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PAN-COMMUNITY
COUNCIL
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28.6.93

SUBMISSION BY THE PAN-COMMUNITY COUNCIL

on the

"DISCUSSION PAPER ON M.O. OF RURAL LAND"
issued by the Lismore City Council, 27 April 1993

INTRODUCTION

The Pan-Community Council is an organisation formed to further the interests of Multiple Occupancy communities. "Pan-Com" appreciates the opportunity to respond to the "Discussion Paper on M.O. of Rural Land".

We wish to congratulate Council on the quality of the paper which we found examined all relevant issues in an objective yet stimulating manner.

Over the last twenty years there has been a gradual growth of M.O. development in the Lismore City Council area. Originally the land was cheap but since then land values have increased dramatically and in some case in the order of ten fold.

Often M.O. communities have made substantial contributions to the local area or, the City Council area as a whole. These contributions have been economic, environmental, cultural, artistic, educational and social. Today many of the sixty or so M.O's in the Council area are tightly woven into the fabric of the local community.

M.O's range a great deal as to their legal structure, physical layout and levels of co-operation. There are however some commonly held philosophies amongst multiple occupancy communities, some of these philosophies include, that :-

1. The good quality of relationship between people is of great importance.

2. The land should be cared for and enhanced by the M.O. community.

3. Membership of an M.O. should be as cheap as possible with an emphasis on owner-building to ensure the availability of access to low cost housing.

4. There is a strong belief and commitment to self sufficiency in terms of energy, housing and food production.

In the context of the Discussion Paper it is important to realise that M.O's do not constitute "Rural Residential" development. Community members do not have legal title to a separate identifiable piece of land.

While individual title to an identifiable piece of land is widely valued in this society, M.O. dwellers have chosen the path of cooperative land sharing.

ABBREVIATIONS

DCP: Development Control Plan
LEP: Local Environment Plan
SEPP-15: State Environmental Planning Policy - 15, Multiple Occupancy of Rural Land
M.O.: Multiple Occupancy
Policy (the): See SEPP-15

# #

6.0 ISSUES: OPTIONS FOR CHANGE TO THE CURRENT SYSTEM OF PROCESSING M.O. APPLICATIONS

(The numbering of the Issues referred to below follows that used in the Discussion Paper).

6.0.1 "SEEKING EXEMPTION FROM SEPP-15 AND AMENDING THE LEP TO PROVIDE THE EQUIVALENT TOGETHER WITH A DCP.?"

Comment: Inappropriate. As the LEP could not minimise the principles of the SEPP it would appear to be cumbersome, complicated and cost inefficient without any apparent gain.

6.0.2 "REMAIN WITH SEPP-15 AND PREPARE A DCP.?"

Sound reasons would need to be advanced as to what benefits may flow from this option.

At this time we see no compelling reasons to support the introduction of a DCP, for the legislation as it stands (if fully utilised), seems to have ample provision to administer M.O. Applications.

If however, the Council elects to introduce a DCP-MO, then we suggest there would be merit in the M.O. community at large, being invited to make input into its preparation.

6.0.3 "AMENDING SEPP-15 WITH THE AGREEMENT OF THE MINISTER?"

This seems to be unrealistic, and but a hypothetical option.

6.0.4 "DO NOTHING?"

We understand this is intended to mean "retain the status quo" and as such, we support this option.

(The following options are over and above those suggested in the Discussion Paper.)

6.0.5 COUNCIL TO PRODUCE AN M.O. USERS GUIDE HANDBOOK.

The "Low Cost Country Homebuilding Handbook" produced by the Department of Planning has over the years been of considerable assistance to community resettlers on the one hand, and to Council on the other, in indicating ways in which the legislation may be appropriately applied.

A Council produced "localised" handbook could usefully extend and update the content of the above Handbook and if its creation involved the community (as it should) could address many of the issues raised in the Discussion Paper.

6.0.6 OTHER POSSIBLE INSTRUMENTS

Council has the option:-

(a) to prepare an M.O. Code, or, simply to make "policy decisions" as to how the legislation is to be applied. An example of this is the present "M.O. Policy Guidelines for Road Conditions".

or (b) to introduce a Draft DCP with the express intent of not formalising its adoption until sometime in the future. The advantage of this option is that it could spellout guidelines in precise details and allow these to be tested over time.

Each of the above should be seen, at least in part, as having an "educational" role for all concerned and, to minimise or avoid possible conflict situations.

Where appropriate, these processes or a combination thereof, may have merit.

6.0.7 AN M.O. COUNCIL ADVISORY PANEL.

An M.O. Advisory Panel may be an aid to Council in advising on the issues raised in the Discussion Paper and as they arise in particular M.O. Applications. The former Architectural Advisory Panel may be seen as a model in this regard.

6.1.0 SUBDIVISION

6.1.1 M.O. cannot be subdivided under SEPP-15 and we support the statement in the Discussion Paper that they also:

"cannot be subdivided under the Community Title legislation".

If this view is held then any suggestion that an M.O. may utilise the subdivision provisions of the Community Title legislation (as suggested as a reason for this M.O. review, in the section WHY THE REVIEW), must be rejected.

6.1.2 We support the view expressed that;

"the maintenance of the single lot, communally owned is in essence one of the underlying principle philosophies of M.O."

6.1.3 In respect to "no legal structure" being one of the possible legal organisations is we suggest, a contradiction in terms, and this notion should be dropped from the paper.

6.1.4 The issue of obtaining finance to build dwellings on an M.O. lies outside SEPP-15 and hence the need for further discussion in this paper.

No amount of fiddling the planning legislation can overcome what can only be addressed through other legislation.

6.1.5 The Discussion Paper asks:-

(a) "WOULD C.T. DESTROY THE CULTURE AND PHILOSOPHY OF M.O.?"

This question is we suggest, a contradiction in terms as the SEPP-15 clearly states that subdivision is not permitted.

Short of an amendment to the SEPP, Council would seem to be obliged to meet this requirement.

and (b) "WOULD SUCH SUBDIVISION CREATE DE FACTO RURAL-RESIDENTIAL ESTATES?"

The only practical way we can see for an existing M.O. to utilise the provisions of the Community Title legislation is to relinquish their status as an M.O. and reestablish themselves via a Rural Residential rezoning, as was carried out by Billen Cliffs to avail themselves of Strata Title.

This being the case, the issue of creating a "de facto rural-residential estate" would seem not able to arise.

6.2.0 MINIMUM AREA
"IS THE MINIMUM AREA TOO SMALL OR THE DENSITY TOO GENEROUS?"

6.2.1 We support the view that the minimum area is satisfactory.

6.2.2 We also hold, that the density formula is satisfactory.

In the past community application for M.O. approval have almost without exception not reached the maximum density threshold and we note Council's statement in this regard, that the average density on land in excess of 30ha, in the Nimbin area, is one dwelling per 19ha.

Proposals to develop a site to its theoretical maximum density is a relatively recent occurence and would seem to be associated with development which is "entrepreneurial" based, rather than stemming from the actions of a community of individuals.

Settlement to the maximum density at the outset leaves little if any scope for future dwellings, as may be desired for relatives and children when coming of age.

Where a "community" comes into being as a result of shared visions, values and interest it appears that the number of house sites sought is based on the SOCIAL (which is here defined to include "economic") needs of the group, and not the theoretical maximum capacity.

The converse appears to be true for "entrepreneurial" based development.

Therefore an applicant seeking the maximum density of settlement may be considered by Council as to whether or not, it is genuinely appropriate for consideration under SEPP-15.

In this regard the Discussion Paper suggests that there "may be a need for more rigid performance standards".

The "standards" that are quoted as examples, all appear to be those which it would reasonably be expected are considered by Council in meeting the requirements of SEPP-15 and s.90.

In this context we contend that the "social environment", should be given at least as much weight as the "physical environment".

The fact that it may not be as easy to "quantify" the "intangibles" associated with "social issues", does not relieve Council from the requirement to address this.

Where relevant it may be appropriate that Council prepare a "Social Impact Statement".

The Discussion Paper also states in this context, that concern has been expressed that M.O. applications which propose development to the maximum density have been "the subject of objection on the basis of overdevelopment".

WHAT CONSTITUTES "OVERDEVELOPMENT"?

If it is held that determination of "overdevelopment" is to be assessed solely on physical environmental constraints (as suggested in the "standards" above), then we submit that this approach is incomplete, and would not be in accordance with the legislation.

The question may be asked:-
"WHAT IS THE 'INTENT' IN AN INTENT-IONAL COMMUNITY?"

This question highlights the need for Council to be supplied with information in the D.A. about the underlying aspirations and intent of the community members, and the extent to which the proposal meets the SOCIAL needs of all the community members.

If it should be revealed for example, that the proposal does not stem from the community members as such, then we suggest that the proposal does not meet the provisions of the Policy and hence ought to be rejected.

We suggest in this regard, that if primary attention is given to the "social constraints" rather than the "physical constraints" an optimum density figure is likely to emerge.

Any proposal which exceeded this "optimum" density could then reasonably be considered to be an "overdevelopment".

6.3.0 AGRICULTURAL LAND

6.3.1 We support the notion that it is appropriate to consider M.O. applications for settlement on Class 1, 2 or 3 Agricultural land and consider that there is no bar to doing this in SEPP-15. What is barred is dwellings on "prime crop and pasture land" as so defined in the SEPP. (The terminology is important in this context).

"Prime crop and pasture" land should not be identified as automatically being Class 1, 2 or 3 Agricultural land, as suggested in the Discussion Paper.

6.3.2 "SHOULD COUNCIL REQUIRE A NOXIOUS WEED CONTROL PROGRAMME?"

This would depend upon the actual proposal. Over the years M.O. members have expended much (free) labour in weed control and reforestation. The control of noxious weeds is part of the larger issue viz. the collective noxious impact on the environment due to the total land use.

Council is not the sole body responsible for noxious weed control. Council should support and supplement other authorities in this regard.

Care needs to be taken not to discriminate against M.O's in this regard.

6.3.3 The question is asked;
"SHOULD THE 25% AGRICULTURAL LAND REQUIREMENT BE RECONSIDERED TO ENABLE M.O. DEVELOPMENT ON LAND WITH A GREATER PERCENTAGE OF PRIME LAND?"

An application is possible in an area where not more than 25% of the land is "prime crop and pasture" land. Clause 5(1)(c) of the Policy enables the Director-General of Agriculture to determine such land in the context of SEPP-15 and this provision should be used to consider each situation on merit.

6.4.0 NON-RESIDENTIAL DEVELOPMENT
We agree with the proposition in the Discussion Paper on this issue and that this facility be available to M.O's on merit.

6.5.0 SITING OF DWELLINGS
"SHOULD DWELLINGS BE CLUSTERED OR DISPERSED?"

Site selection should involve consideration of both social and physical constraints on the land.

This should not be a question of settlement being clustered or dispersed, but which is appropriate in the circumstance of each particular case.

While the SEPP states that development is "preferably in a clustered style" (Aim 2c), the Court found in **Glen Bin v L.C.C.** that "preferably" should not be read to mean "required to be clustered" and that in this particular case found in favour of the community's proposal for a "dispersed" form of settlement.

An M.O. application which makes no provision for "community facilities" ought to be rejected, for to do otherwise would be to breach the spirit and letter of the SEPP.

6.6.0 PUBLIC ACCESS

6.6.1 ROAD USAGE PATTERN
We agree that the greatest impact on unsealed access roads is their use by heavy vehicles during a wet season.

"ARE CURRENT ROAD STANDARDS APPROPRIATE?"

It will depend upon the present state of the road and the expectations and desires of those who use the roads, as to what standard is appropriate.

When determining what standard is to be adopted, the local community (of all residents in the locality) should have the opportunity to be involved in the decision making.

A clear distinction should be made between the wear and tear on a road due to the LOCAL USERS as distinct from NON LOCAL RESIDENTS.

In respect to contributions, where it is desired that the road standard should be improved for the needs of through traffic or tourist traffic, then this should be primarily borne by the wider community (where in some cases, this may be the whole of the Council area).

Due to sharing of vehicles there is ample evidence to show that M.O. families have a lower road usage pattern than non M.O. development. In addition the nature of M.O. dwellings are relatively low-impact developments and consequently require less building materials to be transported.

6.6.2 "IS FLOOD FREE ACCESS CONSIDERED NECESSARY?"

In general "No". The situation can be adequately addressed (as has been the case in the past), in accepting a "mostly flood free" access.

6.6.3 RIGHT-OF-WAY
We submit that right-of-way access be permitted where there is agreement between the parties concerned. Notwithstanding Council's guideline against the use of a right-of-way we would point out that the Court has upheld that it is normally beyond the Council's jurisdiction to restrict the option of a right-of-way. (Glen Bin v L.C.C.)

6.8 WATER SUPPLY
"HOW IMPORTANT IS THE IMPACT OF M.O's ON WATER RESOURCES?"

The normal 50m set back of septic systems and the like, from water streams and overland flow paths, seems to be appropriate.

The set-back from streams should be determined solely on the basis of health considerations.

It is not unusual on M.O's to find roofwater storage tanks, tapping of natural springs and, the construction of water dams. Such facilities greatly reduce the impact on natural water streams.

6.9 WASTE DISPOSAL
"SHOULD PROPOSED WASTE DISPOSAL SYSTEMS BE IDENTIFIED AT THE TIME OF THE D.A.?" and, "ARE THE STANDARDS ADEQUATE?"

On site waste disposal should be considered on merit.

In regard to toilet systems the Council should provide information on a range of "approved in principle" composting toilets and the like.

The traditional "deep drop" pit toilet should remain an option.

6.10.0 ENVIRONMENTAL RISK/HAZARD

6.10.1 FIRE PROTECTION
"ARE EXISTING BUSHFIRE PROTECTION MEASURES AND REQUIREMENTS APPROPRIATE AND ENFORCEABLE?"

Bushfire requirements have frequently been found to be a source of friction due to the requirements being inappropriate, impractical, excessively costly or unreasonably environmentally destructive.

It has been our experience that M.O. communities are "bushfire conscious" and seek that appropriate precautions are taken with this often being based on an approved Bushfire Management Plan.

It appears that the source of the friction stems from the Council applying textbook requirements with little or no regard for the particular "circumstances of the case".

Usually the proposed bushfire conditions are either modified at the Council meeting making the determination, or by subsequent agreement between the parties.

We recommend that bushfire conditions should be determined in close consultation with the applicant so that the requirements are negotiated (and if necessary mediated) prior to the submission to Council for determination.

For relevant guidelines on bushfire procedures see RRTF Draft DCP (Discussion Paper, Appendix 4), Items F1 - F7 and 12, (pp 7-9). To this should be added, that provision be made for a 27m turn around area for Bushfire Brigade trucks.

Reasonable bushfire protection measures are we suggest "enforceable". Any such "enforcing" however should be on merit and not just on textbook formula.

6.10.2 FLOODING
"SHOULD M.O. DWELLINGS NOT BE LOCATED IN FLOODWAYS?"

Answer: In general dwellings should not be located in floodways. The legislation however, enables this to be dealt with on merit, and in the "circumstances of the case".

6.10.3 SLIP/SUBSIDENCE
"SHOULD A GEOTECHNICAL REPORT BE SUBMITTED AT THE TIME OF MAKING A D.A?"

Where it is reasonable to expect that slip or subsidence may occur it is appropriate to supply a geotechnical report.

There should be an option to submit such reports in stages where appropriate. For example, at the D.A. stage a report may be sought to determine in principle, if the proposed access roads and residential areas are practical and appropriate.

Where necessary a building geotechnical report could then be required at the B.A. stage in respect to specific house sites.

6.11 VISUAL IMPACT
"SHOULD LANDSCAPING AND REHABILITATION PLANS BE CLEARLY DEFINED AND NOT ADDRESSES AS GENERALISED "MOTHERHOOD" STATEMENTS?"

Visual impact we submit would be best addressed by the introduction of a general DCP-Rural Visual Impact. Such a DCP should include for consideration, that there be no structures on skylines or structures easily visible from main roads.

Tree planting (nominating the species) around dwellings should be encouraged or required to prevent same creating adverse visual impact from scenic vantage points.

Such a DCP ought to also address the visual impact of electricity supply lines on roadways and across the countryside. Often such lines have a far worse visual impact than do dwellings.

Generalised "motherhood" statements should prevail until such time as there is an appropriate DCP or equivalent.

It would be discriminatory to impose special requirements on M.O. alone.

6.12 IMPACT ON ADJOINING LAND USE
"SHOULD THERE BE A BUFFER WITH ADJOINING LAND WHERE THERE IS AN IMPACT?"

The underlying issue inherent in this inquiry would seem to be the traditional "right-to-farm" issue.

This we suggest is a civil matter and in the event of a conflict ought to be dealt with accordingly.

As the provisions for advertised development apply to M.O. D.A's, adjoining owners are notified and any objections they may have can be taken into account in preparing the report for Council's consideration.

6.13 FAUNA IMPACT
"SHOULD ALL M.O. D.A's BE ACCOMPANIED BY A FAUNA IMPACT ASSESSMENT?"

Answer: "Yes".

Council's educational literature should carefully highlight the distinction between a "Fauna Impact Assessment" and a "Fauna Impact Statement (FIS)" and that an FIS is only required where the impact on the fauna is likely to be significant.

It is appropriate that an applicant seek advice from the NPWS in this regard, and include this in the D.A.

6.14 SPECULATION
"IS THERE A ROLE FOR COUNCIL TO PLAY IN RESPECT TO 'SPECULATOR' OWNERSHIP OF AN M.O.?"

Answer: "Yes". A genuine M.O. is a community of members and cannot be "owned" by a "speculator". If an application is not made by, or on behalf of, the "community of members", it falls outside the provisions of the SEPP.

We support the notion that Council is required to consider that:
"all shareholders be involved in the conceptual planning and development of an M.O."

It is we suggest, already obligatory for Council to satisfy itself that such details as; ownership, decision making structure, process for the

acceptance of new members, share transfer arrangements and the like, are "community based", as required in the SEPP-15.

A requirement of consent could be that evidence be available that the acceptance of new members be determined entirely by the community of members, and that failure to maintain this condition would be a breach of the approval.

It should be remembered that M.O. is characterised by there being no transferable title to land, and therefore there should be no scope for speculation.

6.15 COMPLIANCE WITH CONDITIONS OF CONSENT
"SHOULD COUNCIL 'POLICE' CONDITIONS OF CONSENT AND UNAPPROVED BUILDING DEVELOPMENT?"

Formally Council, under the Local Government Act and the Planning Act, is already obliged to ensure that conditions of consent are met and that appropriate action is taken in respect to unapproved buildings.

Council may of course use its discretion as to the extent of any 'policing' that it undertakes.

Care should be taken however, to ensure that any programme of 'policing' is across the board and not just confined to M.O. properties, for to do otherwise may be considered to be discriminatory.

Council and applicants should keep in mind the option of mutually changing the conditions of consent, if it is seen appropriate to do so. This is one way of rectifying an otherwise difficult situation.

6.16 ILLEGAL DEVELOPMENT
"SHOULD COUNCIL TAKE ACTION AGAINST ILLEGAL M.O's?"

As stated in the previous item, Council has a statutory obligation in respect to illegal development and it is a matter of Council policy as to the extent to which it carries this out.

Approved temporary or transitional dwellings are of course possible and illegal buildings can be registered.

As the number of people permanently residing in unapproved caravans, de facto flats and the like in urban areas is likely to far exceed the irregularities in rural areas, we again counsel that any suggestion of singling out M.O. for special attention in this regard may be viewed as discriminatory.

6.17 RATING
"SHOULD COUNCIL "STRIKE" A SEPARATE RATE LEVY FOR M.O., AND IF SO AT WHAT RATE?"

Answer: While rating is not a planning matter, we support any review that contributes to an "equitable" system of rating.

Some communities relate in the sense of being an "extended" family. As the determination of what constitutes "family" resides wholly with the community and not with Council (Dempsey Family v S.S.C), it is difficult to see how any increase in rates in this situation would not be seen as other than discriminatory.

6.18.0 PAYMENT OF s.94 LEVIES
"ARE CURRENT ROAD CONTRIBUTIONS APPROPRIATE?"

6.18.1 This will vary from place to place and time to time. It will depend on the circumstances.

If the draft s.94 Community Management Plans are approved in their present form, such items as proposed for the rural road levy are likely to represent a very severe to crippling hardship on new M.O's.

It is submitted that such an imposition contradicts the Aims of the Policy, "particularly where low income earners are involved" and the "construction of low cost buildings" are involved.

6.18.2 Attention is again drawn in this context to the comments made above in respect to M.O's having a lower road usage pattern than other developments and that M.O's are also a low-impact form of development.

6.18.3 It is submitted that s.94 levies arrived at on the basis of the distance from Lismore would be inequitable.

6.18.4 "SHOULD COUNCIL CONTINUE TO REQUIRE s.94 LEVIES AT THE B.A. STAGE?"

Answer: Yes, at the time of each B.A. There should be scope for time payment in cases of hardship.

6.18.5 "SHOULD COUNCIL SEEK TO PERMIT 'IN KIND' CONTRIBUTIONS IN LIEU OF A MONETARY CONTINUATION?"

As the legislation requires the Council to consider "in kind" contributions at all times, any alternative to this is not open to the Council.

Typical "in kind" contributions may included free labour by M.O. members on road upgrading (not being maintenance), construction of public recreational facilities, public halls or the like.

6.19 APPLICATIONS
Basically the information suggested in the Discussion Paper to be included in any M.O. application, follows what is required under the provisions of s.90 and SEPP-15.

END

Personal DISCUSSION PAPER
(Not a Parl Lower Doc.)

COMMENTS ON THE

"DISCUSSION PAPER ON M.O. OF RURAL LAND"
issued by the Lismore Council, 27 April 1993

by Peter Hamilton
(Draft 13 June 1993)

INTRODUCTION
The comments in this paper are confined to the ISSUES section (Item 6) of the Council Discussion Paper. An attachment "A" deals with the potential application of relevant sections of SEPP-15.

6.0 ISSUES
OPTIONS WITH RESPECT TO THE CURRENT SYSTEM OF PROCESSING M.O. D.A's

6.0.1 "Seeking exemption from SEPP-15 and amending the LEP to provide the equivalent together with a DCP.?"

Comment: Inappropriate. As the LEP could not minimise the principles of the SEPP it would appear to be cumbersome, complicated and cost inefficient without any apparent gain.

6.0.2 "Remain with SEPP-15 and prepare a DCP.?"

Sound reasons would need to be advanced as to what benefits may flow from this option.

At this time I see no compelling reasons to support the introduction of a DCP for the legislation as it stands (if fully utilised) seems to have ample provision to administer M.O. D.A's.

If however, the Council elects to introduce a DCP-MO, then I suggest there would be merit in the M.O. community having considerable input into its preparation.

In essence this view stems from a value placed in taking responsibility for the legislation that governs our lives.

6.0.3 "Amending SEPP 5 with the agreement of the Minister?"

This is fanciful and but a hypothetical option.

6.0.4 "Do nothing?"

I understand this is intended to mean "retain the status quo" and as such I support this option.

6.0.5 Council to produce an M.O. User Guide Manual.

(This option is over and above those suggested in the Discussion Paper.)

"The "Low Cost Country Homebuilding Handbook" produced by the Department of Planning has over the years been of considerable assistance to community resettlers on the one hand, and to Council on the other, in suggesting ways in which the legislation may be appropriately applied.

A Council produced "localised" manual could usefully extend and update the content of the above Handbook and if its creation involved the community (as it should) could address many of the issues raised in the Discussion Paper.

Council also has the option to prepare an M.O. Code, or, simply to make "policy decisions" as to how the legislation is to be applied. An example of this is the present "M.O. Policy Guidelines for Road Conditions".

Where appropriate this process has merit.

6.1 SUBDIVISION

6.1.1 M.O. cannot be subdivided under SEPP-15 and I support the statement in the Discussion Paper that they also "cannot be subdivided under the Community Title legislation".

If this view is held then any suggestion that an M.O. may utilise the subdivision provisions of the Community Title legislation (as suggested as a reason for this M.O. review, in the section WHY THE REVIEW), must be rejected.

If it were the wish of an existing M.O. to utilise the Community Title legislation, the procedure to follow would be to apply for a so called "spot" rezoning as a "Rural Residential" allotment. Such an approval requires Council consent.

Apart from rejecting such an application outright, Council could if it choose to approve such an application, attach condition normally applying to "Rural Residential" subdivision.

Such development is likely then to attract;-

(a) improved internal roadworks and possibly associated drainage works,

(b) connection to town water, electricity and telephone,

(c) a new s.94 levy in respect to each subdivided lot.

(d) separate rating for each allotment,

(e) upgrading of the sewerage system.

Councils in general, do not support small isolated "spot" "Rural Residential" rezoning on the planning principle that such "urban fragmentation", is not appropriate in rural areas.

6.1.2 I support the view expressed that;

"the maintenance of the single lot, communally owned is in essence one of the underlying principle philosophies of M.O."

6.1.3 In respect to "no legal structure" being one of the possible legal organisations is I suggest, a contradiction in terms, and this notion should be dropped from the paper.

6.1.4 The issue of obtaining finance to build dwellings on an M.O. lies outside SEPP-15 and hence the need for further discussion in this paper.

No amount of fiddling the planning legislation can overcome what can only be addressed through other legislation.

6.1.5 The Discussion Paper asks:-

(a) **"WOULD C.T. DESTROY THE CULTURE AND PHILOSOPHY OF M.O."**

This question is I suggest, a contradiction in terms as SEPP-15 clearly states that subdivision is not permitted. Short of an amendment to the SEPP, Council has no way of side stepping this obligation.

and (b) **"WOULD SUCH SUBDIVISION CREATE DE FACTO RURAL-RESIDENTIAL ESTATES?"**

The only practical way I can see for an existing M.O. to utilise the provisions of the Community Title legislation is to relinquish their status as an M.O. and reestablish themselves via a Rural Residential rezoning, as was carried out by Billen Cliffs to avail themselves of Strata Title.

This being the case, the issue of creating a "de facto rural-residential estate" does not arise.

6.2.0 MINIMUM AREA
"IS THE MINIMUM AREA TOO SMALL OR THE DENSITY TOO GENEROUS?"

6.2.1 I support the view that the minimum area is satisfactory.

6.2.2 I also hold that the density (being the number of houses or people on the property), is also satisfactory.

In the past community application for M.O. approval have almost without exception not reached the maximum density threshold.

Proposals to develop a site to its theoretical maximum density is a relatively recent occurence and would seem to be associated with development which is "entrepreneurial" based, rather than stemming from a community of individuals.

Where a "community" comes into being as a result of shared visions, values and interest it appears that the number of house sites sought is based on the SOCIAL needs of the group, and not the theoretical maximum capacity.

The converse appears to be true for "entrepreneurial" based development.

I hence view that applications seeking the maximum density of settlement be considered by Council as to whether or not, they are but a de facto subdivision.

In this regard the Discussion Paper suggests that their "may need to be subject to more rigid performance standards".

The "standards" that are quoted as examples, all appear to be those which it would reasonably be expected are considered by Council in meeting the requirements of SEPP-15 and s.90.

In this context however, I contend that the "social environment" should be given just as much weight as the "physical environment".

The fact that it may not be as easy to "quantify" the "intangibles" associated with "social issues", does not relieve Council from the requirement to give this due consideration.

The Discussion Paper also states in this context, that concern has been expressed that M.O. D.A's that propose development to the maximum density have been "the subject of objection on the basis of overdevelopment".

What constitutes "overdevelopment"?

If it is held that determination of "overpopulation" is to be assessed solely on physical environmental constraints (as suggested in the "standards" above), then I submit that this approach is inappropriate and would not be in accordance with the legislation.

This situation highlights the need for Council to be supplied with information in the D.A. about the underlying motivations in forming the community, and the ways this is geared to meet the SOCIAL needs of the community members, or, is geared to maxamise the profit margin of an entrepreneur.

I suggest in this regard, that if **primary attention** is given to the **"social constraints"** rather than the **"physical constraints"** an **optimum** density figure is likely to emerge.

Any proposal which exceeded this **"optimum"** density could hence reasonably be considered to be **"overpopulation"**.

3.0 AGRICULTURAL LAND

3.1 I support the notion that it is appropriate to consider M.O. applications for settlement on prime agricultural land and consider that there is no bar to doing this in SEPP-15. What is barred is dwellings on "prime crop and pasture land" as so defined in the SEPP. (It is important to have a clear understanding of the terminology used in this context).

It appears that in the past some traditional farmers on large properties have sought, and been granted M.O. development approval, usually for one or two extra houses.

I believe that had such applications been submitted to the manner of assessment suggested in this paper, that they would have, or ought to have, been rejected.

Such past development might more accurately be described as "de facto detached dual occupancy".

Now that "detached dual occupancy" is an option open to such farmers, M.O. applications in such situations should be rejected.

(In the case of large blocks of land "sequential detached dual occupancies are now permissible, and happening in other parts of the State.)

3.2 The control of noxious weeds is part of the larger issue viz. the collective noxious impact on the environment due to the total land use.

Council is not the sole body responsible for noxious weed control. Council should support and supplement other authorities in this regard, to the extent that such falls within the limits set out in the planning legislation.

Having in mind such issues as dip sites associated with traditional farming, care needs to be taken not to discriminate against M.O's as one particular form of rural land settlement.

The question is asked "**Should the 25% agricultural land requirement be recognised to enable M.O. development on land with a greater percentage of prime land?**"

I see this as a non issue because the needs of traditional farmers on large properties falls outside the aims of the M.O. legislation and any change to this percentage would require an amendment to the SEPP.

4.0 NON-RESIDENTIAL DEVELOPMENT

I agree with the proposition in the Discussion Paper on this issue and that this facility be available to M.O.s on merit.

5.0 SITING OF DWELLINGS "Should dwellings be clustered or dispersed?"

Site selection should involve consideration of both social and physical constraints on the land.

This should not be a question of settlement being clustered or dispersed, but which is appropriate in the circumstance of each particular case.

The SEPP does not indicate "a preference for a clustered configuration" notwithstanding this statement in the Discussion Paper.

On a property with a topography that provides a choice of either clustered or dispersed settlement it may be expected that a bona fide community will opt for a clustered form of settlement, while in a "de facto subdivision" application, it may be expected to have a dispersed form of settlement.

The presence and location of "community facilities" (as required in SEPP-15 Cl[h]), is likely to be centrally placed in respect to dwelling sites.

An M.O. application which makes no provision for "community facilities" ought to be rejected outright for to do otherwise would be to breach the spirit and letter of the SEPP.

The antithesis of "clustered" or "dispersed" development is I suggest "ribbon development".

Where it is proposed for example, that the house sites be equally spaced along say, a Council road, this should be seen as evidence to question whether the application may be a "de facto subdivision".

6.0 PUBLIC ACCESS

I agree that the greatest impact on unsealed access roads is their use by heavy vehicles during a wet season.

To avoid being discriminatory care needs to be taken by Council in examining the type of vehicles likely to be used, particularly where traditional farmers on the same road frequently convey heavy truck loads of livestock, produce or timber.

Such usage needs to be compared with the use by private cars, in the context that the deterioration caused by trucks is vastly greater that caused by cars.

"Is flood free access considered necessary?"

In general "No". The situation can be adequately addressed (as has been the case in the past), in accepting a "mostly flood free" access.

In most cases where the main access is across a "mostly flood free" crossing, there is a second "back" access on high flood free ground.

8.0 WATER SUPPLY

"How important is the impact of M.O's on water resources?"

The normal 50m set back of septic systems and the like, from water streams and overland flow paths, seems to be appropriate.

The set back from streams should be determined solely on the basis of health considerations.

9.0 WASTE DISPOSAL

"Should proposed waste disposal systems be identified at the time of the D.A.?"
and, **"Are the standards adequate?"**

On site waste disposal should be considered on merit.

In regard to toilet systems the Council should provide information on a range of "approved in principle" composition toilets and the like.

The traditional "deep drop" pit toilet should remain an option.

10.0 ENVIRONMENTAL RISK/HAZARD

10.1 FIRE PROTECTION

"Are existing bushfire protection measures and requirements appropriate and enforceable?"

Bushfire requirements have frequently been found to be a source of friction due to the requirements being inappropriate, impractical, excessively costly or unreasonably environmentally destructive.

It has been my experience that M.O. communities are "bushfire conscious" and seek that appropriate precautions are installed.

It appears that the source of the friction stems from the Council applying textbook requirements with little or no regard for the particular "circumstances of the case".

Usually the proposed bushfire conditions are either modified at the Council meeting making the determination, or by subsequent agreement between the parties.

It hence appears that bushfire conditions should be determined in close consultation with the applicant so that the requirements are negotiated (and if necessary mediated) prior to the submission to Council for determination.

For relevant guidelines on bushfire procedures see RRTF Draft DCP (Discussion Paper, Appendix 4), Item F1 - F7 inclusive (pp 7-8). To this should be added that provision be made for a 90 foot, turn around area for Bushfire Brigade trucks.

(I am indebted to Ian Dixon for this material.)

Reasonable bushfire protection measures are I suggest "enforceable".

Any such "enforcing" however should be on merit and not just on textbook formula.

10.2 FLOODING

"Should M.O. dwellings not be located in floodways?"

Answer: In general "No". The legislation enable this to be dealt with on merit.

A blanket prohibition should be avoided as there may come to be M.O. communities who choose to relate to a river ecology and for example, use the river as a source of food or for transport.

Certain stream bank structures may be appropriate in such a case.

10.3 SLIP/SUBSIDENCE

"Should a geotechnical report be submitted at the time of making a D.A?"

Where it is reasonable to expect that slip or subsidence may occur it is appropriate to supply a geotechnical report.

There should be an option to submit such reports in stages where appropriate. For example, at the D.A. stage a report may be sought to determine in principle if the proposed access roads and house sites are practical and appropriate.

Where necessary a building geotechnical report could then be required at the B.A. stage.

11.1 VISUAL IMPACT

"Should landscaping and rehabilitation plans be clearly defined and not addressed as generalised "motherhood" statements?"

There should be a general DCP (Code or Policy document), which sets out guidelines on rural visual impact. This should include for consideration, that there be no structures on skylines or structures easily visible from main roads.

Tree planting (nominating the species) around dwellings should be encouraged or required to shield against adverse visual impact

Such a DCP ought to address in this context such items as electricity supply lines on roadways and across the countryside.

Often such lines have a far worse visual impact on the rural environment, than do dwellings.

Notwithstanding that the Council has no jurisdiction over the location of electricity supply lines, there is nevertheless a requirement on the Electricity Authority to prepare a D.A. in accordance with the provision of Part V of the Planning Act.

I am not aware of this being a practice and suggest that if Council did prepare development guidelines in this regard, it may be that the Authority would accept these on merit, or, be required to do so on appeal to the Court.

"Point sources" of artificial light such as unshielded street lights and tennis court flood lights, are a source of visual pollution, and ought to be shielded to retain the natural night environment.

11.2 On those properties which do have scenic vantage points, and where the occupants have no objection to providing public access to same, due credit for this should be considered in determining any s.94 contribution.

12.0 IMPACT ON ADJOINING LAND USE

"Should there be a buffer with adjoining land where there is an impact?"

The underlying issue inherent in this inquiry would seem to be the traditional "right-to-farm" issue.

This I suggest is a civil matter and in the event of a conflict ought to be dealt with accordingly.

As the provisions for advertised development apply to M.O. D.A's, adjoining owners are notified and any objections they may have can be taken into account in preparing the report for Councils consideration.

13.0 FAUNA IMPACT

"Should all M.O. D.A's be accompanied by a Fauna Impact Assessment?"

Answer: "Yes".

Council's educational literature should carefully highlight the distinction between a "Fauna Impact Assessment" and a "Fauna Impact Statement (FIS)". A FIS is only required where it is considered that the impact on the fauna by the proposed development, is likely to be significant.

It is appropriate that an applicant seek advice from NPWS in this regard and include this in the D.A.

14.0 SPECULATION

"Is there a role for Council to play in respect to 'speculator' ownership of an M.O.?"

Answer; "Yes".
It is I suggest, already obligatory for Council to consider the ownership details, decision making structure, share transfer arrangements and the like.

I support the notion that Council is required to consider that "all shareholders be involved in the conceptual planning and development of an M.O."

Where the final decision making authority rests with the community at large, the presence of a "speculator" among the shareholders would seem to be of little consequence.

As mentioned above, Council should require full documentation on ownership particulars and the communities decision making process.

15.0 COMPLIANCE WITH CONDITIONS OF CONSENT

"Should Council 'police' conditions of consent and unapproved building development?"

Formally Council, under the Local Government Act and the Planning Act, is already obliged to ensure that conditions of consent are met and that appropriate action is taken in respect to unapproved buildings.

Council may of course use its discretion as to the extent of any 'policing' that it undertakes.

Care should be taken however, to ensure that any programme of 'policing' is across the board and not just confined to M.O. properties, for to do otherwise would be to lay the Council open to a charge of discrimination.

Council and applicants should keep in mind the option of mutually **changing** the conditions of consent, if it is seen appropriate to do so. This is one way of rectifying an otherwise "festering" situation.

16.0 ILLEGAL DEVELOPMENT

"Should Council take action against illegal M.O's?"

As stated in Item 15 above, Council has a statutory obligation in respect to illegal development and it is a matter of Council policy as to the extent to which it carries this out.

Approved temporary or transitional dwellings are of course possible and illegal buildings can be registered.

As the number of people permanently residing in unapproved caravans, de facto flats and the like in urban areas is likely to far exceed the irregularities in rural areas, I again counsel that any suggestion of singling out M.O. for attention in this regard would leave Council open to a charge of discrimination.

17.0 RATING

"Should council "strike" a separate rate levy for M.O., and if so at what rate?"

Answer; Council should not "strike" a separate rate for M.O's.

Many communities relate in the sense of being an "extended" family. As the determination of what constitution "family" resides wholly with the community and not with Council (Dempsey Family v S.S.C), it is difficult to see how any increase in rates in this situation would not be seen as other than discriminatory.

It is to be noted that Council does strike a differential rate for the rural residential estate of Billen Cliffs.

The notion of legally applying the concept of "centres of population" to M.O's is questionable as it has not been tested at law as being applicable in this case.

18 PAYMENT OF s.94 LEVIES

"Should Council continue to require s.94 levies at the B.A. stage?"

Answer; Yes, subject to scope for time payment in cases of hardship.

The pending introduction of the amended legislation requires Council to produce a s.94 Community Plan of Management. (If after the 30 June this year, the Council has not introduced this Plan, it will not be entitled to collect ANY s.94 levy until it does so.)

The new information to be provided will I believe enable both Council and the contributor to be better informed, and will provide "hard" evidence to support review of the levy amount.

The Plan in part requires Council to determine in advance what facilities are to be created or expanded and their estimated cost, together with detailed financial information (available to the public at any time) showing for each contributor, the status of where the levy has been spent and how much.

Council's "M.O. Policy Guidelines for Road Conditions" (Discussion Paper Appendix 5) is a wishy washy document and presumably will fall into abeyance with the introduction of the new s.94 requirements.

It is my view having followed the Council's activities in trying to meet the requirements of the amended legislation that future M.O's are likely to find the new s.94 contributions, as being crippling in the extreme.

A likely outcome of this is:-

(a) there will be frequent Court appeals,
and/or (b) communities wanting to settle will do so illegally.

An "up" side to the changes to s.94 is that a social plan has to be prepared in consultation with the local community and in this way local residents may have a real say in determining on what the levy money is to be spent.

"Should Council seek to permit 'in kind' contributions in lieu of a monetary contribution?"

As the legislation **requires** the Council to consider "in kind" contributions at all times, any alternative to this is not open to the Council.

Typical "in kind" contributions may included free labour by M.O. members on road upgrading (not being maintenance), construction of public recreational facilities and the like.

19.0 APPLICATIONS

Basically the information suggested be included in any M.O. D.A. follows the requirements of s.90 and SEPP-15.

END

~~PANCOAST~~
Erased

ATTACHMENT A

NOTES ON SEPP-15 WITH A VIEW TO ITS APPLICATION IN CONSIDERING M.O. DEPLOYMENT APPLICATIONS

Being an attachment to the
"Discussion Paper on M.O. of Rural Land"
issued by the Lismore Council, 27 April 1993

by Peter Hamilton
(Draft 13 June 1993)

- -

1. INTRODUCTION

I consider that any examination of SEPP-15 with a view to its application in M.O. Development Applications and, possible "modifications" or supplementary other instruments, for example a D.C.P., policy statements, code or the like, requires in the first instance, a close examination of the effectiviness of the existing provisions in the SEPP.

It is important I suggest, to satisfy oneself:-

a. on the ways the present provisions of the SEPP are being interpreted and used, and,

b. to consider those provisions in the SEPP which are either, not being applied, or applied inconsistently, or infrequently and perhaps could be better used to overcome experienced difficulties.

2. EXAMINATION OF SEPP-15

The following is a sequential examination of selected items in the SEPP which I see may have relevance when considering M.O. D.A.'s.

2.1 SEPP AIM 2(a)

"to encourage a COMMUNITY based and ENVIRONMENTALLY sensitive approach to rural settlement" (my emphasis).

COMMENT: As "community" is not defined specifically in the "Interpretations" (Item 5), discretion is required in determining whether a D.A. is or is not, a "community based" application within the spirit and letter of the SEPP.

When read in the context of the whole of the SEPP, there are many features which qualify what "community" is to mean in terms of the SEPP.

These include for example, such statements as "collectively own the land", "sharing of facilities", "pooling resources", "construction of low cost buildings" and the like. For further comment on such as these, see below.

In addition reference can be made to the literature both books and journals that deal with lifestyle "community" activities. (A reference list of relevant literature is not included in this paper).

There is in my view an onus on an applicant to spell out what "community" means in the context of their application and if this is not provided, that the Council seek this be supplied by way of "additional information".

It is my experience that the term "community" does mean many different things to resettlers but nevertheless there is a commonly held distinction between what bona fidely is held to be "community development" versus "private development".

This "diversity" of application is respected and "protected" in the legislation and I support this as an appropriate principle to be retained. (It is in fact in my view, an essential "building block" of a sustainable system of democracy).

What does not constitute "community" in the context of the SEPP includes for example "de facto subdivision",

All development impacts on the natural environment. In the case of for example, urban development, or industrial development the impact is usually assessed on the basis of obtaining the "minimal impact" on the environment.

While steps to assess the impact on the environment is spelt out in detail in the Planning Act, eg. in s.90 considerations and s.111 requirements, I suggest that the encouragement of an "ENVIRONMENTALLY SENSITIVE APPROACH" in the Aim of this SEPP is placing a special attention on "environmental sensitivity" which I suggest, is over an above that dealt with elsewhere in the planning legislation.

In essence I see this to be that the quality of the environment on the property will be positively enhanced due to the proposed development. The distinction here is distinction between a "direct" versus an "indirect" benefit to the environment.

2.2 SEPP AIM 2(b)(ii)

"to enable ... the sharing of facilities and resources (and) to collectively manage the allotment"

COMMENT: This Aim gives Council the licence, and I would suggest, the "obligation" to satisfy itself that the spirit and letter of this Aim is met.

It could reasonably be expected that this information include details of for example, constitution of the organisation, articles and memorandum of an incorporated body, regulations, decision making processes including conflict resolution procedures, right of appeal, sanctions and right

of expulsion, inheritance, renting and/or selling of buildings, residential entitlement, transfer of shares or equivalent, environmental management plans.

If such relevant information is not included in the D.A. then the Council should seek it as otherwise it would not be meeting the requirements of the SEPP.

It sems that Council has not always sought such information when it has not been provided.

Where such information is provided it will I suggest greatly assist in distinguishing the "de facto subdivision" from the bona fide community application.

Evidence of how it is proposed that the property be "collectively" owned and managed should be provided.

The requirement of a Social Impact Statement should be considered where appropriate.

2.3 SEPP AIM 2(b)(iii)

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

Evidence of the income status of the community should be provided or sought by Council. Special recognition and consideration should apply where it is shown that the participants are in the lower income range.

For Council to do other than support those on low incomes would be a contravention of this Aim of the SEPP Policy and while I am not aware that this has been an issue in any court appeal, I am of the view the Court would support this principle on merit.

2.4 SEPP AIM 2(c)(ii)

"in a manner which does not involve subdivision ...(or) separate legal rights to parts of the land through means such as agreements, dealings, company shares or trust arrangements."

The introduction of SEPP-15 came about through the efforts of those wishing to live communally with the sharing of facilities and resources.

The Policy does I suggest, clearly set out in "spirit" and "letter" the Aims, Objectives and details to achieve this end.

In drafting the legislation careful attention was given to not providing any loophole that could be used by developers in a way which was inconsistent with the "spirit" of the policy while at the same time, not restricting diverse forms of bona fide communal settlement.

In short this clause of the Policy may be expressed as prohibiting any devious means to circumvent the Aims of the policy in regard to private versus communal ownership of the land.

It is in my view, a credit to the drafters of the legislation that it has been "tight" in this regard. Such attempts that have been made, have been few and far between, and in all probability would not have proceeded had the relevant Councils implemented the relevant clauses in the Policy to determine the bona fides of the applicant.

In essence this may be expressed as those with an ulterior motive to misuse the Policy ought not to apply for M.O. development, and if they do Council should utilise the available provisions in the Policy to prevent such an application being accepted.

The Discussion paper raises the question of "entrepreneural" M.O. developers. In principle I have no difficulty with the concept of M.O. "entrepreneurial" developers and in fact I can envisage situations where such a developer may have a deal to offer.

The distinction between bona fide M.O. development and de facto subdivision lies as far as I am concerned, in the underlying motivation of the applicant.

If the motivation is to make a quick or easy buck, then it is inappropriate, but if it is to be genuinely instrumentally in the formation of a community, which in turn comes to make decisions collectively on the shape of a Development Application, then all things considered, it could be appropriate.

When considering an application from an "entrepreneurial" developer the SEPP provides ample provisions to determine the bona fides of an application in this respect. (I would go so far as to say that this is not just a discretionary requirement on the part of Council, but an obligatory requirement.)

If adequate information is not included in the D.A. to determine the bona fides, then Council should seek that this be supplied in accordance with the provisions of the Policy.

If Council then wished to proceed with a development application but had some reservations, it could place a condition on the approval that the D.A. would lapse if after a specified period of time, certain conditions were not met.

2.5 SEPP Clause 5(2), INTERPRETATION

"... the Council may ... treat two or more dwellings as a single dwelling ..."

This clause provides what is normally referred to as the "expanded house" concept. Different Councils have used different approaches in applying this provision and as far as I am aware, the Lismore Council has in practice, related to each case on its merits and this has not been a source of concern or friction. In most situations this is likely to be a building matter, rather than a planning matter.

2.6 SEPP Clause 7(1)(f)

"... the development is not carried out for the purpose of a ... tourist or weekend residential accommodation, except where development for such purposes is permissible under the provisions of another planning instrument ..."

This provision has come about through an amendment to the original Policy and permits such activities as providing weekend tourist accommodation or running a residential workshop on an M.O. (Ref: Dept. of Planning Circular B11, Item 23)

(This provision is not an issue in the Discussion Paper. I mention it here as there may be those who obtained M.O. approval when the Policy was first introduced, and are not aware of this amendment.)

2.7 SEPP Clause 8, MATTERS FOR CONSIDERATION

"... Council shall not consent to an application ... unless it has taken unto consideration such of the following matters as are of relevance ..."

(1)(a) "... the means proposed for establishing land ownership"

This should include all relevant documentation on the land ownership, both legal documents and informal agreements, policy statements and the like by for example, unincorporated associations.

Where an entrepreneur (be it an individual or eg. a corporate body) holds a percentage of shares in the community, this information together with the details of the manner in which the shares are held and may be transferred, should be detailed.

(1)(a) "... the means proposed for establishing ... dwelling occupancy rights..."

This might reasonably include details such as;

rights to "air space" over specified areas of land,
delineation of the "home improvement area" if applicable,
details in respect to selling or letting the dwelling if applicable.

(1)(a) "... the means proposed for establishing ... environmental ... management ..."

This might reasonably include for example, a land management plan.

(1)(a) "... the means proposed for establishing ... community management ..."

As mentioned above this could be expected to include a copy of the constitution, article of association, or like details providing information on the decision making process.

Evidence should be provided to show that ultimate "power" or determining decision making rests with the community and is not vested in an individual (be it a person or a corporate body etc.).

I consider that the provisions in the above clause alone, if fully considered by Council, are likely to provide sufficient information to determine the bona fides of an applicant.

2.8 SEPP Clause 8(1)(g)
"... IF required by the APPLICANT, the availability of electricity and telephone ..." (my emphasis)

The provision of a telephone service and connection to the town supply of electricity should not be used by Council as grounds for rejecting an M.O., D.A.

2.9 SEPP Clause 8(1)(h)
"... the availability of community facilities and services to meet the needs of the occupants ..."

Where an entrepreneurial type development is proposed the absence of any "communal facilities" should be carefully scrutinised by Council as a possible indicator of the proposal being a "de facto subdivision".

2.10 SEPP Clause 8(1)(k)
"... whether the land is subject to bushfires, flooding, soil erosion or slip and, if so, the ... measures proposed to protect occupants ... (and) internal access roads ..."

Apart from the "bushfire" issue (which is dealt with elsewhere) the requirements of this provision in practice, do not appear to have been a problem. In steep terrain where precipices exist consideration should also specifically be given to possible risk from an avalanche.

PHONE

~~Sports~~
R/Di O Malcolm S invite? ✓ ✓
O media? Fri > 9.30?
O N.N. ?

[Bus Nick & Malcolm view
+ legal view of CT?]

O Seminar + Tent at Bodhi?
O Col James?

Div. LCC tamps dwelling refused.
Warwick Sharing

Helara Wall. 858556
48 Selley Drive
Hochella land.

of Blueberry Farms + MO.
Mac Farms.
of Kanaky, Jan? Rob
Pete Massing

FOCUS

PHONE (07) 201 0645
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62, SWENSONS ROAD, MOUNT CROSBY
QUEENSLAND 4306 ACN 053 987 796

Mr Peter Hamilton,
Unit 1,
50, Paterson Street,
Byron Bay 2481

18.6.93

Dear Peter,

I am sorry this has taken me a while, and I hope my comments are not too late. I think Lismore's paper is very good, well balanced and thought provoking. My own views on the issues that it raises are as follows.

- I cannot see any good argument for prohibiting multiple occupancy on good agricultural land. However, I would consider that in these cases
  - no subdivision should be involved, not even community title, as this might take the land out of future viable economic production, and
  - dwelling sites should be clustered, and where possible located on poorer land.

- I agree with the paper that non-residential development should be permissible, including tourism and cottage industry, where these are permissible in the locality.

- Clustering of dwellings should be required in my view to reduce the visual and functional intrusion on the rural landscape, and to promote co-operative production on the land. This is also sensible in terms of both public and private infrastructure costs.

- Public road access is necessary, consistent with any residential development. Without it, people may simply be locked out (or locked in) and Council may have some liability.

- Impact on water resources is a site specific issue, as is waste disposal. Both need to be assessed at the development application stage. For highly permeable soils, there seems to be increasing evidence that septic tanks (and even "enhanced" systems such as Envirocycle) are not performing well, with resultant risk of groundwater pollution. Composting toilets are becoming a more attractive option, and we are promoting them in some villages in North Queensland.

- Geotechnical assessment at the development applicaltion stage is appropriate, for each proposed dwelling, ***provided that*** this does not duplicate further requirements at the building application stage.

FOCUS

- Visual impact could include a requirement for screening dwellings from view from public places, including public roads.

- The requirement that ownership be vested in at least two thirds of adult residents appears cumbersone and impractical, as well as unjustifiable. I believe that this type of development, as any other, should be "tenure neutral" with regard to its occupation.

- Conditions of consent should be enforced consistently with those for other forms of development. To do otherwise would be a distortion of public responsibility. A similar approach should be taken with illegal development.

- The rating situation probably requires overall review, and I can't see a justification for multiple occupancies being singled out.

- Section 94 levies are reasonable, as are "in kind" contributions.

- I am uncomfortable about the concept of permitting community title subdivision on multiple occupancies, but at the same time I think this is an irrational position. It seems illogical to allow it, but then to make it as unattractive as possible to suppress demand. Probably we need an overall settlement strategy that can create a range of attractive and affordable options in both rural and urban areas.

Another approach would be to look at multiple occupancy development as an opportunity for negotiating site-specific environmental gains. These might include :

- weed control and eradication
- soil erosion control and land rehabilitation
- streambank vegetation and repair
- establishment of wildlife corridors
- voluntary conservation agreements and dedication of land.

By looking for nett environmental gains, multiple occupancy could become an opportunity for public good rather than a threat, within the rural planning context.

I hope these notes are of assistance,

Yours sincerely,

Jane

Dr Jane Stanley

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Dr Jane Stanley

MO - Dep

(T) Set up in 2 cols - bona fide v. speculator + evidence/doc req'd to support

NB 2 types of 'entrepreneurial spec.'

Sale of a share in a tenants-in-common is valid & the entitlement that flows with this is a pro rata entitlement to the assets of the property. BUT this is not the same thing as saying the holder of the share has fee held title to a pegged parcel of land.

A similar argument may be used for any system of land ownership. - viz the members in the Lang Rev are the beneficiaries of the assets of the property eg on sale.

(T) A test is, who stands to benefit on sale?

eg as eg 'Lillyfield' under Steve Gunther.

(T) Who determines sale of shares (or ≡)?
a) If community the ex. (support with Court & minutes etc & that dec
or ≡
b) If by entrepreneur then not ok.

If (b) fails to meet test.

Outline what an entrepreneur could be doing & get paid for if a planning consultant. So Jonathan not a felling a male

"planning consultant" + "financial investor"...

No one expects a planning consultant to benefit for contribution other than contract deal

Could outline what a bona fide project manager/administrator could/should get out of a scheme

Itemise the features / format of a community:
eg. physical growth etc
(cf Andrew Dillon Roy)

It would be reasonable that a person with these skills get paid.

(1) Who + how in the evolution/formation of the community did the original
the "artist"/director/philosophy/clarity on the community held values/attitudes + beliefs, arose

(1) This leads to "who + how did the basic concept of the plan arise".

If after the formation of the core group, the 'bona fide'

if before then STEPS is not met, +:
is in breach for Council to consider.

Expressing this another way—
Fundamental question
Fundamental test of the validity (bona fide)

of an MO-DA.

— a) is it from the community (which feit needs to be documented)

Evidence (statement) that the community were "instrumentally involved in the plan as presented in the DA

or is it the proposal of an entrepreneur/ professional planner &c).

(T) test if rectangular lots. This is not "environmentally" sensitive & ∴ defacto subdivision.

(T) selling above to max density provides no option for children/family → build & this is inappropriate. + ours is an applicant to "slow cause" why this is considered app is

Contains up date (not incl) on "Tests"

R.

RATF 9/2

(9)

SUBMISSION BY THE PAN-COMMUNITY COUNCIL

on the

"DISCUSSION PAPER ON M.O. OF RURAL LAND"
issued by the Lismore City Council, 27 April 1993

INTRODUCTION

The Pan-Community Council is an organisation formed to further the interests of Multiple Occupancy communities. "Pan-Com" appreciates the opportunity to respond to the "Discussion Paper on M.O. of Rural Land".

We wish to congratulate Council on the quality of the paper which we found examined all relevant issues in an objective yet stimulating manner.

Over the last twenty years there has been a gradual growth of M.O. development in the Lismore City Council area. Originally the land was cheap but since then land values have increased dramatically and in some case in the order of ten fold.

Often M.O. communities have made substantial contributions to the local area or, the City Council area as a whole. These contributions have been economic, environmental, cultural, artistic, educational and social. Today many of the sixty or so M.O's in the Council area are tightly woven into the fabric of the local community.

M.O's range a great deal as to their legal structure, physical layout and levels of co-operation. There are however some commonly held philosophies amongst multiple occupancy communities, some of these philosophies include, that :-

1. The good quality of relationship between people is of great importance.

2. The land should be cared for and enhanced by the M.O. community.

3. Membership of an M.O. should be as cheap as possible with an emphasis on owner-building to ensure the availability of access to low cost housing.

4. There is a strong belief and commitment to self sufficiency in terms of energy, housing and food production.

In the context of the Discussion Paper it is important to realise that M.O's do not constitute "Rural Residential" development. Community members do not have legal title to a separate identifiable piece of land.

While individual title to an identifiable piece of land is widely valued in this society, M.O. dwellers have chosen the path of cooperative land sharing.

ABBREVIATIONS

DCP: Development Control Plan
M.O.: Multiple Occupancy
LEP: Local Environment Plan
Policy (the): See SEPP-15
SEPP-15: State Environmental Planning Policy - 15, Multiple Occupancy of Rural Land

# #

6.0 ISSUES: OPTIONS FOR CHANGE TO THE CURRENT SYSTEM OF PROCESSING M.O. APPLICATIONS

(The numbering of the Issues referred to below follows that used in the Discussion Paper).

6.0.1 "SEEKING EXEMPTION FROM SEPP-15 AND AMENDING THE LEP TO PROVIDE THE EQUIVALENT TOGETHER WITH A DCP.?"

Comment: Inappropriate. As the LEP could not minimise the principles of the SEPP it would appear to be cumbersome, complicated and cost inefficient without any apparent gain.

6.0.2 "REMAIN WITH SEPP-15 AND PREPARE A DCP.?"

Sound reasons would need to be advanced as to what benefits may flow from this option.

At this time we see no compelling reasons to support the introduction of a DCP, for the legislation as it stands (if fully utilised), seems to have ample provision to administer M.O. Applications.

If however, the Council elects to introduce a DCP-MO, then we suggest there would be merit in the M.O. community at large, being invited to make input into its preparation.

6.0.3 "AMENDING SEPP-15 WITH THE AGREEMENT OF THE MINISTER?"

This seems to be unrealistic, and but a hypothetical option.

6.0.4 "DO NOTHING?"

We understand this is intended to mean "retain the status quo" and as such, we support this option.

(The following options are over and above those suggested in the Discussion Paper.)

6.0.5 COUNCIL TO PRODUCE AN M.O. USERS GUIDE HANDBOOK.

The "Low Cost Country Homebuilding Handbook" produced by the Department of Planning has over the years been of considerable assistance to community resettlers on the one hand, and to Council on the other, in indicating ways in which the legislation may be appropriately applied.

A Council produced "localised" handbook could usefully extend and update the content of the above Handbook and if its creation involved the community (as it should) could address many of the issues raised in the Discussion Paper.

6.0.6 OTHER POSSIBLE INSTRUMENTS

Council has the option:-

(a) to prepare an M.O. Code, or, simply to make "policy decisions" as to how the legislation is to be applied. An example of this is the present "M.O. Policy Guidelines for Road Conditions".

or (b) to introduce a Draft DCP with the express intent of not formalising its adoption until sometime in the future. The advantage of this option is that it could spellout guidelines in precise details and allow these to be tested over time.

Each of the above should be seen, at least in part, as having an "educational" role for all concerned and, to minimise or avoid possible conflict situations.

Where appropriate, these processes or a combination thereof, may have merit.

6.0.7 AN M.O. COUNCIL ADVISORY PANEL.

An M.O. Advisory Panel may be an aid to Council in advising on the issues raised in the Discussion Paper and as they arise in particular M.O. Applications. The former Architectural Advisory Panel may be seen as a model in this regard.

6.1.0 SUBDIVISION

6.1.1 M.O. cannot be subdivided under SEPP-15 and we support the statement in the Discussion Paper that they also:

"cannot be subdivided under the Community Title legislation".

If this view is held then any suggestion that an M.O. may utilise the subdivision provisions of the Community Title legislation (as suggested as a reason for this M.O. review, in the section WHY THE REVIEW), must be rejected.

6.1.2 We support the view expressed that;

"the maintenance of the single lot, communally owned is in essence one of the underlying principle philosophies of M.O."

6.1.3 In respect to "no legal structure" being one of the possible legal organisations is we suggest, a contradiction in terms, and this notion should be dropped from the paper.

6.1.4 The issue of obtaining finance to build dwellings on an M.O. lies outside SEPP-15 and hence the need for further discussion in this paper.

No amount of fiddling the planning legislation can overcome what can only be addressed through other legislation.

6.1.5 The Discussion Paper asks:-

(a) "WOULD C.T. DESTROY THE CULTURE AND PHILOSOPHY OF M.O.?"

This question is we suggest, a contradiction in terms as the SEPP-15 clearly states that subdivision is not permitted. /Short of

an amendment to the SEPP, Council has no way of side stepping this obligation.

and (b) "WOULD SUCH SUBDIVISION CREATE DE FACTO RURAL-RESIDENTIAL ESTATES?"

The only practical way we can see for an existing M.O. to utilise the provisions of the Community Title legislation is to relinquish their status as an M.O. and reestablish themselves via a Rural Residential rezoning, as was carried out by Billen Cliffs to avail themselves of Strata Title.

This being the case, the issue of creating a "de facto rural-residential estate" would seem not able to arise.

6.2.0 MINIMUM AREA
"IS THE MINIMUM AREA TOO SMALL OR THE DENSITY TOO GENEROUS?"

6.2.1 We support the view that the minimum area is satisfactory.

6.2.2 We also hold, that the density formula is satisfactory.

In the past community application for M.O. approval have almost without exception not reached the maximum density threshold and we note Council's statement in this regard, that the average density on land in excess of 30ha, in the Nimbin area, is one dwelling per 19ha.

Proposals to develop a site to its theoretical maximum density is a relatively recent occurence and would seem to be associated with development which is "entrepreneurial" based, rather than stemming from the actions of a community of individuals.

Settlement to the maximum density at the outset leaves little if any scope for future dwellings, as may be desired for relatives and children when coming of age.

Where a "community" comes into being as a result of shared visions, values and interest it appears that the number of house sites sought is based on the SOCIAL (which is here defined to include "economic") needs of the group, and not the theoretical maximum capacity.

The converse appears to be true for "entrepreneurial" based development.

We hence view that an applicant seeking the maximum density of settlement may be considered by Council as to whether or not, such an application it is genuinely appropriate for consideration under SEPP-15.

In this regard the Discussion Paper suggests that there "may be a need for more rigid performance standards".

The "standards" that are quoted as examples, all appear to be those which it would reasonably be expected are considered by Council in meeting the requirements of SEPP-15 and s.90.

In this context we contend that the "social environment", should be given at least as much weight as the "physical environment".

The fact that it may not be as easy to "quantify" the "intangibles" associated with "social issues", does not relieve Council from the requirement to address this.

Where relevant it may be appropriate that Council prepare a "Social Impact Statement".

The Discussion Paper also states in this context, that concern has been expressed that M.O. applications which propose development to the maximum density have been "the subject of objection on the basis of overdevelopment".

WHAT CONSTITUTES "OVERDEVELOPMENT"?

If it is held that determination of "overdevelopment" is to be assessed solely on physical environmental constraints (as suggested in the "standards" above), then we submit that this approach is incomplete, and would not be in accordance with the legislation.

The question may be asked:-
"WHAT IS THE 'INTENT' IN AN INTENT-IONAL COMMUNITY?"

This question highlights the need for Council to be supplied with information in the D.A. about the underlying aspirations and intent of the community members, and the extent to which the proposal meets the SOCIAL needs of all the community members.

If it should be revealed for example, that the proposal does not stem from the community members as such, then we suggest that the proposal does not meet the provisions of the Policy and hence ought to be rejected.

We suggest in this regard, that if **primary attention** is given to the **"social constraints"** rather than the **"physical constraints"** an **optimum** density figure is likely to emerge.

Any proposal which exceeded this **"optimum"** density could then reasonably be considered to be **"overdevelopment"**.

6.3.0 AGRICULTURAL LAND

6.3.1 We support the notion that it is appropriate to consider M.O. applications for settlement on Class 1, 2 or 3 Agricultural land and consider that there is no bar to doing this in SEPP-15. What is barred is dwellings on "prime crop and pasture land" as so defined in the SEPP. (The terminology is important in this context).

"Prime crop and pasture" land should not be identified as automatically being Class 1, 2 or 3 Agricultural land, as suggested in the Discussion Paper.

6.3.2 "SHOULD COUNCIL REQUIRE A NOXIOUS WEED CONTROL PROGRAMME?"

This would depend upon the actual proposal. Over the years M.O. members have expended much (free) labour in weed control and reforestation. The control of noxious weeds is part of the larger issue viz. the collective noxious impact on the environment due to the total land use.

Council is not the sole body responsible for noxious weed control. Council should support and supplement other authorities in this regard, to the extent that such falls within the limits set out in the planning legislation.

Having in mind such issues as the clear felling of forests (which have enabled the establishment of noxious weeds) and the use of dip sites, care needs to be taken not to discriminate against M.O's in this regard.

6.3.3 The question is asked;
"SHOULD THE 25% AGRICULTURAL LAND REQUIREMENT BE RECONSIDERED TO ENABLE M.O. DEVELOPMENT ON LAND WITH A GREATER PERCENTAGE OF PRIME LAND?"

An application is possible in an area where not more than 25% of the land is "prime crop and pasture" land. Clause 5(1)(c) of the Policy enables the Director-General of Agriculture to determine such land in the context of SEPP-15 and this provision should be used to consider each situation on merit.

6.4.0 NON-RESIDENTIAL DEVELOPMENT
We agree with the proposition in the Discussion Paper on this issue and that this facility be available to M.O's on merit.

6.5.0 SITING OF DWELLINGS
"SHOULD DWELLINGS BE CLUSTERED OR DISPERSED?"

Site selection should involve consideration of both social and physical constraints on the land.

This should not be a question of settlement being clustered or dispersed, but which is appropriate in the circumstance of each particular case.

While the SEPP states that development is "preferably in a clustered style" (Aim 2c), the Court found in **Glen Bin v L.C.C.** that "preferably" should not be read to mean "required to be clustered" and that in this particular case found in favour of the community's proposal for a "dispersed" form of settlement.

An M.O. application which makes no provision for "community facilities" ought to be rejected, for to do otherwise would be to breach the spirit and letter of the SEPP.

6.6.0 PUBLIC ACCESS

6.6.1 ROAD USAGE PATTERN
We agree that the greatest impact on unsealed access roads is their use by heavy vehicles during a wet season.

"ARE CURRENT ROAD STANDARDS APPROPRIATE?"

It will depend upon the present state of the road and the expectations and desires of those who use the roads, as to what standard is appropriate.

When determining what standard is to be adopted, the local community (of all residents in the locality) should have the opportunity to be involved in the decision making.

A clear distinction should be made between the wear and tear on a road due to the LOCAL USERS as distinct from NON LOCAL RESIDENTS.

In respect to contributions, where it is desired that the road standard should be improved for the needs of through traffic or tourist traffic, then this should be primarily borne by the wider community (where in some cases, this may be the whole of the Council area).

Due to sharing of vehicles there is ample evidence to show that M.O. families have a lower road usage pattern than non M.O. development, and in addition that the nature of M.O. dwellings are such that they are relatively low-impact developments and consequently have a lower road usage on this account.

requiring less building materials to be transported.

6.6.2 "IS FLOOD FREE ACCESS CONSIDERED NECESSARY?"

In general "No". The situation can be adequately addressed (as has been the case in the past), in accepting a "mostly flood free" access.

6.6.3 RIGHT OF WAY

We submit that right-of-way access be permitted where there is agreement between the parties concerned. Notwithstanding Council's guideline against the use of a right-of-way we would point out that the Court has upheld that it is normally beyond the Council's jurisdiction to restrict the option of a right-of-way. **(Glen Bin v L.C.C.)**

6.8 WATER SUPPLY

"HOW IMPORTANT IS THE IMPACT OF M.O's ON WATER RESOURCES?"

The normal 50m set back of septic systems and the like, from water streams and overland flow paths, seems to be appropriate.

The set-back from streams should be determined solely on the basis of health considerations.

It is not unusual on M.O's to find roofwater storage tanks, tapping of natural springs and, the construction of water dams. Such facilities greatly reduce the impact on natural water streams.

6.9 WASTE DISPOSAL

"SHOULD PROPOSED WASTE DISPOSAL SYSTEMS BE IDENTIFIED AT THE TIME OF THE D.A.?" and, "ARE THE STANDARDS ADEQUATE?"

On site waste disposal should be considered on merit.

In regard to toilet systems the Council should provide information on a range of "approved in principle" composting toilets and the like.

The traditional "deep drop" pit toilet should remain an option.

6.10.0 ENVIRONMENTAL RISK/HAZARD

6.10.1 FIRE PROTECTION

"ARE EXISTING BUSHFIRE PROTECTION MEASURES AND REQUIREMENTS APPROPRIATE AND ENFORCEABLE?"

Bushfire requirements have frequently been found to be a source of friction due to the requirements being inappropriate, impractical, excessively costly or unreasonably environmentally destructive.

It has been our experience that M.O. communities are "bushfire conscious" and seek that appropriate precautions are taken with this often being based on an approved Bushfire Management Plan.

It appears that the source of the friction stems from the Council applying textbook requirements with little or no regard for the particular "circumstances of the case".

Usually the proposed bushfire conditions are either modified at the Council meeting making the determination, or by subsequent agreement between the parties.

We recommend

It hence appears that bushfire conditions should be determined in close consultation with the applicant so that the requirements are negotiated (and if necessary mediated) prior to the submission to Council for determination.

For relevant guidelines on bushfire procedures see RRTF Draft DCP (Discussion Paper, Appendix 4), Items F1 - F7 and 12, (pp 7-9). To this should be added, that provision be made for a 27m turn around area for Bush Fire Brigade trucks.

Reasonable bushfire protection measures are we suggest "enforceable". Any such "enforcing" however should be on merit and not just on textbook formula.

6.10.2 FLOODING

"SHOULD M.O. DWELLINGS NOT BE LOCATED IN FLOODWAYS?"

Answer: In general dwellings should not be located in floodways. The legislation however, enables this to be dealt with on merit, and in the "circumstances of the case".

6.10.3 SLIP/SUBSIDENCE

"SHOULD A GEOTECHNICAL REPORT BE SUBMITTED AT THE TIME OF MAKING A D.A?"

Where it is reasonable to expect that slip or subsidence may occur it is appropriate to supply a geotechnical report.

There should be an option to submit such reports in stages where appropriate. For example, at the D.A. stage a report may be sought to determine in principle, if the proposed access roads and residential areas are practical and appropriate.

Where necessary a building geotechnical report could then be required at the B.A. stage in respect to specific house sites.

6.11 VISUAL IMPACT

"SHOULD LANDSCAPING AND REHABILITATION PLANS BE CLEARLY DEFINED AND NOT ADDRESSES AS GENERALISED "MOTHERHOOD" STATEMENTS?"

Visual impact we submit would be best addressed by the introduction of a general DCP-Rural Visual Impact. Such a DCP should include for

consideration, that there be no structures on skylines or structures easily visible from main roads.

Tree planting (nominating the species) around dwellings should be encouraged or required to prevent same creating adverse visual impact from scenic vantage points.

Such a DCP ought to also address the visual impact of electricity supply lines on roadways and across the countryside. Often such lines have a far worse visual impact than do dwellings.

Generalised "motherhood" statements should prevail until such time as there is an appropriate DCP or equivalent.

It would be discriminatory to impose special requirements on M.O. alone.

6.12 IMPACT ON ADJOINING LAND USE
"SHOULD THERE BE A BUFFER WITH ADJOINING LAND WHERE THERE IS AN IMPACT?"

The underlying issue inherent in this inquiry would seem to be the traditional "right-to-farm" issue.

This we suggest is a civil matter and in the event of a conflict ought to be dealt with accordingly.

As the provisions for advertised development apply to M.O. D.A's, adjoining owners are notified and any objections they may have can be taken into account in preparing the report for Council's consideration.

6.13 FAUNA IMPACT
"SHOULD ALL M.O. D.A's BE ACCOMPANIED BY A FAUNA IMPACT ASSESSMENT?"

Answer: "Yes".

Council's educational literature should carefully highlight the distinction between a "Fauna Impact Assessment" and a "Fauna Impact Statement (FIS)" and that an FIS is only required where the impact on the fauna is likely to be significant.

It is appropriate that an applicant seek advice from the NPWS in this regard, and include this in the D.A.

6.14 SPECULATION
"IS THERE A ROLE FOR COUNCIL TO PLAY IN RESPECT TO 'SPECULATOR' OWNERSHIP OF AN M.O.?"

Answer: "Yes". A genuine M.O. is a community of members and cannot be "owned" by a "speculator". If an application is not made by, or on behalf of, the "community of members", it falls outside the provisions of the SEPP.

We support the notion that Council is required to consider that:
"all shareholders be involved in the conceptual planning and development of an M.O."

It is we suggest, already obligatory for Council to satisfy itself that such details as; ownership, decision making structure, process for the acceptance of new members, share transfer arrangements and the like, are "community based", as required in the SEPP-15.

One test to ensure that an M.O. is "community based" is for Council to satisfy itself that the acceptance of a new member rests entirely with the existing members and not with for example, the sale of shares by an entrepreneurial speculator. An undertaking to this effect could be made a condition of consent, where failure to establish this, would constitute a breach of the approval.

It should be remembered that M.O. is characterised by there being no transferable title to land, and therefore there should be no scope for speculation.

6.15 COMPLIANCE WITH CONDITIONS OF CONSENT
"SHOULD COUNCIL 'POLICE' CONDITIONS OF CONSENT AND UNAPPROVED BUILDING DEVELOPMENT?"

Formally Council, under the Local Government Act and the Planning Act, is already obliged to ensure that conditions of consent are met and that appropriate action is taken in respect to unapproved buildings.

Council may of course use its discretion as to the extent of any 'policing' that it undertakes.

Care should be taken however, to ensure that any programme of 'policing' is across the board and not just confined to M.O. properties, for to do otherwise may be considered to be discriminatory.

Council and applicants should keep in mind the option of mutually changing the conditions of consent, if it is seen appropriate to do so. This is one way of rectifying an otherwise difficult situation.

6.16 ILLEGAL DEVELOPMENT
"SHOULD COUNCIL TAKE ACTION AGAINST ILLEGAL M.O's?"

As stated in the previous item, Council has a statutory obligation in respect to illegal development and it is a matter of Council policy as to the extent to which it carries this out.

Approved temporary or transitional dwellings are of course possible and illegal buildings can be registered.

As the number of people permanently residing in unapproved caravans, de facto flats and the like in urban areas is likely to far exceed the irregularities in rural areas, we again counsel that any suggestion of singling out M.O. for special attention in this regard may be viewed as discriminatory.

6.17 RATING
"SHOULD COUNCIL "STRIKE" A SEPARATE RATE LEVY FOR M.O., AND IF SO AT WHAT RATE?"

Answer: While rating is not a planning matter, we support any review that contributes to an "equitable" system of rating.

Some communities relate in the sense of being an "extended" family. As the determination of what constitutes "family" resides wholly with the community and not with Council (**Dempsey Family v S.S.C**), it is difficult to see how any increase in rates in this situation would not be seen as other than discriminatory.

6.18.0 PAYMENT OF s.94 LEVIES
"ARE CURRENT ROAD CONTRIBUTIONS APPROPRIATE?"

6.18.1 This will vary from place to place and time to time. It will depend on the circumstances.

If the draft s.94 Community Management Plans are approved in their present form, such items as proposed for the rural road levy are likely to represent a very severe to crippling hardship on new M.O's.

It is submitted that such an imposition contradicts the Aims of the Policy, "particularly where low incomes are involved" and the "construction of low cost buildings" are involved.

6.18.2 Attention is again drawn in this context to the comments made above in respect to M.O's having a lower road usage pattern than other developments and that M.O's are also a low-impact form of development.

6.18.3 It is submitted that s.94 levies arrived at on the basis of the distance from Lismore would be inequitable.

6.18.4 "SHOULD COUNCIL CONTINUE TO REQUIRE s.94 LEVIES AT THE B.A. STAGE?"

Answer: Yes, at the time of each B.A. There should be scope for time payment in cases of hardship.

6.18.5 "SHOULD COUNCIL SEEK TO PERMIT 'IN KIND' CONTRIBUTIONS IN LIEU OF A MONETARY CONTINUATION?"

As the legislation **requires** the Council to consider "in kind" contributions at all times, any alternative to this is not open to the Council.

Typical "in kind" contributions may included free labour by M.O. members on road upgrading (not being maintenance), construction of public recreational facilities, public halls or the like.

6.19 APPLICATIONS
Basically the information suggested in the Discussion Paper to be included in any M.O. application, follows what is required under the provisions of s.90 and SEPP-15.

END

6.14 p10

(A) The Council may find it useful to prepare a series of "test" questions to assist it in delivering the ——— / appropriateness or otherwise, of a DA which may involve an 'entrepreneurial speculator'.

"Test" Who stands to gain financially in the event of the DA being approved?

"Test" Who owns the property (has an option or is purchasing) at the time of the lodging the DA?

"Test" a) Is the DA made in the name of the entrepreneur or on "behalf of the body of members?

b) Where the applicant is acting as a "professional consultant" or the like, is this with or without any vested interest in the outcome of the DA?

Test. Does the acceptance of new members rest entirely with the existing members and not for example, on the sale of shares by an entrepreneurial speculator?

~~An undertaking to give effect to~~ the acceptance of new members ~~being~~ determined by the community of members, ~~could be made a condition of consent~~ where failure to maintain this condition would be a breach of the approval.

A neg: of course could be a condition

rly MO Sabrusso

2 types of speculators

Sima 230480m 9-5 work

Arkel close 855436

File.

~~DA~~
RATE 06
follows cover letter = 07

Unit 1, 50 Paterson Street,
Byron Bay,
NSW 2481
(066) 858 648

29.6.93

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

Dear Sir,

Re: Multiple Occupancy Discussion Paper

I wish to comment on the above Discussion Paper.

Particulars of my comments will follow shortly.

Yours faithfully,

.....
Peter Hamilton