TWEED

COUNCIL'S SUBMISSION TO COMMISSION OF INQUIRY - [illegible]

MULTIPLE OCCUPANCY DEVELOPMENT IN TWEED SHIRE

1. Background

Multiple Occupancy development in the Tweed Shire was facilitated by the implementation of Tweed Local Environmental Plan No. 6, which was gazetted on 25 September, 1981. That instrument enables Council to grant consent to Multiple Occupancy developments where the subject lands are situated within either of the Non-Urban zones 1(a) or 1(b), provided certain fundamental criteria, pertaining to lot size, density, ownership and dwelling types are met.

Since the introduction of Local Environmental Plan No. 6, Council has received a total of fifteen (15) applications for Multiple Occupancy development. Of those, five (5) have been approved, three (3) refused (two (2) of those involved the same applicant and the same property), and seven (7) are pending. To date, Council has received Notice of Appeal to the Land and Environment Court in respect of two (2) applications and hearings in respect of those are still pending. The appeals involve one (1) application which was refused by Council and the other an application which was deferred pending finalisation of the Commission of Inquiry, that Appeal is being heard as a deemed refusal pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979. Additionally, it is known that a number of illegal Multiple Occupancies have been established throughout the Shire. It is estimated that in excess of one hundred and fifty (150) illegal dwellings and other structures have been erected on Multiple Occupancy sites.

In consideration of a development application for a multiple occupancy Council, concerned about the amount of unrest it perceived in the Shire about that kind of development, resolved at its meeting of 26 June, 1985, to formally request the Minister for Planning and Environment to set up a Commission of Inquiry. The Inquiry was subsequently agreed to by the Minister and details of terms of

reference, dates etc. were notified to Council in a letter from the Commissioners of Inquiry dated 22 August, 1985.

Council's present attitude to Multiple Occupancy applications is expressed in a policy it adopted at its meeting of 24 July, 1985, shortly after the announcement of the Inquiry, viz; Council "will not determine any development application for Multiple Occupancy development until the outcome of the recently announced Commission of Inquiry is known and all applicants be advised accordingly. In the interim, all pending applications and any freshly submitted ones to be processed and reported on normally up to the point of determination".

2. Terms of Reference - Specific Submissions

The terms of reference of the Inquiry are essentially twofold -

1. To investigate and report on Multiple Occupancy in the Tweed Shire (7) specific problem areas; and

2. To suggest means to overcome these problems and any others that might be identified by the Commission.

The following comments will be made under headings using the specific terms of reference 1(a) to 1(g). Any comments on matters provided for in the second of the terms of reference are included under those headings.

1 a. Problems encountered by Council in applying the present provisions of Local Environmental Plan No. 6 - Shire of Tweed -

Experience with the application of Local Environmental Plan No. 6 over the some four (4) years since its implementation has highlighted a number of areas where it is perceived to be deficient.

Firstly, the minimum lot size requirement of Clause 12A(2)(a) is forty (40) hectares "or such less area, not being less than twenty (20) hectares, where that lesser area is the prevailing lot size in the locality and the Council considers that the land is otherwise suitable". Confusion has arisen as to what is meant

RI

DEP. Comment

by the words "prevailing lot size in locality" and what is an equitable way of quantifying that. It is felt that it would be better to prescribe a minimum lot size without any further qualification. State Environmental Planning Policy No. 1 could be used to consider on their merits, any exceptional cases.

Secondly, Clause 12A(2)(b) provides "two thirds ($^2/_3$) of the adult persons residing on the land upon which the development is to be carried out have a share in the ownership of the land, whether or not people not residing on the land also share in that ownership". This clause is seen both as ambiguous and irrelevant. The words "residing on land" imply the notion that the proponents of any Multiple Occupancy scheme must be actually living on the land before the application can be approved. That interpretation while it might seem at first glance absurd, could nevertheless be seen as incitement to set up Multiple Occupancy developments illegally. Additionally, it is considered that in practice, the provisions of this clause are of dubious merit. They are almost impossible to police and go no way towards establishing the bona fides of any Multiple Occupancy scheme.

Thirdly, the matters provided for assessment in Clause 3(a) seem suitably comprehensive. However, objective and proper analytical assessment of the eleven (11) points is extremely difficult for Council to carry out competently, given the paucity of data and expert reports that generally accompany applications, the lack of back up technical site appraisal resources and the time constraints on dealing with applications. It is considered that -

1. Some onus should be placed on applicants to provide with their applications, specific site reports from qualified persons covering such matters as soil suitability, erosion hazards, access roads, water supply, drainage etc.; and

2. A mechanism should be set up for referral of all Multiple Occupancy applications to various State Government Authorities, e.g. Agriculture, Soil Conservation, Water Resources, National Parks & Wildlife etc., in order that their expertise might be used in the assessment of applications.

Fourthly, the Local Environmental Plan makes no specific provision for Council to control the construction and standard of internal access roads. Experience to date has indicated that this is a major area of concern. Almost all of the vast number of complaints received about Multiple Occupancy developments have been brought about directly or indirectly, by problems caused by the carrying out of earthworks associated with the construction of internal access roads. Additionally, it is considered that internal roads should be required to be constructed to a standard sufficient for safe and efficient access by both emergency vehicles and residents on the property. Each development should be obliged to contain a major access road providing access within reasonable vicinity of each home site. Specifically, applicants should be required to provide engineering details of the road and have the construction supervised by a qualified engineer. A uniform standard for internal roads should be adopted.

Finally, Clause (6) adopts certain provisions of the Environmental Planning and Assessment Act as they relate, inter alia, to advertising of designated development. One of those provisions requires Council to forward to the Department of Environment and Planning a copy of any application for public display in the regional office of the Department. It is considered that that procedure is both unnecessary and time wasting and should be dispensed with.

b & c.

The determination of an equitable formula for arriving at contributions under Section 94 towards Council provided services & facilities, and the implications of Multiple Occupancy development for the provision of other services & facilities -

Section 94 Contributions -

All contributions should properly be based on population increase created by

development, which places additional demands on community facilities and services, irrespective of the type of development which generates such increase.

All local government authorities levy contributions in respect of Public Reserves, Water and Sewer Headworks and Roadworks etc. and the amount of such contribution is properly related to the population increase generated by the particular development.

In Tweed Shire, contributions for rural subdivision are assessed as follows -

1. Road Development Contribution -

   A cash contribution levied in respect of each additional lot created to be applied to upgrading and reconstruction of rural roads in the general area of the subdivision. The amount is currently $2,500 per additional lot. (see annexure attached)

2. Dedication of Land -

   The Council requires that each property be individually assessed in relation to areas of creek front land or ridge land, which may be suitable for public enjoyment. The developer may be required to dedicate such areas as public reserve.

   Other restrictions may be required to be imposed on land abutting Prescribed Waterways as defined by the Water Resources Commission.

3. Road Improvements -

   In addition to the above, the applicant may be required to carry out such road improvement works on the road on which the subdivision is located, where said improvement is deemed to be necessitated by the resultant population increase and resultant traffic generation.

The foregoing policy is uniformly applied throughout the Shire and there can be no justification for not applying same to Multiple Occupancy type developments.

In all cases, the need for giving of contributions or the carrying out of works is consistent with increased population and traffic flow and should be applied to Multiple Occupancy development.

The formula should thus be -

1. The payment of a Road Development Contribution in respect of each additional holding, interest, or Strata Unit created, said contribution to be identical with the contribution payable in respect of rural subdivision current at the time of approval.

2. The dedication of land for Public Reserve in accordance with clause 4.10.3 of Council's existing policy, viz;

   "Where land in a development has frontage to a designated stream or significant permanent waterway, and is, in Council's opinion, desirable for public enjoyment, having reasonable pedestrian or vehicular access from a Public Road or place, Council may require that said land be dedicated as Public Reserve. This policy shall also extend to elevated land which in Council's opinion is suitable for public enjoyment as a lookout.

3. The carrying out of such roadworks as are deemed necessary to accommodate additional traffic conditions created as a consequence of the development. The standard of the road as upgraded should be consistent with Council's Subdivision Policy requirements as detailed by Drawing A2-36, annexed hereto.

In respect of the payment of contributions, it should be noted that, unlike other forms of development such as subdivision (real property or strata), Local Government does not have the machinery to enforce payment thereof, other than through the Courts. Neither can the "paying off" or "working off" of such contributions be justified as this would be inconsistent with other forms of

development for which justifiable contributions are paid in full and applied toward actual needs within the appropriate time frame.

It is therefore suggested that contributions payable in respect of Multiple Occupancy developments be made at the date of application or at the latest, prior to the issuance of formal approval.

(c) Implications of Multiple Occupancy development for the provision of other services and facilities -

It has been claimed that the type of person attracted to Multiple Occupancy type living would not place the demand on community services and facilities as might be expected from other forms of development.

Experience indicates that this proposition is not correct. Tweed Shire has already experienced some Multiple Occupancy applications which were directed toward the more affluent, professional type of clientele who would have correspondingly higher expectations of services to be provided by the local authority.

Multiple Occupancy interests can always be transferred from the original occupier, for example, but, in any case, families with children will always place an additional burden on community facilities which will ultimately have to be provided by the local authority.

Such services include -

- Child care and public health facilities;
- Embellishment of active and public reserve areas (as distinct from any passive areas provided on site);
- Traffic facilities (other than roads) such as parking areas, traffic control mechanisms, bridges, etc.
- Bushfire protection and fire fighting facilities - fire trails on the site should be provided at the date of development;

- Recreational facilities; and
- Libraries.

d. The need for an equitable system to rate properties with Multiple Occupancy approval commensurate with the actual residential occupation of the land -

Rating Systems to Cover Multiple Occupancies -

Currently this Shire has three rural differential general rates based upon various size categories of rural land. Effectively the rate in the dollar used for the calculation of 1985 rates for each category is -

General		1.3763
Rural A	5-10 ha.	1.2387
Rural B	10-30 ha.	1.0322
Rural C	30 + ha.	0.8946

A minimum general rate of $169.12 applies to each category of general rate in accordance with Section 126(2)(a) of Local Government Act 1919 as amended.

Pursuant to Section 118, under definition 'rural land', subsections (2) and 4 (b) rates are currently levied on properties presently supporting Multiple Occupancies based upon a single valuation provided by the Valuer Generals department subject to the application of Section 126(2)(a).

Where rural properties have portions sold after subdivision or have areas of separate occupation the Valuer Generals Department will issue separate valuation for each parcel of land concerned, thus enabling the issue of separate rate notices. However, contact with that Department has indicated that properties subject to multiple occupancy standards would be considered as a total area under the one ownership used for the one purpose which may only be valued on 'englobo' criteria. The application of rating principles expressed in the Local Government Act creates a potential inequitable situation.

The Strata Titles Act allows the given valuation as supplied by the Valuer Generals Department to be attributed against individual units upon the basis of unit entitlement, allowing the correct issue of rate notices to the respective unit holders. It is suggested that the attribution of values to sites within a multiple occupancy approval, based upon the shareholders agreed equity in the total property, may be a similar basis to use for the levying of rates.

To implement such a system it would be necessary to amend the Local Government Act as suggested hereunder -

Inclusion Section 118(1)

"multiple occupancy land" means a defined parcel of ratable rural land which is valued as one assessment designated as multiple occupancy land by the Council."

Mutiple Occupancy - Rates

Section 118B

The general rate levied on multiple occupancy land shall not be made or levied on the company but, subject to this section, shall be made and levied in respect of each dwelling site comprised in the parcel as if -

(a) the shareholder entitled to each such dwelling site were the owner in fee simple in possession of the site and it were a separate parcel of land having a value equal to the appropriate value apportioned to it under paragraph (c);

(b) that shareholder were, subject to any exemptions or concessions that may be applicable to him or to the site, liable for any rate made and levied by the rating authority on the owners of the land; and

(c) the value of any such site were an amount that bears to the corresponding value ascertained in accordance with section 134 of the ratable parcel (after deducting therefrom any allowance applicable under section 58 or 58A of the Valuation of Land Act, 1916 or deduction applicable under section 2(1) or 2A(1) of Schedule 3 to the Local Government Act, 1919) the same proportion as the shareholder bears to the aggregate shares issued.

Section 139 (4)(c)

Upon the shareholder, in any case where the Act provides that the rate shall be paid to the Council by the shareholder."

Such amendments would enable rate notices to issue to the responsible shareholders and as such the 'ratepayers' would be entitled to pensioner rebates under Section 160AA Local Government Act which would not apply should the notices issue to the 'company' unless dwelling sites were leased by the individual shareholder, hence subject to separate valuations from the Valuer General's Department.

Individuals would be capable of participating in the instalment scheme under section 160 DA of Local Government Act.

Should the Federal Taxation laws be reviewed the individual would have a separate valuation of rates and charges to be noted within the annual assessment which would not be available should the property be rated differently.

e. Schemes in conflict with Multiple Occupancy objectives, which involve small areas of common land and large areas effectively alienated to individual management or ownership, which are promoted as defacto rural residential subdivisions -

Originally the concept of Multiple Occupancy was to provide a facility for groups of people perhaps with similar aspirations for a communal rural lifestyle, to pool their resources to gain communal title and resident rights to rural land which, for various economic and legal reasons, would be otherwise impossible. While some of the early Multiple Occupancy developments appear to have been done on that basis, there is an emerging recognisable trend that these developments are now being promoted by profit motivated developers who are selling Multiple Occupancy shares "off the plan" in essence as defacto rural subdivisions. It is known that a number of the recent Multiple Occupancy developments were sold to individuals notwithstanding the fact that Council had not granted consent to the development. Some, in fact, had not got to the point of being the subject of a

development application. While the principle of a developer being involved in these schemes is not necessarily a bad approach, it is considered that the system lends itself to abuse and some attempt should be made to curtail these practices if Multiple Occupancy developments are to be properly conceived and implemented.

1.f. Action that anticipates development approval by works such as clearing land, road building and the construction of buildings -

One of the effects of (e) above is that in a number of cases, developers seeking to market Multiple Occupancies have gone in and carried out extensive clearing and earthworks prior to seeking an approval and then sold off all or most of the shares in the land and sought to pre-empt approval of any application by exerting pressure on Council through the prospective occupants.

In some cases, these preliminary works have had disastrous environmental consequences including destruction of significant stands of rainforest, silting and discolouration of watercourses, destruction of wildlife habitat, erosion and scarring of scenic hillsides and ridges. When landowners have been approached and asked to explain the works that have been carried out, a fairly common response is to claim that the work is simply in pursuance of some agricultural use of the land or upgrading old existing roads for agricultural purposes, uses which do not require consent in the Non-Urban zones. Invariably, some time later, an application turns up for a Multiple Occupancy on the site. It is apparent that it is now necessary to incorporate into legislation -

1. notice to all concerned that preparatory site works for a Multiple Occupancy require development consent; and
2. a mechanism to allow Council to refuse to consider applications where any illegal work is involved.

Another area of concern is where consent has been granted to a development subject to a general provision that separate building approval be obtained as required under Ordinance 70. In the case of every development application

approved to date, and in fact others not approved, building work has been carried out without the submission of building applications.

It is estimated that there are over one hundred and fifty (150) of these structures, and it should be noted that under Part XI of the Local Government Act, 1919, as amended, no building approval can be granted retrospectively. Therefore, under current legislation, it is necessary to demolish all illegal work and then obtain formal building approval prior to their re-erection. Demolition would obviously cause a great deal of hardship to those concerned. Alternatively, the legislation could be amended to allow some form of "deem to comply" approval.

However, should such legislation be granted, the concession would have to be extended to the entire Shire to avoid any breach of Anti-Discrimination Legislation.

Should just a blanket approval be given, there could be legal ramifications in respect of the approval of structures which may or may not be structurally adequate, and which may or may not comply with the requirements of Ordinance 70 of the Local Government Act, particularly in respect of the provision of facilities and room sizes. Council must give due consideration to design, materials and stability of all buildings. Therefore, approval should not be granted until an inspection has determined the structural adequacy of any existing building and its compliance with the requirements of Ordinance 70. Determination of compliance of dwelling structures with the requirements of Ordinance 70 of the Local Government Act, 1919, raises problems, where an "alternate" system of construction is to be employed. This is because such structures as mud brick, mud block, "tree house" pise, earthrammed walls, stone walls, bottle walls, etc., are not specifically covered and only advisory documents are available for Council to determine the structural adequacy of such buildings. Formulation of Statutory Codes are now overdue.

The alternate designs do not always have conventional "facilities", for example, the use of walls with only soft sheeting such as plastic in lieu of a more permanent structure. The extent of protection of such buildings in the event of bushfire is another problem because of the location and condition of access roads and tracks, some of which are accessable only on foot.

The disposal of night soil and sullage on these developments gives rise for concern as their location can be in catchment areas of water supplies. This is especially true because of the transient nature of many of the occupants who through overseas travel, may be carriers for diseases such as cholera, typhoid, etc. As well, many occupants use untreated water for all their domestic purposes which carries many dangers with the parasite Giordia having been shown to have been in fresh water in the Shire.

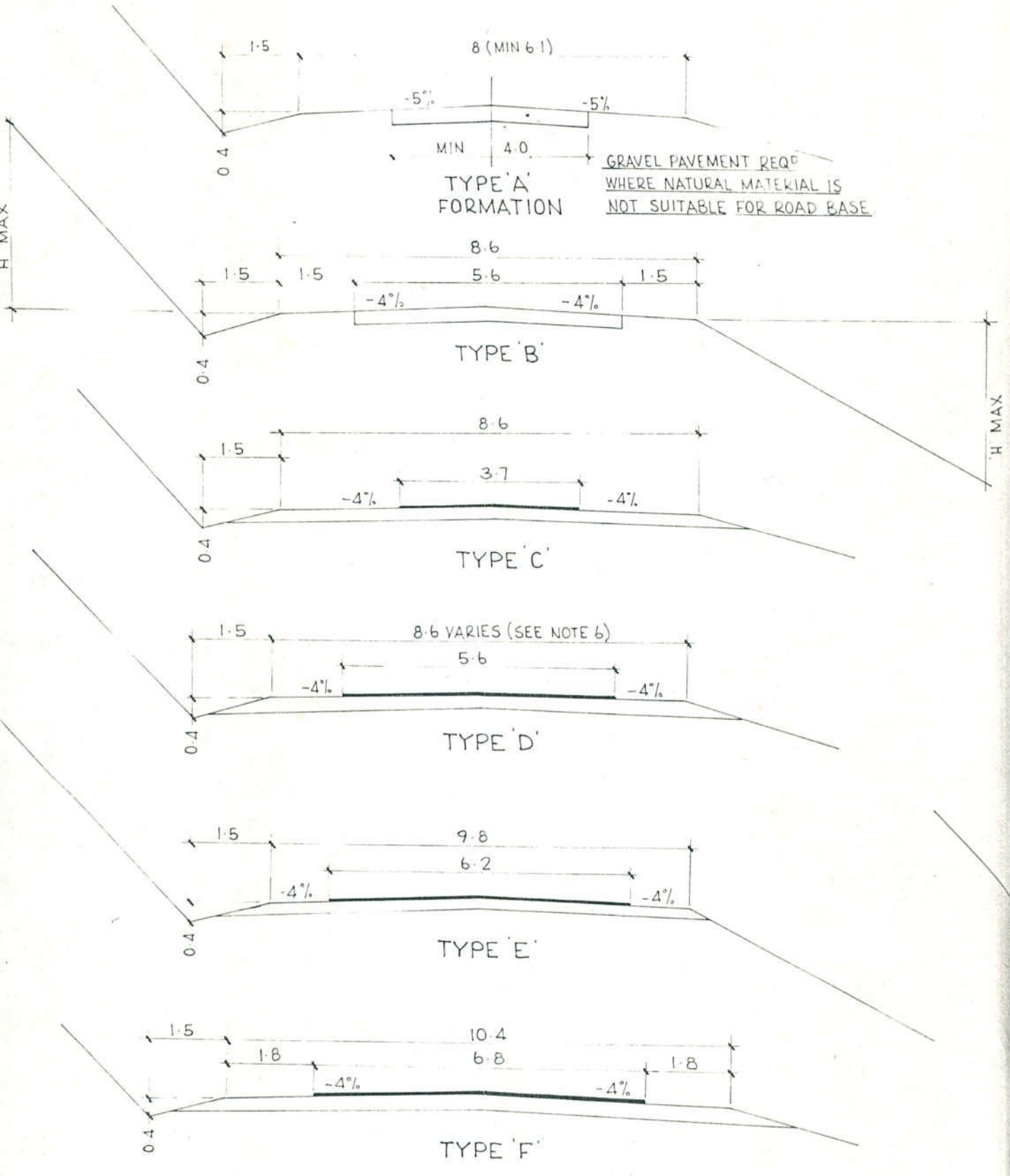
The location of some dwellings on stream banks can also present a danger in times of flood rain and obviously, this is a further factor to be considered.

1 g. Adverse impacts of individual Multiple Occupancy proposals on other residents in the vicinity -

The most noticeable resident reaction has occurred in localities where illegal site works have been carried out in preparation for a Multiple Occupancy. The adverse environmental impacts caused by some of those works have had some worrying consequences for surrounding residents. In one instance, a local watercourse was badly silted and discoloured by earthworks for a period of some four to six (4 - 6) weeks. Some of the residents who pumped drinking water out of the stream now no longer do so because the believe they can no longer rely on the quality of the water. In another instance, a stock access used for many years by an adjoining owner was made impassable by illegal bulldozing work. In other instances, residents have complained of the destruction of the visual amenity of their locality and interruption to their normal lifestyle by unsympathetic developers. All of this has tended to give Multiple Occupancies a poor reputation amongst the established more conventional rural residents and

that can only make the situation more difficult for bona fide Multiple Occupancy schemes.

Presently, on receipt of a development application for a Multiple Occupancy, it is advertised in accordance with the procedures laid down in Local Environmental Plan No. 6 for a period of thirty (30) days. During that time, interested parties may make a written submission in respect thereof. That is about as far as the rights of any residents go. Because of the range of sensitive environmental issues that can be raised from time to time by certain applications, it is considered that it may be in the public interest to institute limited third party appeal rights perhaps along the lines of those proposed in amendments to the Environmental Planning and Assessment Act, in respect of prohibited development.



	DESIGNED B.R.L. DRAWN G.C. CHECKED W.D. Young FIELD BK. LEVEL BK. DATUM SCALE N.T.S.	THES TAKEN AN DEPUTY SH SHIRE ENG

1.) DESIGN STANDARDS :- DESIGN PERIOD 15 YEARS

DES. SPEED \ A.A.D.T.	1 20	20 100	100 140	140 300	300 1100	1100 2200	2200 +
≤ 60 km/hr	A	B	C	D	E	F	-
> 60 km/hr	-	B	D	E	F	G	G

2.) BATTER SLOPES :-

WHERE 'H' MAX < 1 SLOPE NOT TO EXCEED 4:1

	CUT	FILL
DRIFT SAND	5:1	5:1
SAND	3:1	3:1
CLAY, LOAM OR GRAVEL	1·5:1	1·5:1
SHALE OR OTHER MATERIAL SUBJECT TO RAPID WEATHERING.	1 :1	1 :1
ROCK WITH CLAY SEAMS	0·75:1	N.A.
JOINTED, LAMINATED OR SOFT ROCK	0·5:1	N.A.
MASSIVE ROCK	0·25:1	N.A.

3.) DESIGN PLANS :-

I) TO SHOW FULL WIDTH PAVING FOR D.M.R. SCHEMES.
II) TO SHOW PAVEMENT DEPTH AND DESIGN SPEED.
III) TO SHOW BATTER SLOPES.
IV) TO SHOW EXISTING DRAINAGE & DESIGN WATERWAY CALCS. WHERE POSSIBLE.

4.) WHERE TYPE 'B' ROAD INTERSECTS EXISTING SEALED ROADS A SEALED SPLAY AREA SHALL BE PROVIDED AS DIRECTED BY THE ENGINEER.

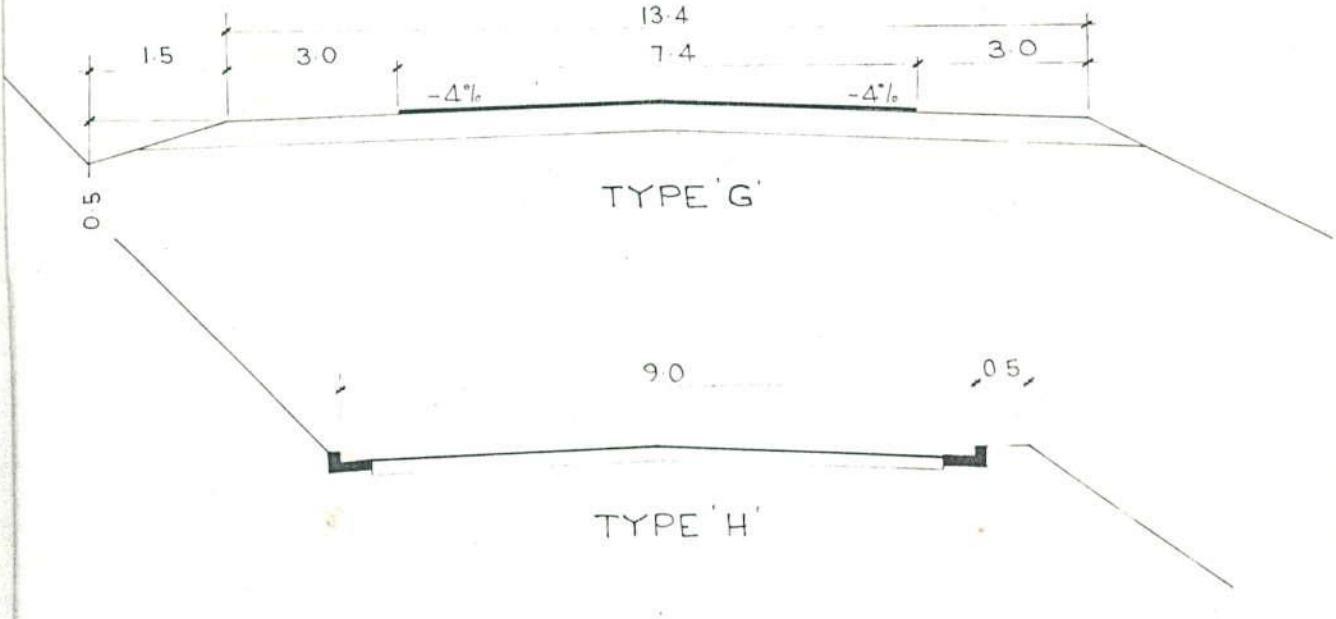
5.) I) FOR STANDARDS OTHER THAN TYPES A & B WHERE LONGITUDINAL GRADES EXCEED 8% KERB & GUTTER AND SHOULDER SEAL SHALL BE PROVIDED IN CUT CROSS-SECTION.

II) WHERE LONGITUDINAL GRADES EXCEED 15% NOTE 5) I) SHALL APPLY AND
a.) TYPES A & B FORMATION SHALL BE UPGRADED TO TYPE 'C'.
b.) TYPES C-G FORMATION SHALL BE UPGRADED TO TYPE 'H'.

6.) SHOULDERS TO BE :-
1·5 METRES WHERE CUT OR FILL IS GREATER THAN 0·6 METRES
1·8 METRES WHERE CUT OR FILL IS LESS THAN 0·6 METRES

THIS PLAN TO BE READ IN CONJUNCTION WITH PLANS N° A1-36 & A2-4

7.) WIDTH BETWEEN KERBS AT STRUCTURES NOT TO BE LESS THAN DESIGNED PAVEMENT WIDTH PLUS 1·4 METRES.



DRAWINGS HAVE BEEN
O THE SITE OF THE WORK
ARE RECOMMENDED
RE ENG
DATE
NEER
DATE 13-11-85

TWEED SHIRE COUNCIL

RURAL ROADWORKS
STANDARD CROSS-SECTIONS

ISSUE A

SHEET OF SHEETS

DRAWING No
A2 – 36

TWEED SHIRE COUNCIL

P.O. BOX 816, MURWILLUMBAH, N.S.W. 2484
TELEPHONE (066) 72 0400
FAX (066) 72 4598

PLEASE QUOTE COUNCIL REF. No. JG:SR T4A/2666

YOUR REF. No.

FOR ENQUIRIES PLEASE CONTACT Mr. J. Glazebrook.

TELEPHONE DIRECT (066) 72 0425

CIVIC AND CULTURAL CENTRE
MURWILLUMBAH

18 October, 1985.

The Secretary,
Rural Resettlement Task Force,
PO Box 62,
NIMBIN. 2480.

Dear Sir,

Commission of Inquiry / Multiple Occupancy in Tweed Shire.

Further to your primary submission to the Commission of Inquiry into Multiple Occupancy in the Tweed Shire, the following questions are submitted for your consideration. You are reminded that the Commissioner has directed that answers to the questions are to be forwarded to the party asking the question, in writing, on or before 4.00 pm. on Friday, 1 November, 1985.

1. What experience have members of the Rural Resettlement Task Force had with Mutliple Occupancy development in the Tweed Shire?

2. Following the formal site inspections by the Commissioner, at which a member of your organisation was present, have you in any was altered your opinion as to the relevance of the Barker Study to the situation in Tweed Shire? If so, in what way?

Yours faithfully,

J. S. Nixon

J. S. NIXON
SHIRE CLERK.

31 Oct. 1985.

The Shire Clerk,
Tweed Shire Council,
P.O. Box 816,
Murwillumbah 2484.

Dear Sir;

Re: Tweed Commission of Inquiry
Your Ref. JG:SR T4A/2666

Further to your letter dated 18 Oct. 1985 we make the following response to your questions:

1) The experience and contact of the RRTF with Multiple Occupancy Development in Tweed Shire would include:

a) several persons from Tweed Shire attended the formation meeting of the RRTF on 18 June 1983;

b) contact and liasson was maintained during the past 2 years with Tweed M.O. residents through the Wollumbin Homebuilders association and personal contacts;

c) in Nov. 1984 the RRTF was engaged by the Land Commission of N.S.W. to conduct a market survey of M.O. communities on the North Coast and this included analysis of 13 M. O. communities in Tweed Shire (see attached letter); and,

d) seven M. O. community representatives from Tweed Shire attended our meeting of 7 Sept. 1985 at which our draft submission to this Inquiry was discussed and approved.

2) Yes, we believe the Barker Survey is relevant to the Tweed situation, assuming the proposed developments: Mt. Carool Pty. Ltd, Urliup Valley Pty. Ltd., and Tomewin Village Pty. Ltd. are disregarded.

We trust that the above information answers your questions satisfactoraly.

Yours faithfully,

Dave Lambert
Secretary

CC: Commissioner of Inquiry

14 Oct. 1985

Shire Clerk,
Tweed Shire Council,
Murwillumbah, N.S.W. 2484.

RE: Tweed Commission of Inquiry

Dear Sir;

We have listed below, a number of questions with respect to your submission at this Inquiry. It is our understanding that the Commissioner has requested all such questions to be answered in writing before I Nov 19¶85 and addressed to the party posing the questions.

1. What evidence is there to support the view that the 5 approved M.O. developments individually, are likely to result in an increase in demand for public amenities or services?

2(a). What public amenities or services have, or is proposed will, receive benefit from s.94 contributions made by the 5 approved M.O. developments?

2(b). What evdence is there that the current cost of providing relevant public amenities or services were identified prior to L.E.P. No. 6 being gazetted?

3. What evidence is there to support the view that each of the approved M.O. developments individually, have or are likely, to cause an overall decline in the amenity of the area?

4(a). What evidence is there that arrangement have been made to establish a physical nexus between each of the 5 approved M.O. developments, and the location where their respective s.94 contributions will be made?

4(b). What criteria has Council used to determine the "immediate location" for this purpose?

5. Within what period of time is it planned that all (or the

remainder) of the s.94 contribution money received from the 5 approved M.O. developments, will be spent?

6. What evidence is there to support the view that the s.94 contribution made by the 5 approved M.O. developments were, in the particular circumstances, a reasonable amount?

7. In respect to the 5 approved M.O. developmnts what consideration was given to discounting?

8. In respect to the 5 approved M.O. developments what consideration was given to "in kind" contributions as an alternative to cash?

9(a). What D.A. conditions and s.94 contribution was made by the Hare Kishna Community?

9(b) What criteria was used in determinimg this particular s.94 contribution?

9(c), From a planning pont of view in what ways is it seen, that the conditions for development of this Community, differ from those provided for development under; L.E.P. No 6?

10(a). In respect to the removal of trees carried out by Tomewin Pty. Ltd., Urliup Valley Pty. Ltd, and Mt. Carool Pty. Ltd. in connection with proposed M.O. development did any of the proprietors seek in advance, the written consent ofCoun¶cil to fell trees under the Council's Tree Preservation Order? If so, was consent granted?

10(b). If the answer to 10(a) is "no", why did Council not take immediate action (when Council became aware of the situation) to prohibit the destruction of futher trees?

10(c) If it is considered that there has been a breach of the Tree Preservation Order has Council taken action, or is it proposed to take action (cf. s.126), to rectify the damage and if not, why not?

11(a). In respect to road works carried ut bby Tomewin Pty. Ltd., Urliup Vallet Pty. Ltd. and Mt. Carool Pty. Ltd. in connection with proposed M.O. development is Council of the view that such is other than is permitted under I.D.O No 2, Col 2, and hence was "development" requiring Council approval?

11(b). If so, what action has Council taken to rectify this situation?

12. Would Council please supply a copy of the gazettal notice of the Tree Preservation Order.

13. Re minimum lot size of 40ha. Did Council seek clarification from the D.E.P. of what "prevailing lot size" meant and if so what was the reply?

14. What evidence is there to support the view that M.O. settlers travel overseas more than others and, may be "carriers of diseases such as cholera, typhoid etc"?

15. Page 4, Re the "vast nuber of complaints....associated with the construction of roads" how many communities are referred to, and how many are not associated with an application from the Tomwin and Urliup areas?

16. Page 14, Is Council's proposed extension of third party appeal extended to any other forms of development or is it restricted to M.O. Development Applications?

The Association looks forward to the receipt of Council's response to these questions. Thank you for your consideration and assistance.

Yours faithfully,

Dave Lambert
Secretary

CC: Commissioners of Inquiry

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Dear Sir,

Commission of Inquiry into Multiple Occupancy in Tweed Shire.

I refer to your letter of 14 October, 1985, and in answer to the questions asked by you, I wish to reply as follows -

1. Council has not had any research carried out on the five (5) approved Multiple Occupancy developments and is unable to produce evidence relating specifically to each of those developments. The assumption made for such increase in demand was in consideration of normal population expectations.

2(a) None of the five (5) approved Multiple Occupancy developments have made any Section 94 contributions. Conditions of approval did however require the payment of contributions for the improvement of roads in the respective localities.

2(b) The "current cost" of providing public amenities or services was not identified prior to the gazettal of Local Environmental Plan No. 6.

3. There is no evidence to suggest that each of the approved Multiple Occupancies have individually caused a decline in the amenity of their localities. Whether or not that will continue to be the case depends, to a large degree, on the attitudes of the occupants themselves to managing their communities in a manner which does not conflict with, nor compromise the desirable aspects of their rural amenity.

4(a) To date, no Section 94 contributions have been paid. The contributions that were asked for by way of various conditions of approval, were so asked on the basis of a contribution towards the improvements or reconstruction of rural roads generally in the locality of the developments.

4(b) The concept of "immediate location" has been taken as feeder and distributor roads for the particular locality. In many cases, it would encompass the "Parish" or parts of adjoining "Parishes".

..2.

5. No Section 94 contributions in respect of Multiple Occupancy development have yet been collected. Any monies that might be collected in the future would be expended in the same fashion as the contributions received in respect of rural subdivisions, rural workers dwellings etc., i.e. they would be paid into a trust fund and allocated for expenditure on appropriate roads. These funds are allocated with and supplemented by rates revenue in each Annual Programme.

6. The contributions required of the five (5) approved Multiple Occupancy developments were in accordance with the contributions charged against rural subdivisions and rural workers dwellings. Extending the Rural Road Development Contribution to include Multiple Occupancy development was seen as logical and reasonable given that such development does in fact similarly increase the density of population, and hence, wear and tear on rural roads. The amounts have been based on current road costs and developers new road costs against adopted lot yields and appropriate costs per rural residence.

7. No consideration was given to discounting.

8. No consideration was given to "in kind" contributions in lieu of cash.

9(a) Initial approvals for this development were issued in 1978 prior to the
(b) introduction of the Environmental Planning and Assessment Act, 1979.
(c) Subsequent approvals after 1980 did not have any specific Section 94 contributions, however conditions of approval included construction of access roads, a bridge and widening of the Tyalgum Road to improve traffic safety. At the time of these approvals, Council did not have a policy of applying Rural Road Development Contributions to this type of development.

10(a) No consent was sought under Council's Tree Preservation Order.

10(b) Action by way of service of notice under the Environmental Planning and Assessment Act, 1979, was taken immediately after it became known that illegal development of the land was being undertaken.

10(c) No breach of the Tree Preservation Order has occurred.

11(a) Council does not have any evidence that illegal roadworks were carried out by Urliup Valley Pty. Ltd., nor is it alleged that any such work was carried out. The preparatory site works carried out by both Tomewin Village Pty. Ltd. and Mt. Carool Pty. Ltd., it is alleged, amounted to a breach of the Environmental Planning and Assessment Act, 1979, in that they were works which required Council's consent, but for which no consent had been given.

11(b) Notices under the Environmental Planning and Assessment Act, 1979, were served on both Tomewin Village Pty. Ltd. and Mt. Carool Pty. Ltd., ordering a cessation of illegal works on their respective properties. Following the submission of Development Applications and written undertakings from both parties to comply with the Notices, Council on the advice of its Solicitors, delayed any further legal action pending determination of the applications. The matter was also referred to the Soil Conservation Service, Water Resources Commission and State Pollution Control Commission for investigation and recommendations on suitable rehabilitation action.

12. A copy of the Tree Preservation Order is attached.

13. No.

14. While there is no evidence to show that multiple occupant settlers travel overseas more of less than other sections of the community, the location of settlements within catchment areas of the Tweed Water Supply and other private water supplies gives rise for concern that those who have travelled overseas or their visitors who may have travelled overseas could possibly be carriers.

    Council's Infectious Diseases Register shows that Malaria has been reported within the Shire and investigation shows that all cases were contracted overseas. As well, Cholera has been isolated in the river systems in the Albert Shire, which adjoins the Tweed Shire to the north.

15. Four (4) applications have been referred to recently. One of these is outside the Tomewin/Urliup areas.

16. Council has only considered this matter in relation to Multiple Occupancy development at this stage. Normal third party appeal rights would apply to designated development.

Yours faithfully,

J. S. NIXON
SHIRE CLERK.

Encl.

Tree Preservation Order

1. Take notice, in accordance with Clause 33 of Interim Development Order No. 2 - Shire of Tweed, Tweed Shire Council has made a Tree Preservation Order in respect of all land within the Shire of Tweed.

2. The objectives of this order are to regulate the clearing of land which would result in the loss of valuable wildlife habitats, rare trees, and environmentally valuable stands of vegetation, and mangroves. It is not to obstruct the individuals desire to clear land for house sites, legitimate agricultural purposes, fire safety purposes, or to thin trees to permit adequate sunlight reaching living or recreation areas etc.

3. This Order prohibits the ringbarking, topping, lopping, removing, poisoning, injuring or wilful destruction of any valuable wildlife habitats, rare trees and environmentally valuable stands of vegetation and mangroves, as defined by Council or the clearing of land for speculative purposes without the written consent of Council.

4. A person who contravenes this order, or causes this order to be contravened shall be guilty of an offence under the environmental Planning and Assessment Act 1979.

5. All disputes of Order to be referred to full Council.

6. Notwithstanding Clauses (1) and (3) this does not apply to -

   i) Trees in a State forest.

   ii) Trees on land reserved as a Timber Reserve within the meaning of the Forestry Act 1916.

   iii) Trees required to be lopped in accordance with regulations 38 or 39, of the Overhead Line Construction & Maintenance Regulations 1962.

   iv) Lands used for genuine agricultural purposes by primary producers as defined by Section 6 (1) of the Income Tax assessment Act, 1936, as amended.

   v) Trees located within public reserves under control of Council or which are on council controlled land and all work relating thereto, if performed by Council staff, workmen, or persons under direction of Council staff.

   vi) Trees within the path of proposed roadway, sewerage or drainage schemes, or any public work that has been approved by Council.

   vii) Trees within a building site or within eight metres (8m) of any existing or proposed building, or foundations thereof, that has been approved by Council.

   viii) Agricultural tree crops.

   ix) Camphor Laurel trees, Privet and proclaimed Noxious Plants.

Adopted by Council Resolution at the Special Town Planning meeting held on 31 October, 1984. Minute No. 1992

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APPENDIX 19

GUIDELINE CRITERIA FOR DETERMINATION OF THE "IMMEDIATE LOCALITY" IN CONNECTION WITH S.94, E.P. & A. ACT.

Peter Hamilton

1. DEFINITION

"Immediate Location" (IL) (1) is here defined to mean "that area with which a resident sees themself as being associated, and, that others also see them as being so related, e.g., 'locals' of the Uki Valley may refer to themselves "as living in Uki" and others would refer to them likewise.

2. METHOD

"Zones of affinity" may be determined for a number of social and environmental factors. The perimeter of such a zone would not usually be a "hard" or precise line of demarcation. Such "edges" are hence also referred to as the "threshold zone" (TA).

The general IL may then be determined as the averages of the cumulative set of overlaps of the "zones of affinity". Similarly the may be an average of the "threshold zones".

Normally it could be expected that the "threshold zone" will contain few, if any residents. An exception to this is the conurbation associated with a road on a narrow ridge of a hill viz the perimeter between two water catchment areas. Such a situation may be examined to check it is but a spur from the "hub" of an IL (7). (9).

3. CHECKLIST OF SOCIO-ENVIRONMENTAL FACTORS FOR DETERMINING AN IL

(a) The Social Environment

* The primary area in which roads are used (as distinct from the physical layout of the road network);
* shop(s), hotel etc - customer catchment area;
* schools(s), - student catchment area;
* school bus route catchment area;
* garage, laundrymat, newsagent, catchment area;
* public hall usage catchment area;

* postal service catchment area;

* electrol polling centre catchment area;

* bush fire brigade catchment area;

* sports and recreational users catchment area (e.g., oval, tennis court, pony club);

* census "collectors districts";

* individual "friendship network" area.

(b) The Physical Environment

* the (physical) road network pattern (e.g., grid, radial, dead end pattern (2);

* agricultural use of the land, if any. (e.g., similarities or dis-similarities resulting in social exchange etc.);

* the natural ecological area e.g., a valley;

* cross roads (as these may "capture" potential customers from the two areas, they are often the approprite site for the "corner store".)

4. TYPICAL CHARACTERISTICS OF AN "IMMEDIATE LOCATION" (For rural areas in the Far North Coast of N.S.W., 1985).

Characteristics of IL's may include the following attributes -

* by having an average radius of about 10km (max say 15kms);

* by having a population of a few hundred people (max say 500 people);

* being centred on a village, school, PO, shop of the like (3);

* being associated with the local water catchment area (4);

* by having a strong senses of "local identity";

* by usually not be related to property, parish or town planning zones. (An IL is likely to be bigger than a "village zone");

* by not being demarced from an adjoining area by roads, creeks (5);

* by not being related to the distance between families or population density;

* by not being regular in shape (it is the anthesis of say, drawing a circle around a village or PO);

* by having a "threshold zone" between on IL and an adjoining IL (6).

5. CONCLUSION

If (1) an IL is determined in accordance with the above guidelines;

and (2) an S.94 contribution is collected from a resident and the money is spent for public facilities or services within this IL,

then it is submitted :-

(1) that the resident is likely to "see" and experience that a nexus exists between the contribution and the expenditure of this contribution.

and (2) that where this process is carried out, reliance might be given to the concept that the S.94 contribution was, and would be seen to be, "reasonable" on this account.

6. FOOTNOTES

(1) For description of "immediate location" in respect to S.94 see RRTF, 1985.

(2) For residents who live on a through road between two major centres of population there is usually some point at which there is a "preferred direction of travel". This point may be a good indicator of the whereabouts of the "threshold zone".

(3) While a "village" may be the focus of an IL, it is unlikely to be synomous with an IL.

(4) A water catchment area may be a particularly effective indicator of a social "affinity zone". This may be noticeable in hilly terrain (the IL by being the "valley community"), but close examination may reveal that this also applies to relatively flat or undulating terrain.

(5) Planning and administrative zones frequently use roads or rivers to demarcate adjoining areas. Such a practice is the anthesis of what might be expected in an IL area.

(6) An exception to an "overlap" or "threshold zone" may occur where, for example, adjoining IL's are divided by a major highway or railway track.

(7) TABLE 1

Distribution of cost for providing a public facility or service under s.94

No.	Facility or Service	Population Threshold	Total Land Required			Total Building		Land Equiv. /lot ha		Cost per Lot to individ.
		Lots	Total ha	ha/ lot	$1/ lot	Total $	$/ lot		(8)	$
1	"Type A"	B	CT	C	D	ET	E	F	W	(D+E)xW
2	"Type B"	H	IT	I	J	KT	K	L	Y	(J+K)xY
3	"Type C"	N	PT	P	Q	RT	R	S	Z	(Q+R)xZ

(8) Percentage borne by contributors (balance to be borne by Council).

Comment

Table 1 has been based on Department of Youth and Community Services 1982. It is submitted that this Table is likely to reveal the practicality or otherwise of establishing different types of public facilities or services.

The population threshold figure is likely to be a "self regulating" point, below which it may not be "reasonable" to consider providing a particular facility (unless Council chose to change its percentage of contribution).

If the estimated income is -

(a) not sufficient to meet the cost of the facility or service, and
(b) can not be spent on the facility or service within a "reasonable" period of time (max 3-5 years);

then either -

(a) there is not entitlement to collect

  (i) contribution under s.94; or
  (ii) the facility or service be not supplied, or scaled down in cost to the point where the budget is made to balance.

(9) Contiguous IL's may be linked to form larger units e.g. an "immediate district" (ID), and ID's may be likewise linked to form an "immediate sub-regions" (IS). The above checklist of attributes and characteristics to be assessed is determining ID's and IS's. It cannot be assured that an ID or an IS exists. Their

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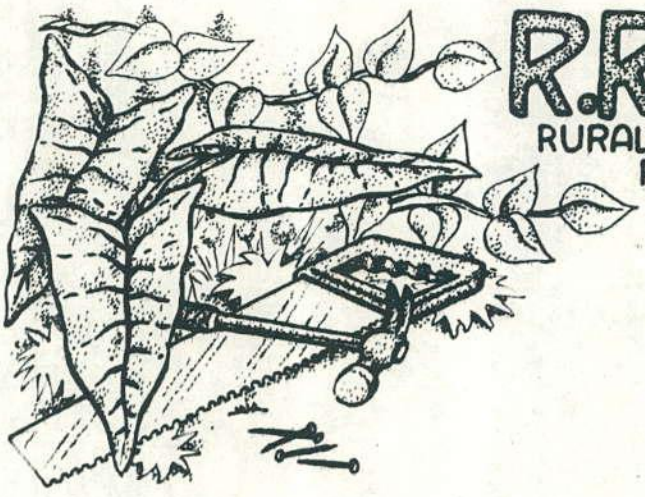

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R.R.T.F. INFORMATION SERVICE

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§annotated comments include P= number of pages and RP= pages which have 2 original pages photo-reduced onto them†

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6.9 "That Council be encouraged to use s.306(2) of the L.G. Act to enable Ordinance 70, Class X buildings, and partially constructed Class I buildings, to be used for occupation by owner-builders establishing themselves on M.O.'s." (SR p.49)

6.10 "That the proposed licensing of caravan parks and camping grounds be introduced as a matter of urgency and, that when introduced, this provision be used by applicants, as one option to facilitate non share holders residing on M.O. land, or potential M.O. land." (SR p.49)

6.11 "That Council be advised that share holders of M.O. properties are exempt under s.288A(7)(ii) from the need to obtain a Movable Dwelling license where they wish to camp on their own property." (SR p.50)

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SECTION 7.
ADVERSE IMPACTS OF INDIVIDUAL MULTIPLE OCCUPANCY PROPOSALS ON OTHER RESIDENTS IN THE VICINITY (Inquiry Item 1(g))

7.1 "That where distortions in land values place an inequitable rate burden on local ratepayers Council set a differential rate or reduce the rate generally to overcome the problem." (SR p.16)

7.2 "That the siting of buildings, roads and the like be as visually unobtrusive as possible and that where appropriate, vegetation cover (eg. stands of trees) be planted to minimise the visual impact of M.O. development, particularly from public roads and neighbours." (SR p.16)

.....

SECTION 8.
TO SUGGEST MEANS TO OVERCOME THESE PROBLEMS AND ANY OTHERS THAT MIGHT BE IDENTIFIED BY THE COMMISSION (Inquiry Item 2)

8.1 "That the collection of documents assembled in connection with this Inquiry not be dispersed, but permanently placed with an appropriate library for public access and inter library loan." (SR p.50)

8.2 "That the Northern Rivers County Council's warnings about future cost escallations for installation of mains power at a later date, be included in the next edition of the DEP 'Low Cost Country Homebuilding' Handbook and also in the proposed Manual to SEPP 15." (SR p.20)

association with the particular land in question. (RRTF SEPP p.5, SR p.49)

.....

SECTION 6.
ACTION THAT ANTICIPATES DEVELOPMENT APPROVAL SUCH AS CLEARING LAND, ROAD BUILDING AND THE CONSTRUCTION OF BUILDINGS (Inquiry Item 1(f))

6.1 "That in respect of construction carried out without Council consent, s.317B(1A) of the Local Govt. Act gives a council discretion in that it "may" order demolition, or it "may" order the doing of "such work as is necessary to make the building comply with the Act", or it "may" choose to take no action. The issuing of a demolition should be an action of last resort only, and that in the first instance rectification of the situation be sought by council on as cooperative a basis with the owners as is practical." (SR p.11)

6.2 "That as far as is practicable the application of building regulations be based upon "performance criteria" and that, where possible, there be "deregulation" of building codes in accordance with Objectives (ii) and (vi) of the Aust. Uniform Building Regulations Coordinating Council." (SR p.12)

6.3 "That there be no extension of third party appeal in relation to M.O. development unless this applies generally to the community." (SR p.12)

6.4 "That as a general standard (unless extraordinary conditions prevail), M.O. communities which are expected to generate less than 350 AADT need only be serviced by an all weather gravel road, or right of carriageway, constructed to a reasonable standard similiar to prevailing standards. All- weather access not to preclude the use of bridges and causeways which are subject to occassional flooding, especially where this is a prevailing practice." (SR p.14)

6.5 "That parking lots developed on M.O. communities need not be bitumen sealed." (SR p.15)

6.6 "That existing illegal M.O. development be afforded the opportunity of legalisation as provided in Circular 44, Policy 11. If this is considered to be, not technically possible, then adopting a policy such as to give effect to the spirit of this policy." (SR p.)

6.7 "That it be recommended to the DEP that SEPP 15 provide for legalisation of illegal M.O. development on a basis not less favourable than provided in Circular 44, Policy 11." (SR p.)

6.8 "That Council be advised that the proposed amendment to s.317A of the Local Govt. Act, to provide "certification" of structures built without council approval, be implemented as a matter of urgency." (SR p.49)

5.1 "That with respect to any future M.O. Development Applications considered by the Tweed Council for M.O. it be a condition that at least 80% of the land shall be owned in common." (SR p.47)

5.2 "That as an aid in determiniing if an application for M.O. development is related to a bona-fide "alternative lifestyle" (Circ. 44, Policy 9 and Clause 5), the following items be considered along with those listed in s.90 and LEP 6, 12A(3a):-

* evidence that there is a communal organisation (ie. a formal corporate entity or a voluntary association) and, if decisions are not made by the body as a whole, then that there is a representative decision making body (eg. management committee, board of coordinators),

* the aims and objective of the organisation,

* constitution, articles and memorandum, and the like,

* trust deeds and the like,

* statement of the distribution of any proposed profit,

* policy statement on the transmission of the decision making authority from agent or core group, to the share holders generally,

* policy statement on the disbursement of any assets, profits etc. in the event of the winding up of the organisation,

* policy statement on the obligations and entitlements of a shareholder, and the organisation's rights in the event of a share holder wishing to sell a share, or rent or sell a building,

* such other documentation or statements as the Council considers relevant in the circumstances. (SR p.48)

5.3 "That the Council may opt, where appropriate, to require as a condition of approval, that the approval will lapse, if at the expiration of a specified period of time, specific conditions have not been fulfilled, or development as applied for has not occurred." (SR p.48)

5.4 "That where Council considers an M.O. application is questionable, due to its size or bona-fides etc., Council recommend that the application be withdrawn and re-submitted for re-zoning as a "rural residential" area. (SR p.48)

5.5 "That in considering an application for M.O. Council shall take into account the possible effect of the proposed development on any aboriginal relic or site; and seek comment on the proposed development from aborigines, if there be any, claiming to have traditional

introduce an environmental protection zone on all land over 18 degrees slope which is not shown as 'protected land' under the Soil Conservation Act." (SR p.26)

3.16 "That the factual information in the Primary Submission by the Soil Conservation Service be recommended to the D.E.P. for inclusion in the next edition of the D.E.P. "Low Cost Country Homebuilding" Handbook and also in the proposed Manual to S.E.P.P. 15." (SR p.26)

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SECTION 4.
THE NEED FOR AN EQUITABLE SYSTEM TO RATE PROPERTIES WITH M.O. APPROVAL COMMENSURATE WITH THE ACTUAL RESIDENTIAL OCCUPATION OF THE LAND (Inquiry Item 1(d))

4.1 "That if consideration is to be given to any amendment to the Local Govt. Act in respect to rating of M.O., this be carried out only in the context of preparing a Community Titles Act." (SR p.10)

4.2 "That the present options open to Council for rating should not be changed." (SR p.46)

4.3 "That land developed within the provisions of the Draft SEPP 15 should not be separately valued." (SR p.46)

4.4 "That if Council opts for a differential rate for M.O. then M.O. rate payers be notified of the criteria used for making the differential rate." (RRTF PS p.7) (SR p.46)

4.5 "That where an increased population is due to M.O. settlement application be made to the Grants Commission for a relevant adjustment in Council funding." (RRTF PS p.7, SR p.47)

4.6 "That in determining the cause of deteriortion of unsealed roads in the Council area, due consideration be given to the relatively higher annual rainfall in this area, compared with other areas." (RRTF PS p.7, SR p.47)

4.7 "That in the event that Council decides to alter the present rating system, then such alteration not be based on a "user pay" basis." (RRTF PS p.8, SR p.47)

.....

SECTION 5.
SCHEMES IN CONFLICT WITH M.O. OBJECTIVES WHICH INVOLVE SMALL AREAS OF COMMON LAND AND LARGE AREAS EFFECTIVEY ALIENATED TO INDIVIDUAL MANAGEMENT OR RESIDENTIAL SUBDIVISIONS Inquiry # 1(e))

3.4 "That to facilitate the most economic distribution of resettlement Draft S.E.P.P. 15, be implemented as soon as possible." (SR p.17)

3.5 "That when using AADT data to determine road maintenance requirements or to 'justify' a so-called 'user pays' basis for payment, the analysis include compensating factors such as truck and heavy vehicle usage." (SR p.19)

3.7 "That it be recommended to the Hon. J. Crosio M.P., Minister for Natural Resources, that local electricity authorities be advised of the Government's policy in support of the use of renewable energy resources; and to take appropriate steps to ensure that such authorities do not lend weight to local government councils by recommending the supply of mains power, as a condition of M.O. development approval." (SR p.23)

3.8(a) "That a users decision to connect, or not to connect, to the mains supply of electricity, is an issue of "freedom of choice" and as such the Tweed Shire Council when considering an M.O. development application, should not treat mains power supply as a necessary service to or within the community." (SR p.23)

3.8(b) "That M.O. communities pose no unusual or specific 'threat' to traditional, non-intensive rural agricultural development." (SR p.24)

3.9 "That the use of 'buffer zoning' not be required between M.O. communities and non-intensive rural agricultural development." (SR p.24)

3.10 "That existing legislation and common law is adequate to deal with property disputes and nuisances." (SR p.24)

3.11 "That M.O. development be permissable with Council approval on prime agricultural land developed pursuant to Draft S.E.P.P. #15, and in particular clause 6(1)e which provides that the land on which the dwellings are situated is not prime crop and pasture land." (SR p.24)

3.12 "That the Soil Conservation Service was in error in reporting to the Catchment Areas Protection Board (letter A.192/2 in Primary Submission by B. Downes, Doc. 28.1), that "... no trees were cleared on 'protected land' on the Tomewin Hamlet property." (SR p.26)

3.13 "That the Catchment Areas Protection Board be asked to confirm the accuracy of the report on the Tomewin Hamlet property and if the original report is found to be in error that appropriate action be taken as prescribed under the appropriate Act." (SR p.26)

3.14 "That 'protected lands', as administered by the Soil Conservation Service, be mapped for the whole of the Tweed Shire area at a scale of 1:25,000, and an exmination made to ensure that all land over 18 degrees slope is included in the protected area." (SR p.26)

3.15 "That in an LEP or other planning instrument, the Tweed Council

(c) OPEN SPACE. Maximum of $150 per dwelling.

(d) BUSH FIRE FIGHTING FACILITIES. Maximum of $150 per dwelling. (SR p.37)

2.10 "That a road contribution made under s.94 shall apply instead of, and not in addition to, any specific requirement for local road upgrading which might be required under s.91(3)(a) and 90(1)(j)." (SR p.38)

2.11 "That to assist the public and councils being better informed on the application of s.94:-

(a) the Commission Report include an annotated bibliography of case law relating to the application of s.94 together with a cross-reference list to subject matter, or failing this, a recommendation that such a bibliography be prepared by the DEP or other appropriate authority;

(b) the DEP maintain the up-dating of this bibliography and make this information readily available for public access;

(c) the DEP maintain a telephone 'informaton service' (sometimes referred to as a "hot line"), on planning matters generally but in particular, the application of s.94, for use by council staff and the public and that rural dwellers be able to obtain this information for the cost of a local call." (SR p.38)

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SECTION 3.
THE IMPLICATIONS OF M.O. DEVELOPMENT FOR THE PROVISION OF OTHER SERVICES AND FACILITES (Inquiry Item 1(c))

3.1 "That, in respect to public sevices and facilities, Council should not assume "worst scenario" situations as a basis for adopting a uniform policy to be applied across the Shire. Rather, Council should commit itself to seeking out options, (eg. requiring as a condition of approval that no claim for uprgading of a road etc. be permissable within a stipulated period of time), to safeguard itself against being liable in the event of future demands being made, associated with a particular development application. To this end, each application should be considered on its merits." (SR p.10)

3.2 "That until such time as the Council undertakes its own M.O. survey, the Barker Survey be used as an appropriate guide in assessing the demand for increased services and facilities." (SR p.10)

3.3 "That the provision of 'services' in rural areas such as post offices, general stores, doctors surgeries, markets and service stations be left to private enterprise and community initiative to provide." (SR p.17)

shall be advised that same has been considered and the reasons given for its non-applicability." (SR p.36)

2.2 "That where a s.94 contribution is applicable to an M.O. development:-

(a) an option always be provided for a time payment arrangement;
(b) no payment need commence prior to the first Building Application approval; and
(c) an option always be provided for "in kind" payments."
(SR p.36)

2.3 "That a s.94 contribution be limited to providing, extending or augmenting bush fire-fighting facilities and/or community facilities and/or open space and/or roads and bridges under council's jurisdiction,(viz. those items specified in Schedule 2 of Draft SEPP 15)." (SR p.36)

2.4 "That the criteria for determining a s.94 contribution include:-

(a) the extent to which any increase in development costs resulting from the contribution will weigh against access to housing;
(b) the extent, if any, to which existing rural services and amenities are under-utilized; and
(c) the extent to which an applicant has the ability to pay, particularly having regard to comparison with speculative and government housing costs."
(SR p.36)

2.5 "That determination of s.94 contributions be made in accordance with the spirit of the provisions of DEP Circular 23 and DEP "Discussion Paper", Part 9." (SR p.36)

2.6 "That s.94 contribution for open space be omitted where an environmental protection zone, wildlife refuge or the like is provided for the conservation of flora and fauna habitats, scenic enhancement areas or the like." (SR p.36)

2.7 "That where a condition pursuant to a M.O. application, consisting of two or more lots, requires that the land be consolidated (as provided in Circ. 44), then any s.94 contributions previously paid should be considered with a view to a discount applying on the current application." (SR p.37)

2.8 "That the amount of any contribution under s.94 be limited in extent." (SR p.37)

2.9 "That, subject to the preceding recommendations relating to s.94, the following maximum contributions are recommended:-

(a) ROADS and BRIDGES. Maximum of $1,500 per dwelling.

(b) COMMUNITY FACILITIES. Maximum of $150 per dwelling.

1.6(b) "That a uniform standard of construction for internal roads should not be adopted and that construction need not be supervised by a qualified engineer." (SR p.8)

1.7 "That the provisions in clause 12A(6) in LEP 6, requiring Council to forward a copy of M.O. applications to the DEP, be not altered." (SR p.9)

.....

SECTION 2.
THE DETERMINATION OF AN EQUITABLE FORMULA FOR ARIVING AT CONTRIBUTIONS UNDER SECTION 94 TOWARDS COUNCIL - PROVIDED SERVICES AND FACILIES (Inquiry 1(b))

2.1 "That a s.94 contribution be sought by Council only where each of the following seven conditions are fulfilled:-

2.1(a) Condition 1. There has been an identification of the likelihood of an increase in demand for public amenity and public services within the area due to the proposed development, and the reasons and evidence to support this view has been supplied to the applicant. (SR p.35)

2.1(b) Condition 2. Where the contribution sought will be used for the purpose of providing, extending or augmenting the particular public amenities and public services identified in condition 2.1(a) above, that the applicant be advised accordingly together with the details of the trust account in which the contribution will be held. (SR p.35)

2.1(c) Condition 3. A causal nexus has been established between the development and a decline in the amenity of the area, and advice given to the applicant accordingly. (SR p.35)

2.1(d) Condition 4. The "immediate location" in which the s.94 contribution will be spent has been nominated and advice given to the applicant accordingly. (SR p.35)

2.1(e) Condition 5. A specified period of time (with a maximum of 3-5 years) in which the s.94 contribution will be spent has been nominated and advice given to the applicant accordingly. (SR p.35)

2.1(f) Condition 6. The provision of data as evidence that the s.94 contribution sought is a reasonable amount and the applicant advised accordingly. (SR p.35)

2.1(g) Condition 7. (a) Where a discount is appropriate in the particular circumstance of the proposed development advice shall to be given to the applicant of the details and the method used in arriving at the discount.
or (b) Where a discount is not applicable, the applicant

1.5(a) "That the 'vast number of complaints...caused...by the construction of internal roads' appears primarily to be related to non bona-fide M.O. development." (SR p.5)

1.5(b) "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comprehensive and effective T.P.O., with secure legal standing, be immediately introduced". (SR p.7)

1.5(c) "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area, and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropriate directive, or if necessary relieving Council of its planning jurisdiction." (SR p.7)

1.5(d) "That if a breach of the Tree Preservation Order occurs Council automatically take action to seek redress as provided under s.126 of the EPA Act by the:-

1. imposition of a fine up to $20,000, and
2. the replanting of nominated trees and their maintenance to maturity, and
3. provision of security to cover default." (SR p.7)

1.5(e) "That a full time "environmental officer" be appointed by Council and given the authority of law to act on its behalf in the event of a breach of the T.P.O." (SR p.7)

1.5(f) "That Council appears to have jurisdiction to require consent for road works associated with M.O. development (by virtue of same being outside the exemption provided in I.D.O. 2, Col.II)." (SR p.8)

1.5(g) "That the provision of an effective T.P.O. and requirement of consent for road works associated with proposed M.O. development are seen to be two effective ways of controlling non bona-fide M.O. development." (SR p.8)

1.5(h) "That, as educational information re unauthorised development, Council periodically publicise, in the local media etc., that approval is required for road works in connection with proposed M.O. development." (SR p.8)

1.5(i) "That in the event of the development applications made by Tomewin Village Pty. Ltd. and Mt.Carool Pty.Ltd. being rejected or withdrawn, that Council proceed with the pending legal action with a view to achieving full restoration of environmental damage along the lines detailed in recommendation 1.5(d) above." (SR p.8)

1.6(a) "That the location and design of internal roads be determined on the merits of the application." (SR p.8)

R U R A L R E S E T T L E M E N T T A S K F O R C E

S U M M A R Y O F R E C O M M E N D A T I O N S

TO THE COMMISSION OF INQUIRY
INTO MULTIPLE OCCUPANCY IN TWEED SHIRE
(Dec. 1985)

ABBREVIATIONS PS Primary Submission
RRTF Rural Resettlement Task Force
SR RRTF Submission in Reply

SECTION 1.
PROBLEMS ENCOUNTERED BY THE COUNCIL IN APPLYING THE PRESENT PROVISIONS OF L.E.P. No.6 - Shire of Tweed (Inquiry Item 1(a))

RECOMMENDATIONS

1.1 "That the Comission recommend that Draft SEPP 15 provide that there be no minimum lot size for M.O. development (ie. that the present 40ha. minimum be deleted and that council consider each case on its merits)." (SR p.1)

1.2 "That clause 12A(2)(b) be retained to give effect to the provison that M.O. be owned in its entirety in common by at least 2/3 of all adults residing on the land, or is otherwise owned on behalf of those persons." (SR p.2)

1.3(a) "That M.O. Development Applications be processed strictly within the statutory time period of 40 days." (SR p.2)

1.3(b) "That to assist in processing applications within 40 days, Council produce a guideline brochure to assist applicants in the preparation of a Development Application. Such a brochure to include model documentation, typical maps, s.90 and LEP 6 3(a) conditions, explanation of possible contributions under s.94, staging, building issues, reference to the 'Low Cost Country Home Building' Handbook and the like." (SR p.3)

1.3(c) "That in considering an M.O. application Council has adequate provison to request the applicant for additional information, and to obtain advice from Government authorities such that it ought to be able to make an assessment of an application within the specified time constraint. It is submitted that additional legislation is not required to achieve this end." (SR p.4)

1.4 "That Council does have adequate jurisdiction to assess and determine the nature of internal roads." (SR p.5)

Dwelling License where they wish to camp on their own property." (Recommendation 6.11)

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1(g) ADVERSE IMPACT OF THE INDIVIDUAL M.O. PROPOSAL ON OTHER RESIDENTS IN THE VICINITY

Apart from the following, our comments and recommendations in respect to this item are engrossed into other parts of our reply.

RECOMMENDATION

"That the siting of buildings, roads and the like be as visually unobtrusive as possible and that where appropriate, vegetation cover (eg. stands of trees) be planted to minimise the visual impact of M.O. development, particularly from public roads and neighbours." (Recommendation 7.2)

****

2. TO SUGGEST MEANS TO OVERCOME THESE PROBLEMS AND ANY OTHERS THAT MIGHT BE IDENTIFIED BY THE COMMISSION

In general, items related to this section have been included above.

It is our view that the material assembled in connection with this Inquiry constitutes a unique and valuable collection. We consider that it would be an invaluable source of of data for reference and research. It is our experience that there are more and more scholars researching the M.O. settlement movement. We believe that the collection of submissions ought not be dispersed, but rather permanently placed in an appropriate library where they can be available for public access and inter library loan.

Libraries that might be considered in this regard are:-

* DEP, Grafton Office Library,
* Fisher Library, Sydney University, Dept. of Architecture Branch,
* Macquarie University, Law Dept. Branch Library.

We hence recommend:-

"That the collection of documents assembled in connection with this Inquiry not be dispersed, but permanently placed with an appropriate library for public access and inter library loan." (Recommendation 8.I)

....

"That in considering an application for M.O. Council shall take into account the possible effect of the proposed development on any aboriginal relic or site; and seek comment on the proposed development from aborigines, if there be any, claiming to have traditional association with the particular land in question. (RRTF SEPP p.5) (Recommendation)

(It is not proposed that Council's determining authority be diminished in any way as a result of this policy. The principle, for which we seek support, involves the recognition of aborigines' identity with the land and acknowledging this through consultation.)

****

1(f) ACTION THAT ANTICIPATES DEVELOPMENT APPROVAL BY WORKS SUCH AS CLEARING LAND, ROAD BUILDING AND THE CONSTRUCTION OF BUILDINGS

In our Primary Submission we commented on the application of various sections of the Local Government Act and pursuant to this make the following recommendations:-

"That Council be advised that the proposed amendment to s.317A of the Local Govt. Act to provide "certification" of structures built without council approval be implimented as a matter of urgency." (Recommendation 6.8)

"That Council be encouraged to use s.306(2) of the Local Govt. Act to enable Ordinance 70, Class X buildings, and partially constructed Class I buildings, to be used for occupation by owner-builders establishing themselves on M.O.'s." (Recommendation 6.9)

"That the proposed licensing of caravan parks and camping grounds be introduced as a matter of urgency and, that when introduced, this provision be used by applicants, as one option to facilitate non share holders residing on M.O. land or potential M.O. land." (Recommendation 6.10)

(We would point out in this regard, that the facility for the core group of a proposed community, to camp on land being considered for purchase, provides invaluable exprience of the advantages and disadvantages of the site. Such information is unlikely to be otherwise available. Such first-hand experience, has been found to be particularly fruitful in selecting building sites and for preparing sensitive land management plans.)

"That Council be advised that share holders of M.O. properties are exempt under s.288A(7)(ii) from the need to obtain a Movable

* policy statement on the transmission of the decision making authority from agent or core group, to the share holders generally,

* policy statement on the disbursement of any assets, profits etc. in the event of the winding up of the organisation,

* policy statement on the obligations and entitlements of a share holder, and the organisation's rights in the event of a share holder wishing to sell a share, or rent or sell a building,

* such other documentation or statements as the Council considers relevant in the circumstances.

* policy statement on the transmission of the decision making authority from agent or core group to the shareholders generally,

* policy statement on the disbursement of any assets, profits etc. in the event of the winding up of the organisation,

* policy statement on the obligations and entitlements of a shareholder, and the organisation's rights in the event of a shareholder wishing to sell a share or rent or sell a building,

* such other documentation or statements as the Council considers relevant in the circumstances.

(Recommendation 5.2)

"That the Council may opt, where appropriate, to require as a condition of approval that the approval will lapse, if at the expiration of a specified period of time specific conditions have not been fulfilled, or development as applied for has not occurred." (Recommendation 5.3)

"That where Council considers an M.O. application is questionable, due to its size or bona-fides etc., Council recommend that the application be withdrawn and resubmitted for rezoning as a "rural residential" area. (Recommendation 5.4)

adjustment in Council funding." (Recommendation 4.5) (RRTF PS p.7)

"That in determining the cause of deterioration of unsealed roads in the Council area, due consideration be given to the relatively higher annual rainfall in this area, compared with other areas." (Recommendation 4.6) (RRTF PS p.7)

"That in the event that Council decides to alter the present rating system, then such alteration not be based on a "user-pay" basis." (Recommendation 4.7) (RRTF PS p.8)

****

1(e) SCHEMES IN CONFLICT WITH M.O. OBJECTIVES WHICH INVOLVE SMALL AREAS OF COMMON LAND AND LARGE AREAS EFFECTIVELY ALIENATED TO INDIVIDUAL MANAGEMENT OR OWNERSHIP, WHICH ARE PROMOTED AS DE FACTO RURAL RESIDENTIAL SUBDIVISIONS

In respect to our primary submission, (p.8), re the percentage of land to be owned in common we recommend:

"That with respect to any future M.O. Development Applications considered by the Tweed Council for M.O., it be a condition that at least 80% of the land shall be owned in common." (Recommendation 5.1)

(This recommendation is in accordance with the proposal in the Draft SEPP #15).

"That as an aid in determining whether an application for M.O. development is related to a bona-fide "alternative lifestyle", (Circ. 44, Policy 9 and Clause 5), the following items be considered along with those listed in s.90 and LEP 6, 12A(3a):-

* evidence that there is a communal organisation (i.e. a formal corporate entity or a voluntary association) and, if decisions are not made by the body as a whole, then there should be a representative decision-making body (eg. management committee, board of coordinators),

* the aims and objectives of the organisation,

* constitution, articles and memorandum, and the like,

* trust deeds and the like,

* statement of the distribution of any proposed profit,

of Dr. Jon Altman are worth noting (Appendix 14):

> ". . . we found that 28% of communities cash income came from unemployment benefits, but this was widely reported as 46%. It should be emphasised that there is no positive discrimination in favour of land sharers; to receive the 'dole' they must pass income & work tests like other Australians. . . In times of high unemployment jobs vacated by land sharers provide opportunities for others. . . our data on consumption patterns indicate that land sharers are committed to simply living, to an ethic of suppressed materialism..."

.....

1(d) THE NEED FOR AN EQUITABLE SYSTEM TO RATE PROPERTIES WITH M.O. APPROVAL COMMENSURATE WITH THE ACTUAL RESIDENTIAL OCCUPATION OF THE LAND

Our Association re-iterates that rating is not presently based on a user-pays or head count principle and we do not support any change to the present basis of rating which would apply only to, and discriminate against M.O. residents. This principle has been restated on at least 5 occasions by the Dept. of Local Government, viz.:

* letter to Tweed Shire, 6 April 1983
* Minute Paper to LandCom Seminar, 19 April 1985
* letter to R.R.T.F., 25 Sept. 1985
* Primary Submission 36.1 to this Inquiry
* letter to L.G.A., Local Government Bulletin, Oct. 1985 (AppendixI6)

In any event, Councils have failed to demonstrate any significant usage of services by M.O. residents such that they could be deemed a 'burden on other ratepayers' or on the country generally. If rates were assessed on a user-pays basis, we venture to claim that many other landowners in the community, including commercial farmers, would suffer a far greater increase in rates than most M.O. communities!

RECOMMENDATIONS

> "That the present options open to Council for rating should not be changed." (Recommendation 4.2)
>
> "That land developed within the provisions of the Draft SEPP 15 should not be separately valued." (Recommendation 4.3)
>
> "That, if Council opts for a differential rate for M.O., then M.O. rate payers be notified of the criteria used for making the differential rate." (Recommendation 4.4) (RRTF PS p.7)
>
> "That where an increased population is due to M.O. settlement, application be made to the Grants Commission for a relevant

Town Planners from the 3 Councils, in response to questions by the Commissioner, stated that while usage of Council-provided services could be fairly low, it was also desirable to consider the cost of services provided by the State.

We question the degree of concern shown by Councils as to the expenditure of bodies such as the Dept. of Education, Dept. of Health and Telecom. Even accepting their concerns, we believe that the "cost" to the community of M.O. is low, when all the services provided by all levels of government are considered.

It is our view that M.O. development is lowering this burden of costs on the overall community. It is instructive to remember the overall housing and poverty problem in this country. The Coopers & Lybrand Scott study (see S.M.H. article, Appendix 17) recently found:

* 40,000 slept outside or in refuges each night
* 60,000 were on the verge of homelessness & without secure tenure
* 800,000 households had insufficient money to pay rent and still maintain themselves at the poverty line
* 135,000 families were on State housing waiting lists
* 58,000 were on the N.S.W. Housing waiting list
* only about 50% of resident Aboriginal households in some towns had permanent accommodation
* the State & Federal governments are spending $1,800,000,000 to support housing this year

Our views in this respect are well summarised by quoting Dr. Ted Trainer (Appendix I5):

> ". . . Sommerlad et al. note but do not stress another category of cost-benefit considerations that should focus in any economic assessment. More self sufficient rural lifestyles are associated with markedly lower resource costs to do with health, education, leisure, and entertainment, and with a variety of social pathologies such as crime, alcoholism, , child abuse, vandalism, suicide, stress disease and drug addiction. . . Economists . . .ignore the quality of life gains that self sufficient rural living yields over the boredom and despair of urban life on the dole. . . We should remember that at present alternative people are struggling heroically to provide for themselves many things the rest of us have laid on by expensive bureaucracies, corporations, professionals and councils, or can simply go out and buy. They are providing much of their own food, clothing, shelter, services, energy, roads, research, administration, health care, education and leisure, at minimum cost in non-renewable resources and without any assistance from the State apart from meagre welfare payments."

The only remaining factor to consider in this respect is the receipt of unemployment benefits by those on M.O. communities and whether or not this is a burden or a benefit to society. In this regard, the statements

b) Library
* 28 households used it between 1 & 10 times/year
* 40 households used it between 11 & 40 times/year

c) Fire Brigade
* 25.7% of individuals wanted a better service
* 6 communities had their own service

d) Schools
* 102 individuals were active in community schools- and
* the provision of private schools costs the community less for education

e) Electricity
*2.2% of households were connected to mains power
*none wanted it connected in the future

f) Telephone
* a large proportion wanted to have one connected

g) Town Water
* no one was hooked up to this service
* BMOAG survey found 92% didn't want it under any circumstances (see Appendix F)

h) Roads
* 76% left their community on 3 occasions or less per fortnight
* 11% of households don't own a vehicle
* 13.2% used a car pool or group owned vehicle
* 2.7% wanted better roads
* Dobinson found that truck damege to roads equals 14,000 cars

The above data for roads are further supported by the following material:

* Kyogle Council Minutes re Road Maintenance (see Appendix 9)
* Kyogle Council & D.M.R. AADT figures (Appendix II)
* B.M.O.A.G. survey which found only 25% wanted a sealed road & 35% objected to this if it increased their rate burden (Appendix I2)
* the Sommerlad study which found the mean per capita income to be $4309. (they couldn't afford to go out any more frequently!!!)

At the first session of the Inquiry, two further issues were raised:

a) Swimming Pool Usage: Most communities reported having creeks and dams to swim in on their own properties and didn't travel to town to use the pool.

b) The Need for Services in the Wider Public Context: At the Inquiry all

subdivision policy is not necessarily applicable to M.O. development. In many cases new settlers have selected sites because of their rustic rural character, and to require upgrading to the standard presented in Dwg. A2-36, could result in the significant erosion of the very charm and isolation that made the locality attractive in the first place!! For our recommendations in this regard see Recommendation 6.4)

On the bottom of p.6, Council claim that "paying off" or "working off" of s.94 contributions cannot be justified with other forms of development. We refute this claim and again submit that s.94 provides for flexibility and "reasonableness".

Finally, in connection with s.94, the Council on p.7, suggests that contributions be made at the date on which the application is submitted, or at the latest, prior to issuing formal approval. Our recommendations on this issue have been made in Recommendation 2.2 above. It appears to us that if the seven conditions identified above are to be taken into account and due consideration given to any particular circumstances, it is difficult to see how it would be practical to do this on the day the application is submitted!!

We are of the view that the DEP Circular 23, while being a helpful document, ought now to be supplemented with a comprehensive and up to date Manual, including a resume of relevant case law. We note that this Circular is an advisory document only. Any Manual produced, as here suggested, ought we submit, to have standing under a Ministerial Directive. We hence recommend:-

> "That the DEP produce an up to date Manual on the application of s.94" (Recommendation 2.15)

We return now to further comments and recommendations arising from our Primary Submission.

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1(c) THE IMPLICATIONS OF M.O. DEVELOPMENT FOR THE PROVISION OF OTHER SERVICES AND FACILITES

We are of the view that the overall need for additional services to be provided by Councils because of M.O. development is low. Our Primary Submission to this Inquiry reviewed the findings of the Barker Survey with respect to most of the services provided by Councils, viz.:

a) Baby & Other Health Services:
   * 3.8% missed not having the service
   * 2% wanted an improved health service
   * such Lismore services were infrequently used by M.O. communities;

QUESTION 7.

"In respect to the 5 approved M.O.'s, what consideration was given to discounting?"

ANSWER TO 7.

"No consideration was given to discounting."

COMMENT. Council's failure to even consider discounting amounts to their non-compliance with Condition 7.

Hence, in summary, the Council, in our view, has failed to comply with Conditions 1, 2, 3, 6 and 7.

As stated at the outset, for s.94 to be validly applied, all 7 conditions are to be fulfilled. We hence recommend:-

RECOMMENDATION

"That on the evidence, Council's proposed application of s.90 in respect of the approved M.O. developments, is invalid."
(Recommendation 2.12)

Council on p.5 state that their policy on s.94 contributions for rural subdivisions is uniformly applied throughout the Shire and that there can be "... no justification for not applying same to M.O. development...". We refute this proposition and refer to the many items above which should result in each application being considered on its merits. "Reasonableness" for example, may be widely interpreted and what is considered to be "reasonable" at one time and place need not be true at another time or place.

As already mentioned the "public interest" provisions of s.90(r) not only provide wide discretion, but actually require council to take same into account!!

On p.6 Council propose a formula for determining s.94 contributions for M.O. development. In Item 1, the proposal is made that the amount "... be identical..." with the contribution in respect to rural subdivisions. This "blanket" or "policy" approach to determining the level of a contribution has been held by the Court in a number of cases, as we have described above, to be unacceptable. We are hence of the view that the Council would be unlikely to succeed in the event that a dissatisfied applicant appealed to the Court, on this account.

On p.6, item 3, the Council proposes that the standard of road upgrading should be consistent with Council's Subdivision Policy and also as detailed in Drawing A2-36. We have already pointed out that M.O. development does not involve subdivision and hence submit that Council's

that Council has no way of accounting for contribution expenditure on an individual basis, once it is lumped together with other money in the Trust account. As s.94 requires expenditure to be made within a "reasonable" period of time (usually viewed by the Court to be a maximum of 3-5 years) it would appear that Council ought to be accountable to individual contributors, and if this information is not available, then a contributor may have a valid case in appeal for a refund of all or part of a contribution.

As Council has no planned time in which the proposed s.94 contribution would be spent, and, it appears, would be unable to account to the developer for the amount of any contribution unspent, we consider that Council would then probably fail to comply with Condition 5.

QUESTION 6.

"What evidence is there to support the view that the s.94 contribution (to be) made by the 5 M.O. developments (would), in the particular circumstance, be a reasonable amount?"

ANSWER TO 6.

"The contributions required ... were in accordance with the contributions charged against rural subdivisions. Extending the Rural Road Development Contribution to involve M.O. development was seen as logical and reasonable given that such development does in fact similarly increase the density of population, and hence, wear and tear on rural roads. The amount has been based on current road costs and developers' new road costs against adopted lot yields and appropriate costs per rural residence."

COMMENT.

1. M.O.s are not subdivisions, and in fact often involve consolidation of lots!

2. In view of the answer to Question 1 above, viz. that "no research has been carried out", the statement that "population density" and "wear and tear on rural roads" are similar, must at best, be speculative.

In this regard we again draw attention to the Court's criticism of the lack of research carried out by Councils (Circ. 23, clause 2) and that in for example, Bryant v Wyong Council (1983) ELR 277, Council was required to "... demonstrate in detail the need created and precisely how the need was to be satisfied before any condition may be validly asked for."

As Council is not able to be other than speculative in this regard, we are hence of the view that they have failed to comply with the provisions of Condition 6.

QUESTION 4(a).

"What evidence is there that arrangements have been made to establish a physical nexus between each of the 5 approved M.O. developments and the location in which their respective s.94 contributions will be spent?"

ANSWER TO 4(a).

"... the contributions ... were asked for ... on the basis of a contribution towards the improvements or reconstruction of rural roads generally in the locality of the development."

COMMENT. In the answer by Council to question 5 below they advise that all monies are paid into a Trust account from which money is then allocated for expenditure on appropriate roads.

The term "reconstruction" implies to us that it is for "capital" works. We consider expenditure on "capital" works to be in accordance with the provisions of s.94. The term "improvements" however, implies to us that it may be for "maintenance", and if this is the case, we submit that this is not a valid use under s.94. We hence consider that Council might thereby fail to comply with Condition 4, with respect to M..O. development to date.

QUESTION 4(b).

"What criteria have Council used to determine the "immediate location" for this purpose?"

ANSWER TO 4(b).

"The concept of "immediate location" has been taken as feeder and distributor roads for the particular locality. In many cases, it would encompass the "Parish" or parts of adjoining "Parishes"."

COMMENT. We draw attention to the fact that no criteria used to determine the "immediate location" have been given. It hence appears, on the evidence, that the determination of locality is completely arbitrary. This information does not appear to have been mapped and nor do the applicants in question appear to have been advised, let alone consulted, in respect to the determination of "location". We are hence of the view that Council has failed to satisfy this aspect of Condition 4.

QUESTION 5.

"Within what period of time is it planned that all of the s.94 contribution money received from the 5 approved M.O. developments, will be spent?"

ANSWER TO 5.

"... all monies that might be collected in future would be expended in the same fashion as the contributions received in respect of rural subdivisions, rural workers dwellings etc. ..."

COMMENT. No answer is given to our question. We hence must assume

COMMENT. On this evidence we believe that the Council has failed to comply with the provisions of Condition 1.

QUESTION 2(a).

"What public amenities or services have, or are proposed to, receive benefit from s.94 contributions made by the 5 approved M.O. developments?"

ANSWER TO 2(a).

"None of the 5 approved M.O. developments have made any s.94 contributions. Conditions of approval did however require the payment of contributions for the improvement of roads in the respective localities."

COMMENT. Action under 2(a) is dependent upon satisfactory determination of the provisions in Condition 1; as this has not occurred, then we submit that the Council has failed to comply with the provisions of Condition 2.

QUESTION 2(b).

"What evidence is there that the current cost of providing relevant public amenities or services were identified prior to LEP 6 being gazetted?"

ANSWER TO 2(b).

"The "current cost" of providing public amenities or services was not identified prior to the gazettal of LEP 6."

COMMENT. The DEP states (Circ. 23, Guideline 7(f)) that, "... in all cases the total current cost of the services required should be identified prior to the LEP being gazetted." As this has not occurred we consider that the Council has also failed to comply with this aspect of Condition 2.

QUESTION 3.

"What evidence is there to support the view that each of the approved M.O. developments individually, have caused, or are likely to cause, an overall decline in the amenity of the area?"

ANSWER TO 3.

"There is no evidence to suggest that each of the approved M.O.s have individually caused a decline in the amenity of their localities..."

COMMENT. In view of the Court cases cited in connection with Condition 3 above, it would seem that it is imperative to establish an amenity decline and as this has not been demonstrated, we consider that the Council has failed to comply with the provisions of Condition 3.

"That a road contribution made under s.94 shall apply instead of, and not in addition to, any specific requirement for local road upgrading which might be required under s.91(3)(a) and 90(1)(j)." (Recommendation 2.10)

"That, to assist the public and councils being better informed on the application of s.94:-

(a) the Commission Report include an annotated bibliography of case law relating to the application of s.94 together with a cross-reference list to subject matter, or failing this, a recommendation that such a bibliography be prepared by the DEP or other appropriate authority." (2.11(a))

(b) the DEP maintain the up-dating of this bibliography and make this information readily available for public access." (2.11(b))

(c) the DEP maintain a telephone "informaton service" (sometimes referred to as a "hot line"), on planning matters generally but in particular, the application of s.94, for use by council staff and the public and that rural dwellers be able to obtain this information for the cost of a local call." (2.11(c))

(Recommendation 2.11)

(The telephone information service provided by the Building Advisory Service of the Dept. of Local Govt. is an example of such a service).

COMMENTS ON THE PRIMARY SUBMISSION BY THE TWEED SHIRE COUNCIL IN RESPECT TO s.94

With a view to ascertaining the actions by Council in respect of the requirements of s.94, we asked the Council a number of questions. These questions relate in part to the seven Conditions itemised above.

QUESTION 1.

"What evidence is there to support the view that the 5 approved M.O. developments individually are likely to result in an increase in demand for public amenities or services?"

ANSWER TO 1.

"Council has not had any research carried out on the 5 approved M.O. developments and is unable to produce evidence related specifically to each of those developments. The assumption made for such increase in demand was in consideration of normal population expectations."

"That where a condition pursuant to a M.O. application, consisting of two or more lots, requires that the land be consolidated (as provided in Circ. 44) then any s.94 contributions previously paid should be considered with a view to a discount applying on the current application." (Recommendation 2.7)

"That the amount of any contribution under s.94 be limited in extent." (Recommendation 2.8)

"That, subject to the preceding recommendations relating to s.94, the following maximum contributions are recommended:-

ROADS and BRIDGES Maximum of $1,500 per dwelling. (2.9(a))
(It is expected that charges of considerably less than $1500 per dwelling would normally apply and a figure of $500 per dwelling might be expected as a more typical amount. See also recommendation 2.10 below).

COMMUNITY FACILITIES Maximum of $150 per dwelling. (2.9(b))
(Where there is an undertaking to contribute labour or resources to community buildings, schools, halls and the like over an extended period of time, then the norm for this contribution should more properly be a nil amount. Where there may be doubt about the reliability of fulfilling any undertaking, the applicant ought to get the benefit of the doubt. It needs to be kept in mind in this regard that such a contribution may, by personal choice, be continued over decades and that the cumulative contribution may be such that a "refund" or pay out by council could then be reasonable on grounds of equity!)

OPEN SPACE Maximum of $150 per dwelling. (2.9(c))
(In view of the general rural, and often remote, location of M.O.'s and having in mind that these often contain large areas of forest, (or it is proposed to engage in reforestation), and that there is often a custom to regard wilderness areas and the like as "public" spaces, then the likely norm for this category should be a nil amount.)

BUSH FIRE FIGHTING FACILITIES Maximum of $150 per dwelling. (2.9(d))
(To apply instead of and not in addition to any specific requirements for on-site water tanks, fire shelters or fire fighting equipment which might be imposed under s.91(3)(a) and 90(1)(g). When substantial provisions are made for these facilities it is seen that the likely norm for this category could be a nil, or a near nil amount.)

(For the purpose of this recommendation a "dwelling" means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile, this being the definition given in the draft of SEPP 15)." (Recommendation 2.9)

or (b) Where a discount is not applicable, advising that same has been considered and the reasons given for its non-applicability." (2.1(g)) (Reommendation 2.1)

As noted, it is recommended that the applicant be advised of the reasons and supplied with the evidence in support of the decision by council. We consider this to be an important principle of justice - that it lead to good communication and an informed public, is in accordance with the Aims of the EPA Act and is a requirement of Form 7 of the EPA Act Regulations. It is our experience that it is a widespread practice not to provide the reasons and evidence in support (even when requested to do so) of a s.94 contribution. We hence recommend, in the strongest possible terms, that the Council respond to their obligation in this matter. For this reason we seek, as above, that the applicant be advised of the relevant details for each of the seven conditions, as applicable.

RECOMMENDATION:

"That where a s.94 contribution is applicable to an M.O. development:-

(a) an option always be provided for a time payment arrangement;
(b) no payment need commence prior to the first Building Application approval;
(c) an option always be provided for "in kind" payments." (Recommendation 2.2)

"That a s.94 contribution be limited to providing, extending or augmenting bush fire-fighting facilities and/or community facilities and/or open space and/or roads and bridges under council's jurisdiction,(viz. those items specified in Schedule 2 of Draft SEPP 15)." (Recommendation 2.3)

"That the criteria for determining a s.94 contribution include:-

(a) the extent to which any increase in development costs resulting from the contribution will weigh against access to housing;
(b) the extent, if any, to which existing rural services and amenities are under-utilized;
(c) the extent to which an applicant has the ability to pay, particularly having regard to comparison with speculative and government housing costs."

(Recommendation 2.4)

"That determination of s.94 contributions be made in accordance with the spirit of the provisions of DEP Circular 23 and DEP "Discussion Paper", Part 9." (Recommendation 2.5)

"That s.94 contribution for open space be omitted where an environmental protection zone, wildlife refuge or the like is provided for the conservation of flora and fauna habitats, scenic enhancement areas or the like." (Recommendation 2.6)

"included discounting factors." (Circ. 23, Clause 2 and Guideline 5)

Housing for "disadvantaged" people may be seen as an issue of "public interest" and hence deserving of consideration for discounting. The Court held, for example, in Nicolson v Lismore City Council No. 10327 of 1983, that the Council's proposal, in respect to Ordinance 70 was not in the "public interest" vide s.39(4) Land & Environment Court Act. (Provision is also contained in s.90(r) EPA Act for consideration of "public interest".)

(The above conditions assume that council has authority under a relevant planning instrument, to impose a contribution under s.94 as a condition of development consent.)

We hence recommend the following:-

RECOMMENDATION:

"That a s.94 contribution be sought by Council only where each of the following seven conditions are fulfilled:-

Condition 1. Identification of the likelihood of an increase in demand for public amenity and public services within the area due to the proposed development, and supply to the applicant of the reasons and evidence to support this view. (2.1(a))

Condition 2. Where the contribution sought will be used for the purpose of providing, extending or augmenting the particular public amenities and public services identified in condition 2.1(a) above, that the applicant be advised accordingly together with the details of the trust account in which the contribution will be held. (2.1(b))

Condition 3. A causal nexus has been established between the development and a decline in the amenity of the area, and advice given to the applicant accordingly. (2.1(c))

Condition 4. Nomination of the "immediate location" in which the s.94 contribution will be spent and advice given to the applicant accordingly. (2.1(d))

Condition 5. Nomination of a specified period of time (with a maximum of 3-5 years) in which the s.94 contribution will be spent and advice given to the applicant accordingly. (2.1(e))

Condition 6. Provision of data as evidence that the s.94 contribution sought is a reasonable amount and advice given to the applicant accordingly. (2.1(f))

Condition 7. (a) Where a discount is appropriate in the particular circumstance of the proposed development, nomination of same and advice to be given to the applicant of the details and the method used in arriving at the discount.

number of developments being relatively small, or dispersed, or in remote locations. A maximum of three to five years has been suggested by the Courts in this connection, as a reasonable time.

In this regard, see Meriton Apartments Pty. Ltd. v Willoughby Municipal Council (1980) ELR 22, and Novati Design and Construction v Leichardt Municipal Council (1981) ELR, 22. We consider it instructive to note that in Mamura v Leichardt Municipal Council (19) ELR, 7, the Court permitted the return of unexpended funds, not used in a specified period.

CONDITION 6. Label: "REASONABLENESS OF THE AMOUNT"

GENERAL DEFINITION
That the contribution must be a "reasonable" amount. (s.94(3))

The test of "reasonableness" appears to be varied as it has taken many forms in the Court. In Keith Hardeman Henry v Parramatta City Council (1982) ELR 85, it was stated that a condition was unreasonable where road works were temporary and would need to be replaced when the general reconstruction of the road was carried out. Further that if general reconstruction of a road was to take place within 3-5 years, then any temporary measure might be viewed as unreasonable.

In this regard the DEP states, (Circ. 23, clause 2) that "...(the Court)... has in particular cases determined that contributions should not be used to make up for past deficiencies or backlogs...". Further that "... a standard of amenity or service in excess of the norm in the locality may be difficult to justify in relation to the development...". (Our emphasis). (Circ. 23, Guideline 4)

In this regard, see Revay and Scott v Leichardt Municipal Council (19) ELR, 9, in which it was held that a s.94 contribution cannot be used for backlog expenditure and the amount of $194,000 was reduced to $30,000. Similarly, in Daniel Callaghan Pty. Ltd. v Leichardt Municipal Council (1980) ELR, 13, the Court considered that the figure of $387,000 was arbitrary and not justified (viz. "unreasonable") and reduced the sum to $30,000.

CONDITION 7. Label: "DISCOUNTING"

GENERAL DEFINITION
That council consider "discounting". (Case law)

The DEP states that "...the Court may permit discounting in cases where for example, the development is held to be 'of an environmental planning advantage to the community'". (Doc. 1.3, Item 9.9)

Further in this regard, the DEP states that "...(the Court)... has addressed the level of contribution in terms of the average land value in the area rather than the value of the particular site, and the need for discounting in individual cases..."(our emphasis), and further, in suggesting the guidelines and principles that councils apply, that these

It appears that the term "locality" has come to be used to refer to the area identified in Condition 1, viz., that area likely to experience the incresed demand for public amenities and public services. In respect to M.O. development we submit that this "locality" will be but a proportion of the whole of the council area. (The term "area" is defined in the EPA Act to mean - vide the Local Govt. Act - the whole of the local government area.)

As noted, the council is to hold the contribution in a Trust account. The funds so earmarked are to be used within the identified locality and for the purposes for which the contribution was made.

In this regard the DEP suggest (Circ. 23, Guideline 6) "...that a separate fund be established for contributions in order that the Council is at all times able to indicate precisely how the finances are being applied...". Further that provision be made for "...the establishment of a Trust Fund ...(including)... a balance sheet itemising headings of income and expenditure." It is also recommended that "... council should prepare a discussion document outlining the different revenue options to be used to provide services and the proportion of the costs of the services being borne by contributions, loans, or special purpose grants." (Circ. 23, Guideline 7)

The DEP also state that "...the contribution must be spent in the 'immediate location'. In one Court case it was held that a contribution for open space had to be by development on it'. In another case involving car parking, the Court held that the parking sought was to be '... situated in such a fashion as to enable a decision to be reached that it was capable of being identified with the proposed development'". (Doc. 1.3, Item 9.6)

(For suggested criteria, to aid in the determination of "immediate locality", in connection with the application of s.94 contributions, see Appendix 19).

CONDITION 5. Label: "SPENDING TIME"

GENERAL DEFINITION

That the s.94 contribution be spent within a reasonable time. (s.94(3))

The DEP state "... if the contribution is not spent within a reasonable time then it would not be a valid levy under s.94. Long term projects hence would not appear to be appropriate subjects for a s.94 levy. In this connection it may be relevant to consider whether, in a slowly developing area, a trickle of s.94 contributions would be sufficient to do anything...". (Doc. 1.3, Item 9.5). The DEP also state "... there would be considerable doubt about the validity of seeking contributions for facilities or services not required for a number of years...". (Circ. 23, Guideline 2)

This issue may apply to M.O. developments in particular, due to the

points; stream banks (providing public access to boat landing points and to camping grounds); land for a childrens centre, public hall, neighbourhood centre; sports field; park, or the like.

We reiterate our earlier statement that public amenities and public services associated with s.94 contributions be limited to "open space"; "community facilities"; "bush fire fighting facilities" and "roads and bridges" as proposed in the draft of SEPP 15.

In the above regard, in John Mark Taplin & Anor v Hastings Municipal Council, No 10229 of 1984, EPCN #10, it was held that there was no evidence to suggest that the development brought about a need for road works or the provision of open space. Nor did the evidence indicate that the contribution would be spent on a facility to service the development under construction.

CONDITION 3. Label: "AMENITY DECLINE"

GENERAL DEFINITION
That there must be a causal link between the proposed development and a decline in the amenity of the area. (s.94(1))

The DEP state that "... the Court has held that there must be a causal nexus between the development and a decline in the amenity of the area and this decline must be substantiated by, eg., the council's need to show that 'The expected increase in population in the locality with the expectant resultant demand for increased facilities ...(will)... necessarily result in a decline or a depreciation of the amenities in that neighbourhood'. It would seem that it is imperative to establish an amenity decline." (Doc. 1.3, Item 9.5).

It hence appears reasonable to us, that if an applicant shows that the existing public amenities and public services were underutilised then no s.94 contribution would be justified. Similarly, if it was shown that there had previously been a population decline in the area, then this could, depending on the particular circumstance, be grounds that a s.94 contribution ought not apply.

In this regard in Michael Davis v Sydney City Council (1983) ELR, 469, the Court identified "amenity decline" as a key element which was necessary to be present before an application could be considered valid for a s.94 contribution. Similarly in Bartalo & Anor v Botany Municipal Council (1981) ELR, 5, the Court "...was not satisfied that the extra population... would necessarily result in a decline or depreciation of the amenity in the neighbourhood."

CONDITION 4. Label: "PHYSICAL LINK

GENERAL DEFINITION
That the contribution is placed in a special Trust account and spent in such a manner as will meet the increased demand as identified in Condition 1. (s.94(3))

(a) That any condition must relate to an environmental planning instrument. This is to say that a contribution must be shown to be more than simply another tax unrelated to legitimate planning activity. (s.94(2)(a)), and

(b) That the council show that the proposed development is likely to result in there being an increased demand for public amenities and public services.

For instance in Bryant v Wyong Council (1983) ELR, 277, council was required to "... demonstrate in detail the needs created and precisely how the need was to be satisfied before any condition may be validly asked for..." and in St. George Building Society v. Manly Municipal Council (1981) ELR, 228, it was stated that council must determine that the development "... will or is likely to require the provision of, or increase in the demand for services within the area."

In Henbury v Parramatta City Council (1982) ELR, 3, the Court held that the development would not have a detrimental effect on the existing amenity, and the road widening conditions were set aside. The "usual policy" of council to require dedication of land was said to suggest opportunism rather than showing the underlying planning principles. An alleged increased public demand must hence, we submit, be fully justified.

In respect to this condition the DEP have stated that "... the Court has been critical of the lack of research undertaken by councils to justify requirements." (Circ. 23, clause 2). Further, "... the fact that an enabling provision ...(exists)... does not in any way detract from the need for this justification". (Circ. 23, clause 5).

CONDITION 2. Label: "Development Link"

GENERAL DEFINITION

That the contribution shall be used only for the provision, extension or augmentation of public amenities and public services as identified in Condition 1. (s.94(2)(b),(3))

It is noted that a condition shall be imposed for the above three stipulated uses only, and that no provision is made for "maintenance". The DEP state in this regard that "...s.94(3) implies that a ... contribution would only be required with respect to capital." (Circ. 23, Guideline 3). Further that "...councils should always provide an 'in kind' contribution as an alternative to cash." (Circ. 23, Guideline 7)

"Examples of public amenities and public services for which contributions, or the dedication of land, have been required by the Court include public car parking area; drainage; open space and, upgrading of stormwater channels ..." (Doc.I.3item 9.4).

Typical public amenities likely to have particular relevance in new settler areas in respect to "Open Space" might include: nature walking paths; cycleways; horse riding trails; access way to scenic vantage

.....

PART C. Rural Resettlement Task Force SUBMISSION IN REPLY AND RECOMMENDATIONS

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1(a) PROBLEMS ENCOUNTERED BY THE COUNCIL IN APPLYING THE PRESENT PROVISIONS OF L.E.P. 6 - Tweed Shire

Our comments and recommendations (excluding those relating to s.94 contributions) have been made in Part B1 above.

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1(b) THE DETERMINATION OF AN EQUITABLE FORMULA FOR ARRIVING AT CONTRIBUTIONS UNDER SECTION 94 TOWARDS COUNCIL - PROVIDED SERVICES AND FACILITIES

In our Primary Submission (p. 2, item 5) we drew attention, in a general way, to what we saw as some of the basic requirements or conditions to be met for the valid application of a s.94 contribution by a council.

In the light of the statements made by the Tweed Council in their Primary Submission on s.94 contributions (p. 4-6), we consider it necessary to amplify our statement (which will be accompanied by recommendations relating to s.94 generally); and with this as a basis, to then comment on the Council's Primary Submission. (Recommendations in relation to the Council will be added at this point.)

The following seven conditions, we submit, each need to be met before a s.94 contribution can be validly applied. These conditions are based on the DEP "Legal Advice" in the Tweed Report (Doc. 1.3, item 9). (The DEP in this paper use the terms "test" and "precondition". We have chosen to use the term "condition" to cover both these terms.)

CONDITION 1. Label: "INCREASED DEMAND"

GENERAL DEFINITION

That the proposed condition under s.94 is related to a planning instrument and that the development is likely to result in an increased demand for public amenities and public services within the council area. (s.94(1),(2))

This condition requires:-

Further that no draft Cluster Titles Act has been prepared and they see that any further action to this end would be at the instigation of the Minister for Natural Resources, (the Director of Land Titles being responsible to this Minister). In addition,the DEP advise that they would be available to assist the Director of Land Titles if requested to do so.

RECOMMENDATIONS

> "That the Director of Land Titles be requested either to release all relevant reports relating to the findings of the various inter-departmental committees examining the issue of a proposed Community or Cluster Titles Act or make available a summary of the activities and findings of these committees." (Recommendation 8.3)
>
> "That the Commissioner seek advice from the Premier as to which Ministerial portfolio might best serve as the focal point for the introduction of a Community Titles Act, and recommend accordingly in the findings of the Inquiry." (Recommendation 8.4)
>
> We would see that the Minister for Housing, the Minister for Natural Resources and the Minister for Planning and Environment might well be considered in this regard.

.....

In regard to income tax deductions in the Coffs Harbour Blueberry Cluster Farm Project, we note that for an outlay of $73,000, an estimated $63,388 may be claimed as a tax deduction!

6. In respect to J.F.M.'s item 4.7, it is our view that the proposed SEPP policy will benefit rural land sharing groups, and the community generally. In response to our question as to which communities had failed because of a ".. lack of title for each component part..." (besides Geergarrow which J.F.M. has purchased) they have replied, p.6, that they "... cannot list failed M.O.'s...".

There is in our view a need to address the question of the type of "prospectus" that is appropriate for different forms of land title. This issue we would see as best addressed in the context of the preparation of a Community Titles Act.

7. In general we believe that private enterprise developers would like to see amendment to the Draft of S.E.P.P. #15,(or other legislation to give like effect),so as to make transferable title to individual allotments freely available so that:

a) the allotments can be bought and sold without the need of a prospectus,(since a core group of buyers has not come together on their own to create the development);

b) the development profit on rural land can be maximized so that more dwellings can be accommodated than under usual concessional subdivision; and

c) the land does not have to be rezoned, involving the probable requirement for a formal E.I.S., a development control process that does not permit an appeal in the event of council or Departmental refusal to approve the development.

.....

B 10. COMMENTS AND RECOMMENDATIONS ARISING FROM THE PRIMARY SUBMISSION BY THE DEPARTMENT OF ENVIRONMENT & PLANNING

1. In general terms we support the Submission of this Department. In our questions to the DEP we sought to obtain a copy of the report of an inter-departmental committee working on a proposed N.S.W. Cluster Titles Act, as referred to in the SEPP 15 "Discussion Paper" (p. 13).

The DEP has advised that these reports,(we now understand that several committees have been working on different aspects of this issue),have been sent to the Director of Land Titles and that it is up to his discretion as to when these will be released, if at all.

SUBMISSION OF JOHNSON FARM MANAGEMENT

1. To assist the Inquiry we append the following background information in connection with this submission. (Appendix 13):

(a) Advocate newspaper article, 7/9/85;
(b) Coffs Harbour Blueberry Cluster Farm Project - Financial Detail;
(c) Draft White Paper on Taxation Reform, June 1985.

2. The environmental issues raised by J.F.M. in their submission (PS p.2, s.1.4) are, in our view, well covered under the various heads of consideration found in s.90 of the E.P.A. Act, local planning instruments and Draft S.E.P.P. #15.

3. We would point out that Health & Building standards (PS p.4, s.3.0) are enforced through the Local Government Act. In this regard numerous penalties and enforcement procedures are available to Council.

4. In respect to the "need for title" (JFM PS item 4) it seems to us that this facility, to meet the expressed needs of J.F.M.-type clientele, are adequately provided for in the planning legislation which enables "rural residential" status to be obtained provided certain environmental and other conditions are met. (In this regard DEP Circular 77 is appended .. Appendix 27). Once this is obtained strata titles are then available. We note that J.F.M. have to date used this provision for their developments.

5. We asked J.F.M. for details of "... experiments (that have been) heavily subsidised by the public purse...". (JFM, PS 4.3). J.F.M. have replied that their information in this regard came from the the Sommerlad et. al. study viz. "... 46% of total cash income came from government sources...".

We would point out that critics of M.O., and sometimes the media, have selectively quoted (or in some cases misquoted) the Sommerlad et. al. findings, with respect to reliance on various forms of social security. In response to this, the authors of the study have since stated:

> "These people are most certainly complying with income and work tests applied by the Dept. of Social Security; they are therefore entitled by law to the benefits that they receive."

We are of the view in this regard, that there has been no subsidy from the public purse over and above what the government would already be making available by way of welfare benefits.

The above letter published by the authors in the Canberra Times (18/1/85), together with an article by one of the authors, Jon Altman, Rural Communes - A Good Thing?, is attached as Appendix 14 to this Submission. An article by Dr. Ted Trainer, Communes for the Unemployed: Dead End?, which was published in the latest Geergarrow, (now a J.F.M. project), Newsletter of Oct. 1985, (Vol. 4, #3) is attached as Appendix 15 to this Submission.

3. We asked the Service for a copy of the "protected lands" map covering the Tomewin Village Hamlet area, but they replied that it was not possible to supply this. While they advise that these maps are available for inspection in the local office, we understand that it is not possible to obtain a print of same. In view of the importance of the "protected lands" in the Tweed area it seems reasonable to us that copies of such maps be readily available.

4. In reply to our question 2, the Service state that:-

"... road works on the (Tomewin) property ... passed through protected land but no breach ... had occurred."

Presumably it is to be inferred that the land slope in question is less than 18 degrees!! Having inspected this road we are of the view that the bulk of the road in question is on a hill which is grossly in excess of 18 degrees slope.

RECOMMENDATIONS

"That the Soil Conservation Service was in error in reporting to the Catchment Areas Protection Board (letter A.192/2 in Primary Submission by B. Downes, Doc. 28.1), that "... no trees were cleared on 'protected land' on the Tomewin Hamlet property." (Reommendation 3.12)

"That the Catchment Areas Protection Board be asked to confirm the accuracy of the report on the Tomewin Hamlet property, and if the original report is found to be in error, that appropriate action be taken as prescribed under the appropriate Act." (Recommendation 3.13)

"That 'protected lands' as administered by the Soil Conservation Service, be mapped for the whole of the Tweed Shire area at a scale of 1:25,000, and an exmination made to ensure that all land over 18 degrees slope is included in the protected area." (Recommendation 3.14)

"That in an LEP or other planning instrument, the Tweed Council introduce an environmental protection zone on all land over 18 degrees slope which is not shown as 'protected land' under the Soil Conservation Act." (Recommendation 3.15)

"That the factual information in the Primary Submission by the Soil Conservation Service be recommended to the D.E.P. for inclusion in the next edition of the D.E.P. "Low Cost Country Homebuilding" Handbook and in the proposed Manual to S.E.P.P. 15." (Recommendation 3.16)

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B 9. COMMENTS AND RECOMMENDATIONS ARISING FROM THE PRIMARY

B 7. COMMENTS AND RECOMMENDATIONS ARISING FROM THE PRIMARY SUBMISSION BY THE DEPARTMENT OF LOCAL GOVERNMENT

In general we are in accord with the Submission made by this Department. In particular we draw attention to their statements confirming our views on various issues raised above, for example, rating; the application of s.317A (giving councils certain discretion in respect to illegal buildings); s.317B(1A) (also giving councils certain discretion in the same regard) and s.317(M) (giving the Court certain discretion in respect to structural design not falling within the ambit of Ordinance 70).

.....

B 8. COMMENTS AND RECOMMENDATIONS ARISING FROM THE PRIMARY SUBMISSION BY THE SOIL CONSERVATION SERVICE

1. The Soil Conservation Service state in item 4.1, that "... the land capability classification maps can be used to identify ... areas potentially suited for ... M.O. use..." and in their recommendation 7(i) imply that M.O. development ought not occur in Land Capability Classes I, II and III.

This view taken by the Service appears to assume M.O. to be a homogeneous form of settlement and land management which is inconsistent with sound agricultural practices. This view appears to have a deal in common with that expressed in the Dept. of Agriculture's Primary Submission. In this regard our comments made in B6 Item 5 above, apply equally to this submission.

2. The Service has made generalised recommendations (as for example, in their item 4.2) based, it appears, on mapping at a scale of 1:100,000. In this regard we draw attention to the Service's "Rural Land Capability Mapping" brochure in which they say under "Level of Interpretation":-

> "... the maps are best used as a source of general information in relation to rural land use potential over large areas. However they will provide reliable interpretation of land down to individual parcels of 200 - 300 ha".
>
> As the size of most M.O. communities is between 40 - 100 ha we fail to see how the Service can make reliable generalisations from such maps. We concur with their recommendation 7(ii) that detailed capability studies be undertaken of areas once identified for proposed M.O. development.

those living on M.O. communities and that the 'conservation movement' is very broadly based. Indeed the recent publicity about the possible link between pesticides and the high rate of birth defects in Coffs Harbour Shire and recent aerial spraying of 2,4,5T on groundsel bush did not involve anyone from M.O. communities!

6. In respect to the concluding recommendations by the Department (p.D8) viz. "...identifying areas of high M.O. suitability..." and "... restricting M.O. from prime agriculture land ..." we are of the view that these conclusions are not consistent with the body of their submission!! For example, on p. C2, the Department states:

> "... that the Dept. of Agriculture is not opposed to the integration of rural clusters ..."
>
> and "... common ownership of at least the prime crop and pasture land is the minimum for this purpose, with residences located on land of lower quality..."

We are not in disagreement with this view. We support broad acres of prime agricultural land being preserved as such. Our concern is that such land be worked in the most efficient manner and further that this may be carried out by other than a sole farmer!!

To imply that M.O. settlers are homogeneous in their abilities, (as is contained in such statements as "... identify areas with a high suitability for M.O....") and that none of these settlers have any sound farming skills, reveals in our view, a superficial understanding of the diversity of people that make up M.O. settlers. Hence the concluding recommendations made by the Department, appear to us to be based on a projection from an erroneous assumption.

RECOMMENDATIONS:

> "That M.O. communities pose no unusual or specific 'threat' to traditional, non-intensive rural agricultural development." (Recommendation 3.8)
>
> "That the use of 'buffer zoning' <u>not</u> be required between M.O. communities and non-intensive rural agricultural development." (Recommendation 3.9)
>
> "That existing legislation and common law is adequate to deal with property disputes and nuisances." (Recommendation 3.10)
>
> "That M.O. development be permissible with Council approval on prime agricultural land developed pursuant to Draft S.E.P.P. #15, and in particular clause 6(1)e, which provides that the land on which the dwellings are situated is not prime crop and pasture land." (Recommendation 3.11)

.....

policies of local electricity authorities, but that the Minister does have certain discretionary power. We hence recommend:-

RECOMMENDATIONS

"That it be recommended to the Hon. J. Crosio M.P., Minister for Natural Resources, that local electricity authorities be advised of the Government's policy in support of the use of renewable energy resources and asked to take appropriate steps to ensure that such authorities do not lend weight to local government councils by recommending the supply of mains power, as a condition of M.O. development approval." (Recommendation 3.7)

"That a user's decision to connect, or not to connect, to the mains supply of electricity is an issue of "freedom of choice" and as such the Tweed Shire Council, when considering an M.O. development application, should not treat mains power supply as a necessary service to or within the community." (Recommendation 3.8)

.....

B 6. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE DEPARTMENT OF AGRICULTURE

1. In response to the Department's suggestions regarding rating (PS p.D5), we refer to the comments in our Primary Submission and in Part C of this submission. Rating is not and should not, in our view, be based on a "user pay" or per capita basis. For our recommendation in this regard see Recommendation 4.2 below.

2. With respect to the road maintenance issue, we maintain that most of the damage is done by heavy vehicles and the rain;and that any true shift to make the 'user pay' for road use would increase the rates of the commercial farmer far more than those of a medium-sized M.O. community!!

3. We would point out that nuisances referred to by the Department (PS p. G1 & 2) between neighbours are not limited to M.O. residents and that most of the problems cited are covered by common law or specific legislation, eg. Dividing Fences Act, Real Property Act, Water Act, Bush Fire Act, Noise Pollution Act.

4. With respect to the proposal for buffer zoning (PS p. G8) neighbours will still exist and there is nothing to say that, in general terms, farmers on low quality agricultural land will come into less conflict than those on prime land with rural resettlers.

5. Regarding the Dept. letter of reply, 30 Oct. 1985, it is important to appreciate that the concern about pesticide use is not limited to

"... not to enforce the condition in this particular instance would set a dangerous precedent."

No resolution was reached at the Conference and the matter went before a full hearing of the Court. After a full day of hearing, but before the applicants presented their case, the matter was settled out of Court, when the Council agreed to withdraw the required condition!

Despite the fact that the applicants were then not liable for the cost of the proposed work, they nevertheless had to pay out several thousand dollars in legal costs.

We seek a situation where other proposed community developments will not have to be confronted with a like situation.

5. In respect to the Tweed Council area we understand that the supply of mains electricity has been proposed as a condition of approval for at least two of the M.O. applicants in this area viz. at Coal Creek and at Byrrill Creek. We understand that this requirement is the subject of negotiation between the applicants and Council, and that Mr.J. Weller on behalf of these communities will be commenting on the present status of these negotiations.

6. The Energy Authority of N.S.W. advise us that the Government's energy policy is contained in the document Energy Policy Summary and Background Paper. (Doc. 34.). This policy recognises that the existing energy fossil fuel resources are a finite quantity. In respect to energy conservation the Policy states that:-

"... energy conservation is a corner stone of the Government's energy policy. The objective is to eliminate unnecessary and wasteful use of energy and hence reduce the overall demand. Energy conservation effectively extends the life of our resources." (Item 4.1)

The Policy goes on to state that:-

"In the long term, N.S.W. must seek to develop renewable energy sources. There is as yet no clear path to achievement of this aim, and pending their development we must reduce our dependence on oil and develop a diversified fuel usage pattern based on coal and natural gas." (Item 6)

...and further that:-

"The problem posed is complex and must be addressed by the Govenment and a populace which fully understands the seriousness of the implications and is willing to make the necessary adjustments and sacrifices. Decisions made, or avoided, in the next few years will directly affect our lives and those of our descendants. Difficult and possible unpopular choices must be made." (Preamble)

We concur with these sentiments. In respect to applying this Policy the Energy Authority has advised us that they have no jurisdiction over the

they have again asked "... to whom does the NRCC deal with in respect to ... an easement - the individual or the body corporate...". We submit that the registering of easements should be a matter between the NRCC and the corporate body or trust holding the property. Different communities may well have different attitudes to such issues as overground power lines etc. The internal rules and agreements may deny or give rights to its members to obtain the mains power.

RECOMMENDATION

> "That the N.R.C.C. deal with the body corporate in respect to the registration of an easement or a right-of-way for the supply of mains electricity." (Recommendation 3.6)

4. We welcome the statement by the NRCC (p.2 of the above letter) that "... there is no intention of forcing electricity supply onto a community ...". Despite this statement our experience has been that the NRCC and some councils appear to have acted in concert to "rely" on each other, with the consequence that the local council has come to require the provision of mains supply as a condition of M.O. development approval or subdivision to facilitate such development.

In this regard we draw attention to a situation in the Ulmarra Shire Council area where this Council required as a condition of development consent the provision of mains supply to a property boundary. The cost estimated by the NRCC to provide this supply was $20,696.00. The applicants asked the Council, through their Consultant Surveyor, to reconsider this condition for approval stating that:-

> "The main reason for buying and living in the area is to lead an alternative lifestyle of self-sufficiency on a low cash flow budget. To this end they have purchased small capacity solar units to operate 12 volt appliances. Their power requirements are small and since they have already sold their 240 volt appliances, they have firmly indicated to me that they would not have the power connected in the foreseeable future, even if it was available." (Appendix 26a)

The Council did not consent to this request and the matter was appealed to the Court. A copy of the report by Council to the Appeal Conference is attached (Appendix 26b). In this report attention is drawn to the statement that:-

> "... the Council considered a request from the NRCC that the provision of electricity be made a condition of approval for any development of land within the Shire." (Item 3) and,
>
> "...reticulation of electricity ia an accepted standard condition of consent." (Item 9)

In the relevant letter from the NRCC (Appendix 26c) the NRCC state that:-

> "... this Council supports the condition of subdivision, requiring electricity supply ... to be extended to ... the proposed lots."

The NRCC go on to say (p.2) that:-

preparing or initiating the preparation of a draft for this Act.

Their response indicates to us some confusion as to who should take the intiative in this matter. In view of the extensive work that Landcom have already done in identifying the issues that need to be addressed, it seem to us that they are in an excellent position to contribute to the preparation of such an Act.

The involvement of the many other Departments etc. who may be effected by such legislation would of course need to be canvassed. The present situation appears to be one where, although there is widespread agreement as to the need for a C.T.A., there is a reticence by any authority to take the first step! The Attorney Generals Dept. would as we see it, need to be involved at the appropriate stage, but it seems to us quite unrealistic to expect this Dept. to be seen as an "authority" on M.O.!

(We have also sought information from the DEP in connection with this issue and we will refer to this, when commenting on their Primary Submission).

Some preliminary suggestions towards a brief for the preparation of a draft C.T.A., are given in Appendix 25. For recommendations in this regard see Recommendations 8.3 and 8.4 below.

The R.R.T.F. welcomes the interest and support of Landcom and the present Minister for Housing, The Hon. F.J. Walker Q.C. in investigating and attempting to solve some of the difficulties which have arisen with respect to M.O. development.

.....

B 5. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE NORTHERN RIVERS COUNTY COUNCIL

1. We agree with the suggestion (PS p.1) that 240v mains electricty should not be connected without Council consent.

We draw attention to the fact that in the Barker Survey and in various primary submissions to the Inquiry very few M.O. residents have, or desire mains power.

2. With respect to the NRCC's advice about future cost increases we recommend:

RECOMMENDATION

"That the Council's warnings about future cost escallations for installation of mains power at a later date be included in the next edition of the DEP 'Low Cost Country Homebuilding' Handbook and the proposed Manual to SEPP 15." (Recommendation 8.2)

3. In the Letter of Reply, 21 Oct 1985, received by us from the NRCC,

In any event, we reject the use of such AADT data to suggest a 'user pays' formula as such figures fail to take account of the tremendous damage caused by heavy vehicles - eg. one truck equalling damage of 14,000 cars according to Dobinson and,". . . are considered to be the principal contributors to pavement deterioration. . .", by Holmes (Appendix 21). We therefore recommend:-

> "That when using AADT data to determine road maintenance requirements or to 'justify' a so-called 'user pays' basis for payment, the analysis include compensating factors such as truck and heavy vehicle usage." (Recommendation 3.5)

.....

B 4. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE LAND COMMISSION OF N.S.W.

1. In general terms, we support the statements in this submission, particularly the principal concerns of the Minister for Housing expressed on Page 1 of the Chairman's letter, and the statements with respect to s.94 contributions, viz.:

> "... to ensure that multiple occupancy remains affordable to the target group of the policy i.e. low income earners ..."
>
> * Any formula for establishing contributions towards services and facilities needs to reflect such on-site facilities provided by M.O. communities.
>
> * The establishment of an equitable formula for contributions must also be mindful of the policy intent to provide affordable land and home ownership. . .
>
> * Council's plans (for new services) be compiled with the involvement and endorsement of the local community ... standards for such services and facilities should thus reflect community needs and values.
>
> * Time payments and the provision of equity may be considered viable alternatives (to upfront s.94 payments).
>
> * There is a need for the development and distribution of guidelines regarding the application of s.94 contributions for M.O. developments."

2. In view of the identified need for a Community Titles Act (C.T.A.) (Landcom PS p.6), we asked Landcom if they were they aggreable to

from rates is:-

* Kyogle spends $6,667,812. with 16.6% from rate revenue
* Lismore " $22,258,541. " 25.5% " " "
* Tweed " $16,858,448. " 30.9% " " "

M.O. residents are not "... asking the local indigenous rural population to bear the brunt of providing services and facilities to ..." (them), but rather it should be accepted, that in general they are satisfied with the existing level of services and facilities. (see Barker Survey).

The "budget" in terms of public services and facilities that council might provide may be balanced either by acquiring more money via contributions etc. or by supplying only limited services and facilities.

The decision as to which of these two directions council decides to proceed appears to touch on the deep-rooted cultural attitude that "big must be better" and that it is "unthinkable" that anyone would be prepared to accept, let alone choose, to "make do" with less.

While we support development where it is appropriate, we favour the latter method of balancing the "public services and facilities budget", particularly in the present economic climate.

Further in this regard we would point out that for every 500 new settlers moving into a council area, a minimum of $3,000,000. (500 x $150 x52) per annum will flow into the area. The council stands to gain both directly and indirectly from this via the chain of private enterprise rate payers benefiting from this in-flow of capital!!

We also draw attention here to the fact that such people usually have little, if any capital reserves, yet set about to provide their own housing. Such housing is constructed at no cost to the council and only to the State for those few who as yet, are eligible for the First Home Owners Scheme Grant.

(In view of the above, we can nevertheless envisage a time when councils could come to vie with each other to attract this "permanent" economic resource to their area!!).

7. With respect to the Consultants Report, Assessment of Contributions for Road Upgrading and Recreation in Rural Areas (p.23 &24), a detailed analysis of Table 5, (see Appendix 10 & 11), does not support the suggestion that M.O. development leads to increased road usage. If the Increased AADT No. is divided by the number of New Lots Created 1975-83, then we find that the result for the 2 stations in the M.O. area of the Shire (#04365 & 04505) are among the lowest in the Shire!!! Had M.O. residents been using the road to a significant extent, then the AADT divided by the number of new lots in this area would have been distorted upwards!!

from either Kyogle or Nimbin, we do not see any acute need for a post office, general store, service station etc. and in any event these facilities are not provided by Council. We hence recommend:-

> "That the provision of 'services' in rural areas such as post offices, general stores, doctors surgeries, markets and service stations be left to private enterprise and community initiative to provide." (Recommendation 3.3)

2. The area in question above is also only some 15 km. from the Border Ranges National Park, one of the largest and most significant parks in N.S.W., so we do not see any need here for special open space or recreational areas. (See Recommendation 2.9c).

3. The local public hall was recently burned down and we understand that plans are actively underway to rebuild it with local labour and support.

4. We would point out that the so called 'saturation point' has been reached in the area because Council chose to limit M.O. development in its enabling L.E.P. to some 3% of the Shire. To overcome this problem we believe M.O. should become permissible in all rural areas of the Shire.

> "That, to facilitate the most economic distribution of resettlement, S.E.P.P. 15 be implimented as soon as possible." (Recommendation 3.4)

5. Regarding the statement in the last paragraph, (Kyogle PS p.3), we would point out that Council <u>does</u> receive more revenue from:-

- increased land valuations from market demand, created by use of poor quality farm land; (see also supporting claim on page 1 of Dept. of Agriculture PS #37.1; Johnson Farm Management PS #33.1, Clause 2.6; and Lismore Council PS p.9);
- increased road grants from the Grants Commission based on census figures;
- increased funding for libraries based on per capita funding; and,
- increased funding for fire brigades based on increased fire insurance levies.

6. With respect to the question of who pays, (Supplementary Submission p.3), we submit that State and Federal governments supply most of the money used for services generally. Revenue is raised through taxes on income and land, (land tax and rates), and in some cases on a user—pays basis, eg. petrol taxes, telephone installation charges for M.O. homeowners, (but limited to $150 for other rural homeowners with freehold title!). The commencement of many private schools in the area has effectively reduced the cost to the State for certain educational facilities.

The expenditure of North Coast Councils and the proportion which comes

6. With respect to the qualifications given to the Barker Survey (Lismore PS p. 6) we would point out that:

-Ms. Barker has an Honours degree in Social Psychology,
-she was under the supervision of the Town Social Planner,
-her findings have been republished by Metcalf & Vanclay,
-and her findings are generally consistent with other studies by Sommerlad and others.

7. Council, (Lismore PS p.6), alludes to the high cost of education in rural areas as it draws students away from existing facilities in the cities and creates a need for new facilities on the North Coast. While there is a shift in population to the North Coast, the overall cost analysis should in our view have regard to the following two factors not mentionned by Council:-

a) Population Growth: A preliminary estimate of Australia's population at the end of March this year showed an increase of 193,500 persons in one year. (see Northern Star article, Appendix 20). The increase for N.S.W. was 63,200 persons of which some 10,100 were aged between 6 and 15 years. Hence educational facilities would have had to increase by some 10,000 places this year and we believe this is generally cheaper to provide in rural locations.

b) Private Schools: M.O. communities have been instrumental in providing some 3 or 4 private schools in the Local Government Areas on the Far North Coast. All private schools save the government considerable sums of money compared with the cost of State provided facilities.

8. With respect to the adverse impact caused by increased valuations, (Lismore PS p.9), it is interesting to note Councils' complaints about insufficient rate revenue from M.O. communities versus their concern for an increased burden on neighbouring, (but not M.O.!), properties. We hence recommend:-

"That where distortions in land values place an inequitable rate burden on local ratepayers Council set a differential rate or reduce the rate generally to overcome the problem." (Recommendation 7.1)

.....

B. 3. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE KYOGLE SHIRE COUNCIL

1. In regard to the list of 'deficient services' (Kyogle PS p.1 & 3) we would point out that since the area referred to is only about 15 km.

grass will be suitable to meet this requirement and we understand that the community will seek leave to make a submission to this Inquiry in this regard. For reasons similiar to our belief that roads need not generally be sealed to M.O. communities, the following recommendation is made in respect of parking lots on M.O. communities:

> "That parking lots developed on M.O. communities need not be bitumen sealed." (Recommendation 6.5)

3. In connection with the practice of the Lismore Council of requiring road upgrading under s.90 and a road contribution under s.94, we asked the Council what evidence there was to support the view that this was a reasonable practice, (Question 9). Council have replied, "... a road upgrading under s.90 may be required where the access road is not adequate ... a monetary contribution, when required for upgrading of an amenity in the area, (intersection, car parking upgrading arterial or other roads, etc.) can only be done under s.94. This is quite common. See Coupe v Mudgee Shire Council." (Resume in Appendix 23, full judgement Appendix 24)."

Our recomendation in this regard will be made in Part C below, (see Recommendation 2.10).

4. Regarding a Bush Fire Brigade levy, (Lismore PS p.5), Council has not in our view, justified the need for a contribution. New equipment is generally provided by the Board of Fire Commissioners and the Council in recent years has budgeted for example, $500 - 600 per year for the maintenance of the Nimbin Fire Station. The 1985 Budget estimates indicate That $102,550 will be spent from rates on fire services which is less than $3.00 for each person residing in the area (1981 census). This figure is only $1.23 per person in Kyogle Shire and $1.62 per person in Tweed Shire. (1985 Budget Estimates).

Our recommendation in respect to bush fire contributions will be made in Part C below (see Recommendation 2.9d).

5. In response to Council's recommendation (p.5) that "... in the case of a dispute, the Land and Environment Court can arbitrate...", it is our experience that communities are generally most reticent to lodge appeals, due to it being:-

- -an emotional trauma caused by the delays, publicity etc.;
- -a financial burden, as generally corporate bodies cannot get legal aid;
- -an anathema to the spirit of consensus and good relations;
- -an organizational nightmare trying to obtain local legal and professional advice which is skilled in this jurisdiction and who are prepared to 'take on' the Council. (It is to be kept in mind in this regard that communities are often quite isolated and may not even have a telephone connected.)

b) the Murrurbundi Council Shire Engineer's Report (Appendix 5) states with respect to Priority 2 roads that "... rehabilitation to sealed standard will not be undertaken and road sections that fail will revert to a reasonable gravel pavement standard...", and for Priority 3 Roads, "...sealed sections will be deliberately allowed to degenerate to a point where they must be reverted to gravel standard."

c) Kyogle Council Minutes for 4 Feb. 1985 and 1 April 1985, (Appendix 9) report on a Dept. of Main Roads letter that the Dept. "... would not consider a change in road priority that necessitated the sealing of previously unsealed sections of roadway. This was due to the need to utilise scarce available funding in maintaining the existing sealed road network ..." At the latter meeting the Shire Engineer reported that the 183 km of sealed roads in the Shire costs on average some $2833 per year per kilometre to maintain. Attention is drawn to the fact that these figures do not include the cost of a 'patching gang' estimated to cost $120,000 in the Murrurbundi Shire Engineers Report (Appendix 5).

d) According to the Society for Social Responsibility in Engineering (Appendix 8):

> "The cost of maintaining a sealed road, when calculated over a fifteen year period, is aproximentaly twice that of a gravel road, assuming that traffic, location and width are the same."

e) It forces the M.O. community to accept and fully pay for a standard far in excess of the norm in the remainder of the Shire. According to Lismore Council's Rural Strategies Study, the Council has 268 km of sealed roads and 675 km of gravel roads, (and 205 km looked after by D.M.R.).

Bearing in mind the findings of the Barker survey, the D.M.R. suggested minimum of 350 AADT to justify sealing and the prevailing rural standards, we recommend:-

> "That as a general standard, or unless extra-ordinary conditions prevail, M.O. communities which are expected to generate less than 350 AADT need only be serviced by an all-weather gravel road, or right of carriage way, constructed to a reasonable standard similiar to prevailing standards. All-weather access not to preclude the use of bridges and causeways which are subject to occassional flooding, especially where this is a prevailing practice." (Recommendation 6.4)

2. Lismore Council Planning Department originally asked a local M.O. community, (Co-ordination Co-op Ltd), to seal a parking lot for a number of vehicles in respect of a proposal for a small food shop. After negotiation this was altered to require a "dust free surface" for the parking lot. (However, the requirement for the parking bays to be marked out still remains!). This community presumes that coarse gravel and/or

'Nutshell', 1985:

> ". . . a person was held liable for a risk of injury that is not foreseeable, it being so if it is not far-fetched or fanciful, notwithstanding that it is more probable than not that it will not occur ...' In Bolton v Stone (1951 U.K.), a cricket club was held not to have been negligent in failing to prevent a ball from hitting a woman. The degree of probability of such a risk occuring was minimal; the cost of preventing it would have been considerable."
>
> "Councils and highway authorities ... having the duty of constructing and repairing highways can successfully be sued for nuisance said to result from the highway surface only by showing that the nuisance has resulted in what is known as misfeasance, as distinct from nonfeasance. Misfeasance means doing something negligently. Nonfeasance means failing to do something at all." (our emphasis). See Buckle v Bayswater Road Board, (1936) H.C.A.

Councils often do not maintain local public roads which are especially remote, rugged or not used by many vehicles. For example, in Lismore, the City Council has never maintained Younges Road but it is now requesting a M.O. community, (Blue Pearl Trust, known as "Siddha Yoga Farm"), to bitumen seal it! In Murrurbundi Shire Council, some 12% of their roads are classed as "Priority 4 Roads ... (which) are not normally maintained and will not be attended to unless directed by the Shire President or Council, or in the event of a safety problem". The Shire Engineer's Report, (see Appendix 5), in this case did not mention any difficulties with respect to public liability.

We would also point out that Council's potential for liability is not a "head of consideration" under s.90(1) of the E.P.A. Act and therefore it "... is not a matter which may be included as a condition of consent ..." Galandon P/L v Council of the Shire of Narrabri No. 10430 of 1982, E.P.C.N. #7 and also Demco Machinery P/L v Parramatta City Council No. 100120 of 1983, E.P.C.N#6. See also in this regard, Deeds of Idemnity for Flood Prone Land, Local Government Bulletin, June 1984 (Appendix 6).

Regading the propensity of both Lismore City Council and Tweed Shire Council to require bitumen sealing of roads as a condition of M.O. Development, (see Appendix 7), we hold this to be unreasonable in both a moral and legal sense having regard to:

a) our understanding that the Department of Main Roads has established that, for typical rural roads, it is uneconomic to undertake sealing unless the Annual Average Daily Traffic (AADT) exceeds 350 vehicles. (See Appendix 8). Using the road usage figures from the Barker Survey, an average community of 20 households would use the road about 5 times per day, (10 AADT) - a far cry from 350!!! A perusal of AADT counts made by the Dept. of Main Roads on the North Coast indicates that roads with this count or higher are already bitumen sealed. (See Appendix 11b & 11d).

15. Council on p.12 states that the "formation of statutory (building) Codes are now overdue". We do not support this view. We support the Objectives of the Australian Uniform Building Regulation Coordinating Council relating to the application of "performance criteria" and "deregulation" of codes wherever possible. These objectives have been endorsed by the Minister for Local Government. We hence recommend:-

> "That as far as is practical the application of building regulations be based upon "performance criteria" and that where possible, there be "deregulation" of building codes in accordance with Objectives (ii) and (vi) of the Aust. Uniform Building Regulation Coordinating Council." (Recommendation 6.2)

16. Council on p.13 states that "many occupants ... through overseas travel, may be carriers of diseases such as cholera, typhoid etc". We asked the Council what evidence there was to support the view that M.O. settlers travelled overseas more than others (Question 14). Council replied that "... there is no evidence to show that M.O. occupants travel overseas more or less than other sections of the community..."!

17. Council on p.14, proposes that there be "limited third party appeal rights" to development on the grounds that "sensitive environmental issues can be raised from time to time". As it was not clear to us to whom it was proposed that this should be applied, we asked if it was proposed that this right be restricted just to M.O. developments (Question 16). Council have replied that "...they have only considered this matter in relation to M.O. development at this stage". We hence recommend:-

> "That there be no extension of third party appeal in relation to M.O. development unless this applies generally to the community." (Recommendation 6.3)

.....

B 2. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE LISMORE CITY COUNCIL

1. With respect to Council's concerns re public liability, (Lismore PS p.5), it is our view that the potential for liability in the situation cited would be low, given that the tort is a nonfeasance as opposed to a malfeasance or misfeasance. Any potential for liability could be further reduced by adequate signposting of the road with respect to dangereous curves, flood-prone crossings etc.

According to Torts by Mark Boulton, Law Book Company

seeks new legislation to deal with this issue. We have dealt with this topic in our item 5 above.

13. Council states on pp.11-12, that in the case of every M.O. development application approved, building work has been carried out, without the submission of a Building Application.

We point out in this regard that Council has required, without any options, payment in full of the s.94 contribution before an applicant is even eligible to submit a Building Application! It appears that applicants have either been negotiating this issue with Council, or are in the process of appealing to the Court, or are waiting for the outcome of this Inquiry. Given all the factors including the protracted time in processing the application by Council, the high value of the contribution, the pressing need for housing, concern over the precedent that could be set; the questionable legality of the contribution, the absence of a time payment offer, the absence of an "in kind" option and the absence of dedication of land as an option, it is not surprising that the applicants have commenced construction!

14. Council go on to state that "under current legislation it is necessary to demolish all illegal work". This we submit is an entirely erroneous reading of the legislation. As pointed out in the Supplement to our Primary Submission, (Doc. 34.), s.317B(1A) of the Local Govt. Act gives Council considerable discretion in this matter, namely that the Council "may" order demolition, or it "may" order the doing of "such work as is necessary to make the building comply with the Act", or the Council "may" choose to take no action. (See also correspondence from the Dept. of Local Govt. in the "Bega Report" (Doc. 2.) in this regard).

Further, we again draw attention to the statement made by the Minister for Local Government in corespondence of 25th Sept. last (Doc. 34.) in which he says:-

"I agree that demolition orders should only be used and enforced as a last resort. Also that rectification of buildings should be sought by councils on as cooperative a basis with owners as is practical."

We hence recommend:-

"That in respect to construction carried out without Council consent, s.317B(1A) of the Local Govt. Act gives a council discretion in that it "may" order demolition, or it "may" order the doing of "such work as is necessary to make the building comply with the Act", or it "may" choose to take no action. That the issuing of a demolition should be an action of last resort only, and that in the first instance rectification of the situation be sought by council on as cooperative a basis with the owners as is practical." (Recommendation 6.1)

certain number of days in the year), but some years later they change their minds or new shareholders come to "demand" a high level bridge.

In this example we see, as one option, that Council could impose a condition of approval that no application will be made to Council to raise the level of the bridge, but that if the applicants change their mind and come to want a high level bridge, then they will have to pay for it, or pay an agreed amount towards its construction. An appropriate deed and/or covenant could be prepared where necessary, to give such an undertaking legal standing and an assurance that the undertaking would run with the title in the event of the property being sold.

It is hence recommended:-

> "That in respect to public sevices and facilities Council should not assume "worst scenario" situations as a basis for adopting a uniform policy to be applied across the Shire. Rather, Council should commit itself to seeking out options (eg. requiring as a condition of approval, that no claim for upgrading of a road etc., be permissable within a stipulated period of time), to safeguard itself against being liable, in the event of future demands being made associated with a particular development application. To this end, each application should be considered on its merits." (Recommendation 3.1) (See also Recommendation 3.2)

10. Council, on p.9 propose that the Local Govt. Act be amended to make special provision for rating of M.O. land. Our general view on rating has been detailed in our Primary Submission. We are still of the view that the present options open to Council give a deal of latitude and that these are reasonable in the circumstances.

It is further viewed however, that if consideration should be given to amending the Local Govt. Act in respect to M.O. settlement, for whatever reason, then we consider that this should only be done in the context of a wholistic overview of all the ramifications. It appears to us that the appropriate focus for doing this would be in the preparation of a draft Community Titles Act. We hence recommend:-

> "That if consideration is to be given to any amendment to the Local Govt. Act in respect to rating of M.O., that this be carried out only in the context of preparing a Community Titles Act." (Recommendation 4.1)

11. In general the statements by Council (pp.8-10) on rating in relation to M.O. development, appear to stem from the concept that the user should pay. To be consistent we would expect to see other users of Councils' services and facilities, eg. tourists visiting the area, also "pay". We note in this regard that 344,000 tourists visited the Shire in 1983-4 (Tweed Shire Short Term Residential Development Strategy: Review 1985)!

12. In respect to unauthorised earth works Council on p.11

Council to forward a copy of M.O. application to the DEP, be not altered." (Recommendation 1.7)

8. Comments on Council's Primary Submission (p.3-6) dealing with s.94 contributions will be made in Part C below.

9. On p.7 the Council state that M.O. applications have been received from "the more affluent professional type of clientele". We assume these remarks are directed to the proposed developments in the Tomewin-Urliup area, and if this is the case, would draw attention to our comments above, viz. that in our view these are not bona-fide M.O.'s.

Not withstanding this, we can envisage at a theoretical level, there being a community of affluent members wishing to take advantage of M.O. legislation, doing so in a manner not inconsistent with the spirit of Circular 44. We would welcome such a development.

("Agricultural Technologists of Australia" are one such group who have been exploring options for some time in this regard. (See Appendix 21 for details). Their "Farm Club" and "Village Concept" have a deal in common with M.O. planning principles. To date their planning needs, to facilate the "Pokolbin Farm Club" have, we understand, been met through the "rural residential" provisions of the local planning instrument. If a Community Title Act were available, it appears that they might avail themselves of such legislation.)

Should "affluent" members desire "higher expectations of service to be provided by the local authority" it seems to us consistent that the latent self-interest would result in their making a contribution to the upgrading of the relevant road. Even some traditional communities known to us, who are far from "affluent", have voluntarily contributed to the upgrading of their local public road! Such a procedure is in our view preferable to having a fixed standard. One advantage of such an approach, is that it it is self-regulating, ie. it is geared to the residents capacity to pay.

Further, on p.7, Council maintain that M.O. Title can always be transferred to others and that, in the long run, through this process or natural increase via children, it will result in a "burden on community facilities" which ultimately will have to be provided by the local authority. This we consider to be a classic example of the "worst scenario" syndrome referred to in our Primary Submission (p.2). We know of only one community that has "changed hands" in the manner suggested, and despite this case, submit that the general evidence does not support this fear.

A more likely scenario in our view is that for some, personal values are likely to change over time and with this an expectation that Council should provide certain services or facilities. A proposed s.94 condition to raise the level of a bridge is submitted as a good example to illustrate this issue. Let us suppose that the present residents state that they do not want a high level bridge (and are prepared to be flood-bound for a

the environmental resources of the North Coast by appropriate zoning and controls, ..(and that).. other land use including agriculture may need to be constrained to meet these objectives". (Principle One).

In a press statement made by the Minister, (Appendix 4.) following the release of the above s.117 Directive Mr. Carr said:-

> "Our coastline is among our greatest assets as a State and we will not allow it to be destroyed. Development which would destroy the very asset it is designed to take advantage of will not be permitted."

We hence recommend:-

> "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comprehensive and effective T.P.O., with secure legal standing, be immediately introduced". (Recommendation 1.5(b))

> "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area; and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropriate directive, or if necessary, relieving Council of its planning jurisdiction." (Recommendation 1.5(c))

> "That if a breach of the Tree Preservation Order occurs that Council automatically take action to seek redress as provided under s.126 of the EPA Act:
>
> 1. imposition of a fine up to $20,000,
> 2. the replanting of nominated trees and their maintenance to maturity,
> and 3. provision of security to cover default."
>
> (Recommendation 1.5(d))

> "That a full time "environmental officer" be appointed by Council and given the authority of law to act on their own behalf in the event of a breach of the T.P.O." (Recommendation 1.5(e))

Secondly ...re earth works requiring Council approval.
In response to our question 11(a) as to whether earth works carried out at the above properties were other than is permitted under I.D.O. No 2, Col II, Council has advised that the works at Tomewin Pty. Ltd. and Mt. Carool Pty. Ltd. did require consent, and that no such consent has been given.

In reply to our question 11(b), Council advise that notices under the EPA Act were served on the two properties in question ordering a cessation of illegal work, but on advice, that they have delayed further legal action pending determination of their development applications. We hence

recommend:-

"That Council appears to have jurisdiction to require consent for road works associated with M.O. development (by virtue of same being outside the exemption provided in I.D.O. 2, Col.II)." (Recommendation 1.5(f))

"That the provision of an effective T.P.O. and requirement of consent for road works associated with proposed M.O. development are seen to be two effective ways of controlling non bona-fide M.O. development." (Recommendation 1.5(g))

"That as educational information re unauthorised development, Council periodically publicise, in the local media etc., that approval is required for road works in connection with proposed M.O. development." (Recommendation 1.5(h))

"That in the event of the development applications made by Tomewin Village Pty. Ltd. and Mt.Carool Pty.Ltd. being rejected or withdrawn that Council proceed with the pending legal action with a view to achieving full restoration of environmental damage along the lines detailed in recommendation 1.5(d) above." (Recommendation 1.5(i))

6. In respect to the location and construction standard of internal roads (Tweed PS p.4) it is our view that these be determined on the merits of the application. Roads we submit, if well sited and constructed by experienced persons, should be accepted as adequate. (We note that roads on agricultural properties do not even require Council approval, let alone engineering design and supervision!). We hence recommend:-

"That the location and design of internal roads be determined on the merits of the application." (Recommendation 1.6(a))

"That a uniform standard of construction for internal roads should not be adopted and that construction need not be supervised by a qualified engineer." (Recommendation 1.6(b))

7. Council (Tweed PS p.4) seeks exemption from advising the DEP about M.O. applications received on the grounds that this is "unnecessary" and "time waisting". We support the provisions of clause 12A(6) in LEP 6. The DEP is charged with monitoring M.O. development under clause 10 of Circular 44. As councils in general, we understand, have failed to supply the DEP with the requested information to enable monitoring, it is necessay in our view, that this now be obligatory. Such information, we consider, is essential source data to assist in understanding the diversity, extent and evolution of this form human settlement. It is for this reason that we support the monitoring provision of Clause 11 in the Draft of SEPP 15. We hence recommend:-

"That the provisions in clause 12A(6) in LEP 6, requiring

consent of Council.

Clause 4. "A person who contravenes this order...shall be guilty of an offence under the E.P.& A. Act."

In response to our question 10(c) however, Council advise that no breach of the T.P.O. has occurred but offer no comment by way of explanation! In this regard Mr. J. Glazebrook has advised verbally that the T.P.O. applies only "to those areas identified by Council as significant", and that as Council has not identified any such areas, the T.P.O. is "virtually meaningless".

We consider Council to be remiss in failing to have promolgated significant trees, and areas of trees, by now. We note that in the Primary Submissions by Barbara Downes and various others to the Inquiry, details have been given of significant trees in the Tomewin-Urliup area, and, that the general "Sites of Conservation Significance" were identified in connection with the Tweed Shire Local Environmental Study, by the Environmental Consultant, S. Gilmore in June 1983! (Appendix 2.)

Even if Council had "defined" the significant areas (thereby giving effect to the above provisions) the T.P.O. goes on to provide a wide range of exceptions where the T.P.O. shall not apply! Relevant to the current situation are:

6(v) "...trees located on council controlled land..." (eg. road verges).
6(vi) "...trees within the pathway of a proposed roadway ..." (This clause could be used to permit an unrestricted amount of clearing!).
6(vii) "...trees within a building site or within 8m. of any proposed building ..." (This clause could be used to give immunity to clear fell the whole of a property!).

Not withstanding the explanation that Council has not defined any trees as significant the wording in clause 3 above: " or the clearing of the land for speculative purposes" may be viewed as encompassing the above mentioned properties. (It is our view that the evidence suggests that the proposed development on each of the three properties is, in this context, for "speculative purposes"). Even if this view had been taken by Council, destruction of trees without the consent of Council could still have been possible by virtue of the trees allegedly being in a proposed roadway, or on a proposed building site!

We wish to express in the strongest possible terms our concern over the unsatisfactoriness of this situation, both from the point of view of the preservation of significant trees, and as a potential instrument open to Council to prohibit unauthorised development (be it M. O. development or otherwise). It is our view that the Tweed T.P.O. is making a mockery of the environmental planning legislation.

The Minister's concern in this regard is evidenced by the s.117 Directive (No S.16) (Appendix 3) issued earlier this year, in which it is stated that the council "shall take into consideration ... the need to protect

"That Council does have adequate jurisdiction to assess and determine the nature of internal roads." (Recommendation 1.4)

(Note. The above recommendations deal with the right of Council to assess internal roads in principle. The question of the location and the standard of construction of such roads is dealt with below.)

5. Council (Tweed PS p.4) states that the vast number of complaints about M.O. developments have been related to the construction of internal roads. In response to our question 15 as to how many communities have been the subject of complaint, the Council has advised that there have been four and that three of these are those in the Tomewin-Urliup area. It is our view that Tomewin Vilage Pty. Ltd., Mt. Carool Pty. Ltd. and Urliup Valley Pty. Ltd. appear not to be bona-fide M.O. developments. (cf. Circular 44 Clause 5 viz. "The policy requirements are designed to ensure that only bona-fide M.O. holdings are approved").

In this regard it is our view that a minimum test of bona fides is that there shall be evidence of a community, ("community" here meaning a group of people having a common aim to share resources and facilities); that a proportion of the land will be held in common; evidence that the development is not for the speculative gain of individuals (eg. sale in a short period of time); evidence of a policy likely to result in the settlement having a low impact on the environment and a sensitivity to the retention of natural vegetation. (For further comments on determination of "bona-fides" see below). It is hence recommended:-

"That the 'vast number of complaints...caused...by the construction of internal roads' appears primarily to be related to non-bona fide M.O. development." (Recommendation 1.5(a))

We are concerned to see that M.O. legislation is not misused and that councils have adequate powers to prevent non bona-fide development and where necessary that such powers are effectively used.

In this regard we sought information from Council in respect to the Tweed Tree Preservation Order (T.P.O.) (Appendix 1.) and earth works requiring Council approval. These two items will be dealt with separately.

Firstly ... re the Tweed Tree Preservation Order.
In response to our question 10(a) as to whether consent of Council to fell trees under the T.P.O. was sought by Tomewin Pty. Ltd., Urliup Valley Pty. Ltd. and Mt. Carool Pty. Ltd., Council has advised that no consent was sought. At its face value the destruction of trees on the above three properties would appear to contravene the T.P.O. which provides that:-

Clause 3. "This Order prohibits the ringbarking, topping, lopping, removing, poisoning, injuring or wilful destruction of any valuable wildlife habitats, rare trees and environmentally valuable stands of vegatation...as defined by Council or the clearing of land for speculative purposes without the written

include model documentation, typical maps, s.90 and LEP 6 3(a) conditions, explanation of possible contributions under s.94, staging, building issues, reference to the 'Low Cost Country Home Building' Handbook and the like." (Recommendation 1.3(b))

"That in considering an M.O. application Council has adequate provison to request the applicant for additional information, and to obtain advice from Government authorities such that it ought to be able to make an assessment of an application within the specified time constraint. It is submitted that additional legislation is not required to achieve this end." (Recommendation 1.3(c))

4. Council (Tweed PS p.4) maintains that there is no specific provision to control the construction and standard of internal access roads. We believe that it is reasonable to assume that Council does have jurisdiction to assess internal roads under LEP 6 12A 3(a)(iii) in particular, and generally via sub clauses (i), (v), (vi), (ix) and (xi) and further that s.90 (q) and (s) of the EPA Act might also be relied upon.

Reliance might also be placed on Circular 44, Polcy 8, which provides that "Councils should take account of...adequacy of access." (We draw attention here to the fact that Policy 8 does not appear to be confined to external roads!) Further the Note to Policy 8 states that where the enabling clause does not determine specific standards then each application may be considered on its merits with the option to require changes to site and development plans.

Further in this regard we draw attention to s.313(1)(i) of the Local Govt. (LG) Act:

"Where consent under the EPA Act, is required ... then in respect of any application for approval of the erection of the building the Council shall take into consideration - (i) means of access generally and particularly the means of access for the purpose of the removal of nightsoil, garbage and other refuse...."

and s.313(2)(a) which provides that:

"Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

Desite the latitude that councils appear to have under these provisions we wish to emphasise that they do not make vehicular access a mandatory requirement, but only that the question of access shall be "taken into consideration".

Not withstanding the above, if it is considered that assessment of internal roads is beyond authority under LEP 6, then it would seem appropriate that the LEP be amended accordingly. (This would of course reflect adversely on the drafting of the LEP in the first place!). It is hence recommended:-

pending expiration of the 40 day period to seek a "breathing space" for more time. The applicaion of an exhorbitant condition eg. the requirement of extensive road works under s.90, or a heavy s.94 contribution, are two "devices" that might seem attractive in this regard. A third "device" is (shortly before the expiration of the 40 days) to ask the applicant for further information or agreement to proposed conditions so that the reply might be incorporated into the final recommendation for Council approval. Where such measures are motivated as "devices" to circumvent the "deemed to comply" provisions of the EPA Act they are, of course, illegal. (Toohey v Aboriginal Land Council, 6 ALJR 164)

It is our view necessary, not only that Council carries out its obligations in the prescribed way, but also that it appears to the applicant that this has been done.(Rex v Sussex Justices, 1 K.B. at 256).

Our concern in this matter stems from the "elapse" time between the submission of a DA and when an owner builder may submit a BA and commence house construction. Normally the conditions in the DA, eg. road works and bridges are required to be completed prior to approval of Building Applications. In practice the conditions have been such that approval has resulted in the need for time consuming negotiation, possible court appeal, raising the required finance and physically carrying out the work. To date this has resulted in "elapse" times of up to two years! (See eg. doc. 34.6, item 39). This we submit might be appropriate in a speculative project village estate, but is totaly inappropriate and unreasonanble in bona fide M.O. development.

(So called "staged" development is one technique that addresses this problem viz. that Building Applications are approved progressively as stages of the required conditions are completed. Lismore Council for example, now accepts "staged" M.O. development. We welcome and support this solution.)

We hence believe that given resolution of the outstanding "difficulties" that it is reasonable to expect that applications can and, we submit, should be dealt with within 40 days. We hence ask that the Commission seek to find practical solutions to the outstanding "difficulties" in such a way that applicants may avail themselves of the "deemed to comply" provision if no response is received from Council within 40 days.

As a constructive proposal to this end we suggest that Council publish an information brochure to assist M.O. applicants in preparing their Development Application. Such a brochure could contain model documentation, typical maps, suggetions as to appropiate consultant or Departmental reports, building issues and the like. We hence recommend:-

> "That M.O. Development Applications be processed strictly within the statutory time period of 40 days." (Recommendation 1.3(a))
>
> "That to assist in processing applications within 40 days, Council produce a guideline brochure to assist applicants in the preparation of a Development Application. Such a brochure to

have addressed this question was when Council drafted the clause!

The practice of an applicant making a written statement or a statutory declaration is, in our view, sufficient as a statement of good faith, to satisfy the requirements of this provision. The wording in the Land Commission's DA to the Kyogle Council for the Wadeville property may, we suggest, be taken as a model in this regard.

It is our experience that this requirement is not an onerous condition on a bona-fide M.O. applicant and as such, goes some way to establishing the bona-fides of an applicant. For these reasons we have recommended retention of this provision in the proposed SEPP 15.

As to the alleged difficulty to "police" this provision we submit that it ought only be necessary to pursue this where there is evidence of, for example, non bona-fide development. (For comment on definition of "bona fides" see below). The availability of this provision is hence seen as one which could assist Council to deal with non bona-fide situations. It is hence recommended:-

> "That clause 12A(2)(b) be retained to give effect to the provision that M.O. be owned in its entirety in common by at least 2/3 of all adults residing on the land, or is otherwise owned on behalf of those persons." (Recommendation 1.2)

3. Council (PS p.3) has drawn attention to certain "difficulties" encountered in assessing the requirements set out in Clause 3(a) of LEP 6 within the statutory time constraint of 40 days. It seems to us that a deal of the "difficulities" experienced are of Council's own making! Council has suggested that some onus should be placed on applicants to provide certain information. We agree with this proposition but submit with respect, that this does not require special legislation or authority to obtain same. In our view, it simply requires that Council request such information!

Similarly to suggest that a "mechanism" needs to be set up to obtain comment from other Government Authorities is surely unnecessary. It is our understanding that relevant Government Authorities readily give comment when requested to do so. This procedure appears to be working satisfactorily in other council areas!

Such suggestions seem to us to reflect an inepitude by the Council to deal with the routine practicalities of the planning administration. We note that Council has approved only five M.O.'s in four years, and that for some applicants this has involved years of negotiation, while others have been waiting years to submit their applications. The notion that the legislation is new or that there are so called "difficulties", is not in our view enough to entirely excuse Council from all responsibility in this matter. We are left with the impression that at least in part, Council has been claiming "difficulties" as an excuse for not processing M.O. applications within 40 days.

We are aware that it might be tempting for Council, if concerned with the

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PART A. INTRODUCTION

Comments and recommendations arising from the primary submissions made by others are made in Part B of this submission. Part C contains our submission in reply and Part D contains a summary of our recommendations. The recommendations in the Summary are numbered in accordance with the Terms of Reference of the Inquiry.

Abbreviations

BA	Building Application
DA	Development Application
EPA	Enviro. Planning & Assessment Act
PS	Primary Submission
SEPP	State Environmental Plannning Policy
TPO	Tree Preservation Order

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PART B.

B1. COMMENT AND RECOMMENDATIONS ARISING FROM PRIMARY SUBMISSION BY THE TWEED SHIRE COUNCIL

1. In the Tweed Shire Council's primary submission (p. 2) the Council states that "confusion has arisen as to what is meant by 'prevailing lot size'". It is our view generaly, that there should be no minimum of 40ha. and that councils should have the discretion to determine each application on its merits. This we believe would be less constrictive for M.O. applicants, open the way for legalisation of illegal M.O.'s on properties less than 40ha. and permit closer dovetailing of M.O. development with provision for Dual Occupancy. The R.R.T.F has recommended to the DEP that the Draft SEPP 15 be amended accordingly. It is hence recommended:-

> "That the Comission recommend that Draft SEPP 15 provide that there be no minimum lot size for M.O. development (ie. that the present 40ha. minimum be deleted and that council consider each case on its merits)." (Recomendation 1.1)

We are not aware that other councils have experienced "confusion" over this policy in Circular 44. If there were special conditions in the Tweed giving rise to possible doubt about its application, we question why this was not dealt with at the time LEP 6 was drafted! In reply to our question number 13 to the Council, we draw attention to the fact that they have not sought clarification from the DEP of this clause!

2. In respect to the requirement that 2/3 of the residents shall be shareholders (Tweed PS p.3) we do not support the view that this provision is "irrelevant" or of "dubious merit". We note that Council does not cite any case where an applicant has sought to use this clause to justify illegal settlement. No such case is known to us, as occuring in any other area and we believe it to be contrary to a reasonable reading of Policy 6, Circular 44. If Council considers the wording of clause 12A(2)(b) to be "ambiguous" we submit that the appropiate time to

17. Poverty: 800,000 and Its Rising, Sydney Morning Herald, 11 Nov. 1985.

18. D.E.P. Circular 23, Oct. 1981.

19. R.R.T.F. Criteria Guidelines for Determining "Immediate Locality" re s.94, Dec. 1985.

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25. Shann Turnbull, Correspondence re Community Titles Act, 30.11.85.

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b. Ulmarra Shire Council, Report to Court Conference.
c. N.R.C.C., Correspondence 2.12.83.
d. N.S.W Energy Authority Policy Statement.
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27. D.E.P. Circular 77.

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7.b. Lismore Council Works Committee Minutes 5/7/83

8. Society for Social Responsibility in Engineering, letter 12 Aug. 1985.

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10. Northern Star Article re Road Funding, 31 Oct. 1985.

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    a. AADT Figures from Shire Records.
    b. Dept. of Main Roads AADT Stations.
    c. Dept. of Main Roads AADT Records.
    d. Northern Star Article re Logging Truck Damage to Roads, 13 May 1985.

12. Bellingen M.O. Action Group, Submission & Survey, [1984].

13. a. Advocate newspaper article, 7 Sept. 1985.
    b. Coffs Harbour Blueberry Cluster Farm Project - Financial Detail
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    d. Johnson Farm Management, Advertising Material, 4 Oct.1984.

14. Canberra Times Letter by Dr. L. Sommerlad et al., 18 Jan. 1985.
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15. Communes for the Unemployed- Dead End? Dr. T. Trainer, Geergarrow Newsletter, Oct. 1985.

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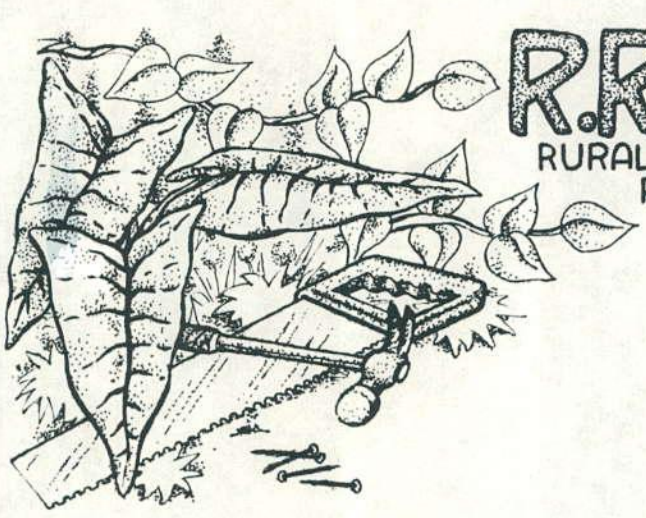

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R U R A L R E S E T T L E M E N T T A S K F O R C E

COMMISSION OF INQUIRY INTO

MULTIPLE OCCUPANCY IN TWEED SHIRE

SUBMISSION IN REPLY

(10.12.85)

CONTENTS

changes recommended by this Association as will be outlined in our submission to the Department in the near future;

2. That the present basis of local rating remain unaltered, that is, it be based on Land Value as defined by the Valuation of Land Act;

3. That a manual be issued by the Dept. of Environment & Planning explaining the development control process and outlining methods of avoiding or minimizing social & environmental impact;

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APPENDED

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Dave Lambert
(Secretary)

The R.R.T.F. is of the view that the present system of rating should remain unaltered and not be based on a user pay principle.

1(e) SCHEMES IN CONFLICT WITH M.O. OBJECTIVES WHICH INVOLVE SMALL AREAS OF COMMON LAND AND LARGE AREAS EFFECTIVELY ALIENATED TO INDIVIDUAL MANAGEMENT OR OWNERSHIP, WHICH ARE PROMOTED AS DE FACTO RURAL RESIDENTIAL SUBDIVISIONS

The Association is of the view that Clause 6(1)(d) of Draft S.E.P.P.#15 should remain unaltered as it ensures that at least 80% of the land should be held in common

1(f) ACTION THAT ANTICIPATES DEVELOPMENT APPROVAL BY WORKS SUCH AS CLEARING LAND, ROAD BUILDING AND THE CONSTRUCTION OF BUILDINGS

The Association is of the view that:
1. Existing illegal developments should be afforded the opportunity of legalizing their situation subject to the provisions of Draft S.E.P.P.#15 and if necessary using S.E.P.P.#1 in consultation with the Dept. of Environment & Planning; and that difficulties could be reduced by:

2. Speeding the implementation of the alleged pending amendment to s.317A of the Local Government Act to provide recognition of buildings constructed without prior approval.

3. Supporting the introduction of licensing of Caravan Parks and Camping Grounds as announced by the Minister for Local Government 7 August 1985. See Dept. of Local Govt. (1985).

4. Supporting the view that an owner, or part owner of a property, when residing on the property, is not required to obtain a Movable Dwelling license by virtue of s.288A(7)ii and s.288A(9)(a) of the Local Govt. Act.

5. Supporting the use of s.306(2) of the Local Govt. Act to enable Ordinance 70 Class X buildings, and partially constructed buildings to be used for occupation by owner-builders establishing themselves on Multiple Occupancies. (This provision is so utilised by the Lismore City Council).

1(g) ADVERSE IMPACT OF INDIVIDUAL M.O. PROPOSALS ON OTHER RESIDENTS IN THE VICINITY

The potential adverse impact on other residents in the area could be diminished by measures such as:

1. the planting of trees, shrubs, barner grass etc.
2. effective & sensitive sighting of buildings and other development;
3. councils acting in the role of a friendly adviser in the formulation of proposals;
4. the quick implementation of Draft S.E.P.P.#15 which would have the effect of allowing such development to be spead out into suitable areas of the State as opposed to being restricted to a very small and sometimes unsuitable locality.

(2) TO SUGGEST MEANS TO OVERCOME THESE PROBLEMS AND ANY OTHERS THAT MIGHT BE IDENTIFIED BY THE COMMISSION

1. That Draft S.E.P.P.#15 be gazetted as soon as possible with the

only is this happening but that such residents positively cherish the opportunity to become more self-reliant in this way and see such action as an important component in achieving a healthy lifestyle.

We oppose at this time any proposal to amend the existing legisation with a view to introducing either a head tax, dwelling tax or seperate tax on improved valuations with respect to M.O. Not only do we oppose such in principle but we also view that the introduction of any such legislation would be fraught with problems of administration. If a dwelling tax was introduced, for example, would the Council issue seperate rate notices? Would an "expanded" house with seperate bedroom units or a communal house of several adults be rated as one unit or several? Would pension concessions apply? Would a dwelling or the occupation of it, attract the separate valuation? Would all sections of the community be rated on a user pay principle?

As mentioned, Councils may, as an option seek to apply a differential rating for M.O. In the case of the Lismore Council, the M.O. rate is nominally the same as the general rate. It is noted when introducing this differential rate, no criteria were recorded by the Council as the basis for making this decision. By inference the sole criterion appears to have been that the "user pay"!

As an issue of principle we see no reason why, if a group of people choose to <u>share</u> an asset (as in the case of a property for M.O.), that they should be taxed at a higher rate. By analogy, if a number of people share an income they are not required to pay a higher rate of income tax, due to the act of sharing that income.

(In citing above the Lismore Council action to set a differential rate for M.O. at nominally the same as the general rate, we do so only to illustrate that this is but one option open to councils. We wish to place on record that we do not necessarily endorse that M.O. rates be nominally the same as the general rate. Our view is that each situation ought to be considered on the merits of the case).

Councils often cite the extra road pavement damage they assume results from residents commuting to and from M.O. communities in their cars. Dobinson (Deputy Engineer-in-Chief, Planning & Design, N.S.W. Dept. of Main Roads) states:

> "The amount of damage that a truck loaded to the permissable limit will do to road pavement is about 14,000 times greater than the average car; and the damage increases in relation to the fourth power of the axle load." Dobinson (1985).

So a community would have to average more than 38 (viz. 14000/365) car trips daily for a full year to equal the road damage done by <u>one</u> logging truck, bulk milk tanker or cattle truck, travelling from a 'traditional' rural property on <u>one</u> occassion!

We suggest that the only equitable and realistic method to make the user pay for road use is through petrol taxes. Short of this we approve of the present situation where the Grants Commission is making funds available to those Councils which have a population increase due in part to M.O. settlement.

(It is our experience that deterioration of unsealed rural roads is disproportionately higher in this region than other regions, due to the higher rainfall, rather than to greater road usage).

To conclude, we would express the view that to legislate in order to change the basis of rating to one of a user pay principle would be a Pandoras Box of monumental proportions eg. What rate will users of heavy vehicles pay on other rural properties? Or will clubs and hotels be rated differently from other commercial business because they generate a greater usage of roads and need more community services such as police and medical facilities to cope with the side effects of their activity!

on each M.O. dwelling.

"As you are aware, the Department's existing policy is not to regard this type of occupancy as a separate parcel of land in terms of the requirements of the Valuation of Land Act, 1916, and accordingly single land valuations of the whole of the property in one ownership are presently made and issued.

However, in view of your Council's request and other recent enquiries of a similar nature, the situation has been re-examined and the conclusions are as follows;-

It is clear that Multiple Occupancy of rural land is designed to provide an alternative life style based, in part, on agriculture.

These farm complexes, whilst somewhat different in character to "convential" farms, are nevertheless owned by one body and, from the information available, are worked as one unit on a co-operative basis for agricultural or pastoral purposes.

The development intention in all cases examined is clearly one of communal sharing of the whole of the land and NOT one of cuting the land into parcels devoted to permanent or undefined seperate use . . . . Council's request for seperate valuations for the two cases nominated cannot be provided."

The Association is of the view that land developed within the provisions of Draft S.E.P.P.#15 should not be seperately valued.

iii) Rating Based on a 'User Pay Principle':

In response to a Council suggestion for special rating for M.O. properties on a "user pay" principle the Department of Local Government made the following reply on 6 April 1983:

"The Council appears to assume a direct connection between rates and demand on local government services. This connection, in a direct sense, does not exist and has never existed, except perhaps in the case of local rates. It also seems to infer some sort of concept of head tax, which has never existed in local government.

Local Government rating is primarily a tax, based on the value of land, to provide support for local government. Although this concept is modified both in relation to local rates and differential rating, there has never been any suggestion, in practice, that an individual ratepayer should receive, or indeed should be able to demand, local government services in porportion to his rates.

Secondly, it is open to doubt that the additional demands placed on local government services would be high as seems to be envisaged by some councils. It is suggested that the very nature of hamlet developments indicates that they will look inwards rather than to the community at large for many of their services.

It appears that in the context of rating, the difference between hamlet development and other development is one of degree only. The office can see no reason why people living in a hamlet development should be treated differently from people living in a block of flats or units, people living in a granny flat, even perhaps a substantial number of people, whether related or not, living in a single dwelling. The judgment in the Dempsey family case (South Sydney Municipal Council v James and Anor 35 LGRA 342), although in another context would seem to have some relevance here."

Our association supports the above statement. With respect to M.O. residents looking "inward" for services, it is our experience that not

remains valid".

The Council allegedly applying a higher rate than the general rate is unknown to us and until such time as this is confirmed we question the accuracy of this statement. If this turns out however, to be the case it would seem to be a very liberal interpretation of this section of the legislation!

With respect to the charging of a differential rate less than the general rate, the Oct. 1983 edition of the Local Government Bulletin commented:

"Section 118(4) provides:

'The council may, in the resolution making the general rate, determir

(b) in respect of rateable land being:

(i) all rural land in the area;

(ii) rural land within a defined portion or defined portions of the area; or

(iii) all rural land in the area, except that within a defined portion or defined portions of the area;

that the general rate small be such amount in the dollar (being less than the amount defined to in subsection(3)) as may be specified in the resolution in relation to any such rural land; and the rate so specified shall apply uniformly to all rateable land in respect of which it is so determined.'

In order for a differential rural rate to be valid it is essential that:

"....(2) The various rates must be applied to all rural land in the various portions of council's area as determined;

(3) The amount of the rate in respect of the various portions must be specified in the resolution and must be less than the general rate under subsection 118 (3); and

(4) The rates determined for the various portions of council's area must be applied uniformly to all rateable parcels of land in the various areas in respect of which it is determined. This requirement is mandatory and failure to comply will result in the whole rate for the particular area being invalid.

The "portion" or "portions" referred to in subsection 118(4)(b)(ii) must be defined in one of the methods set out above in the resolution determining the rate in respect of the various portions. Each portion must be defined in a seperate resolution. Failure to comply precisely with the clause will result in the invalidity of the rate".

<u>This association holds that the present options open to Councils for rating M.O. should not be changed.</u>

ii) <u>The Suggestion for Separate Valuations:</u>
We concur with the Valuer General's reply to the Tweed Shire Council of 11 January, 1984 in response to their request for a seperate valuation

the future (Tables A10 + A11). So the County Council needn't concern themselves about building new power generating stations on the North Coast to service M.O. residents!

vii) Telephone: The Barker Survey found that a large proportion of M.O. residents wanted a telephone. It is also interesting to note that Telecom now discriminates against homeowners from M.O. Communities in that it adopts a 'user pays policy' for them versus a flat fee of $150 for other rural homeowners with freehold title. In any event the Council does not financially contribute towards the cost of telephone installations.

viii) Town Water: The Barker Survey indicated that no M.O. resident was hooked up to water supplied by Council (Table A12).

In general terms the Barker Survey found that most M.O. residents looked towards their own communities for providing most of their services. It reported that "56.7% were content with the present level of services. Of those who would like addtional services, 26% wanted an improved fire brigade, 20% social venues for children and 4% mentioned roads. . . . Generally, M.O. residents are satisfied with the level of service provision, and there was not a great demand for the development of additional services (except in relation to services for youth)" (pp. 30 &36). Youth Services are generally provided by the State government and not local government.

1(d) THE NEED FOR AN EQUITABLE SYSTEM TO RATE PROPERTIES WITH M.O. APPROVAL COMMENSURATE WITH THE ACTUAL RESIDENTIAL OCCUPATION OF THE LAND

1. Present Methods of Rating:
Councils are using three forms of rating with respect to Multiple Occupancy:

(a) charging the normal rural rate (which the R.R.T.F. supports)

(b) charging a differential rate greater than the general rate pursuant to S.118(4)(a) of the Local Government Act (L.G.A.), or

(c) charging a differential rate greater than the rural rate but less than the general rate pursuant to S.118(4)b of the L.G.A.

With respect to charging a differential rate greater than the general rate, a committee of Far North Coast Councils commented:

"Section 118(4)(a) of the Local Government Act provides inter alia-

The council may, in the resolution making the general rate, determine -

in respect of rateable land . . . in any town, village, centre of population or urban area within the council's area and which is specified in that resolution . . . that the general rate shall be such amount in the dollar . . . as may be specified in the resolution in relation to such town, village, centre of population or urban area so specified;

'Centre of population' is defined in Section 118(1) and "means a defined part of an area designated as a centre of population by the council...

At least one council in N.S.W. has used this section of the Act for M.O. development and levied a higher rate than the general rate. The ratepayer(s) have not appealed and therefore the rating method

We are of the view that Council Planners often greatly over estimate the anticipated demand for increased services by M.O. residents.

The following information is offered as an appropriate guide when assessing the demand for increased services.

1. Roads: In the Barker Survey, Barker (1985) Table 30, it was found that 75% of surveyed M.O. households owned their own vehicle and that... "most people leave their community on one or two days each week". It is further noted that some 76% left the community on three occassions or less each fortnight. Barker goes on to say that... "despite wide ranges and level of involvement in agricultural activities, transport needs are not great. Most communities reported using their own car two to six times a year for associated purposes such as obtaining fertilizer and mulch. Occasionally (once or twice a year) a truck was used".

The Survey also notes that 11% of households do not own a vehicle and that 13.2% use a car pool or group owned vehicle. Barker found that 2.7% wanted better roads (Table A18) and concluded "the road usage of M.O. dwellers, as indicated by this survey does not appear to be extensive" (pp.36).

In respect to the above we submit that it is instructive to note the findings in Dobinson (1985). Dobinson in comparing car use to truck use and the resultant damage to a road found that one truck (loaded to the permissable limit) will do road pavement damage equal to about 14000 cars. (For further details see under section 1(d)3 below).

ii) Baby & other Health services: The Barker Survey (Table 24) reported that only 3.8% of respondants missed not having such a service and such existing services in Lismore were "notable for their lack of use by M.O. residents". Only 2% (Table A18) wanted an improved health service. This study concluded "residents of multiple occupancies are not regular users of community services in nearby towns" (pp. 28).

iii) Library: The Barker Survey found that this service was used "to some extent" with 28 households using it from 1 to 10 times a year and 40 using it 11 to 40 times a year.(Table A18) It should be noted that Councils receive revenue from the State Government based on population numbers.

iv) Fire Brigade: The Barker Survey found that 25.7% of individuals wanted a better fire brigade (Table A18) but 6 M.O. communities had their own service, 10 communities planned to have one in the future (Table 22) and 8 participated in existing village brigades (Table 23). This Survey also noted (s. 3.3) that "six communities had experienced a bushfire on their property. These were mostly caused by neighbours burning off and were, in the main, extinguished by the community". This would accord with a view expressed by the Australian Conservation Foundation that "In the N.S.W. north coast area 95% of the many bushfires which occur each year are thought to originate from burning-off fires carelessly managed by graziers and other property holders." It should be noted that Council Bush Fire Brigade Services are funded through a levy collected by the State Government on premiums for fire insurance policies. M.O. homeowners pay the same fire insurance levy as other homeowners in the community.

v) Schools: The Barker Survey found that many M.O. residents were active in starting their own private schools (2) and pre-schools(3) with 102 individuals reporting they were involved with such community educational facilities (Table 23). For those children attending government schools, the State government provides the necessary resources at no cost to the local Council.

vi) Electricity: The Barker Survey found that only 2.2% of households were connected to mains power and none indicated wanting it in

appear to take the "worst senario" as the basis for "justifying" heavy road upgrading conditions!

Alternatives that might be considered in this regard are:

a. That where upgrading is borne by one development, that repayment be made (on a proportional basis) if and when other development occurs which uses the same road. (This method is used by the local electricity Authority and may be seen as a model in this regard).

b. Making as a condition of D.A. approval that no upgrading will take place at Council cost unless and until there are a stipulated number of actual or proposed road users. This model has we believe, been explored in the the Byron Shire where the relevant number of houses in question was 200.

We hope to make a further submission on this topic (which we see could stem from evidence presented to the Inquiry) but see as a basic principle that councils should not impose road upgrading conditions under s.90 in addition to imposing a s.94 contribution. It is our understanding that this is the position now taken by Kyogle Shire with respect to development which is already serviced by an all weather road.

We are opposed to any open ended situation which may have the result of an M.O. applicant double-paying for services or facilities simply because there are these two avenues under which a council may seek a contribution. Our experience in the Lismore City Council area, where road upgrading (often to the value of hundreds of thousands of dollars) and a road levy are charged, leaves us with the impression that this Council at least, is intent on maximising road upgrading and maximising an income contribution to the council, in a way which appears to be placing a disproportionate burden on M.O. applicants.

We further draw attention to the fact that road conditions sought under s.90 are frequently reduced or removed following negotiation and particularly that this is the case where there is a move to appeal the matter to the Land and Environment Court.

We are distressed that it seems that most M.O. applicants in the region (who wish to have an open relationship with the council) to date, have had no other option, but to run this gauntlet.

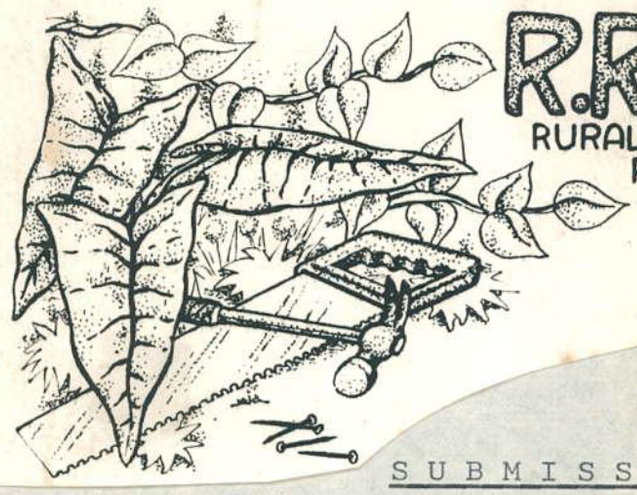
2. That since many M.O. communities develop slowly over a period of years, the contribution should only be payable at the Building Application stage.

3. That in imposing a s.94 contribution an alternative be permitted by Councils to a financial contribution eg. land contribution towards open space, labour on community projects, construction of a community facility such as a pre-school; (This would allow those on very low incomes such as Social Security benefits, to concentrate their funds on for example, building mateials and yet still make a s.94 contribution to the community).

4. That s.94 levies be limited to those items identified in Schedule 2 of Draft S.E.P.P.#15.

5. That councils should readily adopt the precedents established by the Land & Environment Court eg. council must establish that a need for the upgraded service exists, it must be reasonable and spent in the "immediate locality" within a reasonable period of time. St. George Building Society v. Manly Municipal Council. For other relevant cases see R.R.T.F. Information and Position Paper E.P. & A. Act. (1985) , and Jolley (1984).

1(c) THE IMPLICATIONS OF M.O. DEVELOPMENT FOR THE PROVISION OF OTHER SERVICES AND FACILITES



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S U B M I S S I O N B Y

T H E

R U R A L R E S E T T L E M E N T T A S K F O R C E

T O

THE COMMISSION OF INQUIRY
INTO MULTIPLE OCCUPANCY IN TWEED SHIRE

(20 Sept.1985)

INTRODUCTION

The R.R.T.F. is a non profit community based Association seeking to promote the interests of rural resettlement in the form of Multiple Occupancy (M.O.). (A copy of the "Objectives" as appearing in the R.R.T.F. Constitution is appended for your information).

With respect to the Tweed Shire the Association has been concerned about the particular manner in which M.O. development has occured since it was introduced by the Shire.

We understand that the findings and recommendations by the Commissioner arising from this Inquiry are likely to be reflected in the final wording of the current Draft State Environmental Planning Policy (Multiple Occupancy) (S.E.P.P.) #15 and in addition, that the Commission's findings and recommendations on the subject of rating are likely to be reflected in the rating policies of councils throughout the state.

(A copy of R.R.T.F. proposed amendments to Draft S.E.P.P.#15 will be forwarded to the Commission as soon as available).

The following submissions are numbered in accordance with the Terms of Reference of the Inquiry.

1(a) PROBLEMS ENCOUNTERED BY THE COUNCIL IN APPLYING THE PRESENT PROVISIONS OF L.E.P. No.6 - Shire of Tweed

Our comments will be made on the problems encountered by the Council when these become available.

1(b) THE DETERMINATION OF AN EQUITABLE FORMULA FOR ARRIVING AT CONTRIBUTIONS UNDER SECTION 94 TOWARDS COUNCIL-PROVIDED SERVICES AND FACILITIES

It is our view:

1. That there frequently appear to be basic differences in planners expectations, values and attitudes re the expected and/or desirable development in the long term, and, those of new settlers. (See Hamilton (1985) for examples of such differences). Frequently planners