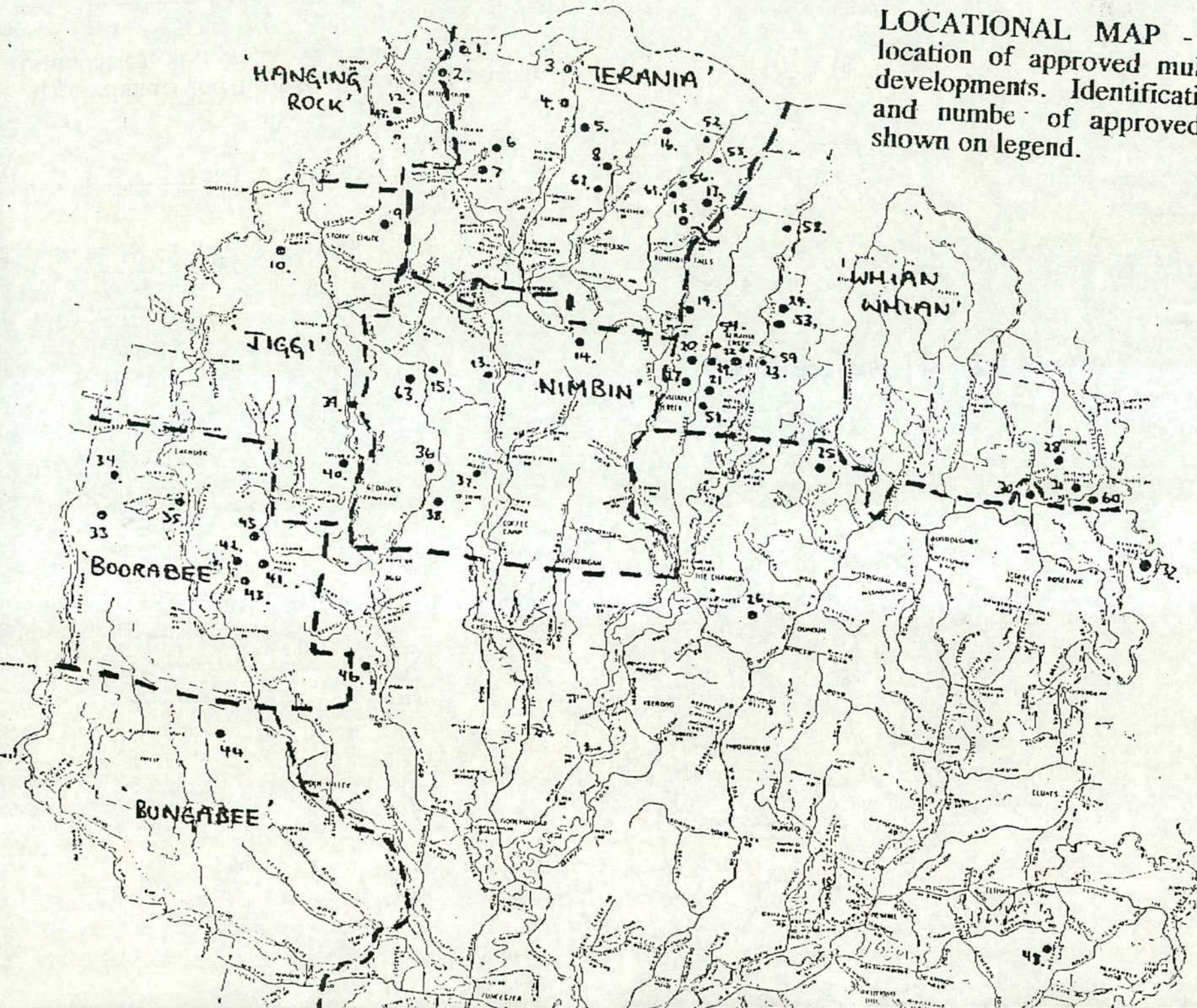


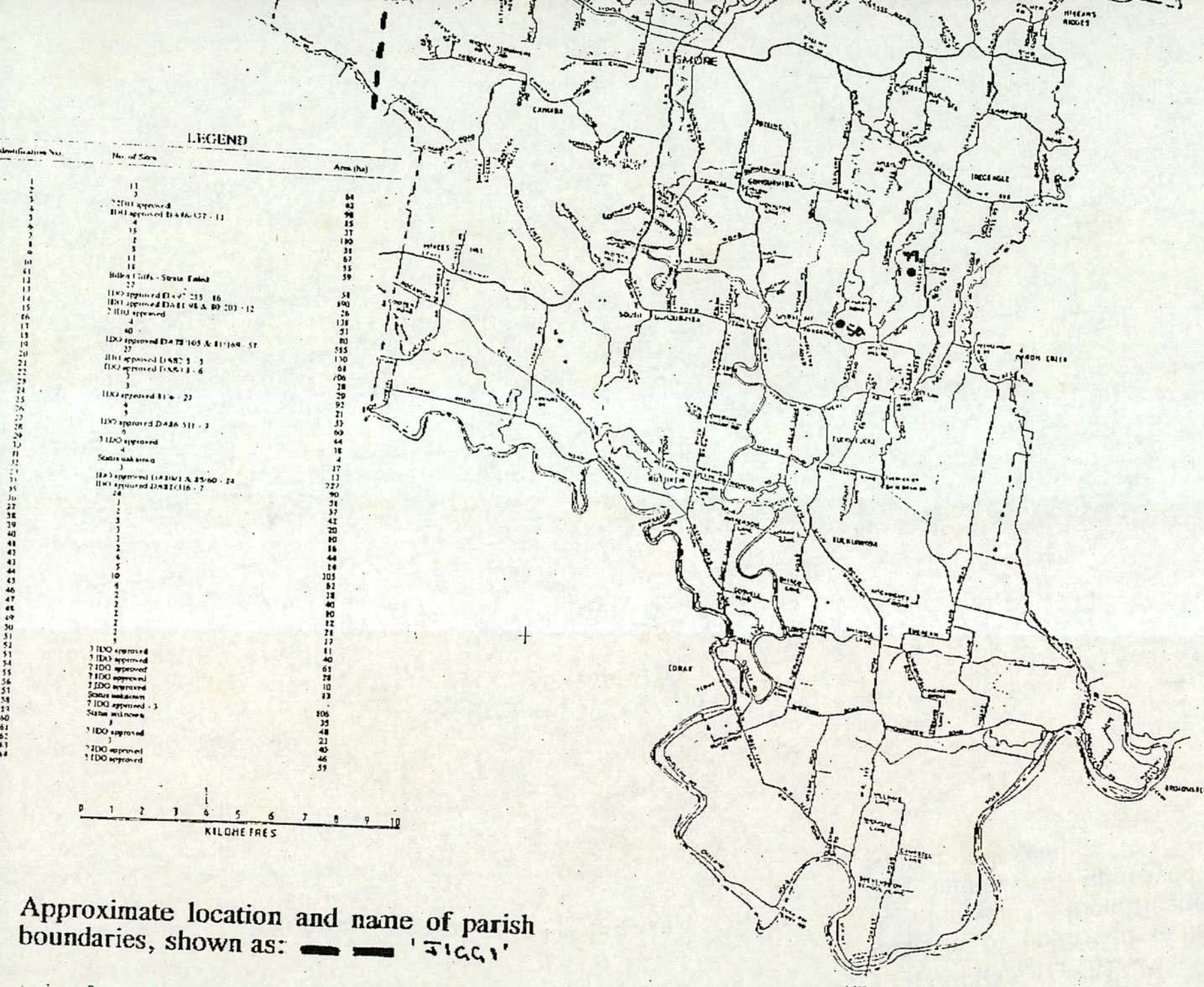
(J R Hampton)
MANAGER-
DEVELOPMENT CONTROL



(N Juradowitch)
DIVISIONAL MANAGER-
PLANNING SERVICES

LOCATIONAL MAP - shows general location of approved multiple occupancy developments. Identification number, size and number of approved dwelling sites shown on legend.





Approximate location and name of parish boundaries, shown as: **— — — — —** '51001'