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FAX No: ..... DATE: 2.8.95

Number of pages (including this sheet): 2

SUBJECT: Byron MO - LEP

COMMENTS:

Herewith copy in case this is not the same as what you have on hand.

P.

A 1

1st Draft

History of Multiple Occupancy in NSW

There have always been MO's in Australia, from Aboriginal times, but the ones that directly sparked the NSW SEPP 15 were those set up in the Rainbow Region of far north NSW following the 1973 Australian university students' arts festival - The Aquarius Festival.

Lack of housing and of money meant that many who came to live in the area were obliged to live on de facto MO's in any shelter they could find or contrive, ranging from tree houses to ferro-cement domes. Although there had been multiple dwellings on many of these same properties as late as the 1960's, occupied by poor banana growers, the land was zoned "Non-urban/(a)" which limited dwellings to 2 per 40 ha. However, Lismore CC, following consultation with the State Planning Authority, did suspend relevant provisions of its plan to permit 2 MO developments, the Co-Ordination Co-operative of Tuntable Falls and Noubergee of Lilian Rock (Town Planner's Report, Terania Shire Council no: 631, 15/1/76). While the local Terania Shire Council was prepared to accommodate MO development, it was amalgamated with LCC in 1976 and Lismore took a decidedly negative attitude culminating in its issuing several demolition orders on illegal MO buildings in January 1977. Although these were suspended to allow time for the dwellings to be brought up to building standards, the Council's attitude was still one of "formal confrontation," (Mowbray, M. "Where Cultures Clash, LG powers prop reaction," RAPIS, June 1980, p.57 - 60, at 59). The Homebuilders Association, formed in 1975, so to represent the interests of owner home builders continued to negotiate with first Terania and then Lismore Council and finally in February 1978 Lismore Council announced a moratorium on demolition orders and convened a series of meetings with the Homebuilders and the Local Government Dept. which led to the DOEP releasing an "Interim Policy: Multiple Occupancy on Farms" in September 1979, (Homebuilders Assn. pamphlet, 30/10/79).

However, the advent of the Terania Creek logging protests in August 1979, largely organised by local MO members, saw the Lismore City Council re-issue fifteen demolition notices on illegal dwellings on the Bodhi Farm Community in the Tuntable Creek valley, ("Northern Star", 18/10/74 & 3/11/79). The then Minister for Environment and Planning, the late Paul Landa, at a DOEP seminar on hamlet development in Lismore, threatened Lismore Council with dismissal if they went ahead with demolitions, expressing his concern at the use of councils' powers "for social coercion" and announced that he would legislate to allow multiple occupancy of land, inviting the Council and Bellingen Shire Council to set up Experimental Building Areas, allowing more flexibility in compliance with the Ordinance 70 building code. (MOEP Press Release, 18/12/79). Lismore CC declined, leading Landa to unilaterally declare legal provision for MO communities in parts of the Council area (~~Local Government Act 1919~~, Alteration of Interim Order No 1: Shire of Terania 1980).

In November 1979 the NSW Dept. of Environment and Planning circulated Circular 35 (Interim Policy - Multiple Occupancy on Farms), to Councils outside the Sydney area. This was followed by Circular 44 in July 1980, after input had been received from councils, alternative lifestyle developments and the Local Government and Shires Association, and the 1981 DOEP Discussion Paper, (Technical Assistance Group, Architecture Dept. University of Sydney, ~~North Coast~~ Low Cost Country Homebuilders) which has set the policy parameters for MO's in NSW ever since, spelling out fourteen policies on MO development, the most important of which were the Departments support for multiple occupancy, the preference for clustered development, the minimum allotment size, the prohibition of subdivision and the need for MO's to be owned by 2/3 of their adult residents. Importantly Circular 44 also contained provisions for legalising existing de facto MO's as by this time considerable numbers of illegal developments were causing concern to Councils and MO residents alike.

In February 1980 LCC gave retrospective approval to 23 MO's and in August 1980 the Council adopted a DCP for MO's and gradually other councils introduced enabling clauses into their planning regimes - based on sample clauses issued by the State Planning and Development Commission in November 1981 - Tweed (25/9/81); Severn (6/5/83); Kyogle (9/2/84); Coffs Harbour (25/6/84) and Bombala (23/9/84), though all but Tweed, Kyogle and Bombala related only to specific sites. (Wyatt, J. "Multiple Occupancy: Report and Development Control Plan, Bellingen SC and NSW Dept. of Housing, September 1986, p.4). In January 1985, Ministerial Direction No: 16 "Planning in Rural Areas" again directed relevant councils to take MO developments into account when preparing LEP's for rural lands within their areas. (Mitchell, T.M., "Multiple Occupancy: Recommendations Regarding Draft SEPP No: 15", B.B. thesis, Hawkesbury Agricultural College, October 1986, p. 64).

The high point in State Government interest in MO's came with the release of research showing widespread support from "back to the land" magazine readers for changes in law and administration of MO's and government funding for MO-type settlement, (Metcalf, W.J. & F.M Vanclay, "Government Funding of Alternative Lifestyles: An Opinion Survey, Institute of Applied Social Resources, Griffith University, May 1984), and a feasibility study by the Land Commission of NSW which recommended "implementation of Multiple Occupancy (MO) development for low income earners in NSW" ("Multiple Occupancy Development", Land Commission of NSW, June 1984, p.4). In his preface to the study Housing Minister Walker announced that he had "asked the Land Commission to identify a potential pilot project as a form of low cost land and home ownership that may be facilitated by the Government."

This initiative led to the ill-fated Mt. Lindesay and Wadeville Projects in which the State Government proposed to provide seed capital and other resources to a group of low income earners to establish an MO. Before arrangements were finalised people were already living on the chosen property and with the accession to power of the Liberal and National parties in 1985 the project ~~and the residents were~~ abandoned by the new Government.

In August 1985, the DOEP released a discussion paper and a draft policy on MO's. The 23 policies recommended included many from the Department's previous Circulars 35 and 44, plus new policies concerning new forms of MO legal title; the permitting of MO's with Council consent in all general rural or non-urban zones; ~~close monitoring~~ of the operation in relation to new forms of tenure or strata subdivision and ~~the~~ limitation of S.94 contributions under the Environmental ~~Planning and Assessment~~ Act 1979, (DOEP, "Multiple Occupancy in Rural New South Wales: A discussion Paper," Sydney, 1985, pp.37 - 44). In Circular No: 83, which accompanied the Draft Policy, the Department's Secretary explained that, "The Draft Policy has been introduced in response to a situation where very few Councils have introduced enabling provisions for multiple occupancy, as previously recommended by the State Government. Increasing demands for multiple occupancy, and the lack of any planning framework to meet these demands, reduced public confidence in the Government support for the multiple occupancy concept is evident but potential initiatives at both State and Federal level are hampered by the existing situation," (Pincini, R.L., Secretary, Dept. of Environment and Planning, Circular No: 83, "Draft State Environmental Planning Policy - Dwelling - Houses in Rural Areas (Multiple Occupancy)," 12/8/85, par. 5).

A number of other research papers on MO's were completed around this time, including a study of MO's in the Clarence Valley which found that, "Despite the problems caused by the presently illegal nature of MO development...many developments are flourishing...Local Councils, existing local communities and MO participants have combined to revitalise a number of rural locations that were in decline and therefore under utilising existing infrastructure and services.....That such opportunities to experiment and co-exist with other [MO] participants are available is vital," (Cuming, P. "Multiple Occupancy of Rural Land in the Clarence Valley," Housing Commission of NSW, 1985, p.56 - 7).

Another study which surveyed small numbers of MO's in the NSW far and mid north coast and the south coast, found that, "Only a few shires have permitted multiple occupancy and only then in quite restrictive circumstances: on marginal and unproductive land; with settlement densities that are quite inappropriate to the needs of settlers; and with stringent registration, servicing and road access requirements that are often beyond the financial resources available. It is suggested that multiple occupancy be removed form the control of local councils and given over to State control...and that the high registration fees and rates be reduced," (Sommerlad, E.A., Dawson, P.L. & J.C. Altman, "Rural Land Sharing Communities: An Alternative Economic Model?" Bureau of Labour Market

Research Monograph Series No: 7, A.G.P.S., Canberra, 1985, p. 210). Other findings were that 82% of households on MO's were below the poverty line (ibid., p. 118), and that land use and management were environmentally sensitive, (ibid., p. 170). The study concluded that, "land sharing communities have a great deal to offer....new ways of organising work and integrating it with other aspects of living; and new ways of contributing to economic and social well being through the expansion of household production of goods and services [and]...sustainable patterns of living," (ibid., p. 189).

A study sponsored by the Dept. of Housing and Bellingen SC found 200 people living on 12 MO's in the Shire and drew up a draft DCP for the Shire which has since served as a model for other councils, (Wyatt, J. op. cit.).

One of the most significant events in the development of State Government policy on MO's was the 1985 - 6 Woodward Commission of Inquiry into Multiple Occupancy in the Shire of Tweed. This was set up after the Council applied to the Minister for Planning for an inquiry under S.119 EP&A into problem areas specified by the Council. The problems related to applying the Shires LEP MO provisions; determination of an equitable formula for S.94 contributions and rates; de facto MO subdivisions; adverse impacts of MO's on neighbours; the implications of MO development for provision of Council services and actions anticipating development approval, (Woodward, J., "Multiple Occupancy in the Shire of Tweed," Report to the Minister for Planning and Environment, Sydney, March 1986, p.6).

He found that other forms of rural development involving some degree of common property and/or common management have not been adequately distinguished from multiple occupancy development....Council has not been particularly adept at making distinction between bona fide multiple occupancies and other forms of development.....there appears to be some inconsistency between the types of controls placed on multiple occupancies and the relative lack of control of rural activities which in most instances will be on land adjoining multiple occupancies," (Woodward, op. cit., p. 120 - 1).

MO residents in the 1990's feel this is still true, as was Woodward's finding that amongst some MO residents there are, "demands for community title legislation...there is an inconsistency in the support for prohibition of subdivision and the demands for a new form of legislation which would provide free rights to individual members for sale and for mortgage of dwelling and site, (ibid., p. 28) and he felt that none of the legal title options provide a suitable legal structure and a method of dealing with trends in multiple occupancies with regard to the individual transfer of rights in part of the land and a degree of community control over the transfer, (ibid., p. 29).

The Commissioner called for "a form of land tenure which combines individual ownership with a group settlement; common responsibilities with private rights of exclusive occupation and security of tenure in harmony with joint occupation and control; transferability of equity by individual members; distinction between liabilities of the community and liabilities of the individual...and a suitable mechanism for enforcing the communities decisions", (ibid.).

The Commissioner recommended inter alia, that 100% of MO land be owned in common; freehold not be permitted but exclusive occupation rights by lease be permitted between the owners in common and individual households, (ibid., p. 79).

He suggests long term leases with provisions covering transfer without the consent of the common owners, such consent not to be unreasonably withheld. This could be implemented by legislative amendment or use of the suspension provisions of S.28 of the Environmental Planning and Assessment Act. As to use and management of common land he recommends that model provisions be drawn up for use by MO's and administered by a deed between the common owners and instruments under S.88B of the Conveyancing Act so that direct breaches of such rules can be legally enforceable, (ibid., p. 34 - 6).

On the question of S.94 and S.90 contributions, Woodward quotes the DOEP Discussion Paper to the effect that the contributions demanded by councils are too high and reflect the actual cost of upgrading existing facilities rather than the additional wear and tear on them caused by the MO. Moreover, because MO land is not subdivided there is no capital generated, unlike other forms of rural development, with which to pay such contributions and hence MO's do not have the same ability to pay. Again some of the community facilities for which councils seek contributions are either not used by MO residents, not accessible to them or are provided by the MO's themselves, (ibid., p. 51). He suggests that S.94 contributions by MO's can be kept low by councils applying to the Local Government Grants Commission for supplementation of funds where MO's exist in the LGA, (ibid., p. 88). He found that, "there appeared to be little demand from the existing multiple occupancy developments in the Tweed Shire on community facilities," (ibid., p. 53). He continues, "Inspection of multiple occupancies and consideration of the submissions to the inquiry indicates that these [S.94] charges are likely to be excessive in terms of the actual demand placed on roads by multiple occupancy dwellers," (ibid., p. 54). The Commissioner recommended arbitration of contribution disputes, (ibid., p. 55); S.94 instalment payments, (ibid., p. 56); and pointed out the tendency for Council to "double dip" - collecting separate amounts of money for the S.90 (i) access provision and again for the same piece of road, under S.94, (ibid.).

On rates the Commissioner advocated a rating system based on the number of dwellings which could apply to all rural forms of development, including MO's but felt that a special MO rate may need to be struck to balance the number of houses against the social objectives of providing low cost housing. Councils could apply to the Local Governments Grants Commission for supplementation of funds to offset revenue loss, (ibid., pp. 646).

The Inquiry found, "little evidence in the Tweed Shire of other forms of development under the guise of multiple occupancy policies.....[However] Some instances...occur where an entrepreneur, developer or individual is the initiator of the development rather than a community already formed or partly formed...[and] are outside the generally acceptable but vague notion of bona fide multiple occupancies," (ibid., pp. 91 - 2). But he felt that with a subdivision prohibition, 100% of the land for common use, other forms of rural development involving de facto subdivision are unlikely to be....of significant concern," (ibid., p. 92).

Significantly, apart from a few instances of developer designed "MO's" committing serious bulldozer damage - the Commissioner concluded, "This issue appears to be exaggerated and where problems have occurred from all forms of new rural settlement, the cause is attributed unfairly to multiple occupancy," (ibid., p. 94). Similarly he found that adverse impacts on neighbours were not confined to MO's nor were many instances provided, (ibid., p. 95).

One of Commissioner Woodward's conclusions in particular bears repetition today - "The only basis for treating multiple occupancy as a special or exceptional case are the social objectives of the policies. Remove these social objectives and there appears to be no reason why multiple occupancy should not be treated on the same basis as any other form of development. For these reasons it is recommended that the objectives be more explicit in setting and the basis of multiple occupancy for example, common ownership of the whole land, an ownership-residency requirement, low income communities and low cost housing," (ibid., p. 35).

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1st Draft

Cases Concerning Multiple Occupancy

Introduction

This compilation of cases is based on the writer's personal knowledge, on the collective knowledge of the Pan Community Council and its predecessor the Rural Resettlement Task Force and does not claim to be a complete listing. It also draws on the Land + Environment Court's database, Australian Planning Appeals Reports, Local Government Reports + Environment Law News reports.

The criteria for inclusion in this list are somewhat arbitrary because prior to SEPP 15's promulgation in 1988, de facto MO's often did not use this term and so could not be included in this list unless some other evidence reasonably suggested that the cases did in fact concern MO's.

Additionally, many of the cases "concerning" MO's contested development consent conditions which are not of themselves exclusively related to MO's. However, these cases have been included on the basis that the conditions are distinguished by their nature or extent in relation to MO's in comparison to other rural residential developments.

The cases are sequenced in approximate date order.

Abbreviations

"J" indicates the case was heard by a Judge of the Land and Environment Court.
"A" indicates the case was heard by an Assessor of the Land and Environment Court.

The numbers following the names of the parties indicate the court list number and year of the hearing.

The successful party is indicated by an asterisk. Where no asterisk appears the matter was settled by compromise and consent condition/s.

The facts and issues relevant to MO's involved in each case are briefly listed on the line below the citation and where relevant, a brief case comment has been appended.

CASES

Bold. caps

1(J) George and Others v Lismore CC * 40191/82, (the Billen Cliffs case)

Whether DC invalid due to Council ~~working~~ irregularities - whether proper consideration given by Council to S.90(1)(g) re land slip - whether DC invalid due to the land not being un-subdivided under the meaning of LCC IDO 40 cl. 15(2)(a)(ii) - whether Court should exercise discretion to give development consent on basis of hardship to unit holders.

Interim Development Order

The applicants were adjoining landholders opposed to the establishment of a rural land sharing community on the subject land. They appealed Councils DC on the grounds above under S.123 and brought suit against Council and the Company representing the community unitholders and residents. This community was set up under the provisions of LCC's IDO No. 40 on multiple occupancy which was based on the DOEP Draft SEPP.

Procedural not merit.

2(A) A.M. Nicholson v Lismore City Council *, 10327/83
Whether Council could grant approval for DA containing an unspecified number of future dwellings in an indicated area of the land, subject to maximum permitted density provisions of Government Gazette notice.

The Assessor held that "the consent issued is for precisely what the applicant sought and accordingly there can be no reasonable basis for dissatisfaction by the Applicant" and that, the Applicant having begun to implement the consent, no valid appeal lay to the Court.

3(A) Mitchell v Ulmarra SC 1984
Whether DC condition requiring connection and reticulation of mains electricity to subject land was a reasonable condition.

PTO.

4(A) Everel* v Kyogle SC, 10028/85
Whether tenants of the subject land were "employed or engaged in the use of the parcel for the purposes of agriculture" in the meaning of the subject Councils IDO - whether the proposed use of the land would cause additional costs to Council.

Although the Draft SEPP 15 was referred to and the Assessor opined that it would permit several dwellings without requirement that they be occupied by people engaged in agriculture on that land, the Draft was not considered as it had not yet been submitted to the Minister under the terms of S.37, EP&A. The second refusal ground was met by the agreement of the parties to relevant additional consent conditions. The applicant unsuccessfully argued that the Council's flat rate for all rural developments S.94 contributions be reduced for an MO development because unlike subdivisions, it did not generate additional capital from which to pay the contribution. This ruling would appear to conflict with the principle ? in Palm View Hamlets P/L v Tweed SC (infra. at 6) where Senior Assessor Jensen ruled "a generalised title....is.....manifestly unreasonable."

5(A) Byrrill Creek Hamlet P/L v Tweed SC, 10402/85
S.94 contributions for road works

The applicant appealed against consent conditions requiring S.94 contributions to Councils Rural Road Development Contribution and to upgrading of the access road to the development. The Assessor rejected the former on the ground that it "is more a levy or a tax than a contribution directly related to the subject development," (at 6) and accepted the latter with modification.

5(a) Urliup Valley P/L v Tweed SC* 1985
Council prosecuted this speculative developers company for bulldozing internal access roads & doing large scale environmental damage prior to obtaining development consent. The case reportedly attracted public concern with one objector appearing in court holding a dead koala allegedly killed by the bulldozing.

Ref ?

3.

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6(A) Magic Mountain Permaculture Co-operative Ltd * v Hastings SC, 10484/85
Whether permacultureal subsistence agriculture constituted persons "engaged...in the pursuit of agriculture" within the meaning of Council's draft LEP - whether development of "workers dwelling houses" under the draft LEP must occur after erection of the principal dwelling house.

As Council had deleted provisions for MO's from its draft LEP prior to the hearing the case was decided on the basis of Council's draft LEP provisions. The Assessor ruled that subsistence permaculture constituted agricultural employment under the draft LEP and that "workers dwelling houses" cold only be developed after the erection of the principal dwelling house on the subject land.

7(A) Bundagen Co-operative Ltd. v Coffs Harbour SC.

8( ) Parry SC v I. J. and W. Fox and G.M and H.M. Edmonds, 40177/85

9(J) Glenbin P/L v Lismore CC, 10535/86 CJ.
Whether dwellings on MO's must be clustered - S.94 road works contribution amount and when it need be paid - whether the Court can require a dominant tenement owner to consent to an application by the servient tenement owner to the Equity Court to modify or extinguish a right of way.

The Court held that SEPP 15 does not mandate MO dwellings to be clustered and the S.94 road works contributions need be paid only when building approval for each dwelling is given. Cripps J further held that the Court lacked jurisdiction to order the applicants to consent to an application by the servient tenement owners to the Equity Court for modification or extinguishment of a right of way.

10(A) Crystal Vale P/L* v Tweed SC, 10469/87
Whether a flat rate S.94 contribution to road works by new subdivisions, applied to MO's, was reasonable.

The Court held that a generalised title did not fairly and reasonably relate to the development and was unreasonable, citing Newbury DC v Sec. of State for the Environment [1981]AC578 and distinguishing Parramatta CC v Peterson (1987) GI LGRA 286.

4 -9.

11(A) Palm View Hamlets P/L* v Tweed SC, 10470/87
This case concerned the same issue as Crystal Vale (supra) and both cases were heard together and decided alike.

12(J) Hayden v Eurobadalla SC, 20159/87; (1988) 66 LGRA 337
Whether provisions of environmental planning instruments under the EP&A Act affect exercise of Court's discretion in determining appeals under S.317B of the Local Government Act 1919.

Hemmings J held that even if the provisions of SEPP 15 applied to this development, this did "not ? the exercise of my discretion ["pursuant to ....the Local Government Act"]" (at 346), to order the demolition of unauthorised dwellings. However, it is not clear whether his ruling was made on the basis that SEPP 15 applied to the subject land or whether on the basis that Council's Rural LEP applied and thus it is unclear whether he deemed the relevant dwellings to be dwellings on a MO or "rural workers dwellings" under the Rural LEP.

13(A) Whitehouse v Richmond River SC*, 10551, 20194, 20526, 20543/87
Definition of "expanded house" - definition of "single family"

Although the subject "house" consisted of 4 units connected to a central unit by covered breezeways, the Court held that, "the elements are too far dispersed ....they do have the capacity to be converted into discreet [sic] self contained units of accommodation [at 3]...what was before the Court does not constitute a dwelling house" (at 4). ~~It is submitted that~~ this judgement ~~is in error or not according with~~ was based on a superseded definition of "dwelling house" and were the case to be heard now it is submitted that the "house" would fit the current definition. (in the EP&A Act's Model Provisions)

14(A) Black Horse Creek P/L v Kyogle SC, 10652/88
594

C1

(1st Draft)

Other State Statutory Provisions for Rural Land Sharing Communities

Tas, NT. ?

Although rural land-sharing communities exist in all Australian states, only NSW has specifically legislated to accommodate them in a State Planning instrument.

For the purposes of this paper, enquiries were made of state and local government agencies and of consultants in all states, with the following information being elicited for each individual state.

Queensland

In a study of the state's Group Title legislation, Kohn concludes that, "there has been no real attempt by either local or state governments to provide the rural settler a streamlined but flexible legal mechanism by which rural communities can be established in a sound manner," (Kohn, P., "Group Title Applicability for Rural Community Living," B.Sc. Hons. Thesis, School of Australian Environmental Studies, Griffith University, Brisbane, p. 22).

The Building Units and Group Titles Act 1980 - 1990 (Q) is similar to NSW's Community Title Legislation in that it provides for the partition of land into separate lots which may be individually owned and common property owned and managed by a body corporate. "Management provisions of the body corporate are however, complex and its powers may be quite extensive," (Kohn, op. cit. p. 15).

The Act leaves the onus on Local Government to establish guidelines concerning the legislation although Kohn found that almost all Councils surveyed believed that the applicability of the Act to rural areas was "perceived to be of limited value," (ibid., p. 100). "Additionally, the Local Authority holds the right of veto through the approval process...It is this right of veto by local authorities which is perhaps the major problem with the use of legal mechanisms such as Group Titles. This especially exists in conservative shire councils which are common in Queensland," (ibid., p. 24).

Does this mean they can reject on ground of rg policy? or just merit. If so, how is this diff to NSW?

C2

Like the Strata Title legislation in NSW, the Group Titles Act's main focus is on urban highrise developments. For this reason its application to rural land sharing communities can be problematic. "The basic problem with the body corporate structure as required by the legislation is that it embodies much of what alternative lifestyle seekers see as wrong with society. Part of this is the necessity to conduct meetings of a set type in which an atmosphere of conflict is easily created....forcing people to make decisions when another method of resolution devised by the members may work better," (ibid., p. 79). "Another problem is that there is at present some doubt about the legal powers of the body corporate regarding the common property and the interactions between the body corporate and the lot holders," (ibid., p. 24, citing Gregor, S., "Group Title Subdivision: The Legal Context," in Brown, R. (ed.), "Group Title Subdivision," proceedings for the 12th Annual Planning Workshop Regional and Town Planning Program, University of Queensland, Brisbane, 1988, pp. 3 - 8).

Nevertheless, Kohn's survey of members of the Crystal Waters Permaculture Village on the Sunshine Coast hinterland found that 64% believed GT was the most suitable mechanism for establishing communities like theirs, (ibid., p. 76), and around 90% perceived benefits from the Act in terms of its provision of freehold title plus community living; a legally organised community; availability of common property and ease of entry and exit, (ibid.)

Kohn sees local government and planning advantages in GT in terms of facilitating development in otherwise difficult to develop locations, flexibility in lot and house placement on the property; and reducing council costs by requiring bodies corporate to provide and maintain services and roads, (ibid., p. 103 - 4). Moreover, he sees the role of the body corporate as a mechanism and an opportunity for political empowerment of rural land sharing communities, "giving people a greater sense of control over their lives, and allow[ing] participation in the decisions which will affect them all," (ibid., p. 26).

However, Kohn's investigation of the Crystal Waters group also clearly indicates the shortcomings of the GT approach to the facilitation of rural intentional communities in terms of a perceived lack of a sense of community amongst the Crystal Waters members, shortcomings which are shared by the Community Title legislation in NSW. (members of Tuckombil Community Title development, Nimbin, personal communication, 30/6/95).

"The need for quick sale of lots to meet the demands of the designers and costs of the project resulted in little control over the recruitment of members," (ibid., p. 93). "The function of the Group Title structure is that it permits the isolation of members as they are able to exist on their own lot without a great deal of interaction with the other members," (ibid., p. 94). Kohn concludes that the people at Crystal Waters are very much a group of individuals rather than a community," (ibid.) and that there is a lack of, "a coherent sense of community for the members," (ibid., p. 112).

C3

(2) Kahn on GI

The writer submits that these comments demonstrate that the Group or Community Title concept does not meet the needs of most MO-type communities because it removes control of group membership from the community, leading to a lessening and possible breakdown of the community's coherence and solidarity, without which the community cannot adequately function. Whilst it is contended that there is a place for Group/Community Title development, it is not a substitute for or alternative to multiple occupancy as it is too expensive to cater for low income groups and as it militates against the fostering and maintenance of the sense of community which are necessary to the success of MO communities.

binding & fragmentation / legally commonly held to be, although also as a lifestyle.

(Cock, "Sustainable Community Settlement Society", Feasibility Study, Ministry of Housing, Victoria 1984)

Victoria

Despite some demand for MO-type legislation and the commissioning of State Government reports and pilot projects in the early 1980's (e.g. Goldstone, P. P.), there is still no legislative provision for MO-type developments in Victoria. According to a senior officer of the State Planning Dept., the only way to set up an MO in Victoria would be by way of a site specific amendment to the local council's planning regime, which in his opinion would be unlikely to be endorsed by the Council concerned. (Cook, G., personal communication, 20/7/95).

Ministry of Planning officer, Victoria,

Tasmania

There is no state legislation relating to MO's and applications for such developments would have to be made to local councils. Strata Title legislation is in-stant place but has never been applied to rural land, (Scavone, A. Association of Senior Solicitor, Dept. of Environment and Planning, personal communication, 20/7/95). In the Meander Shire Council area in northern Tasmania, where numbers of de facto MO's exist, the applicable interim Development Order states that further residential buildings will not be permitted in rural areas unless they are incidental to the purpose for which the land is zoned, (Derrick, D., Meander SC Town Planner, personal communication, 20/7/95).

South Australia

There is no statutory provision for MO's in SA and any proposal to site more than one dwelling on a rural property would require an application to the Development Assessment Commission or the relevant council. Councils are empowered to make rural development plans having statutory force under the Local Government Act and any application for an MO-type development would have to be by amendment to such plans and would be inherently unlikely to gain approval, (Welford, C., Director Legislative Branch, Dept. of Housing and Urban Development, personal communication 20/7/95; McNamara, P., Barrister and Solicitor, personal communication, 21/7/95).

Letter tailored for Fuzzies Farm Norton Summit

4 C4

In 1979 a group of people intending to establish a rural intentional community in the Adelaide Hills, based on shared resources and a commitment for "a sociologically sane and socially just society" formed itself into a legal co-operative, the Village Co-operative Ltd. After unsuccessful negotiations with the local District Council, the State Planning Commission and other state government Depts. over a number of years, the group brought an appeal against the Commission for refusal of planning consent in 1987.

One of the grounds of the appeal was the definition of a "multiple dwelling," about which "The majority judgement considered that the intention of the [state] Development Plan was that no more than one family should be housed on an allotment," (Harbord G.A., "The Baby and the Bathwater," paper based on lecture at SA Institute of Technology; September 1988, p. 14).

The majority judgement went against the group. "Its effect was to favour a 'weekender' house property over a group whose members included several unemployed and which was hoping to gain both decent full time housing as well as a living and a viable lifestyle from the land. The majority judgement also effectively institutionalised the nuclear family norm in the planning controls and failed to recognise a place for alternative[sic] shared housing and lifestyles, (ibid., p. 16).

Harbord concludes that the group's experience, "highlighted the lack of flexibility in the South Australian planning system and the inability of that system to cope with innovative yet important developments," (ibid., p. 17), and....demonstrates the enormous obstacles facing any group which tries to establish an alternative lifestyle...," (ibid., p. 2).

Western Australia

In the early 1980's a number of MO-type communities were set up, mainly in the south west region, ~~principally in~~ including the Shire of Augusta-Margaret River. In 1983 the Minister for Planning requested the Shire, "to provide for the inclusion and acceptance of multiple occupancy on [sic] rural locations....This led to the Shire adopting a detailed multiple occupancy policy and appropriate zoning provisions within its district and zoning scheme, (McLeod, G. "Rural Resettlement in Multiple Occupancy Communities," unpublished paper, 1986. p. 5).

At the same time the WA branch of the Australian Association for Sustainable Communities was working with the State Planning Commission to draft a uniform MO policy, which was released in 1984 with the objective of facilitating MO communities in WA. This left control of MO development with councils

D2

Draft 1

Commentary on new & old SEPP. /2. (Plat type cut.)

to ensure a physical connection between the different structures comprising the composite dwelling & to restrict the area in which they are located. It will be noted that the latter provision is expressed as an area so allow for the different dimensions of such an area that may be required due to topographical constraints.

Multiple Occupancy

Former sub-clauses (c) & (d) have been revised as it is submitted they are unnecessary & discriminatory. The former LCC Strategic Planner who carried out the recent inspections of all dwellings on MOs in the council area is unaware of any dwelling whose height exceeds eight metres. Malcolm Scott, (personal communication, 24/4/95). Sub-clause) may also be seen as discriminating between rural residential settlement forms against multiple occupancy in that no similar eight restriction applies, for example, in respect of the Lismore City Council area's LEP or Rural Residential Subdivision & ral Occupancy DCP No. 30 which could be or adjoining land (Thulon) may be visual is the terrain.

Sub-clause (d) may be similarly discriminatory in that the ame restrictions do not apply for other instruments governing ural residential development. (Woodward op. cit. p. 6) Moreover it is quite conceivable hat a MO based on agriculture may need to be located on a roperty where more than 25% of the land is prime crop land here seems no prima facie reason why it should be prohibited rom doing so. This view is put by Woodward J who found hat, "The experience in the Tweed to date is that multiple occ- ancies are unlikely to engage in intensive agriculture of- rime crop & pasture land ... The price ... is also likely to e ... [but] in particular situations it might mean that prime crop easure land is not utilised," (Woodward, op. cit., p. 98-9).

Commentary D/3

Sub-clause (4) has been added to facilitate MO members' ability to provide themselves an income by working at home. This is of particular importance as there are few employment opportunities in rural areas generally & many MO's are physically remote & lacking in transport facilities to get to where the jobs are. It has also been a continuing feature of MO members that many engage in crafts work at home & this sub-clause would ensure their right to do so, without permitting an enterprise so large as to change the character of the area or disturb neighbouring land-users

Sub-clause (5) attempts to address one of the fundamental problems identified by MO residents in the widest survey, the issue of privacy & security of members' house blocks. This has been a continuing concern of MO members & has been reported by most of the research studies conducted, including Woodward's Inquiry which called for "a form of land tenure which combines ~~individual~~ common responsibilities with private rights of exclusive occupation & security of tenure in harmony with joint occupation & control" (op. cit., p. 29). He concluded, "The interests of the multiple occupancy communities could be substantially improved [by] ... the ability of the community to permit individual members to OCCUPY (not own) portions of the common property on clearly defined terms without involving the subdivision provisions of the Local Government Act" (op. cit. P. 33)

The insertion of the new sub-clause seeks to achieve this aim by guaranteeing the individuals' occupation rights by enabling legally enforceable agreements between members, whether by means of long-term leases (as suggested by Woodward, pp. 33-4, 64-79-80) or other agreements.

It should be noted that the new clause will only operate

P.T.O. →

Commentary D 14. (1) Legislate in SEPP - for MO deemed to have same status as provn Act

It is submitted that this sub-clause enables the balance between common responsibilities & private rights of which Woodward speaks by permitting a degree of household tenure whilst enabling the community as a whole to maintain some control over its membership. This is in contradistinction to Community or Group Title legislation where experience has demonstrated that individual rights to alienation of houses & house sites inhibit or prevent the creation & maintenance of a genuine community of members (See references, supra to Garlanbah & to Kahn, op cit.) The motivation for MO "Community" has come from those groups of people who do not want Torrens land title & who do want to break away from the cultural system of private land title eg mainstream freehold "freehold" & settlers with lots are fairly-a home as
8. Matters for Council to Consider

This clause has been extensively altered because, "The number of heads of consideration under Section 90 of the Environmental Planning & Assessment Act & ["LEP's related to multiple occupancies"] - are excessive & unworkable." (Woodward op, cit. p. 100)

Since it is intended that this revised SEPP ~~should function as~~ will be read & followed by people wishing to set up MO's, it was thought to be helpful to include a reference at the beginning to the overriding need to consider the statutorily mandated matters in s. 90(1) as well as those more particularly related to MO's.

However many of the matters specified in cl. 8 of SEPP 15 overlap or duplicate those to be found in LEPs or DCPs applying to MO development. Consequently only 8(1)(a) to (d) are retained in the revised SEPP, whilst all the remaining sub-clauses are covered by the detailed requirements & guidelines of Schedule 3.

Subclause 8(1)(a) has been extensively added to in accordance with the suggestions of the Rural Resettlement Task Force, & the predecessor to the Pan Community Council,

Commentary D/5

(Rural Resettlement Task Force, "Submission on the Draft SEPP – Dwelling Houses in Rural Areas (Multiple Occupancy)", 27/9/85, pp. 4-5), & the expressed wishes of MO residents surveyed by this writer. These provisions have been added to assist councils in distinguishing member-initiated MO's from developer-initiated MO's, as "Council has not been particularly adept at making distinctions between bona fide multiple occupancies & other forms of development" (Woodward, op. cit. p. 76) in the Tweed & elsewhere. They are designed to ensure that developments genuinely meet the spirit & letter of the Policy by requiring details of the circumstances in which the MO has been established & of how the MO will be controlled by the members as a collectivity. It is intended that, where relevant, sub-clause 8(a) will function in conjunction with sub-clause 2-2-1 of Schedule 3, relating to the staging of developer-initiated MO's.

It will be noted that the inclusion of Schedule 3 makes it much easier for intending MO members to understand what is required of them (in order to comply with the Policy) by spelling out the application process & the information required in a straightforward manner (Schedule 3 cl. 1.0 et seq.). It is hoped that this will obviate the need for individual councils to issue detailed MO guidelines & will enable the Policy to function as an inclusive & self-sufficient document.

2. Density of Developments

On the suggestion of Woodward, (op. cit. p. 101), sub-clause 9(3) has been amended to clarify the intention of the provision.

Commencing D/6.

10. Subdivision Prohibited

Sub-clause (3) has been added to clarify & reinforce the effect of cl 7(5), (see supra), so that it is clear that individual householders exclusive occupation of their houses & home improvement areas does not have the legal effect of subdivision under the Local government, Strata Title, Real Property or Conveyancing Acts.

11. Advertised Development

This clause has also been exercised as being redundant & discriminatory. Councils already require the advertising of DA's & a submission period of 21 days for other rural residential developments irrespective of their size & have the power to extend this period if necessary. It is hard to understand why a MO development should be subject to stricter advertising & submission requirements than any other rural residential development of equivalent size & scale.

~~to the seven years of SEPP 15 & position~~

4. Monitoring of Applications

Although cl 4(1) has been was part of SEPP 15 since its inception, it has never been properly complied with.

Hence the clause has been strengthened by the addition of sub-clause 4(2) requiring the Secretary to publish & make publicly available a compilation of the MO information forwarded by councils under 4(1) so that this Policy can be effectively monitored by the Dept. thus obviating the need for future reviews such as that undertaken by Urbon & Associates (supra).

Consolidated REP

ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT 1979

NORTH COAST
REGIONAL ENVIRONMENTAL PLAN 1988

I, the Minister for Planning and Environment, in pursuance of section 51 of the Environmental Planning and Assessment Act 1979, make the regional environmental plan set out hereunder. (85-1894)

BOB CARR,
Minister for Planning and Environment.
Sydney, 18th December, 1987.

PART 1 - PRELIMINARY

Citation

1. This plan may be cited as "North Coast Regional Environmental Plan 1988".

Aims

2. (1) The aims of this plan are-

(a) to develop regional policies that protect the natural environment, encourage an efficient and attractive built environment and guide development into a productive yet environmentally sound future;

(b) to consolidate and amend various existing policies applying to the region, make them more appropriate to regional needs and place them in an overall context of regional policy;

(c) to provide a basis for the coordination of activities related to growth in the region and encourage optimum economic and social benefit to the local community and visitors to the region; and

"commercial farming" means the use of an area of land for agricultural purposes that is sufficiently large to support at least one family engaged in full time production.

"co-operative small holdings" means the use of land for commercial farming by a group of owners where the major agriculture activity is managed in common.

"council" in relation to an area within the region means the council of that area.

"height", in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the natural ground level immediately below that point;

"large scale vegetation clearance" means any manner of destruction of the majority of trees or shrubs on land having an area of not less than 20 hectares.

"multiple occupancy" means the erection of two or more dwellings on an allotment of land where the allotment of land comprises the principal place of residence for the occupants who occupy the land on a communal basis.

"natural ground level" means the actual physical level of a site prior to the commencement of construction work on the site.

"primary arterial road" means major highly trafficked roads connecting regions within and outside the State.

"prime crop or pasture land" means land identified by the Director-General of the Department of Agriculture as comprising Classes 1, 2 or 3 of a classification set out in the "Rural Land Evaluation Manual", or other land identified as having agricultural significance.

"region" means the land referred to in clause 3.

"rural land" means land identified in an environmental planning instrument applying to land within the region as either Rural or Non Urban.

"secondary arterial road" means highly trafficked roads other than primary arterial roads connecting regions and significant centres.

(c) appropriate buffer zones around potential extraction sites where the erection of dwelling-houses, and other development which may prejudice eventual extraction operations, is restricted.

Policies for control of development

18. The council shall not consent to development for extractive industry unless it is satisfied that conditions have been imposed to ensure site rehabilitation during and after extractive operations.

PART II

DIVISION IV - RURAL HOUSING

Objectives

19. The objectives of this plan in relation to rural housing are -

(a) to ensure that opportunities for small residential lots are available as part of a planned strategy for rural living areas; and

(b) to provide for multiple occupancy of rural lands in some circumstances.

Policies for plan preparation

20. (1) Before preparing a local environmental plan to provide land for rural living purposes, the council shall prepare a rural land release strategy for the whole of the local government area. The local environmental plan shall be based on the strategy.

(2) The strategy referred to in subclause (1) shall -

(a) identify land physically capable for rural housing;

(b) be based on the number of rural lots needed to meet the legitimate demand evidenced by the average rate of building approvals over the preceding 5 years;

(c) provide up to an additional 30 per cent supply of subdivided land to allow for changes in demand;

(d) give preference to existing settlements which already have services and community facilities, or otherwise concentrate rural

Amendment No 2

ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT 1979

NORTH COAST
REGIONAL ENVIRONMENTAL PLAN 1988
(AMENDMENT NO. 2)

I, the Minister for Planning, in pursuance of section 51 of the Environmental Planning and Assessment Act 1979, make the regional environmental plan set out hereunder. (G90/00306)

Robert Webster

Minister for Planning.
Sydney.

CITATION

1. This plan may be cited as North Coast Regional Environmental Plan 1988 (Amendment No. 2).

OBJECTIVES

2. This plan aims to amend the Principal Plan:

(a) to assist in the implementation of the following directions made by the Minister under section 117 of the Environmental Planning and Assessment Act 1979:

G25 Flood Liable Land
G26 Residential Allotment Sizes
G27 Bus Services and
S25 Development Near Licensed Aerodromes

Adopted 1994

(b) to implement new pol· ·s on coastal development, as required · the New South Wales Coast Governmen· ·licy; and

(c) to reflect environmental planning policy development since January 1988 and to correct various anomalies.

LAND TO WHICH PLAN A LIES
3. This plan applies to lan· to which the Principal Plan applies.

PRINCIPAL PLAN
4. In this plan, North Coast Regional Environmental Plan 1988 is referred to as the Principal Plan.

AMENDMENT OF PRINCIPAL PLAN
5. The Principal Plan is amended-

(a) by inserting in clause 5, in alphabetical order, the following definitions:
Coastline Management Manual means the Government publication with that title published in 1990;
dual occupancy means the creation of not more than two dwellings (whether separate or attached) on one urban lot, or of not more than two attached dwellings on one lot in a rural or environmental protection zone;
Floodplain Development Manual means the Government publication with that title published in 1986;
New South Wales Coast Government Policy means the Government publication with that title published in 1990;
North Coast: Design Guidelines means the government publication with that title published in 1989;
North Coast Region Tourism Development Strategy means the Government publication with that title published in 1987;
Development Along the New South ast: Guidelines means the Government ·n with that title published in 1992;
Development Near Natural Areas: :s for the North Coast means the ent publication with that title published in 1990;

(b) by omitting the definitions of "multiple occupancy" and "total destination resort" from clause 5;

(c) by inserting in the definitions of "rural land" in clause 5 after the word "urban" the words", an environmental protection, a national park or a nature reserve, or a forestry";

(d) by omitting from the definition of "the map" in clause 5 the words "Environment and";

(e) by inserting at the end of clause 5 the following subclause:
(2) A copy of any of the publications referred to in subclause (1) may be inspected by any person during ordinary office hours at the Northern Regions office of the Department of Planning;

(f) by inserting after clause 5 the following clauses:
Duties of certain public authorities in relation to development consents and plan preparation
5A (1) This clause applies-
(a) to a consent authority determining an application for development consent for the carrying out of development on or in relation to land within the region; and
(b) to the Minister or a public authority determining whether or not to grant concurrence to the granting of such a consent; and
(c) to a council deciding whether or not to prepare a draft local environmental plan applying to a part of the region and when preparing any such plan.

(2) For the purpose of advancing the aims of this plan set out in clause 2, a consent authority, the Minister, a public authority and a council, when exercising their respective functions referred to in subclause (1), should take into consideration the aims, objectives and other provisions of this plan that are relevant to the exercise of those functions.

Inconsistency between draft LEP and this plan
5B. In so far as a provision of this plan provides that a draft local environmental plan is to include, or is not to include, a particular requirement -
(a) the failure of a draft local environmental plan to comply with the provision constitutes an inconsistency between the draft plan and this plan; and

Explanatory Notes

NORTH COAST
REGIONAL ENVIRONMENTAL PLAN 1988

EXPLANATORY NOTES ABOUT CHANGES PROPOSED IN AMENDMENT NO. 2

Clause 1-4 - No change.

Clause 5- New definitions have been incorporated for dual occupancy and rural land.

Publication references have also been added for: *Coastline Management Manual; Floodplain Development Manual; NSW Coast: Government Policy; North Coast: Design Guidelines; Tourism Development Along the New South Wales Coast: Guidelines; Tourism Development Near Natural Areas - Guidelines for the North Coast.*

The definition of multiple occupancy has been deleted because the multiple occupancy clauses have been deleted in draft Amendment No. 2.

The definition of total destination resort has been deleted because the term has been replaced by more appropriate terminology in clause 68.

The definitions and publication references have been added/altered to reflect amendments elsewhere in draft Amendment No. 2. Clause 5(2) has been added to indicate that the publications are available at the Grafton office of the Department.

Clause 5A- This new clause is proposed to be introduced to require public authorities to take into consideration the aims, objectives and other provisions of the REP when making decisions in relation to development consent and plan preparation.

Clause 5B -This new clause clarifies that a draft LEP, which is inconsistent with the REP, is not made unlawful or ineffective by that inconsistency. See "Background" (p.4).

Clause 6 -No change.

Clause 7 -The requirements for the advice of the Director General of Agriculture in paragraphs (a)(ii) and (b)(ii) have been deleted to streamline the planning process where such consultation is not necessary.

-paragraph (a)(v) has been added to ensure any rezoning of prime crop or pasture land is undertaken in full knowledge of the agricultural capability of the land.

Clauses 8-12 -No change.

Division 2 -The title has been changed from Fisheries to Catchment Management to reflect the diverse range of issues addressed in the Division.

Clause 13 -This clause has been altered as for the title to Division 2.

Clause 14 -Subclause (1) has been altered as for the title to Division 2.

Paragraph (1)(c) has been added so councils are alerted to the need to take into consideration any environmental guidelines or water quality study prepared by the Environment Protection Authority.

Subclause (2) has been deleted because consultation with relevant authorities is a requirement of Section 62 of the Environmental Planning and Assessment Act, 1979, and it is not necessary to duplicate this requirement. See also Background (p.4).

Clause 15 -The introduction to this clause has been altered as for the title to Division 2.

Subclause (i) has been added for the same reason as clause 14(1)(c).

Clause 16 -No change.

Clause 17 -Subclause (2) has been deleted for the same reason as subclause 14(2).

Clause 18 -Subclause (2) has been deleted because consultation with relevant authorities during the development control process is a requirement of section 90(1)(n) of the Environmental Planning and Assessment Act, 1979, and it is not necessary to duplicate this requirement.

Clause 18A -This new clause has been inserted to ensure there is consistency throughout the region in the way mineral sand mining proposals are considered by councils.

Clause 19 -This clause has been altered to remove the inference that councils must provide for rural residential development. The reference to multiple occupancy has also been deleted (see clause 23 notes).

Clause 20 -The previous clause 20 has been redrafted to clearly define when a rural land release strategy is required and identify criteria for land suitability. New criteria which have been proposed include future urban needs, environmental hazard potential and conservation value.

Clause 21 -Subclause (2) has been altered for the same reason as subclause 14(2).

A new subclause (3) has been introduced to prevent inappropriate permanent occupation of caravan parks in rural or environmental protection zones.

Clause 22 -No change.

Clause 23 -This clause has been deleted. The REP clause required councils to incorporate provisions in their local environmental plans (LEPs) to permit multiple occupancy development. However State Environmental Planning Policy No. 15 (SEPP 15) has come into operation since the REP was made. SEPP 15 allows applicants to seek consent for multiple occupancy development. There is no longer a need for councils to include specific provisions in their LEPs unless provisions which differ slightly from SEPP 15 are proposed.

Clause 24 -No change.

Clause 25 -Subclause (2) has been deleted for the same reason as clause 14(2).

Clause 26 -This clause has been deleted. The clause required LEPs to contain provisions that permit forestry without consent in zones where agriculture is permitted without consent. It was considered that private forestry operations may warrant review by council in some

FAX DOCUMENT FROM PETER HAMILTON

1/50 Paterson Street, Byron Bay, 2481 (066) 858 648 (F/T)

TO: Graham Irvine

FAX No: ..... DATE: 25.7.95

Number of pages (excluding this sheet): 3

SUBJECT: Def "Home Industry"

COMMENTS: As discussed

Pete

FAX DOCUMENT FROM PETER HAMILTON

1/50 Paterson Street, Byron Bay, 2481 (066) 858 648 (F/T)

TO: Graham Irvine

FAX No: ..... DATE: 25-7-95

Number of pages (excluding this sheet): .....

SUBJECT: Assignment

COMMENTS: As discussed relevant sections of the LCC Social Impact Assessment could to advantage go into the Schedule and/or the new SEPP

Regards

Peter

Graham Innes

No Case law on hand.
He has Crystal Vale reveal 1986 Judgement
Glen Bein (He has my copy of Judgement)
Anson
Grather

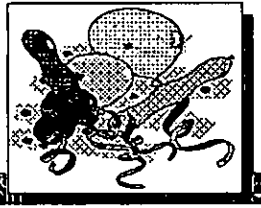
others Tellaland
Scotha Farm
Blackhouse Creek

Bruce B has sent copy Malcolm's report to Graham via Di & will drop copy into me.
To go to Council meeting on 18th

Wishing you the happiest of Birthdays on the 15th of July 1995.

May you have many more years of fun and games.

I love you very much..



~~Byron LLP~~ Graham

~~Landcom 1984~~ DO

"~~Feasibility Study~~"

Ø cf-s 37 EPA re SEPP

re notes concept

& matter of state sig , Nowra

case law

Ø Woodward Inquiry Report

Ø Other MO ~~ARTS~~ case law.

O "Manual R/Col & type.

Ø Landcom Feasibility Study (re Manual.)

The Purdon Report: Analysis & Critique.

Since the repeal of decision to SEPP 15 was based entirely on the findings & recommendations of Purdon's Report it is essential to examine the methodology & conduct of the study in order to assess its adequacy.

The following analysis generally follows the order of the review ~~Report~~ Summary Report, as this was the document on which the Ministers decision to repeal was based.

It is submitted that the review's methodology was fundamentally flawed & that therefore most of its conclusions & recommendations are invalid.

To begin with the consultants had no idea of the number of MO's in NSW, their location or their population. Therefore they were totally reliant on council information & on MOs who volunteered information by responding to newspaper advertisements seeking information.

However as only 55 of the 67 councils to which SEPP 15 applied chose to ~~depend~~ return the Purdon questionnaire (1) as it is common knowledge that councils' information on MOs is incomplete it is evident that the database on which their recommendations rest is inadequate. Moreover →

This inadequacy is demonstrated by the discrepancies in MO population estimates in the review documents themselves. E.g. at par. 2.3.3 vol 1, the NSW MO population is variously estimated at 1350, 1750 or 7,000, whilst at 3.2.4 the authors claim "the policy applies to a maximum of 2000 people on an estimated 500 properties across NSW" (p. 23) (2)

when the responses to individual questions asked on the questionnaire sent to councils are examined it can be seen that less than half of the responding councils answered any of the individual questions, making a mockery of the claimed 85% response rate.

PR 12.

Similarly, this figure of 500 MO's may be contrasted with their estimate of "about 220 MO's" on P. 13 vol. 1. In turn, this figure conflicts with another at P. 3 of the Summary Report which claims that the review was based on "a survey of about 280 individual MO's in the LBA's". These figures are misleading because only 23% of these MO's replied & hence the authors' recommendations are again based on a totally inadequate sample of only 64 MO's. PTO → Even the authors admit to, but decline to discuss, "some discrepancies in this data from different sources" (SR p. 3, vol. 1, PD)

Apart from these two wide inadequate surveys, Purdom "relied on a literature review of "all currently available information relating to the operation of the policy" (vol. 1, p. 3). Yet they do not include a bibliography or any discussion of the sources or methods of this literature review, which did not e.g. include material on the subject held by the PCC, among others.

The "consultations" relied on were also inadequate. They consisted of brief meetings with 39 individuals (all selected through their association to the consultants' advertisements) over 4 days. Many of these individuals were either developers, interest groups or non-MO couples, citizens opposed to MO's, whilst others were councillors or council staff whose opinions had already been canvassed in the questionnaire to councils. In addition the authors relied on 24 written submissions, consisting of 8 submissions from individuals on MO's, one from a group of MO residents, 5 from councils, 3 from interest groups & the rest from individuals. Again this was a highly biased & unrepresentative source of information.

The final source of information relied upon by Purdom was "All public authorities having a potential interest in MO

2a.

Again there are serious discrepancies in the records debated concerning the number of dwellings on MOs, with the councils claiming a total of 486 whilst the MO residents' survey yielded 908 dwellings (V.1, p.15, 2.3.4).

On their own statistics only 23% of MOs replied to Purdon's questionnaire representing 0.8% of the total MO population. This is simply insufficient as a database from which meaningful conclusions can be drawn.

development [which] were consulted + asked to provided [sic] details of their experiences + concerns" (vol 1, p. 3). It is simply untrue that "all public authorities ... were consulted" as letters were only sent to 9 state government departments + not to e.g. Environment Dept, Attorney General's Dept + 3 regional bodies comprising a total of 14 authorities. Of 33 letters sent, 13 replies were received - another inadequate sample - + most of these claimed to have little knowledge ~~experience or difficulties~~ of MOs.

(3)

Given this methodological basis it is contended that little if any reliance can be put on the review.

1. Summary

The main reason for Purdon's recommendation for repealing SEPP 15 is that "The very low level of demand for MO developments reinforces the conclusion that MO development is essentially of local rather than state significance" (SR, p. 1). This conclusion is incorrect + misleading for several reasons.

Firstly the statistics on which they base their judgment are questionable as cited. E.g. Table B1 (v 1, Attch B (p B1) lists the number of DA approvals since 1988 as 25 + the number of sites as 118 whereas LCC's own statistics yield 39 DA's approved for a total number of 314 sites ("Discussion Paper on MO" LCC 1994). Moreover Purdon's figures don't include figures on the substantial number of applications by MO's for additions or variations of DC (ibid.).

Secondly it is fallacious to determine whether a policy is "of state significance" merely because "The majority of MO developments are concentrated in the north-

PR 14

eastern corner of NSW" (SR, p.1) or because the policy presently covers "only a very small percentage of total properties or resident population throughout the state" (ibid). If these criteria were applied to other SEPPs such Policies as SEPPs 3, 7, 13, 29 (u) (15.02 relocation in 1990 according to Purdons (1.1.2)) would also need to be repealed.

Thirdly, when MO DA's, ~~the numbers of~~ made under SEPP 15 since its promulgation, are compared with Community Title DA's made under the Community Land Development Act 1989, it can be seen that, according to the councils survey, there were 5 rural residential Community Title subdivisions operating in LGA's that responded to the survey & another 8 applications had been received over the last 12 months" (v.1, P.B20). Yet these consultants do not recommend repealing Community Title provisions & indeed they encourage their use (SR, P.15) (3)

Finally, the consultants have misinterpreted their own statistics & contradicted their own conclusions. Whilst they report that "Recent years have seen a substantial decline in both the number of new MO applications & development approvals..." (SR, P.1) their very next page contradicts this, claiming "there is a small but ongoing demand for MO development" (ibid P.2). In the main report they also ~~assert~~ state that "The majority of Councils receiving MO applications in recent years indicated that the level of MO DA's have remained relatively constant..." (v.1, P.B5)

In the light of these considerations it is submitted that Purdons' judgment, "that the Policy is not really doing much work & its use since inception is declining" (v.1, P.23 & 23) is not credible & cannot justify repeal of SEPP 15. (7) Aims being met,

What harm if only 1 new MO pa?

PR 15.

The Summary's other "main conclusions" are similarly suspect. It recommends that "MO's should be treated in a similar manner to other forms of rural development in terms of Planning assessment, environmental management, reference 5.94 Development Contributions" (SR p. 2). In fact MO's are already treated in a similar manner - they are subject to the same planning & environmental assessment under the EP&A Act, the same types of assessment factors under SEPP 15, cl. 8 & the same formulae for s 94 contributions (1)

The authors offer no evidence at all for their final conclusion that "removal of SEPP 15 is not seen as having any adverse effect on existing MO communities" (ibid). Such a question was not asked in either the councils or the MO residents' surveys & no such statements were made by other individuals or organisations consulted (2)

On the contrary, the repeal of SEPP 15 has left MO's in the legal limbo of existing use rights (3) which are complex & uncertain & which do not facilitate alterations or additions to existing MO's. Early indications in the Lismore area suggest that SEPP 15's repeal has led to a lower valuations of MO properties (L Hicks, Registered Valuer, Nimbin, personal communication, 29/6/95) (10)

"Issues"

- Policy Context & Objectives: Part of the consultants' rationale for SEPP 15's repeal relies upon the contention that part of the purpose was to regularise illegal MO development & hence, that because "Considerable numbers of unauth- (11)

PR 16 (12)

need MO [sic] continue to exist" (SR p.6) the Policy has failed. While the regularisation of illegal developments may have been an embedded reason for SEPP 15's introduction nowhere is it to be found in the Aims & Objectives of the Policy & it does not therefore come within the Reviews terms of reference. Purdons themselves report a high degree of regularisation of MOs under the new Policy (V.1, P.13, 2.19). Here again Purdons have omitted evidence, used incomplete & faulty evidence & drawn invalid conclusions from it.

In their councils survey Purdons asked 4/5 Council satisfied that in comparison with other rural residential developments, MO developments adequately contribute towards the cost of funding services & infrastructure?" (Q.32). This arguably leading question was answered affirmatively by 56% of councils, though only 11 councils out of 67 replied. Thus there is no warrant for the Summary judgment that the treatment of MOs in relation to rural residential developments is not equitable" (SR P.6). As to the issue of council rates, although [illegible] Purdons Summary claims that "considerable time & resources are directed into this type of development" (SR P.6), only 2% of their council sample - i.e. 9 councils out of 67 or 13% of all applicable councils thought that, compared with other rural residential living development applications, the level of Council resources taken up in the determination of each MO development application was average or more than average. Hence on both sets of figures MO DAs actually require LESS than average council resources (V.1, P.8+2, 2.12). (13)

There is no ground whatsoever in Purdons' assertion that "there is little local control over MO developments" (SR p.6) for no question was asked in the councils survey & no such comment was made by any of those listed as having been consulted.

6a

What is more, there is no ~~logical reasons~~ ~~proven facts~~ evidence that ~~reason why~~ MO[s] contain proportionally more illegal dwellings than any other form of rural residential development. Indeed the most recent evidence, from LCC Planning Officer Malcolm Scott (! (14)) demonstrates that there are few illegal dwellings on LCC ...

→ "no reason why MO's should be treated differently to other forms of rural development in relation to ... revenue collection" (SR, p. 13), whilst only 8 councils (of 67) felt "dissatisfied with current rating arrangements &/or levels of contribution being collected" (V.1, p. 219, 221).

(SR, p. 14).

~~Opposers~~ claim that MO's "don't pay their ~~fair share of~~ way in terms of Council rates". The evidence does not bear them out. The Dept of Local Government's current "Council Rating & Revenue Raising Manual" states that dwellings on MOs are rated in the same way as second houses ("workers cottages") on other rural properties. The Manual lists common criteria for determination of whether separate valuations should be made where there are more than one building on a property & points out that a council ~~are~~ is already able, under the Valuation of Land Act 1916 NSW, "to apply for separate valuations to be provided by the Valuer-General" (Par. 9.6). Research by LCC Councillor Diana Roberts (Media Release 2/8/94 ~~personal communication 31/7/94~~) indicates that MO dwellers pay more in rates than the average residential rate per head of population, despite getting less access to council facilities & services & despite providing community services themselves. Even Purdon's Summary Report concludes that there is, "*

LHS cut for some sheets no loading -
In future use margins L + R

10-7-95

Comments on Graham Draft Catalogue & Pender Report.

(1) May be correct - some councils do not have mo, some included. The no 67 is not specified how this set?

(2) Check this. Pender got LGA areas from DOP!

~~(3) Health~~ (3) esp as this was one Dept's request to another
~~(4)~~ update (5) ✓ (6) Recall that high incidence in the first few years was due to backlog of those who had in some cases been waiting years for enabling legislation
(7) Dispensation for no movements/day along with other [illegible] is a dispensation procedure applied across the board on a case by case basis

* (8) in quoters or S Number or both - not complex or [illegible] ~~as~~ re legislation & case law..

(9) No

(10) is this so? (11) Is this ok reading - surely lots of office areas!

(12) evidence? (13) Such control applies to whole of rural area. If you look for "discrepancies" you will find it, eg case of round poles & Councillor found to be using same. Potential discrimination & ad hoc admin.

(14) LGA with by far the largest no of mo ✓

(15) See their ~~preferred options - differs as to which table~~
(16) ref?

[illegible signature / initials] 12/8

given that ~~so~~ local councils have the same control over MOs under the EP&A Act as they do for all other forms of rural residential development, any lack of control relates to councils' implementation of the Act & the Policy, not to any lack of power.

Another justification for SEPP 15 repeal appears to be that, despite the large degree of acceptance by both Council & MO residents of the objectives, Councils indicated that they were largely not being achieved by MO developments in their area" (SR p. 7). While it has been pointed out above that it is invalid to base any firm conclusions on such flawed methodology & that it is invalid to generalise from a sample of 15 out of 64 councils, the results to questions 12 & 14 demonstrate that the responding councils did not believe MOs were unsuccessful in achieving any of the Policy's objectives (V.1, p. B:8) except facilitation of "clustered style rural development" & "minimisation of demand on Council/Government services"

It should be noted that → MO residents were not asked. Moreover, ~~it~~ is questionable whether those council staff answering the councils' questionnaires were in any position to judge MOs' levels of achievement of Policy objectives and also that all the Policy's aims & objectives need to be explained by each MO.

~~"Rejection of Assessment~~

~~There is no evidence provided for the conclusion that~~

Ensuring Density Water Quality & Effluent Disposal

The Purdon Report produces almost no evidence to support its proposition that there are areas of concern in relation to water quality ... & ... effluent di-

PR /8

posal is a major concern in terms of the potential impact on water resources" (SR p.11). ~~These issues were not raised as problems at all by the MO residents surveyed~~ when the issues were raised, & in ~~(1)~~ 20 of the councils survey just 14% of councils named "poor solid waste disposal ~~practices~~" as a disadvantage of MO development. ~~Among the public authorities consulted~~ only the Casino ~~office of the~~ Soil Conservation Service distinguished by its ~~consistent~~ antagonism to MO's & the Sydney & South Coast offices of the Dept of Water Resources mentioned water quality or effluent as a problem on MO's. The DWR admitted they "had virtually no experience with multiple occupancies to date" (V.1, p. C6) & thus their concerns were based on theoretical considerations. The SCS on the other hand, was reported as expressing "Major concerns of soil erosion & sediment movement, sewage effluent & solid waste disposal" (SR p. C2). However, "the majority of problem sites have in the Dept's experience been illegal developments" (ibid) & so such problems can't be attributed to any failings of SEPP15. In fact a reading of the SCS comments in full suggests that they are referring to "potential" rather than actual problems on MO's. It should be noted that LCC's recent inspections of all their MO's reported no problems in regard to water quality or effluent affecting either MO's or their neighbours.

PTO

~~Apart from these references to such a problem are MO~~ written submission ~~neighbours~~ ... disposal ~~whilst none of the 39 people verbally consulted raised these issues as problems~~

Nevertheless MO opponents in the Lismore area are known

8a

(from only 8 MOs)

It becomes clear that almost all of these concerns relate not to the impacts of MOs on water quality but to the impacts of their own MO neighbours upstream users. (V.2, p.38). Regarding waste disposal the 3 MOs responding did not see this as a problem (op. cit. at 2.39)

When asked whether "impacts on water quality" or "waste disposal" were perceived by councils government agencies or MOs as "concern" at or after the DA stage 75% + 48% respectively MO residents answered affirmatively in relation to the pre-DA stage of development. However "waste disposal" was inexplicably not provided as an answer category for the post-DA stage but judging by the 24% of neighbours listing "impacts on water quality" as a "concern" such fears have practical to be necessary in practice. Moreover the wording of these questions is ambiguous as they don't allow respondents to specify whether the "concerns" are held by council government agencies or MO residents themselves. In revising Table 6 (V.1, p. D17) & in the open-ended responses to Q. 66,

PR /9.

to have complained about such purported problems to the local politicians who lobbied to have the Review set up & it may seem that the consultants have adopted these complaints as fact without investigating them & in the absence of any substantial evidence emerging from their questionnaires & consultations.

E.g. the Lismore & District United Ratepayers Assocn. claimed in 1993 that "It would seem a number of aspects of multiple occupancy policy are creating considerable concern for rural residents. These include the provision of an adequate water supply. However the greatest problem as we see it is on-site effluent disposal & this applies to rural villages & rural properties, as well as multiple occupancies." (NS, 7/8/93) Despite being challenged to do so at public meetings this group & the Nimbin Ratepayers Assocn have never provided any evidence for this assertion & the local LCC is also unaware of any such problems regarding MO's.

Again it should be noted that water & effluent problems are not specific to MO's, as the LDRA acknowledge.

"The development of MO's in isolated rural locations significantly increases the demand for certain services, particularly roads." (SR, p.12)

In relation to council rates this objection is analysed above. In regard to increased demand for services this did emerge as a problem for 29% of responding councils (V.1, p.B12, 7-18) & 9 of 15 councils thought that MO's were "partially unsuccessful to unsuccessful" in minimising demand for council services. (V.1, p.B29 8)

Once again the ~~basis~~ criteria used by council

PR /10

staff in answering these questions are unknown & their personal knowledge of such matters is questionable, not to mention the methodological inadequacies of the question form & sampling.

The PCC, the MO peak organisation is unaware of any data supporting the proposition & believes that on the co[ntrary] MO's provide many of their own community services including internal roads, at no cost to council or governm[ent] (P. Hamilton, PCC, personal communication, 2/7/95 ...)

Thus there is no evidentiary basis for Purdons assert[ion] that MO's "significantly increase the demand for commun[ity] services" & hence this argument cannot be used to justify the repea[l] of SEPP 15.

Purdons' Conclusions & Recommendations

The Review put forward 4 policy options "to facilitate MO developments" (SR p.16, par 5) "Option 1 [no change] was not considered a viable option because of the numerous deficiencies highligh[ted] by the Review. These concerns arose from MO residents & Councils as well as state government agencies, & strongly su[p]ported the need for change" (SR, p.16 ...)

As has been demonstrated in the analysis of the Sur[vey] Report above this assertion is misleading at best & [...] dacious at worst & is NOT supported by evidence in the Review or elsewhere. In their own councils survey Purdons report by far the largest response number of responding councils was that they want SE[PP 15] retained as is or with amendments (V.2, p.B.20 par 2-23) & they [state] that "the review has demonstrated basic support for MO's" (SR, p.16)

PR /11.

Similarly although surprisingly no question was asked of the MO residents as to whether SEPP 15 should be retained, it seems clear from the 6 open-ended responses to Q. 67 — "Do you have any other comments regarding the effectiveness of SEPP 15 ..?" — that MO's overwhelmingly want the Policy retained e.g. "SEPP 15 is a good policy". "SEPP 15 is generally a good instrument". "SEPP 15 needs to cover the management of our development adequately". "very successful" "SEPP 15 has been useful to our group". "Policy is in the main very effective" (V. 2, par. 2.42-44)

Thus the consultants' rejection of Option 1 is quite unjustified & from their own Review appears to be the most favoured option by all significant stake-holders.

Option 4

Option 4 is based on the unsubstantiated judgments that the Policy has served its purpose as the State Govt & that it is now more appropriate for MOs to be controlled by local instruments. ... Option 4 represents a more efficient use of State Government resources than continuation with SEPP 15" (SR, p 16)

The first contention seems to derive from the previously discussed erroneous conclusion that the number of DAs under the Policy is declining & does not itself justify repeal.

The judgment that "it is now more appropriate for MOs to be controlled by local instruments" is ~~accordingly~~ merely the consultants' opinion as it does not emerge clearly from any evidence to be found in the Review.

The same can be said for the final contention which is also unsupported by any weight of evidence in this Review or elsewhere.

It is noteworthy that the consultants' preferred option in their main report was altered in their Summary Report from "advise Councils that the Policy will cease to have effect after 2 years" (v. 1, P. 55, ab 4.4) to, "a one month period to lodge outstanding DA's ... a further two months for processing & determination of DA's by Councils." (SR, pg, ab 5)

No reasons or evidence are presented for this significant change to Purdon's recommendations & ~~neither~~ the Review does not suggest that this is a preferred option for any of the significant stake-holders.

Further it should be noted that the main report recommends, "Further consultation should be undertaken regarding outcomes possibly in conjunction with the local Government & Shires Assocn. & representatives of MOs. Based on this review it is further recommended that the Department undertake the following consultation on the recommended option to enable a final decision by Government: release discussion paper (existing report or summary); liaison with local Government & Shires Assocn.; & organise regional conferences. These actions would lead to refinements of the preferred approach ... Effective consultation will also encourage a general acceptance of the changes by all involved parties." (v. 1, P. 58, ab 4.6)

No such consultation occurred. Instead, despite the Minister's & DEP's assurances of community consultation prior to any changes to the Policy, SEPP 15 was released within a month of release of the Summary Report & the "rural clauses" of SEPP 42 promulgated soon after.

~~[illegible]~~ [illegible] Regs.
cl 24(2A)
DCP - Notification to
~~[illegible]~~ DOAP.

~~[illegible]~~s.

Re DOAP maintaining
of MO (~~in lieu~~
regular audit etc
(in lieu of Pendolan)

Graham - NEW STEPP-15 + Manual
Assignment deadline July 27

What is A Community Title Scheme?

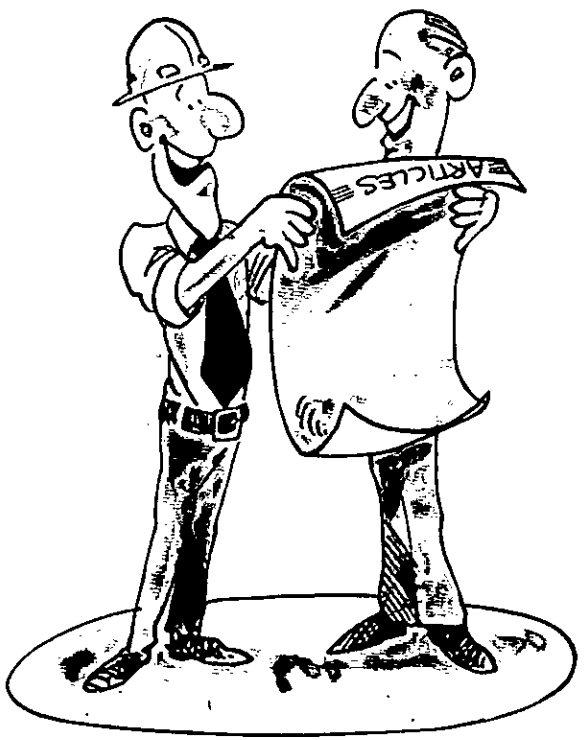
Community Titles are schemes providing for low, medium or high density housing, leisure and retail facilities and other community uses. Whether the scheme is single, duplex or multi-storey for residential or commercial usage it can be incorporated in a Community Scheme. The Schemes provide for lands to be set aside for Community, Precinct or Neighbourhood use while providing secure Title to the ownership of neighbourhood property. These schemes are particularly useful for land with dual-occupancy and Community Titles Scheme Plans can only be prepared by a Registered Surveyor.

Community Associations

Community, Precinct and Neighbourhood Associations are similar to Bodies Corporate under existing Strata Schemes. They are controlling bodies established to administer the obligations of the Community Land Management Act. The Associations are made up of owners of lots in the Neighbourhood Schemes comprising the overall Community Scheme. Your Consulting Surveyor will advise on the establishment of Community Associations.

Unit Entitlements

Unit Entitlements are proportional valuations of your Title against the overall value of the Scheme and will control the amount payable by you towards the overall running and maintenance of the Scheme.



Development Statements

This statement sets out the developer's proposals and undertakings to provide facilities as well as rights and duties of owners in the Scheme. It can be used as part of the development contract for later stages. Statements are compulsory for Neighbourhood Schemes but optional in Precinct and Community Schemes. Your Consulting Surveyor can advise on and prepare Development Statements.

Where can you have a Community Title Scheme?

Each Local Council Planning Scheme sets aside localities zoned for different land uses. A standard, low density residential community scheme can be achieved in any residential zone. Medium and high density residential, retail, industrial or commercial schemes can be located subject to council approval in appropriately zoned land. However, mixed and varying uses may be allowed depending on Council policy and attitude. Your Consulting Surveyor will consult and negotiate with Council and investigate the possibility of creating any Community Titles Scheme on your behalf. A Consulting Surveyor is trained and experienced in dealing with Local Councils.

Strata Titles Commission

As with Strata Titles, the Arbitrator on Community Titles Schemes will be the Strata Titles Commissioner. Your Consulting Surveyor can advise you on submissions to the Commissioner.

When It Comes to Professionals

Your Consulting Surveyor can create anything from a small community to a new town. Call the professional best suited to discuss the advantages of Community Schemes for the development of your land.

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- ☐ Strata and community titles and management
- ☐ Civil engineering design, supervision and surveys
- ☐ Planning environment and land management
- ☐ Development appeals
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- ☐ Land Information Systems
- ☐ Set-out of buildings
- ☐ Ident Survey

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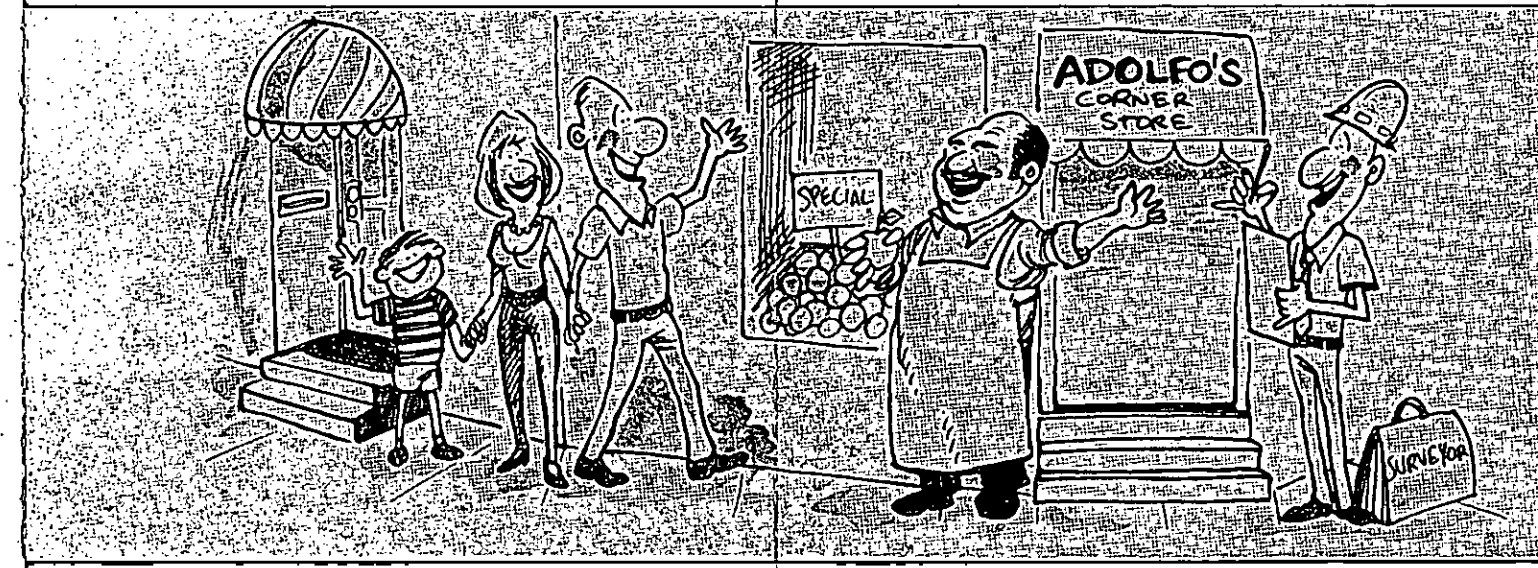

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