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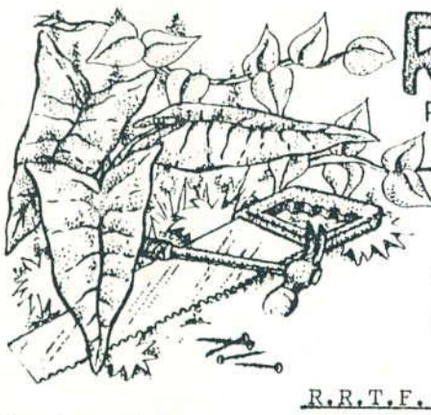

R.R.T.F.

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

B1

INFORMATION AND POSITION PAPER

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

R.R.T.F. POSITION Access Conditions and levies

The Act should be amended to require Councils to analyse and consider the effect of any proposed D.A. condition, charge or levy on the provision of housing for the poor as suggested in D.E.P. Circular 23 of 14Oct 1981 and on the ability of pensioners and unemployed to pay such costs. Policy 10 of the Housing Policy of the Local Gov't and Shire Association of N.S.W. states in part:

> "Councils should undertake the progressive development of an explicit housing policy which may be implemented through measures such as:
> The consideration of social and economic effects of housing losses and gains when considering development applications;"

We are of the view that once a road is public and is constructed, there appears no doubt that the council is fully responsible for its maintenance. (D.E.P. Circulars no's 23 and 42; Keith Hardmann Henry -v- Parramatta City Council (1982) ELR 0085 at the acceptable standard, or a higher standard if initially constructed to a higher standard).

Where a M.O. community is located at the end of a No Thru Road, it might in some cases be appropriate for Council to offer to sell the road to the community for $1., in which case Council would be relieved of the responsibility of maintaining it. In other cases a right of carraige way through a State Forest, Park or private property might be an appropriate and reasonable form of access.

In general terms, we would agree with the following statement from the 1982 Annual Report of the N.S.W. Land Commission:

> "Lack of established guidelines to interpret and implement s.94 of the Act has resulted in widely varying interpretations among Councils as to what is a reasonable level of contribution by developers... in some cases excessive contributions are being sought by Councils...uncertainty about level of contribution.... prevents the preparation of realistic feasibility studies....it is only by contesting extravagant and unjustified imposts that land prices can remain within the reach of first home buyers. It is for this reason that the Commission often finds itself at the forefront of disputes with other authorities".

We would also sympathize with similiar problems being experienced by other Departments such as the Education Department. According to the Far North Coast Report 1984. by the N.S.W. Land Co-ordination Unit:

> "Occasionally councils are unwilling to recognise the service obligations of the Department and tend to impose development criteria more appropriate to private development. For example, substantial contributions may be sought for the development of access roads, augmentation of water supply and, in some cases, cycleways and pedestrian pathways, etc. as conditions of development consent.
>
> This poses major problems for the Department in fulfilling its obligation to provide educational facilities in appropriate locations and at appropriate times to service the growing population.
>
> The Department feels that clear guidelines should be established by the Department of Environment and Planning to resolve such problems."

With such problems being experienced by Government Departments, what hope is there for the poor people of this State to have access to affordable housing?

The poor and other disadvantaged members of our society should not be held liable to seal the State's roads, replace wooden bridges with concrete ones or to set the development standards by recourse to the courts.

Multiple-occupancy seminar:

Landcom plans pilot scheme

The Land Commission of New South Wales (Landcom) hopes to establish a pilot low-cost multiple-occupancy scheme at Wadeville, about 15 kilometres west of Nimbin.

Landcom has taken out a three-month option on 90 hectares of land, on which about 60 adults could be accommodated on 30 homesites.

The announcement was made yesterday at Nimbin by the Minister for Housing, Mr Walker.

The Minister was opening a seminar on multiple occupancy organised by Landcom and the Rural Resettlement Task Force.

Details still are to be worked out, but the pilot scheme is in line with the Government's decision to look at a range of housing options for low-income people 'in response to the changing needs of our society'.

An aspect of the scheme would be multiple occupancy on a rental basis for those who might not be sure if they were suited to the lifestyle.

Planning policy

Mr Walker said he was pleased at a decision last year by the Department of Planning and Environment to draft an environmental planning policy for multiple occupancy.

If multiple occupancy was allowed in other parts of the State, land costs and share prices would be reduced, making multiple occupancies more accessible to low-income people.

"Because of the high costs and complications of development experimentation, it has become apparent that governments are the most appropriate bodies to explore these alternatives", Mr Walker said.

The Government's role in housing was not simply a matter of building more public housing and re-zoning more and more land for private dwellings.

"Government involvement should be to offer people real choices. Multiple occupancy is one of these choices," he said.

"The advantages of multiple occupancy include:

- "It extends home ownership to low-income earners.
- "It contributes to regional economic development.
- "It provides housing to areas experiencing rapid population growth.
- "It offers a socially productive lifestyle for low-income earners, including the long-term unemployed."

Mr Walker said that despite the positive contribution these communities could, and had made, they had faced enormous obstacles in their development.

"Obstacles which have, in some instances, been created by governments," he said.

He foreshadowed legislation dealing specifically with multiple occupancy.

But first there would have to be proper consultation with local government, multiple-occupancy residents, community groups and Government departments.

Mr Walker was asked about the Australian National University survey, which doubted the economic viability of rural communities.

"The university probably was right, but communities are feasible as a mode of living," he said.

"It is better to be unemployed and living in one of the most beautiful parts of the world, than living in a city slum. At least you can grow some of your own food to supplement your income.

"And remember, there are a great many farmers living marginally."

Speakers at the seminar included the Mayor of Lismore, Ald Bob Scullin, who said his council welcomed the Landcom pilot scheme as a further step in understanding the problems of multiple occupancy.

"It is a new concept in living and the whole community needs to understand it," he said.

The council had established a multiple-occupancy committee and he said that the council had never refused a multiple-occupancy development application.

But there was mistrust between the council and multiple-occupancy residents, and as such, he welcomed such seminars.

Other organisations represented included Telecom, the Department of Environment and Planning, the Sustainable Settlement Planners, the Land Co-ordination Unit, the Department of Finance, the Department of Local Government and the Kyogle Shire Council.

● ABOVE: Mr Walker, left, examines a display depicting multiple-occupancy lifestyles. With him is the chairman of the Rural Resettlement Task Force and a co-ordinator of the seminar, Mr Dudley Leggett.

Bonalb ope record

Organisers of the B cultural show on the N the first day of the a successful in decades.

Officials reported a in all livestock classes

They are confident also will draw another

A highlight yesterda

More than 120 ca from throughout the the major beef produc

Cattle numbers ye show's 57-year history

A three-year-old bu Carthy, of Culmaran pion beef exhibit.

The bullock also years class.

Organisers also we dairy cattle exhibits.

Dairy cattle were last year after a 30-y

Old Bonalbo dair McDonald scooped th classes.

Cattle exhibited by and female prizes.

A four-year-old owned by Mr and M the grand champion

Also judged yester

The prize for the s local girl Leanne Bo

Leanne and Black the shire hack and cl

The show and rode cattle dog trials.

Twenty-four dogs, sey, will compete in

The dog trials wi events.

More than 230 h maiden, novice, oper drafts.

The roughriding separate ring, are sch

The poultry and today.

Land Commission of N.S.W.

R.R.T.F.

MULTIPLE OCCUPANCY SEMINAR

I9 April I985 - Minutes Prepared by the R.R.T.F.

Introductory Session. Chairperson : Councillor Andrew Buchanan.

John Plummer (Chairman,Land Commission of N.S.W.). This seminar follows logically from the Land Commission's Feasibility Study on Multiple Occupancy, issued last year and widely distributed. This study has highlighted the complex issues facing m.o. settlers. It is estimated there are some 7-8000 of these now. M.O. is thus the most major innovation in land usage since white settlement. It is here to stay and the difficulties must be addressed. Many government bureaucracies and other parties must co-operate to resolve the issues,and never before have so many come together in one place to discuss this question.

Hon. Frank Walker (Minister for Youth & Community Services and for Housing & Co-Operative Societies) Landcom is now proposing to extend its normal activity of developing suburban blocks (at an infrastructural cost of at least $23,000 each) into developing m.o. communities suited to those on low incomes. Because of the high cost and complexity of organizing housing,the government must take a vital role and has been doing so in other innovative schemes e.g. housing for singles,shared housing,community tenancy schemes etc. But m.o. is quite unique in its difference. It extends home ownership to those on low incomes, contributes to the economic development of rural regions and increases their population and provides a socially desireable lifestyle for the long-term unemployed. But there are many obstacles to be faced,including the unavailability of a strong,ideal legal structure. The present ad hoc development cannot continue and a pilot project is proposed.It will be important to lower service costs by clustering settlement,to preserve agricultural land and to be sensitive to terrain and topography. A site for the pilot scheme has been located but unfortunately the land price is artificially high due to the limited areas where local council permits m.o. The proposed SEPP should lower land price for m.o's by 10-20%. We look forward to this valuable development now so many prejudices have been overcom

Dudley Leggett : (Chairman,RRTF) Thanks to the Minister and Landcom for enabling this seminar. The representation of nine government departments present here is welcome and rare. The RRTF is a think-tank whose membership is open to all and tends to come,along with its finance,from m.o. communities. It is concerned to synthesise and disseminate information central to the issue of rural resettlement. Such information commonly pertains to the legal structuring of communities,their internal decision-making,their economic and environmental viability and their relationship with local government. Our particular concern has been to interest government in promoting and assisting the growth of sustainable rural communities,especially by resettling the urban unemployed. A vast task confronts us all here today. Co-ordination and synchronicity between government departments (which at present can appear to be working at cross-purposes) is essential. The wide ramifications of such action should be kept before us : the alleviation of global concerns such as pollution,resource depletion,energy shortages,alienation and economic disorder. In planning and implementing these m.o. community developments,the people who will live there must be involved at every stage. The RRTF has located a core group constituting some 20% of the total population planned for the pilot scheme,and with the assistance of the Office of Youth Affairs & the Department of P.M. a training and information support project is now under way in this area to prepare them,and others,for the needed developments ahead.

Ald. Bob Scullin : (Mayor of Lismore) The Lismore City Council is attending this seminar out of support,not merely concern. But we must point out a very real need for controls and for clear understanding on the costs to the whole community involved. The council has a duty to plan for future demands.

7. SPORTING FACILITIES

(Still to be added)

No doubt m.o. is an entirely new concept of living, but we have every reason to expect future demands for road upgrading, schools and services. That is why we have to impose conditions when approving Development Applications. In doing so, it should be realized, a major reason for delay is that reports must be processed through at least three government departments. The council has never refused an m.o. application. Indeed, they have been pioneers and have faced resentment from both sides when m.o.s are proposed. It has fought a legal battle on their behalf, set up its own m.o. committee and held public meetings. We are also adopting a new policy which will legitimize temporary dwellings.

Planning session. Chairperson : Col James.

David Kanaley : (D.E.P. Grafton). The State Government, through the D.E.P., did in 1980 recognize m.o. is legitimate, here to stay and to be developed within a due process. Unfortunately, only a few councils have adopted Local Environmental Plans allowing it. Lack of widespread council adoption of formalizing procedures is forcing illegal development of m.o.s. Accordingly a SEPP has been drafted and soon will be publicly displayed for comment. Its contents cannot be now revealed but major issues dealt with are the need for m.o.; definition of the term; overhaul of the 1980 policy; staging larger develpoments; limiting s. 94 conditions on the D.A. imposed by local councils; the need to allow temporary dwellings; minimizing problems from bushfire, flood and visual impact; the need for local consent and the relevance of strata titling to m.o. The effect of the SEPP will be to overule local planning instruments. Should a council disallow an application for m.o. made under it, or impose excessively onerous conditions, then an appeal will lie to the Land and Environment Court.

Pat Knight : (Planner, Kyogle S.C.) Kyogle shire is economically poor, with high unemployment, with the depression of rural industry following the run-down of cream dairies in the '60's and '70's, the beef depression and diminution in the timber industry following over-cutting and loss of reserves to National Parks. We are unable to afford proper administration of the whole shire. Most of our 300 timber bridges need attention. The burden on existing ratepayers is already high. The only way that the extra services m.o. developments entail can be raised is via the s. 94 EPA conditions. The result is illegal development and lobbying to restrict the s. 94 conditions. If government is to encourage m.o. development and migration to country shires, it should consider who is to pay the infrastructure cost., and should compare their donation to that they make in the suburban context.

Peter Reynders : (Chief Town Planner Lismore C.C.) Friction resulted from the 1980 retrospective gazettal by the then Minister Paul Landa of 23 unapproved developments as m.o.'s. But local government in Lismore determinedly developed codes and standards. Local Government is a third and independent tier and is not an agent for merely enforcing government policy. But the council has sought to act fairly for all concerned, fighting objectors to an m.o. proposal in court (paying fees exceeding rate-income from all m.o.'s for 2 years), establishing an m.o. committee, paying for counsel's opinion on the lease-back arrangement etc. Council officers spend a disproportionate amount of their time on m.o. matters. The council and its staff are open to co-operating, but it is best won over by ideas not bludgeoning.

Rob Doolan : (Sustainable Settlement Planners) In co-ordinating the pilot project certain enlightened procedures will be adopted. So as to minimize future social conflict individuals will exercise choice in selecting their own homesite, its size and even its neighbours. Three types of development work are envisaged : those carried on by Landcom (roadworks, carparks, bridges, dams), that infrastructure built by community labour and treated as sweat equity (e.g. drains, fire reduction) and that long-term development not included in the official costing but left to resident's labour (e.g. footpaths, wildlife corridors). Landcom's approach to this pilot project for a valuable settlement option has every chance of success.

Robyn Read : (Director, Land Co-Ordination Unit). The concept of m.o. has come a long way because people up here have clear ideas and stand by them. Jane Miknius and Tom Webster of Landcom have taken up the ball and run with it. Most m.o.

development is taking place in the north coast region. This has the fastest-growing population and the most unemployment in the State. Its economic infrastructure is run-down and communications are difficult. It is a physically beautiful region, requiring sensitive management. There is a maldistribution of health services (with no care for the chronically mentally ill); road costs are very expensive; there are only 2.6 places per 1000 for tertiary education (at NRCAE), compared to a state average of 11.5; but the new settlers can contribute to solution of these problems. However, who is to pay the infrastructure cost of re-establishing them here ? Suburban infrastructure is expensive, at least $10,000 per lot cost to the State, plus some $1700 underwriting by the local governmemt. Medium density development may cost only one-tenth of this. But any development does cost, and can only be paid by the purchaser (renter) or the public sector. M.O.'s do present councils with new costs of servicing the extra population. The amount of rates they contribute are a mixed blessing : in Lismore 22 legal m.o.'s contributed $31,000 in rates. But looked at as 700 people in separate households of av. 3.2 each, they would (as rural residences) have contributed $176,000. Had all the houses been on separate agricultural holdings the rate would have been $56,000. But then, had these folk not been able to enter m.o. then they would probably have had no home at all. Had they not come to the North Coast the properties they represent would have contributed only $10,000 in rates. In order to assess what costs m.o.s should pay e.g. in s. 94 conditions, then more needs to be known about the real impact they do have on council services (there is no doubt self-sufficiency minimizes this).

Dave Lambert : (Secretary, RRTF) It is ironic that s. 94 of the Environment Protection Act, for which folk of our persuasion lobbied so hard, is now the major obstacle to m.o. development. Thus for instance, ten households at the formative Nervi Banana community were required to pay $85,000 for an access road. At Bundagen the Coffs Harbour S.C. required $\frac{1}{2}$m. in roadworks. Such charges amount to a levy to enter a local government area as a resident. Are refunds then available from the L.G. area one has left ? Engineering statistics indicate one fully-laden truck does 14,000 times the road damage of a car. Is this proportion of increase in development consents therefore to be applied to dairies and timber ventures relying on such trucks? 60% of m.o. settlers are on low incomes (social security Council may think it is being fair and even meeting m.o. settlers half-way, but for them the cost of imposed conditions remains as impossible as ever. Poor people should not be expected to seal the State's roads and to replace wooden bridges with concrete ones.

Financial / Legal session : Chairperson, Sue Barker.

Dick Gallimore : (Department of Housing and Construction -- FHOS). The new FHOS scheme has helped 142,000 people get their first home and has generated 55,000 jobs in the building industry. There have been teething problems in the scheme, including an 8-month backlog in appeals and a recent reduction of $1000 in the amount granted. The problem in making grants to m.o. settlers is twofold : we dispute there is "effective legal tenure" within the terms of the FHOS Act unless the shares and rules themselves evidence a right to occupy, with secure tenure, the dwelling concerned; and we are reluctant to make grants where the settler might, under the rules of the community, be expelled. It is no use applying for the grant under s. 11 because m.o. land will not be deemed "rural" unless it is used wholly or substantially for primary production in a business sense. If legal structuring can be achieved so as to satisfy us, a dwelling will attract the grant if it is the principal place of rsidence of the recipient, is council-approved and in accord with building ordinances , and regardless of whether or not certain amenities normally part of each house (e.g. laundry) are shared with others.

Shann Turnbull: (Financial analyst) In considering formation models for m.o. it is important they be affordable by any person without job or assets, reputeable (the involvement of Landcom helps here) and sustainable should welfare payments have to cease. The Mt. Lindesay model fitted the test : share price was $6250, of which $5000 was to come from FHOS and $20 p.w. from the settlers for one year as a license to dwell there. Guarantees must be afforded in the legal structure protecting each settler's assets and thus encouraging them to labour.

Tony Pagotto : (Solicitor,Lismore) Many legal structures can be used for m.o. But by defining the legal position in the structure costly test-cases in the equity courts can be avoided. This course also satisfies the present FHOS administrators. In taking it,however,one may sail close to the wind of subdividing the land,within the definition of the Local Government Act and contrary the DEP's circular 44 which forbids subdivision in m.o. zoning. One must also be careful,if any sense of community is to be preserved,to require that any selling shareholder, or one who has defaulted on a secured loan and whose financier has foreclosed, must have his block,share and entitlement offered first to the community (or its nominee) for sale. Should such a sale prove impossible then the seller may be allowed to offer to the public market at the same (not a lower) price. In these circumstances I have developed a structure,detailed in the Landcom feasibility study,which satisfies FHOS,enables use of the asset as security for loans and protects the settler's assets in improving the site.

Vernon Wong-See : (Senior Research Officer,Dept. of Co-Operative Societies). The Department will do everything possible to expedite registration of co-operatives and to minimize the long delays which can occur. Applicants can help by submitting their draft formation statement using the standard set of rules (approved variants may be used). Introducing unprecedented variations at this time leads to much delay and complexity. The objects in particular must be precise: the more prolix,vague and varied they are the more difficult it is to guage prospects of success. The Registrar is bound by statute to satisfy himself there is a good chance of success before registering. Applicants should therefore plan to present details of their funding.

Ray O'Rourke : (Commissioner of Land Tax) The Land Tax legislation is under review, but at present exemption is not granted merely because land is m.o. once it is above the threshold value of $55,000. Only by becoming a Rural Co-Op can an m.o. avoid this tax.

David Spain : (Solicitor,RRTF) It is incongruous that whilst some government dept.s (e.g. Landcom,Dept. Co-Ops) are encouraging m.o.,others are tripping it up. They should all be exempted from land tax (if anything must be) because if one looks beyond the legal technicality that an incorporated entity holds the title, they are in fact just aggregations of homes and primary production such as is normally exempt. That the FHOS grant does not flow to m.o. settlers,who need it more than anyone,under Labor as under the Liberals,(unless they effect a de facto subdivision of the land) is a bitter pill to swallow. The interpretations the FHOS administrators are putting on the Act are hollow and unfounded. There is nothing in the entire Act indicating the secure right to tenure must be enforceable at common law rather than at equity. Indeed,the rights which attract FHOS under s.11 (permission to build by a rural landowner) are only enforceable in equity. Where a respectable holding-corporation guarantees such security then it is bound by promissory estoppel to honour its word and that should be enough for FHOS administrators. Their second claim : that m.o. tenure is usually insecure because the community rules enable expulsion,is preposterous. When folk join a particular community it is because they want a lifestyle defined in those rules (e.g. no dogs or firearms). They are hardly likely to contravene them (as the absence of historical example proves). Folk presently being favoured by FHOS are more likely to have their home resumed by the DMR or army than an m.o. settler is to be expelled. It is grotesque that the effect of these FHOS constrictions is to force m.o. settlers to carve up the land formally,using devious legal constructions,paying survey fees and compromising that emphasis upon community values and freedom of access for all that they wish rather to treat as having priority. Nor are the bulk of such settlers in the least interested in mortgaging their interest and living under the shadow of the financiers. No doubt the new legal schemes (if they are not contravening the subdivision limitations) do suit a section of the market,but for the bulk the co-operative is best. It has a long and democratic history and all requisite guarantees can be written into its rules.There is an entire division of the Co-Op Act dealing with Community Settlement Societies which is entirely undeveloped. There is not a single one. Giving such exemption from land tax would be a prerequisite to reviving this division. But the government could go further and envisage an

entire socio-economic phenomenon like Mondragon,in the Basque region of Spain, developing in N-E NSW. Mondragon,a federation of co-operatives,has grown from nothing in 30 years,generating 20,000 jobs and an output worth $400m. p.a. This ("Rainbow") Region and that of the Basque country have much in common : a tight, mountainous bioregion filled with people who feel oppressed and have a cohesive vision of a new world. The Mondragon federation have built an entire social structure including schools,hospitals and credit unions. With a pinch of the right catalyst the same thing could be done amongst all the potentials and talent of this area. The major obstacles are under-capitalization and that apathy which assured regular dole-payments can engender. Neither obstacle is insurmountable. If a bioregion of m.o's could add economic independence to their environmental and social merits,what a political clout that would be !

Final (general) Session : Chairperson: Alderman Mac Nicolson.

Vince Collins : (District Manager,Telecom) Telecom has a 3-year planning cycle. No capital development can happen in the third year without planning. Uncertainty about the future of m.o. has been a problem for us. Occurence of illegal m.o.s particularly upsets our planning. We need a long lead-time because our policy is that 90% of materials we use come from local manufacture. This is not world-competitive and needs time and a secure contract to gear-up. When m.o.s are properly planned they allow us to minimize the route costs.

Alan Duke : (Customer Services Manager,Telecom) Telecom will provide a single phone to within 300 m. of any property's border. Reticulation beyond that point will,in the case of m.o.s,be bourne by the consumer. This cost will normally be $850 but will vary (especially upwards) depending on the terrain. This "customer pays" policy does not apply to rural subdivisions in general but rather only to m.o.s,because we class them with retirement villages which, under our legislation,are to be charged in this way. It makes no difference that m.o.s are non-profit-making or seek to provide homes for low income people. Our costs are high and there is no abuse of our discretion in deeming mo. "cluster housing" within the 1967 Act.

Chris Aird : (Builder's Licensing Board) The BLB protects the consumer by requiring all builders doing work worth $1000 + to be licensed; also any trade work worth $200 + . Owner-Builders are exempted but should get an Owner-Builder's license. To prevent speculative builders avoiding their liabilities in this way,only one Owner- Builder's license is allowed per person each five years. There are several advantages in dealing with a licensed builder. Rectification oders and arbitration are available through us. So is an insurance policy,which is indeed compulsory,premiums being paid when plans are picked up following council approval.. An Owner-Builer's permit is not required where the work is worth less than $1000. But m.o. properties are not in themselves exempt.

Lyall Dix : (Chairman,Building Regulation Advisory Committee). BRAC is located within the Dept. of Local Government. Its task is to advise the Minister on the technicalities of building regulations. In 1980 at the Local Government Minister's conference a uniform code of such regulations was adopted. This makes changes to the 0.70 standards slow,especially as the purpose of the regulations is to maintain a standard of health,safety and amenity. However, there is a trend towards "performance standards" which will assist in innovative building. The Low Cost Country Homes Book,put out by the DEP along those lines, does have some 14 anomalies from our point of view. There is no provision for retrospective approval of sub-standard buildings. This is a matter for local council either by s. 317A LGA Certificate of Compliance (to be called more accurately a Certificate of no action)so as to avoid council liability),or by a s. 317B order to upgrade. The final recourse is a demolition. If a builder wishes to avoid code standards,this can be organized with a structural engineer's certificate. BRAC will send a building advisory officer,finance permitting.

Karl McLaughlin(RRTF). Alternative technology is very competitive with traditional technology. In matters of water,housing,roads,power,the authorities must be wary of forcing m.o.'s to consume more than they want.

Dave Lambert :(Secretary,RRTF). Telecom should not be treating m.o. like a commercial cluster development,but rather like normal rural homeowners in a subdivision. There should be no alteration in present council rating methods. In particular any suggestion of a head tax upon settling should be avoided. Council rates are based on land value,not usage. Thus the Nimbin pub pays the same rates as the Rainbow Cafe,although its business turnover is far higher.

Peter Hamilton :(RRTF). The proliferation of rules,procedures,ordinaces (especially 0.70)is bewildering. It is now beyond the average person's comprehension.Council is not exercising creative discretions. When they refused to allow Bodhi Farm to have "open wall" rooms or to use mezzanines,we had to take them to court for a favourable verdict -- that no useful purpose would be served by enforcing the demolition order. There are too great limitations on BRAC's technical and policy role. The status if the Low Cost Country Homes Handbook should be clarified. More discretion should be exercised to accept performance-based criteria in the building code.

Dick Persson (Head,Housing Policy Unit) The purpose of this seminar has been to crystallize debate within the bureaucracy over issues such as the content of SEPP,road funding,land tax,FHOS and co-operatives. Public servants do not have the power to change the system -- some do not have the will,and indeed those who do usually have it squashed out of them. Keep up the grass roots efforts. In six or twelve months you may see some results. Don't forget your folk are eligible for Co-Op Housing Society loans -- get them on the waiting list. Thanks to all the bureaucrats for coming at such short notice.

Conclusion :

Sonia Atkinson : At last everyone seems to be in agreement that m.o. is a good thing,and that the legislation must come to terms with what is already there. Ten years ago the New Settlers could not have imagined the multiplicity of authorities with which they would be involved. It is now up to those authorities to co-ordinate between themselves and to keep in touch with the grassroots as it provides the facts and demolishes the myths. The authorities should take particular care not to remove some of the blockages whilst leaving others. It is basic to define what the term m.o. means. At present it conjures up a wide diversity of interpretations ranging from the mere holding and settling of land under common ownership to an entire range of social,economic and environmental requirements and expectations in the way this is done. Thus councils tend to shove m.o. in the "subdivision" pigeonhole whereas in fact it may be more concerned with the opposite : amalgamation of interests,holdings and satisfying needs. I suggest there are two criteria essential to being an m.o. :and both relate to the use of the land rather than to the incomes and further ideals of the settlers (these being difficult to discover or enforce). At least half the land must be held vacant for communal use,and the community must have control over who lives there. I advise the RRTF to research more deeply facts and figures on the demand m.o. folk have for services,since indications should be emphasised that,with self-management,they do and always will want far less. This seminar marks the end of ten years of striving on the part of the m.o. pioneers. Probably the next ten years will stabilizing and consolidating the vision they have achieved.

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R.R.T.F.

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INFORMATION AND POSITION PAPER

TELECOM INSTALLATION CHARGES

POSITION

The R.R.T.F. is of the view that the new policy discriminates against M.O. homeowners in that they are now to be treated differently from other rural homeowners. We cannot see any logical reason why a home with freehold title should be treated differently from one constructed on a shared piece of land.

The subcriber usage rate of a phone on a M.O. community should not be any less than that of other rural subcribers, and indeed, may be greater in many cases as a number of households often share the one phone. While there are often a number of phones on a M.O. community, there is rarely one in each household, and hence a greater degree of sharing would occur.

This policy will also introduce a number of anomalies and inequities within individual M.O. communities:- eg. will the first subscriber pay for most of the work and cable required by future subscribers?

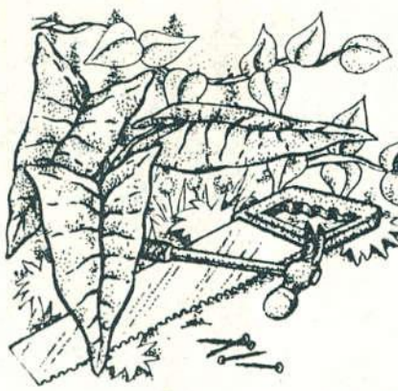
In general terms M.O. homeowners tend to be significantly poorer than those living on freehold title. A recent study, Rural Land Sharing Communities : A Partial Solution to Unemployment ? by Sommerlad et al. for the Bureau of Labour Market Research, concluded that social security benefits represented the primary source of income for 60% of income sharing units. Clearly, pensioners and other low income people would be unable to afford the "typical" proposed charge of $830.

As the new policy is discrimnatory against one form of home ownership often taken up by the poor sectors of the community, the present practice should be abandonned in favour of the former policy which treated all forms of rural home ownership on an equal basis.

INFORMATION

Until recently Telecom installed telephones for Multiple Occupancy (M.O.) subcribers for the standard connection fee of $150, which is applied to all rural subcribers within several kilometers of an existing Telecom line. The Lismore Regional Office of Telecom then started advising M.O. applicants that they would have to pay the full cost of installation for all work and materials needed to reticulate the service (after the first 300 meters) within the property. In response to R.R.T.F. submissions on this matter to the Minister, the Hon. Michael Duffy M.P., the Acting Secretary, Mr. B.W. Byrnes made the following reply on 12 November, 1984:

> "The current policy on provision of telephone services on multiple occupancy properties is the same as that applied to cluster dwelling developments and retirement villages, where new services are provided to a single point on the property and actual costs are charged to extend these services to the buildings on the property.
>
> A similar approach is adopted by other public utilities where the utlities pay the costs of providing services to the boundary and the owner is required to pay the cost of reticulation on private property.... Based on current estimates, the average cost to the owner of each dwelling on a typical multiple occupancy property will be $830.00....
>
> Telephone services have already been installed on some multiple occupancy properties for the standard connection fee in the belief that the dwellings had individual titles. However, Telecom does not intend to recover the costs of these installations".



R.R.T.F.

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E1

INFORMATION AND POSITION PAPER

LOCAL GOVERNMENT ACT AND ORDINANCE 70

R.R.T.F. RECOMMENDATIONS

Over the years members of Multiple Occupancies via the Task Force and the Home Builders Association (Rainbow Region) (H.B.A.) have actively sought a sensible application of building regulations in relation to owner built homes. (See for example, acknowledgement in the "Introduction" to the "Low Cost Country Home Building" (the Handbook) published by the Department of Environment and Planning, 1981.)

The H.B.A. have long held that if it was found that the application of Ordinance 70 positively prohibited sensible building practice, then it ought to be changed or not applied. The Association considered, however, that Ordinance 70 as it stood, gave Councils a deal of discretion and that if this was sensitively administered there would be no need to change the Ordinance unless there was a clear case (e.g., a Court decision) considered to be contrary to appropriate building practice. (The whole of the Handbook has been designed to be within the framework of the State's building regulations - see Foreword by Mr. Eric Bedford, Minister for Planning and Environment).

Further in this regard attention is drawn to the statement made by the late Mr. Paul Landa, the then Minister for Planning and Environment at the Hamlet Seminar in 1979:

> "We're looking to, as a State Government, the local Councils to exercise that discretion in a flexible and humane and considerate way and if that's not forth coming then there may have to be changes to those ordinances to guarantee some greater flexibility" (Seminar Proceedings P.E.C. 1980 p.46)"

We ask the Department of Local Government to issue appropriate directives to Councils on the following

1. (a) The manner of applying Ordinance 70.

(b) That Councils automatically bring the provisions of 317M of the Local Government Act to the notice of those making a Building Application which does not comply with Ordinance 70 as recommended by Ms. J. Fitz-Henry in her judgment. (1)

(c) That demolition orders be issued only as a last resort, and that in the first instance Councils attempt to resolve differences by, for example, negotiation, use of the discretion provided in s.317A and s.317B(1a) or recommending the use of 317M.

2. That Mezzanines are a sensible and low cost building solution. Provided adequate air circulation is available they are not unhealthy and are energy efficient to heat due to the restricted space. Their use for domestic sleeping can hardly be considered to constitute an affront to public decency. In view of this, and the submission that they are not illegal anyhow, we urge that a clear directive be made permitting such use.

3. With respect to Movable Dwelling Licences we ask that a directive be issued to Councils advising that it is not necessary for part owners or owners to apply for this licence.

4. That Councils be encouraged to exclude the application of Ordinance 70 either on an area basis or on the basis of specific sites, or both.

Comment: This very simple process would immediately free Council staff to attend to other matters and hence would result in a cost benefit to Council. The application of Ordinance 70 could, for example, be omitted for those properties where a M.O. Development Application is approved.

5. Readily issue bulletins or directives to Council to assist owner builders, M.O. communities and other group housing projects when necessary.

6. Change building law, ordinances etc. promptly when necessary.

7. Locate at least one full time building inspector permanently in the North Coast Region to assist Councils and applicants alike in the appropriate delivery of the Government's policy on building matters and associated issues.

8. Change the composition of the Building Regulation Advisory Committee (BRAC).

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Comment: We understand that BRAC advises the Minister on interpretation and proposed changes to the building regulations and beside containing representation from the Department we understand that the Committee consists of members from the Board of Fire Commissioners, Health Commission, Public Works Department, Housing Commission, Master Builders Association, Royal Australian Institute of Architects, Sydney City Council, Local Government and Shires Association, Institute of Engineers, Building Surveyors Institution, Australian Institute of Building. We trust that it is clear from this list that input to it from owner builders engaged in low cost experimental building techniques is hardly well represented! We request that consideration be given to either broadening the composition of the Advisory Committee to include specialists in the owner built low cost mode of construction, or otherwise create an avenue where pertinent issues such as we have raised may be brought to the attention of the Minister as a matter of course.

As the composition of the present Committee stands we do not consider that we are being represented by our peers.

That the Local Government Department implement as a matter of urgency the "performance standard" criteria as recommended in the Australian Uniform Building Code.

We draw attention to the reduction of minimum room sizes and other changes recently introduced in the counterpart of Ordinance 70 in Victoria. Ordinance 70 should be re-examined with a view to introducing parallel changes in this State.

INFORMATION

The application of Ordinance 70 to Multiple Occupancy (M.O.) communities by councils with unreasonable severity continues to be a source of friction in many areas. A number of the issues which have arisin are outlined below:

CL.47.1 (2): External walls:

> "....External walls (including openings around windows and doors) shall be so constructed as to prevent the penetration of rain or other water to the inner parts of a building".

Mr. (now Justice) Murray Wilcox Q C , offered the following written advice to solicitors for a local M.O. Community:

> "The Council apparently interprets clause 47.1 (2) as requiring, in relation at least to buildings not excepted under subclause (3), that there be a waterproof external wall of the building. It seems to me that this interpretation is incorrect. Subclause (2) does not, in terms, require the construction of an external wall. Rather, it specifies the nature if the construction of any external wall which is in fact provided. In other words, it assumes the existence of the relevant wall and then says that such wall shall be so constructed as to be waterproof. The subclause has nothing to say about a situation where, as here, there is no wall at all. Certainly, in my view, it does not require the provision of an external wall ..... Upon the Council's construction one would always have to close in, by waterproof walling, an open verandah or terrace. I cannot think that this was intended...."

In the Bodhi (M.O.) Farm case (1) the assessor did not find it necessary to determine the meaning of this clause, but set the demolition orders aside (further comment on this case appears on the following pages).

CL. 49.5 (1): Mezzanines

> ".... every habitable room shall be for at least 2/3 of the area of the floor not less than 2400mm in height and shall not in any portion be less than 1500mm in height ...."

If a mezzanine is a habitable room, then the 2400mm ceiling height requirement would apply; if it is merely a "space within" another room, then this requirement should not apply and is hence permissable and legal under common law.

S. 317 A Certificates

Mr. (now Justice) Murray Wilcox Q C has advised:

> "The Council seems to have proceeded on the basis that if there is a breach of the Ordinance then automatically steps must be taken to remedy the breach or the building be demolished. The Council also seems to have taken the view that if there is a non-compliance then no s.317A certificate may be granted. If the Council has taken that view then it seems to me that it has fallen into error. Relevantly, it is a condition precedent to the exercise of power under s.317B that the building was erected without the prior approval of the Council. I understand that this condition is satisfied, however, Council is not obliged to issue a notice under the section for the demolition or alteration of an unapproved building; it has a discretion as to the course it shall take. The effect of the appeal provisions in s.317B (5) is to commit to the

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S.288A (7): Movable Dwelling Licence:

Attention is drawn to s.288A (7) of the Local Government Act and the situation where an owner, or part owner is not required to obtain a movable dwelling licence. It is our experience that Councils and applicants are confused about the application of this provision. Some part owners simply do not apply for a licence and other part owners do with attendent costs and sometimes onerous conditions. Sometimes Councils make renewal difficult. We know of no instance where the Council has advised such an applicant that a licence is not required!

S.312 and 306 (2) : Class X Outbuildings

A class X building is one not intended for permanent dwelling purposes. It requires Council approval under s.312 to construct and then an application would be lodged to occupy it for a specified period of time pursuant to s.306 (2).

CL. 6.1 (4) : Dwelling House Definition

In the Dempsey case (3) a number of unrelated persons wished to convert an old wareshouse into a dwelling to live together sharing common facilities. Council contended that it was not a "dwelling house" but a "residential building". In this case, it was held that:

> "(1) The word "design" in the definition of "Dwelling-house" refers not to intended use but to architectural design ....
>
> (2) The relevant question, in considering an application to erect or alter a building claimed to be a dwellinghouse is whether, as a matter of fact, the layout is such as to be appropriate for a family unit to live in in the accepted way. It is irrelevant whether the actual occupants may properly be described as a single family.
>
> (3) Consequently the making of the proposed alterations would be an "erection" for the purpose of the single dwelling.
>
> (4) A building is used as a dwellinghouse within the meaning of the ordinance if it may fairly be said, as a matter of fact, that it is occupied in much the same way as it might be occupied by a family group in the ordinary way of life and that it is not a use and occupation more appropriately described in other categories of residential buildings. Hence it is unnecessary to consider whether the actual proposed occupants may be classified as a single family."

Demolition Orders and Natural Justice

In The High Court Twist case (4) the Chief Justice commented:

> "The common law rule that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power is both fundamental and universal:.... it appears to the court that the legislature has not addressed itself to the appropriate question, the court in the protection of the citizen and in the provision of natural justice may declare that statutory action affecting the person or property of the citzen without affording the citizen an opportunity to be heard before he or his property is affected is ineffective.... Where the legislation is silent on the matter, the court may presume that the legislature has left it to the courts to prescribe and enforce the appropriate procedure to ensure natural justice..... It is quite evident to my mind that, in enacting s.317B,the legislature has provided an opportunity for the owner of a property to be affected by the court's order to be heard before his rights are finally affected".

However such a denial of natural justice does not automatically void a demolition order and in the Twist case, the court held that the order was valid based on the other considerations in the case.

"Stop Work" Notices

According to Butterworth Information Bulletin No.6, Dec.1980:

> "There is no specific provision in the Act for the issue of "stop-work" notices and they are, in effect, administrative instruments issued by Councils which place the persons concerned on notice that they are in breach of the Act and liable to prosecution".

References:

1. A.M.NICOLSON - V - THE COUNCIL OF THE CITY OF LISMORE NO.20519 of 1983.

2. SEETO CONSTRUCTION PTY LTD - V - THE COUNCIL OF THE SHIRE OF SNOWY RIVER

3. SOUTH SYDNEY MUNICIPAL COUNCIL - V - JAMES AND ANOR, Court of Appeal 19 Sept 1977, 35 L.G.R.A.432.

4. TWIST - V - RANDWICK MUNICIPAL COUNCIL, High Court, August and November 1976. A.L.R. 390

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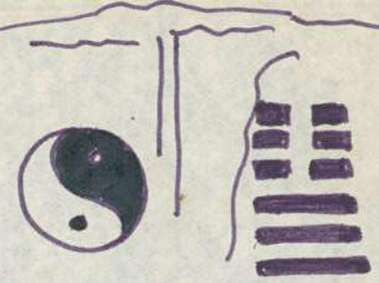

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B2

DEVELOPMENT APPLICATION - REQUIREMENTS

We suggest that Council's obligations under S.90 re environmental assessment of a proposed M.O. development could be adequately fullfilled providing the area for future dwellings are designated clearly so as to include only suitable areas, as regards soil suitablity, visibility etc. It may also be appropriate for Council to set design limits such as height of any future buildings. In this way repeated assessments would be minimized and determined at the onset, and applicants would not be required to make design and planning decisions unnecessarily prematurely.

INFORMATION - S.90,91 & 94

Councils are imposing onerous costs and conditions under s-90,91 & 94 of the Act. Many of the conditions are in dispute and are, in time, expected to go to appeal. The Court is in effect setting most of the standards, as the Act is drafted to allow for wide discretion in its interpretation. A number of established tests and conditions are outlined below:

1. The Council must form an opinion that the proposal "will or is likely to require the provision of or increase the demand for public amenities and public services within the area"; e.g., by virtue of population increase. The condition, also, must be fairly and reasonably related to the development. St. George Building Society -v Manly Municipal Council, (1981) ELR. 0228.
In Ligora v Leichhardt Municipal Council(1980), ELR, 0185, it was stated that councils with their experience and knowledge of land development can reach conclusions of a need for a reasonable dedication or contribution.

2. The contribution sought must be for the purpose of providing, extending or augmenting those public amenities and public services. Examples of public amenities and services for which contributions or the dedication of land have been required by the Court under s.94 include public car parking, drainage, open space, the upgrading of stormwater channels and traffic planning study and possible parking contributions consequent on the findings and adoption of that study.
M.Davies and Partners P/L v Sydney Council 16 June 1983

In John Mark Taplan & Anor v Hastings Municipal Council, No10229 of 1984, E.P.C.N.#10, it was held that a contribution of $250. for bushfire fighting purposes (for a rural subdivision) was for a planning purpose.

3. 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 e.g., the council will 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. Bartolo and Anor v Botany Municipal Council, 1981 ELR,5.
In the Taplin case (see #2 above) 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 consideration.

4. There must be a physical nexus between the condition sought and the development proposed. In addition, the contribution must be spent in the "immediate location". In one case it was held that a contribution for open space had to be "by development on it". In another case, where a parking contribution was sought the Court held that the parking sought was to be "... so situated and defined in such a fashion as to enable a decision to be reached that they are capable of being indentified with the proposed development".

5. The contribution must be spent within a reasonable time. If not, the contribution would not be a valid levy under s.94. Long term projects 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 insufficient to do anything. Three to five years is suggested by the courts.

Meriton Apartments Pty Ltd v Willoughby Municipal Council (1980) ELR,22. and Novati Design and Construction v Leichhardt Municipal Council(1981)ELR,22.

6. Conditions must be reasonable. This is a complex matter of no easy solution; each case depending on the facts and circumstances relevant in the area. Certainly, a reasonable contribution cannot be an exaction or tax.

(a) In Keith Hardeman Henry v Parramatta City Council,(1982) ELR,0085. It was stated that a condition is unreasonable where works were only temporary and needing replacement when the general reconstruction of the road was carried out. In relation to this aspect, "temporary" must be related to a period and this might be accepted as the three to five year period. If council intends reconstructing a road within that period then temporary measures might be unreasonable. Each circumstance must be individually assessed as there may be other extenuating circumstances.

B3

(b) In Henbury Pty.Ltd v Parramatta City Council (1981)ELR 0003,it was stated that in that instance the dedication of reserved lands as a usual policy suggests opportunism rather than planning principle is behind the policy. It was further noted that section 91 (sub-section 3(h) excepted) does not provide an alternative or ancillary power to impose the disputed condition as such a condition falls squarely within the ambit of Section 94.

(c) In Pulver, Cooper & Blackley v Greater Cessnock City Council (1975)3 LGATR.172 "The LGAT has required an access road to be sealed even although the subdivision was creating three lots only. It did so notwithstanding all subdivision roads (and many other) in the area were of gravel formation. What led the tribunal to its decision was that the un-made road as it existed was completely impassable by normal vehicles even after minimal rainfall". It held that "Topography and terrain are such that an all-weather gravel formation is most unlikely to be usable at all times without repeated maintenance... It is not right or proper or reasonable that the Council should be expected to become responsible for such a suspect road". (The Town Planning and Local Government Guide Vol.26). 305/306.

(d) In Building Owners & Ors -V- The Council of the City of Sydney,No. 40084 of 1983, E.P.C.N.#10, Justice Cripps made comment about a Council policy which "precluded it from considering an individual case on its merits. It was held that Council may not adopt a rule or policy "disabling itself from exercising its direction in idividual cases and may not adopt a rule or policy inconsistent with its statuory obligations and duties ..... without regard to individual circumstances".

(e) In the Carr case Councils request for a $57.000 contribution was reduced to $1000/additional living unit as Council's request was unacceptable because:

(i) it was based on a standard of open space much higher than existed in the Municipality or in the subject area;

ii) Council was trying to use new development to overcome a deficiency which had existed for a long time;

iii) Council had not made allowance for the population which could live on the site if houses were erected on it. (The site comprised 5 parcels of land, thus 5 houses could have occupied the site). No contribution would have been required for such development.
Carr Holdings Pty Ltd v Leichhardt Municipal Council
E.P.C.N.#2

(7) The courts will permit discounting in cases where, for example, the development may be "of an environmental planning advantage to the community". Daniel Callaghan Pty.Ltd. -v-Leichardt Municipal Council(1980) ELR,13. This case was an appeal against a contribution of $387,000 for open space. The figure was arbitrary and not justified (but $30,000 was justified). The Dept of Environment & Planning in its Circular 23, dated 14 Oct 1981 states:

"The implications of the Section for development costs and ultimate costs to the consumer need to be carefully evaluated. Any increase in development costs as a result of contributions under Section 94 must be weighed against the wider community concern about access to housing. The Department's view is that there needs to be a comprise in the use of the Section between the provision and establishment of services on the one hand and the cost to the ultimate consumer on the other".

(8) In Council of the City of Sydney - v - Ke-su Investments & Ors No.40059 of 1983, E.P.C.N.#7 the court noted that the rules of natural justice were applicable to planning law. See also Twist -v- Randwick Municipal Council,High Court, A.L.R.390.

INFORMATION - COUNCIL DEVELOPMENT APPROVALS

In the Billen Cliffs M.O. case(George & Ors -v-The Council of The City of Lismore,No.40191 of 1982) the objecting neighbours took Council to court for approving the application. Justice McClelland found in favour of Council holding that:

"If it were necessary to decide (if)..... the orders sought by the applicant should be made, the balance of hardship would weigh heavily against them. The (M.O.) unit holders who are people of modest means have invested considerably both in money & hope.... and the evidence of one objector.... convinced me that the impact of the proposed development on the objectors would be minimal".

In S. Le Cornu -v- Maclean Shire Council,No.10412 of 1981, E.P.C.N. #10 the Court overturned Councils objection to the use of a farm property for a rehabilitation centre for drug addicts and parole. The assessor indicated that:

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(a) He doubted whether the fears of the residents even when "discounted by reason of the natural human tendency to exaggerate difficulties and problems that are in prospect and are not at present existing" (referHardie,J. In Foley -v- Waverley Municipal Council L.G.R.A. 26 at p.30) constituted a relevant "social effect" of the proposed development (section 90(1) (d). Rather, they appeared to be more accurately designated a reaction to the proposal.

(b) "in balancing the prospective social benefit of the project for the whole community against the asserted social detriment to the local community ... "locality" in S.90(1)(d) is not limited to the immediate environs of the appeal site", since such a narrow focus would artificially constrain or distort balancing the social effects".

(c) The Court did not "regard the social detriments as imposing a manifestly unreasonable or disproportionate burden on the few neighbours. Their perception of the social costs is understandably different. However their private interests have blurred their ability to make an overall assessment of the social effects of the proposal. In consequence they emphasise their own private rights. This they are entitled to do but it falls to the Court to make the final evaluation and this task is facilitated by the Court's ability to be objective".

(d) Flood liability/fire risk to cane crops
Although the Court accepted that in times of heavy flooding the island would be cut off from the mainland, it noted that such flooding did not present any intrinsic or special danger and that emergency services existed to transport people to the mainland. It had not been demonstrated that the proposal involved any special risk relating to fire hazard.

INFORMATION - D.A. REQUIREMENTS

One Council has been requiring a seperate D.A. for each Building Application. In Quota Corporation -v- Leichhardt Municipal Council,D.E.P/ Legal Digest #4, 1982, Justice Cripps declared

> "that Council's main objective in seeking to define the application as a development application was to impose conditions which could only be imposed at development application stage, notably contribution for open space. His Honour considered that Council had made no real attempt to justify the imposition of the condition relating to open space contribution".

In Land Lease Developments -v- Hornsby Shire Council No.10222 of 1983, E.P.C.N.#7 it was agreed that the D.A. did not comprise detailed plans but a "master plan" and the Court attached a condition requiring a further D.A. for each individual building application.

In a Bodhi M.O. Farm case(A.M.Nicholson-v- Lismore City Council,No. 10327 of 1983) the original D.A. designated general areas for future proposed dwellings "without the need for a further development application". This approach was supported by the Regional Office of the D.E.P. The Assessor commented:

> "I prefer the submission of Council that such an approach lacks specificity and may avoid a proper environmental assessment of future development based on specific location, size and design of building and such matters. It is my opinion Council properly interpreted the application as specifically indicated on the land use plan by the legend and notation of proposed new structures. Anything beyond that would be speculative".

It would appear therefore, that M.O. applicants will either have to submit detailed D.A.'s (specifying location of future house sites) or be prepared to submit individual D.A.'s with Building Applications following approval of a master plan. The latter course leaves them open to costs and conditions being imposed at the prevailing rates.

ACKNOWLEDGAMENTS AND DISCLAIMER

Much of the information presented is de rived from Court judgements and reports written by legal experts. In a couple of cases we have been unable to indicate the source of the advice. Nor can the RRTF guarantee that the information presented is without error of any kind. So it should only be used as a guide and not as a substitute for legal advice specific to one's personal situation.

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D1

INFORMATION AND POSITION PAPER

FIRST HOME OWNERSHIP SCHEME (F.H.O.S.) GRANTS

A number of difficulties and long delays have resulted when multiple occupancy (M.O.) community members have applied for these grants. Some of the issues are outlined below as quoted from Ministerial or Departmental correspondence.

Tenure in the land:

"By way of background I should explain that participants in many multiple occupancy developments we have examined to date have been ineligible for F.H.O.S. generally because the individual's tenure for the land is either non-existent or readily defeasible by the body corporate, trustee or owner as the case may be. In some cases, for example, a breach of even minor rules of the Co-operative or other governing body can result in explusion of that member and forfeiture of interest in that body.

The security of tenure of the individual participant is paramount and provisions in the rules of a body corporate which enable explusion and forfeiture of an interest in the body corporate often result in that person being ineligible for F.H.O.S.

The general criteria is that a "right of occupancy" should be a legal right; in other words enforeable by the individual in the Courts if necessary.

Further, the reference in section 11 (4) and (5) in the First Home Owners Act to "an exclusive right of occupancy" indicates that it is the individual's rights which are paramount for the purposes of the FHOS Act. The Department takes the view that it is not possible for an individual to hold an exclusive right of occupancy jointly with the other owners of the land. Therefore an individual must be able to lawfully evict a trespasser including an adjoining neighbour from the individual's dwelling".

Expanded House:

"Where 4 buildings each exclusively used by seperate family groups as sleeping quarters are erected adjacent to a fifth building which incorporates kitchen, living and washing facilities used in common by the family groups; then such a communal structure and seperate sleeping quarters would be a dwelling for the purposes of the F.H.O.S. Act, provided that the person seeking assistance has an exclusive right of occupancy of the sleeping quarters and a right in common with a limited number of other persons to use and occupy the communal facilities".

Costing of Project

"In the case of owner-builders, whether or not they are building on a multiple occupancy project, the Department needs some idea of the expected cost to the applicant in order to be able to judge whether adequate financial resources are or will be available. The value of any labour the applicant will contribute therefore is of no concern to the Department.

If the home is to be funded from Social Security and F.H.O.S. benefits, this should be stated and the application will be assessed on that basis.

There is no minimum cost or value for a qualifying home. As the Minister has explained previously, the legislation requires simply that the Department must be satisfied that the facilities it provides are such that it is reasonable to regard it as the principal place of residence of a person or persons; and that, if any building standards are applicable to it, it complies with those standards".

Completion of Project

"The legislation provides that assistance shall not be paid until the dwelling has been completed or the Secretary is satisfied that substantial progress on the construction has been made or is likely to be made within a reasonable time. The provision is administered flexibly, having regard to obvious building delays faced by owner builders financing construction from their own resources as funds become available. There must be some certainty that a project will proceed to completion before assistance can be paid, but it is recognised that with a modest owner built project, the F.H.O.S. payments may represent the major part of the finance required".

Grant as a Rural Property:

"Under section 11 of the Act, a person building a home on a rural property who does not own the land on which that home is to be built, may be eligible for assistance if the owner of the land gives permission for that person to occupy the home on completion.

D2 Section 4(1) defines "rural property" as,
(a) land used wholly or substantially for carrying on the business of primary production; or

(b) land that the secretary is satified should, having regard to its extent, location, use or zoning be regarded as a rural property for the purposes of this Act.

This section would be relevant to M.O. siituations provided the specific requirement as to "business" can be satisfied. Further, subsection (b) must be used, for example, where land is rural and an applicant has the intention of using it for primary production, but may not be doing so at the time an application is made".

".... the word "business" is a specific requirement and the land must be used wholly or substantially for that purpose. From the documents evidenced, there is no indication that the land will be used for generation of income through primary production, but rather for self-sufficiency. In my view self-sufficiency does not meet the requirements of the running of a business on the land".

Grants for Trusts:
Both a local unit trust and a non-discretionary type trust have been rejected for assistance on the following interpertation:

"Section 12 of the F.H.O.S. Act contains the provisions relevant to trust holdings. Where a person holds an interest in land in trust for another person or persons (referred to as the beneficiary or beneficiaries) and the Secretary is satisfied that the beneficiary or beneficiaries will become the owner or co-owner of the land, the beneficiary can be deemed to be the owner or co-owner for the purposes of the Act. Simply continuing to be a beneficiary of a trust is not sufficient for the purposes of the section. In Re D.R. and J.A. Jeans and the Secretary, Department of Housing and Construction 2 ALD 337, the Administrative Appeals Tribunal determined that certainty of the vesting in the applicants of legal title to the subject land is required, not a mere possibility that such a vesting may occur at some indeterminate future date".

R.R.T.F. VIEW

We believe that the Department is adopting a very rigid and conservative interpertation of the requirements of the legislation and has ignored one's rights under common law and the laws of equity.

For example we would express doubt that the Courts would agree to permit an explusion (without compensation) for a minor breach of the rules as this would be contrary to natural justice. See Ethell v Whalan (1971) 1 NSWLR 416 .

Dean Letcher of Counsel advised solicitors for a local M.O. co-operative some years ago that he considered that:

"....each of your clients has, in my opinion, an equitable interest in the structures although by their erection on the land of another they may have no claim which would succeed at Common Law. I think there is little doubt that the Co-operative could not simply take the benefit of the structure unless it offered equitable compensation (Rand-v-Chris Building Co Pty Ltd (1957) V.R. 625) and because the occupiers of the structures had conducted their affairs on the basis that they were permitted the benefit of the occupation the Co-operative would not be permitted to withdraw it (W.J. Alan Limited - v - El Nasr co (1972) 2 All E.R. 127 at 140). There in something of a High Trees estoppel in this proposition in that the owner of the land would not be permitted to resile from a position which it itself has caused to exist and he will be prevented from so resiling permanently. This means that he is permanently estopped in equity rather than merely having his rights suspended with an expectation that a period of suspension will be terminated.
It will be apparent from the above that I consider that the persons who erected and occupy the various structures have a sufficient interest in the structure to obtain equitable relief whether by way of financial compensation or injunction to restrain interference with their enjoyment of the structures on the basis of their expenditure of time and effort and the agreement with the owner of the land".

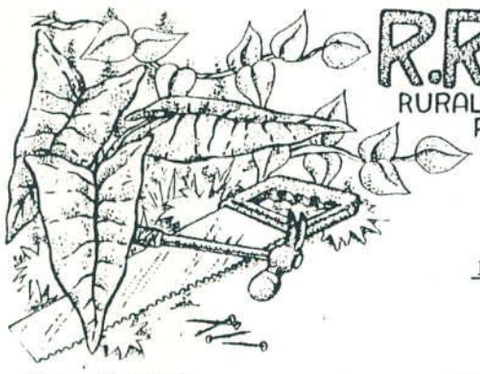
Since the F.H.O.S. is aimed at assisting those in need to obtain housing and M.O. is assisting this aim we believe that the Secretary could comfortably come to the view that land zoned for M.O. could be regarded as "rural property pursuant to S.4(1) (b) and S.11 wherein applicants are not required to own land themselves, but have permission to occupy it.

In any event, the R.R.T.F. is of the view that if the current legislation does not permit payment of F.H.O.S. grants to most M.O. applicants, then the Act should be amended to be less restrictive.

Or alternatively an equivalent grant should be made available under some other programme, providing the trust or corporote body is of a non-profit nature. One such programme is the Local Government and Community Housing Program (LGACHP) which will provide grants to the States to distribute for low cost rental housing to community groups, voluntary organizations and rental housing co-operatives.

However, under present arrangements, the money for this programme is very limited and distribution of the grants at the discretion of the Minister on the recommendation of a committee.

April 1985.



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(E)

R.R.T.F. POSITION ON CO-OPERATIVES

The R.R.T.F. encourages multiple occupancy (M.O.) communities to incorporate so as to facilitate holding land title, clarify decision-making processes, structure business operations, minimize disputes and afford members the protection of limited liability. From the variety of incorporative structures available, the R.R.T.F. encourages the co-operative method for the following reasons:

(a) Initial set-up and ongoing costs are minimal.

(b) If established as a Rural Society then the co-operative is exempt from land tax.

(c) The co-operative has perpetual succession and all normal benefits of incorperation.

(d) Co-operatives have a long and democratic history.

(e) They are not difficult to form provided applications are in order.

(f) They are extended certain special financial advantages including deductability of dividends from taxable income, exemption from certain stamp duties, ability to call up extra funds by special resolution, limitations on individual share-holding and the ability to remain a vibrant member-run organization by being able to forfeit shares of members with whom they have had no dealings for three years.

(g) There is some flexibility to achieve anything within the Rules of a co-operative which can be achieved by more complex, expensive and indirect means. This includes attatching defined land to shares and giving the share-holder express rights thereover.

(h) There are federations of co-operatives within Australia and in a worldwide network. Extensive camaraderie exists within the movement which has, in Australia, formed banking, travel, training and lobbying services.

It should be pointed out that certain disadvantages and criticisms apply:

(a) Registration can be slow if the applicant deviates from the standard rules. The R.R.T.F. has a list of options which have been approved. Once registered, a society can then at leisure debate and register novel or idiosyncratic rules.

(b) The Registrar of Co-operatives must be satisfied the proposed venture has a good chance of success. A formative M.O. community can show this by having an option to purchase specific land, an indication from local council that an M.O. Development Application could be issued for that land, and some positive indication that the balance of funds and shareholders would be forthcoming.

(c) The Co-operation Act requires the Registrar's consent before any Rule change can be registered. This is sometimes painted as "outside interference". However, in balance it should be more positively regarded, as a safeguard for co-operatives against themselves: against financial naivete, unscrupulous or misguided majorities, rules contravening legislation, or rules which are poorly drafted.

The R.R.T.F. specifically requests:

(a) That the Registrar designates a staff member familiar with M.O. aims, aspirations and problems to handle M.O. enquiries.

(b) That the Registrar continue liaison with R.R.T.F. so as to develop an official information sheet pertinent to M.O. and with a variety of rule options available at that time.

(c) That groups having trouble achieving registration, or in convincing the Registrar they clearly have a good chance of success, contact R.R.T.F. for advice.

MARCH 1985

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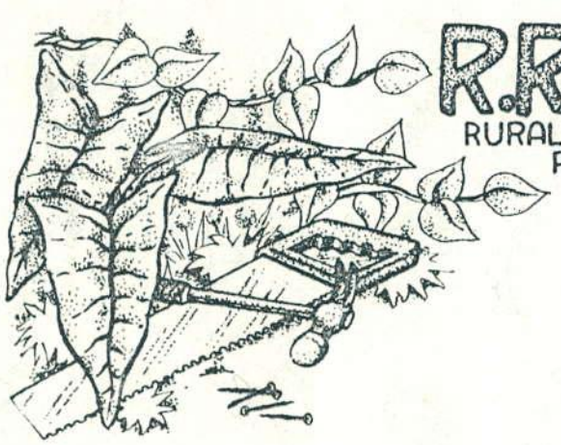

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RURAL RESETTLEMENT TASK FORCE
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INFORMATION AND POSITION PAPER

TELECOM INSTALLATION CHARGES

POSITION

The R.R.T.F. is of the view that the new policy discriminates against M.O. homeowners in that they are now to be treated differently from other rural homeowners. We cannot see any logical reason why a home with freehold title should be treated differently from one constructed on a shared piece of land.

The subcriber usage rate of a phone on a M.O. community should not be any less than that of other rural subcribers, and indeed, may be greater in many cases as a number of households often share the one phone. While there are often a number of phones on a M.O. community, there is rarely one in each household, and hence a greater degree of sharing would occur.

This policy will also introduce a number of anomalies and inequities within individual M.O. communities:- eg. will the first subscriber pay for most of the work and cable required by future subscribers?

In general terms M.O. homeowners tend to be significantly poorer than those living on freehold title. A recent study, Rural Land Sharing Communities : A Partial Solution to Unemployment ? by Sommerlad et al. for the Bureau of Labour Market Research, concluded that social security benefits represented the primary source of income for 60% of income sharing units. Clearly, pensioners and other low income people would be unable to afford the "typical" proposed charge of $830.

As the new policy is discrimnatory against one form of home ownership often taken up by the poor sectors of the community, the present practice should be abandonned in favour of the former policy which treated all forms of rural home ownership on an equal basis.

INFORMATION

Until recently Telecom installed telephones for Multiple Occupancy (M.O.) subcribers for the standard connection fee of $150, which is applied to all rural subcribers within several kilometers of an existing Telecom line. The Lismore Regional Office of Telecom then started advising M.O. applicants that they would have to pay the full cost of installation for all work and materials needed to reticulate the service (after the first 300 meters) within the property. In response to R.R.T.F. submissions on this matter to the Minister, the Hon. Michael Duffy M.P., the Acting Secretary, Mr. B.W. Byrnes made the following reply on 12 November, 1984:

> "The current policy on provision of telephone services on multiple occupancy properties is the same as that applied to cluster dwelling developments and retirement villages, where new services are provided to a single point on the property and actual costs are charged to extend these services to the buildings on the property.
>
> A similar approach is adopted by other public utilities where the utlities pay the costs of providing services to the boundary and the owner is required to pay the cost of reticulation on private property.... Based on current estimates, the average cost to the owner of each dwelling on a typical multiple occupancy property will be $830.00....
>
> Telephone services have already been installed on some multiple occupancy properties for the standard connection fee in the belief that the dwellings had individual titles. However, Telecom does not intend to recover the costs of these installations".

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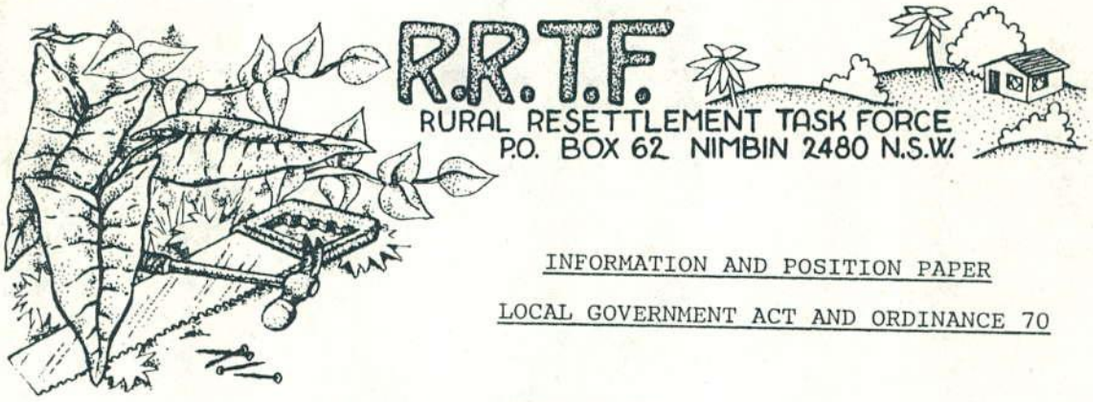

INFORMATION AND POSITION PAPER

LOCAL GOVERNMENT ACT AND ORDINANCE 70

R.R.T.F. RECOMMENDATIONS

Over the years members of Multiple Occupancies via the Task Force and the Home Builders Association (Rainbow Region) (H.B.A.) have actively sought a sensible application of building regulations in relation to owner built homes. (See for example, acknowledgement in the "Introduction" to the "Low Cost Country Home Building" (the Handbook) published by the Department of Environment and Planning, 1981.)

The H.B.A. have long held that if it was found that the application of Ordinance 70 positively prohibited sensible building practice, then it ought to be changed or not applied. The Association considered, however, that Ordinance 70 as it stood, gave Councils a deal of discretion and that if this was sensitively administered there would be no need to change the Ordinance unless there was a clear case (e.g., a Court decision) considered to be contrary to appropriate building practice. (The whole of the Handbook has been designed to be within the framework of the State's building regulations - see Foreword by Mr. Eric Bedford, Minister for Planning and Environment).

Further in this regard attention is drawn to the statement made by the late Mr. Paul Landa, the then Minister for Planning and Environment at the Hamlet Seminar in 1979:

> "We're looking to, as a State Government, the local Councils to exercise that discretion in a flexible and humane and considerate way and if that's not forth coming then there may have to be changes to those ordinances to guarantee some greater flexibility" (Seminar Proceedings P.E.C. 1980 p.46)"

We ask the Department of Local Government to issue appropriate directives to Councils on the following

1. (a) The manner of applying Ordinance 70.

(b) That Councils automatically bring the provisions of 317M of the Local Government Act to the notice of those making a Building Application which does not comply with Ordinance 70 as recommended by Ms. J. Fitz-Henry in her judgment. (1)

(c) That demolition orders be issued only as a last resort, and that in the first instance Councils attempt to resolve differences by, for example, negotiation, use of the discretion provided in s.317A and s.317B(1a) or recommending the use of 317M.

2. That Mezzanines are a sensible and low cost building solution. Provided adequate air circulation is available they are not unhealthy and are energy efficient to heat due to the restricted space. Their use for domestic sleeping can hardly be considered to constitute an affront to public decency. In view of this, and the submission that they are not illegal anyhow, we urge that a clear directive be made permitting such use.

3. With respect to Movable Dwelling Licences we ask that a directive be issued to Councils advising that it is not necessary for part owners or owners to apply for this licence.

4. That Councils be encouraged to exclude the application of Ordinance 70 either on an area basis or on the basis of specific sites, or both.

Comment: This very simple process would immediately free Council staff to attend to other matters and hence would result in a cost benefit to Council. The application of Ordinance 70 could, for example, be omitted for those properties where a M.O. Development Application is approved.

5. Readily issue bulletins or directives to Council to assist owner builders, M.O. communities and other group housing projects when necessary.

6. Change building law, ordinances etc. promptly when necessary.

7. Locate at least one full time building inspector permanently in the North Coast Region to assist Councils and applicants alike in the appropriate delivery of the Government's policy on building matters and associated issues.

8. Change the composition of the Building Regulation Advisory Committee (BRAC).

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Comment: We understand that BRAC advises the Minister on interpretation and proposed changes to the building regulations and beside containing representation from the Department we understand that the Committee consists of members from the Board of Fire Commissioners, Health Commission, Public Works Department, Housing Commission, Master Builders Association, Royal Australian Institute of Architects, Sydney City Council, Local Government and Shires Association, Institute of Engineers, Building Surveyors Institution, Australian Institute of Building. We trust that it is clear from this list that input to it from owner builders engaged in low cost experimental building techniques is hardly well represented! We request that consideration be given to either broadening the composition of the Advisory Committee to include specialists in the owner built low cost mode of construction, or otherwise create an avenue where pertinent issues such as we have raised may be brought to the attention of the Minister as a matter of course.

As the composition of the present Committee stands we do not consider that we are being represented by our peers.

That the Local Government Department implement as a matter of urgency the "performance standard" criteria as recommended in the Australian Uniform Building Code.

We draw attention to the reduction of minimum room sizes and other changes recently introduced in the counterpart of Ordinance 70 in Victoria. Ordinance 70 should be re-examined with a view to introducing parallel changes in this State.

INFORMATION

The application of Ordinance 70 to Multiple Occupancy (M.O.) communities by councils with unreasonable severity continues to be a source of friction in many areas. A number of the issues which have arisin are outlined below:

CL.47.1 (2): External walls:

> "....External walls (including openings around windows and doors) shall be so constructed as to prevent the penetration of rain or other water to the inner parts of a building".

Mr. (now Justice) Murray Wilcox Q C , offered the following written advice to solicitors for a local M.O. Community:

> "The Council apparently interprets clause 47.1 (2) as requiring, in relation at least to buildings not excepted under subclause (3), that there be a waterproof external wall of the building. It seems to me that this interpretation is incorrect. Subclause (2) does not, in terms, require the construction of an external wall. Rather, it specifies the nature if the construction of any external wall which is in fact provided. In other words, it assumes the existence of the relevant wall and then says that such wall shall be so constructed as to be waterproof. The subclause has nothing to say about a situation where, as here, there is no wall at all. Certainly, in my view, it does not require the provision of an external wall ..... Upon the Council's construction one would always have to close in, by waterproof walling, an open verandah or terrace. I cannot think that this was intended...."

In the Bodhi (M.O.) Farm case (1) the assessor did not find it necessary to determine the meaning of this clause, but set the demolition orders aside (further comment on this case appears on the following pages).

CL. 49.5 (1): Mezzanines

> ".... every habitable room shall be for at least 2/3 of the area of the floor not less than 2400mm in height and shall not in any portion be less than 1500mm in height ...."

If a mezzanine is a habitable room, then the 2400mm ceiling height requirement would apply; if it is merely a "space within" another room, then this requirement should not apply and is hence permissable and legal under common law.

S. 317 A Certificates

Mr. (now Justice) Murray Wilcox Q C has advised:

> "The Council seems to have proceeded on the basis that if there is a breach of the Ordinance then automatically steps must be taken to remedy the breach or the building be demolished. The Council also seems to have taken the view that if there is a non-compliance then no s.317A certificate may be granted. If the Council has taken that view then it seems to me that it has fallen into error. Relevantly, it is a condition precedent to the exercise of power under s.317B that the building was erected without the prior approval of the Council. I understand that this condition is satisfied, however, Council is not obliged to issue a notice under the section for the demolition or alteration of an unapproved building; it has a discretion as to the course it shall take. The effect of the appeal provisions in s.317B (5) is to commit to the

Court the ultimate decision as to the proper exercise of discretion: see re Diecut Pty.Ltd. Ex Parte North Sydney Municipal Council (1963) 8 LGRA 343 at p. 348. There have in fact been numerous cases, some of which are reported, where the Court has upheld the appeal and set aside or varied the requirements of the notice notwithstanding the fact that it was satisfied that the building has been erected otherwise than in accordance with approved plans."

With respect to s.317A Certificates, Mr. Justice Cripps in the Seeto case (2) commented:

"... I do not think it is necessary for the Council to identify every possible departure before determining that it should issue a certificate that the building complies assuming, as I do, that no contraventions or departures were discernible by the exercise of reasonable care and skill. In my opinion, if after considering all the relevant material (including inspections etc) and there are no discernible contraventions of the Act and Ordinances or departures from the plans and specifications, the Council's duty would be to furnish a certificate to the effect that the building complies...."

According to Butterworth's Information Bulletin No 6:

".... another avenue sometimes used to give a semblance of legal sanction to building work carried out without prior Council approval is to apply for a Certificate of Compliance under s.317A of the Act. If the council sees fit it may then issues a certificate in one of the forms set out in that section, that is -

(a) that the building complies with -

(i) the Local Government Act and ordinances;

(ii) the plans and specifications, if any, approved by the council: and

(iii) the Environmental Planning and Assessment Act 1979, and any environmental planning instrument; or

(b) that any contravention of the matters listed in (a) above is not such as need be rectified".

S.317B (1A): Demolitions

Some Councils are under the impression that section 317B(1A) requires a Council to order the demolition of buildings "erected or altered .... without the approval of the Council ....". It is our view that section 317B (1A) should be read as giving Councils a discretion. When an offending building is brought to Council's attention, the Council "may" order demolition or it "may" order the doing of "such work" .... as is necessary to make the buildings .... comply with the Act and ordinances". The Council may also decide to do nothing.

In the Bodhi Farm (1) case the court set aside 2 demolition orders (due to the lack of an external wall and the ceiling height in a mezzanine) because:

".... no useful public purpose would be achieved by confirming the demolition orders as issued by the respondent Council .... The way of life chosen by those on Bodhi Farm, and other such settlements, requires a certain remoteness for its success; it is only in these situations that one could, with some degree of safety from the dangers posed by other human beings, live so close to nature as to want to dispense with an external wall, Also, it is only certain people who would really want to live so close to nature that they choose to plan their/houses so as to facilitate the entry of wild life rather than otherwise. If these two houses were to pass into other ownership, it would not be a major task to enclose these rooms as the Council wants them to and indeed as others have already done on Bodhi Farm".

S.317 (M): Ordinance 70

In the Bodhi case (1) the assessor commented:

".... in future the provisions of 317M of the Local Government Act should be investigated at building application stage if it is considered unreasonable and unnecessary by the applicant that the full ceiling height as required by Ordinance 70 should be provided. By way of comment, it is regrettable that the "Low Cost Country Home Building"report at p.16 under the heading "Appeals and Objections" gives both misleading and inadequate advice on the simple 317M objection procedure available in this Court to all applicants under Part XI Building Regulation, of the Local Government Act, 1919. This procedure, however, is not available here as the structures in question were erected without building approval being obtained beforehand".

Note: The s.317M provision can be used with respect to any ordinance 70 clause.

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Attention is drawn to s.288A (7) of the Local Government Act and the situation where an owner, or part owner is not required to obtain a movable dwelling licence. It is our experience that Councils and applicants are confused about the application of this provision. Some part owners simply do not apply for a licence and other part owners do with attendent costs and sometimes onerous conditions. Sometimes Councils make renewal difficult. We know of no instance where the Council has advised such an applicant that a licence is not required!

S.312 and 306 (2) : Class X Outbuildings

A class X building is one not intended for permanent dwelling purposes. It requires Council approval under s.312 to construct and then an application would be lodged to occupy it for a specified period of time pursuant to s.306 (2).

CL. 6.1 (4) : Dwelling House Definition

In the Dempsey case (3) a number of unrelated persons wished to convert an old wareshouse into a dwelling to live together sharing common facilities. Council contended that it was not a "dwelling house" but a "residential building". In this case, it was held that:

> "(1) The word "design" in the definition of "Dwelling-house" refers not to intended use but to architectural design ....
>
> (2) The relevant question, in considering an application to erect or alter a building claimed to be a dwellinghouse is whether, as a matter of fact, the layout is such as to be appropriate for a family unit to live in in the accepted way. It is irrelevant whether the actual occupants may properly be described as a single family.
>
> (3) Consequently the making of the proposed alterations would be an "erection" for the purpose of the single dwelling.
>
> (4) A building is used as a dwellinghouse within the meaning of the ordinance if it may fairly be said, as a matter of fact, that it is occupied in much the same way as it might be occupied by a family group in the ordinary way of life and that it is not a use and occupation more appropriately described in other categories of residential buildings. Hence it is unnecessary to consider whether the actual proposed occupants may be classified as a single family."

Demolition Orders and Natural Justice

In The High Court Twist case (4) the Chief Justice commented:

> "The common law rule that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power is both fundamental and universal:.... it appears to the court that the legislature has not addressed itself to the appropriate question, the court in the protection of the citizen and in the provision of natural justice may declare that statutory action affecting the person or property of the citzen without affording the citizen an opportunity to be heard before he or his property is affected is ineffective.... Where the legislation is silent on the matter, the court may presume that the legislature has left it to the courts to prescribe and enforce the appropriate procedure to ensure natural justice..... It is quite evident to my mind that, in enacting s.317B,the legislature has provided an opportunity for the owner of a property to be affected by the court's order to be heard before his rights are finally affected".

However such a denial of natural justice does not automatically void a demolition order and in the Twist case, the court held that the order was valid based on the other considerations in the case.

"Stop Work" Notices

According to Butterworth Information Bulletin No.6, Dec.1980:

> "There is no specific provision in the Act for the issue of "stop-work" notices and they are, in effect, administrative instruments issued by Councils which place the persons concerned on notice that they are in breach of the Act and liable to prosecution".

References:

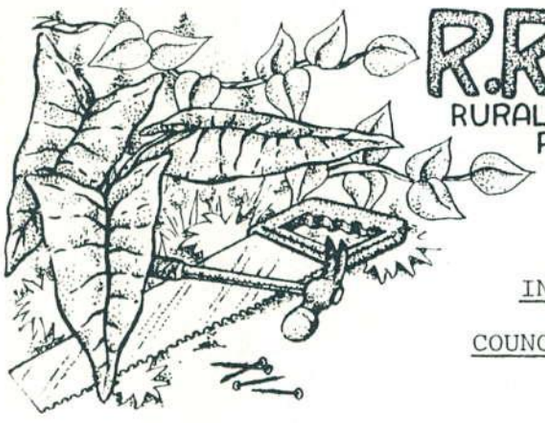
1. A.M.NICOLSON - V - THE COUNCIL OF THE CITY OF LISMORE NO.20519 of 1983.

2. SEETO CONSTRUCTION PTY LTD - V - THE COUNCIL OF THE SHIRE OF SNOWY RIVER

3. SOUTH SYDNEY MUNICIPAL COUNCIL - V - JAMES AND ANOR, Court of Appeal 19 Sept 1977, 35 L.G.R.A.432.

4. TWIST - V - RANDWICK MUNICIPAL COUNCIL, High Court, August and November 1976. A.L.R. 390

March 1985.



R.R.T.F.

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

H1

INFORMATION AND POSITION PAPER

COUNCIL RATING AND MULTIPLE OCCUPANCY

RURAL RESETTLEMENT TASK FORCE POSITION

This association holds that the present options open to Councils for rating M.O. should not be changed.

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 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 cutting 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."

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.

(H2)

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 of 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 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 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".

Councils often cite the extra road pavement damage they assume results from residents commuting to and from M.O. communities in their cars. However few if any M.O. communities would use a road 14,000 times a year, which they would need to do to equal the amount of damage done to road pavement by a single truck loaded to the permissible limit. This fact is stated by Ken Dobinson, deputy engineer-in-chief (planning and design) in the Department of Main Roads, N.S.W.: "The amount of damage that a truck loaded to the permissible 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." (Engineers Australia, February 22, 1985 pp. 24-28)

As an issue of principle we see no reason why, if a group of people choose to share 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.

We are not clear as to what is considered by the Department of Local Government to be bona fide or acceptable criteria for fixing a differential rate and would appreciate comment to clarify this issue.

By way of comment, we understand from the Departmental letter quoted that the general rate is not related to a "user pay" principle, and, if this is the case, presume that the same principle ought to apply to any variation of that rate, in this situation a differential rate for M.O.

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 in the context of illustrating that the system of differential rating is one of the options open to Council. We wish to place on record that we do not necessarily endorse that Multiple Occupancy rates ought to be nominally the same as the general rate.

In response to Council claims that M.O. communities result in increased road use, 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).

INFORMATION

Councils in N.S.W. are using 3 forms of rating with respect to multiple occupancy (M.O.) - i.e.

(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 remains valid.

It is difficult to question a method which is actually used, but it does seem a very liberal interpretation 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, determine:

(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

(H4)

(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.

Looking at section 118(4)(b) it seems to us that the so called rural rate may be made in respect of:

(i) all land in council's area coming within the definition of rural land; or
(ii) land coming within the definition within a portion of several portions of council's area, such portions being defined as required; or

(iii) all land in council's area coming within the definition except that within a defined portion of defined portions.

The rate is then determined in the resolution in respect of "any such rural land" and must be applied uniformly to all land in respect of which it is 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.

There is a further matter that is critical if the differential rates are to be valid. Section 118(1) refers to the word "defined" as meaning "defined in the manner prescribed" and section 118(4)(ii) refers to "defined portion or defined portions" of council's area ....

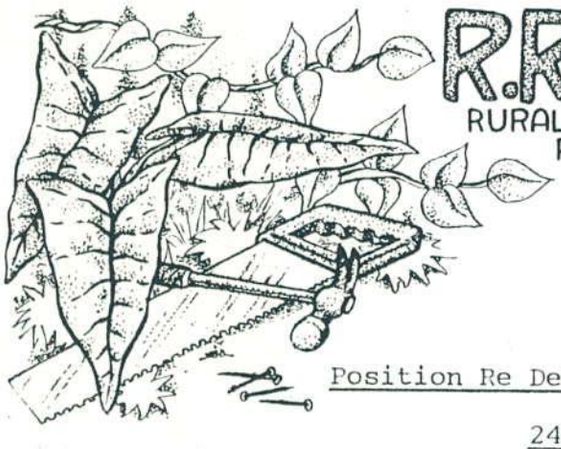
Accordingly, the "portion" or "portions" referred to in subsection 118(4)(b)(ii) must be defined in one of the methods set out above in the resolution determining the rate in respect of the various portions. Each portion must be defined in a seperate resolution. Failure to comply precisely with the clause will result in the invalidity of the rate".

In response to an enquiry from Tweed Shire Council the Local Government Office replied 22 November, 1982, as follows -

".... it is open to the Council under the provisions of section 118(4)(b)(ii) of the Act to define individual properties as portions of the area for the purposes of the section. This would enable the Council to levy a different amount or amounts in the dollar of the general rate in respect of rural lands, as defined in the Act, within such defined portions and so differentiate between rural lands subject to M.O. and those which are not. This is the provision used by Lismore City Council to prevent the extension of a lower rural differential rate to M.O. land".

Despite the assurance of the Department of Local Government above, we would suggest that any M.O. community who is dissatisfied with a so called differential rural rate should seek legal advice.

March 1985



R.R.T.F.

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

I1

Position Re Development Condition Requiring Provision of 240 Volt Cable to M.O. Properties

The RRTF believe that property owners should NOT be required to install or extend the County Councils high voltage power line to their properties if they do not want this service. In many cases with respect to Multiple Occupancy (M.O.) the installation of 240 volt power would cause a visual or other environmental hazzard as well as an unacceptable cost burden to those requiring low cost housing. Cheaper or more environmentally sensitive alternatives are often available and are surveyed in the last section of this paper.

Information

To date we know of no cases where Councils have imposed such a condition on a M.O. community. However a number of warning bells have been sounded!

The Energy Authority of N.S.W. made the following comment with respect to the Landcom Feasibility Study:

> "..... For property connection distances of the order of a few kilometres, costs of $6,000 per kilometre may be incurred. In many rural areas, notably those at the edges of the existing electrical distribution network, it is a condition of the shire council that the developer pay for the extension of electricity services to any new development. This condition would be an additional cost burden for multiple occupancy developments, the electricity usage for which may well be lower than average."

Recent rural strata title developments have been required to install 240 volt power to each site and Ulmarra Shire Council with the support of the Northern Rivers County Council placed this condition on 3 subdivisions even though the owners wished to use solar cells. Councils reasons for this condition included:

> "..... reticulation of electricity is an accepted standard of consent ..... subsequent owners of subdivided land demand the convenience of electricity ..... supply of power, where available, is necessary for the orderly development of the rural areas."

It should be noted that such a condition may be appealed to the Land & Environment Court.

There are two separate reasons why 240 volt power provision should not be mandatory upon subdivision or rezoning. The most obvious is that in some areas it is simply more expensive than alternatives offering comparable performance. The second reason is that mains power comes in a minimum package which may offer more than the consumer will ever need but also cost more than the consumer can pay for. Non-mains power systems come in all sizes to accurately fit the consumers needs. Thus small independent systems can often offer better value per dollar even though the cost of each unit of power consumed might be ten times as high.

(I2)

There is a common attitude that mains power is a necessary step in the process of development and efficiency. It is considered better to borrow capital to have the inevitable power system sooner rather than later to avoid wasting time and money on expensive stop gap measures.

This view can be countered on two points. The "inevitability" argument is presumptive. New technology is bringing down the price of small power systems, while the cost of mains power & mains connections is going up. Also social attitudes are changing in the direction of tolerance of energy conservation measures, diversification of skills, sensitivity to environmental abuse, and fear of pre-emptive decisions by government. The second assumption is that interest payments are justified by the time and inconvenience saved and the economics of scale gained by doing servicing "up front". With interest rates and unemployment the way they are, this is highly questionable, even if the finance can be raised.

The graph below presents the cost versus performance of 65 randomly chosen non-mains electrical installations in the Nimbin area. The open circles are solar/wind/petrol systems and the crosses are microhydroelectric. Some of the people represented installed non-mains systems only out of necessity and would have preferred mains connection if it had been organised. The majority though are quite satisfied with what they have (c.f. the paper done in 1984 by the University of Queensland Solar Energy Research Centre).

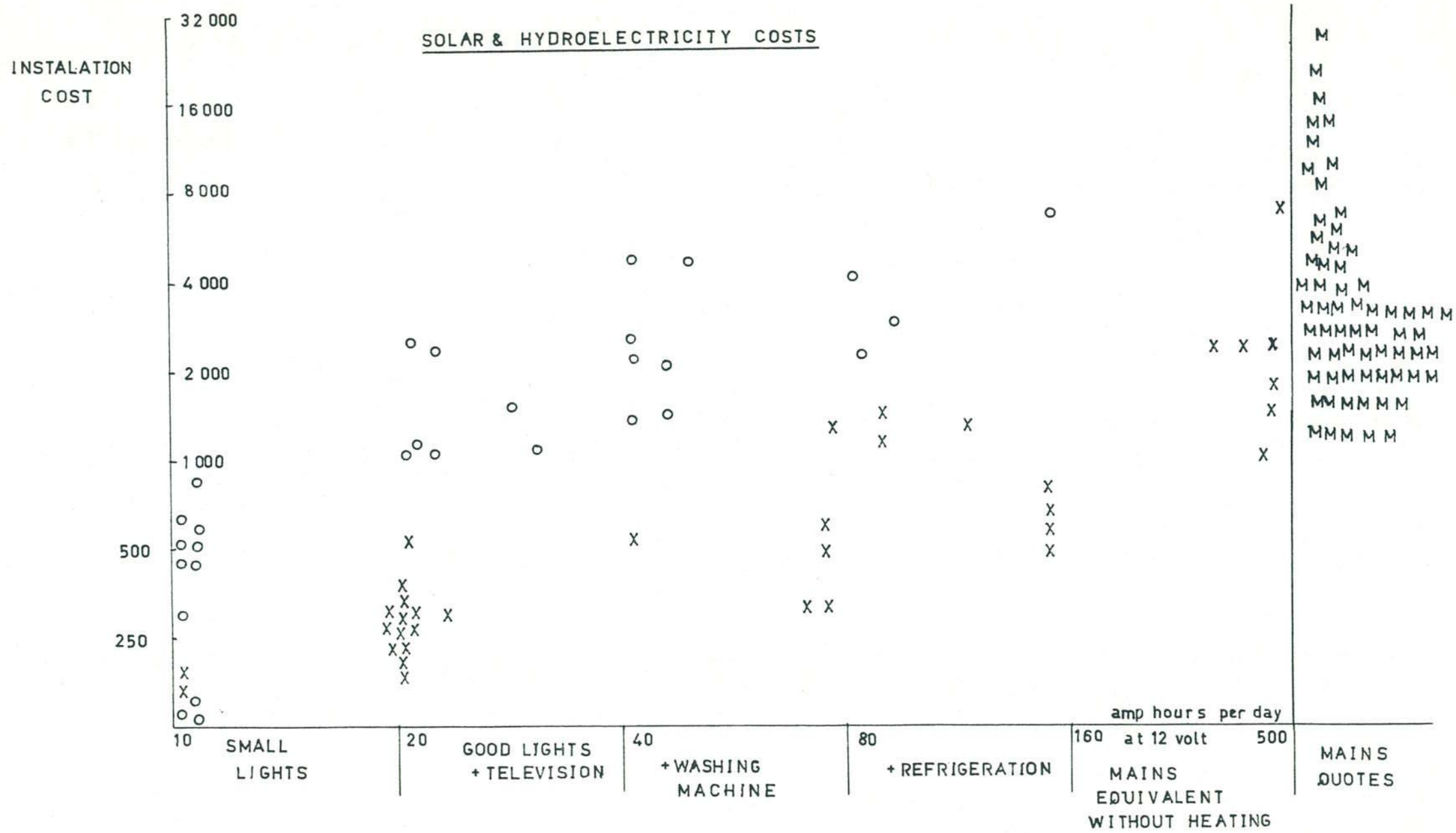
The figures for mains connection of the sample were derived from quotes given often years back and naturally low. Where several neighbours could have co-operated this was taken into account and the cost correspondingly lowered.

The concept of "Standard of Supply" is complex. For small systems the energy available per day is the important criterion, whereas in big systems without water and space heating the peak Kw load is more important. A continuous 200w supply sounds laughably small but with an inverter and battery bank it can supply a house with the equivalent of mains power if hot water and space heating are omitted. Thus a 200w energy source can do most of what a 10,000w mains supply can do. Fifty times the energy is not necessarily fifty times as good! The difference can be made up at quite moderate cost by solar hot water and fuel stove.

Only initial capital is considered, as continuing costs of almost any electrical system will be small. All the systems graphed below would have running costs way below power bills, even with consumers who ruin batteries every year. Very few independent power setups would experience depreciation of $200 p.a. while few mains power bills are under this. It is hard to be more precise about this issue as the depreciation is so much a function of the consumer's responsibility, and power bills for houses with small consumption so much dependent on the formula that NRCC adopt.

Beyond all these economic arguments lies the view that the Council is being plainly tyrannical. If people object on environmental grounds to being surrounded by 50 Hz electromagnetic fields they should be free to live in an environment of their choice.

April I985


SOLAR & HYDROELECTRICITY COSTS
INSTALATION COST
32 000
16 000
8 000
4 000
2 000
1 000
500
250
amp hours per day
10
SMALL LIGHTS
20
GOOD LIGHTS + TELEVISION
40
+WASHING MACHINE
80
+ REFRIGERATION
160
at 12 volt
500
MAINS EQUIVALENT WITHOUT HEATING
MAINS QUOTES

May 14, 1985

RE: LANDCOM SEMINAR INVITATION to MONARO ASC

P.O. Box 740, QUEANBEYAN 2630

Dear Dave,

I know only too well that there are not enough hours in the day, these days - HOWEVER, the Seminar invitation came far, far, too late. The process of ASC contact people talking with the people of their local region to get the feel of how & what they're thinking, to decide who perhaps could attend the seminar, to discuss what could hoped to be achieved from the seminar - TAKES TIME. No time for this was allowed by sending the invite when you did. If you really want input from people in general then imposing unrealistic time schedules ~~(and~~ is not the way to do it. And if the timing came from LandCom then it is yet another example of how inappropriate it is, at this stage, for the semblance of organization (~RRTF, ASC) for the interests of the alternatives lifestyles movement to be engaged in formal relations with Government.

The process of dialogue with the machinations of bureaucracy is rife with the danger of being co-opted, compromised and entangled with expectations that can overshadow or kill the original objectives & intentions.

The LandCom Feasibility Study is a prime example of this. Not one potential rural resettler that I know could have been involved in a ~~$16,000~~ "low-cost" (cash outlay) option.

What was the process of consideration of submissions received by LandCom/RRTF on this study?

Is any thinking being done on how to engage a broader cross-section of people in discussion of M.O. in general? Do you consider this desirable?

I enclose my initial response to the Seminar Invitation & repeat that I support Susanna's proposal that further regional seminars be held (with an emphasis on consolidating the most appropriate approaches to govt as seen by communities)

Regards,

Marg McLean
MONARO ASC contact person.

Re: LANDCOM SEMINAR INVITATION April 22, 1985

Dear Dave Lambert,

The most appropriate response that I can make at this stage of proceedings is to perhaps request 'time out' (like in basketball) - "time out" for regrouping & consideration of what the aim of the game is. Do "we" (see ~~suggested definition~~ in footnotes) "we" is ~~really~~ want to get as many balls through the hoops as possible? Do "we" know what positions we are all playing? Do "we" know what happens if we "win" this game? Do we play another team?

continuing May 14.

Dave, to me, the whole issue of Rural resettlement is a keystone in the process the alternative movement has been grappling with towards creating vital a

viable options for a sustainable future.

Rural resettlement is what we did and now is when we have to cogently & coherently analyse & synthesize (& decide to do) what it was we actually did do - and in so doing, do it better in the future.

There are no simple answers as yet, to my mind, and it certainly is far too early to be formalizing relations with government policy making. We need to be having far ranging discussions and communications amongst ourselves - to develop & work on the necessary perceptions, systems thinking and right human relations that are in accord with the values that we espouse.

I acknowledge that it is not an easy job, but I see that it is important, vital in fact, if we really are working towards social change & accepting responsibility for the future.

I support Susanna Valls proposal that she has made to Landcom to hold further regional M.O. seminars.

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

B1

INFORMATION AND POSITION PAPER

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

R.R.T.F. POSITION Access Conditions and levies

The Act should be amended to require Councils to analyse and consider the effect of any proposed D.A. condition, charge or levy on the provision of housing for the poor as suggested in D.E.P. Circular 23 of 14Oct 1981 and on the ability of pensioners and unemployed to pay such costs. Policy 10 of the Housing Policy of the Local Gov't and Shire Association of N.S.W. states in part:

> "Councils should undertake the progressive development of an explicit housing policy which may be implemented through measures such as:
> The consideration of social and economic effects of housing losses and gains when considering development applications;"

We are of the view that once a road is public and is constructed, there appears no doubt that the council is fully responsible for its maintenance. (D.E.P. Circulars no's 23 and 42; Keith Hardmann Henry -v- Parramatta City Council (1982) ELR 0085 at the acceptable standard, or a higher standard if initially constructed to a higher standard).

Where a M.O. community is located at the end of a No Thru Road, it might in some cases be appropriate for Council to offer to sell the road to the community for $1., in which case Council would be relieved of the responsibility of maintaining it. In other cases a right of carraige way through a State Forest, Park or private property might be an appropriate and reasonable form of access.

In general terms, we would agree with the following statement from the 1982 Annual Report of the N.S.W. Land Commission:

> "Lack of established guidelines to interpret and implement s.94 of the Act has resulted in widely varying interpretations among Councils as to what is a reasonable level of contribution by developers... in some cases excessive contributions are being sought by Councils...uncertainty about level of contribution.... prevents the preparation of realistic feasibility studies....it is only by contesting extravagant and unjustified imposts that land prices can remain within the reach of first home buyers. It is for this reason that the Commission often finds itself at the forefront of disputes with other authorities".

We would also sympathize with similiar problems being experienced by other Departments such as the Education Department. According to the Far North Coast Report 1984. by the N.S.W. Land Co-ordination Unit:

> "Occasionally councils are unwilling to recognise the service obligations of the Department and tend to impose development criteria more appropriate to private development. For example, substantial contributions may be sought for the development of access roads, augmentation of water supply and, in some cases, cycleways and pedestrian pathways, etc. as conditions of development consent.
>
> This poses major problems for the Department in fulfilling its obligation to provide educational facilities in appropriate locations and at appropriate times to service the growing population.
>
> The Department feels that clear guidelines should be established by the Department of Environment and Planning to resolve such problems."

With such problems being experienced by Government Departments, what hope is there for the poor people of this State to have access to affordable housing?

The poor and other disadvantaged members of our society should not be held liable to seal the State's roads, replace wooden bridges with concrete ones or to set the development standards by recourse to the courts.

B2

DEVELOPMENT APPLICATION - REQUIREMENTS

We suggest that Council's obligations under S.90 re environmental assessment of a proposed M.O. development could be adequately fullfilled providing the area for future dwellings are designated clearly so as to include only suitable areas, as regards soil suitablity, visibility etc. It may also be appropriate for Council to set design limits such as height of any future buildings. In this way repeated assessments would be minimized and determined at the onset, and applicants would not be required to make design and planning decisions unnecessarily prematurely.

INFORMATION - S.90,91 & 94

Councils are imposing onerous costs and conditions under s-90,91 & 94 of the Act. Many of the conditions are in dispute and are, in time, expected to go to appeal. The Court is in effect setting most of the standards, as the Act is drafted to allow for wide discretion in its interpretation. A number of established tests and conditions are outlined below:

1. The Council must form an opinion that the proposal "will or is likely to require the provision of or increase the demand for public amenities and public services within the area"; e.g., by virtue of population increase. The condition, also, must be fairly and reasonably related to the development. St. George Building Society -v Manly Municipal Council, (1981) ELR. 0228.
In Ligora v Leichhardt Municipal Council(1980), ELR, 0185, it was stated that councils with their experience and knowledge of land development can reach conclusions of a need for a reasonable dedication or contribution.

2. The contribution sought must be for the purpose of providing, extending or augmenting those public amenities and public services. Examples of public amenities and services for which contributions or the dedication of land have been required by the Court under s.94 include public car parking, drainage, open space, the upgrading of stormwater channels and traffic planning study and possible parking contributions consequent on the findings and adoption of that study.
M.Davies and Partners P/L v Sydney Council 16 June 1983

In John Mark Taplan & Anor v Hastings Municipal Council, No10229 of 1984, E.P.C.N.#10, it was held that a contribution of $250. for bushfire fighting purposes (for a rural subdivision) was for a planning purpose.

3. 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 e.g., the council will 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.
Bartolo and Anor v Botany Municipal Council, 1981 ELR,5.
In the Taplin case (see #2 above) 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 consideration.

4. There must be a physical nexus between the condition sought and the development proposed. In addition, the contribution must be spent in the "immediate location". In one case it was held that a contribution for open space had to be "by development on it". In another case, where a parking contribution was sought the Court held that the parking sought was to be "... so situated and defined in such a fashion as to enable a decision to be reached that they are capable of being indentified with the proposed development".

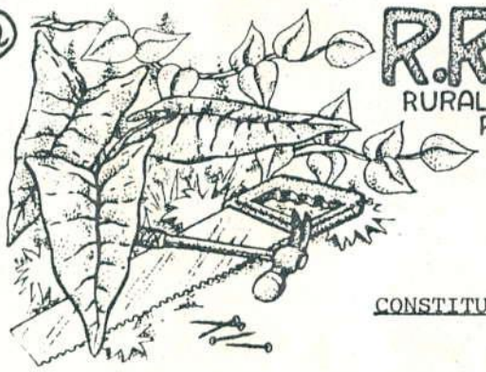
5. The contribution must be spent within a reasonable time. If not, the contribution would not be a valid levy under s.94. Long term projects would not appear to be appropriate subjects for a s.94 levy. In this connection it may be relevant to consider whether, in a slowly developing area, a trickle of s.94 contributions would be insufficient to do anything. Three to five years is suggested by the courts.

Meriton Apartments Pty Ltd v Willoughby Municipal Council
(1980) ELR,22. and Novati Design and Construction v Leichhardt Municipal Council(1981)ELR,22.

6. Conditions must be reasonable. This is a complex matter of no easy solution; each case depending on the facts and circumstances relevant in the area. Certainly, a reasonable contribution cannot be an exaction or tax.

(a) In Keith Hardeman Henry v Parramatta City Council,(1982) ELR,0085. It was stated that a condition is unreasonable where works were only temporary and needing replacement when the general reconstruction of the road was carried out. In relation to this aspect, "temporary" must be related to a period and this might be accepted as the three to five year period. If council intends reconstructing a road within that period then temporary measures might be unreasonable. Each circumstance must be individually assessed as there may be other extenuating circumstances.

(A2)



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

CONSTITUTION OF THE RURAL RESETTLEMENT TASK FORCE

NAME 1) The name of the Association shall be the Rural Resettlement Task Force (RRTF).

OBJECTIVES: 2) These shall include:
a) to assist in making land available for sustainable lifestyle rural communities,
b) to assist resettlers in establishing such communities

c) to provide an on-going and widely based information and policy group for study, evaluation, analysis and other work for government departments, agencies and other interested bodies.

d) to provide workshops, seminars, and the dissemination and exchange of information of value to potential resettlers,

e) to make representations on appropriate matters,

f) to recommend to government departments and agencies appropriate consultants and work groups for specific resettlement tasks, and

g) to stimulate the growth of similiar affiliated bodies to assist rural resettlement in other areas.

MEMBERSHIP: 3) Membership shall be open to persons or groups interested in rural resettlement.

PRINCIPLES: 4) Any affiliated consultancies seeking R.R.T.F endorsement must recognise their committment to the on-going research and information exchange base of the R.R.T.F., and the overall aims, objectives and policies of the Association.

5) Where possible, the R.R.T.F. will seek to create employment for persons in the immediate local area in the development of projects.

GENERAL MEETINGS: 6) The business of the association shall be conducted at General Meetings.

STEERING COMMITTEE : 7) A steering Committee elected annually at a General Meeting shall co-ordinate activities between meetings. The Committee shall elect a Convenor, Secretary and Treasurer from their membership. Any payment of committee members shall be as determined by a General Meeting.

8) An R.R.T.F. member who has a monetary or other interest in any matter under consideration by a General or Steering Committee Meeting and who is present at that meeting shall declare his/her interest and shall refrain from voting on any motion with respect to the matter.

ALTERATIONS TO CONSTITUTION: 9) A 3/4 majority at a General meeting will be necessary to change, this constitution, with one month prior notification of the intended alterations having been given.

DISSOLUTION: 10) In the event of a dissolution of the association, any remaining funds and assets shall be given to a community based organization having a like minded objective.

Standing Orders

1) A quoram of the Steering Committee shall be 40% of those elected to the Committee.

2) That all decisions at all meetings of the R.R.T.F. shall be made by consensus; "consensus" here meaning the absence of dissent from proceeding with the decision if possible. If consensus is not achieved the matter shall be tabled to the next meeting or in the event of urgency, a 3/4 majority shall be considered sufficient.

3) A General Meeting shall take place in Nimbin on the first Saturday of every month.

6 April 1985

DEPARTMENT OF LOCAL GOVERNMENT

Minute

Subject:— RATING OF MULTIPLE OCCUPANCY PROPERTIES
Prepared for seminar on Multiple Occupancy Properties
held 19th April, 1985 by the Land Commission of N.S.W.

M 5795 Government Printer

There is no proposal before the Government to legislate for the rating of multiple occupancy properties. The existing rating provisions including differential rating confers on Councils a wide discretion in the determination of their rating policies. It is open to Councils to define individual parcels of rural land as portions of an area, levy different amounts of the general rate on each parcel and determine a minimum amount of that rate.

It has been suggested that Councils could not obtain an equitable solution under the differential rating provisions because it cannot levy a rural land differential rate higher than the general rate. Therefore, the only recourse available appears to be a substantial contribution under the provisions of section 94 of the Environmental Planning and Assessment Act.

It has also been suggested that multiple occupancy results in increased usage of roads of an inferior standard and that in a normal sub-division application the Councils would require contribution for road development. A further suggestion is that Councils recover the contribution over a period of several years by levying the minimum rate on each dwelling house.

In this regard, some Councils appear to assume that there is a direct connection between rates and the demand on Local Government services, such as the upgrading of roads. This connection, in a direct sense does not exist and has never existed except perhaps in the case of local rates. Local Government rating is primarily a tax based on the value of land to provide support for Local Government.

In the context of rating, the difference between multiple occupancy development and other development is one of degree. The Department can see no reason why people living in a multiple occupancy development should be treated differently from people living in a block of flats or units, people living in a granny flat, or even perhaps a substantial number of people, whether related or not, living in a single dwelling. In practice, any change in the zoning of the land will be reflected in the land valuation and will have an effect on the rates levied on the land.

If the development is carried out in such a way that the individual components are capable of separate occupation, they must be separately valued and rated without any requirement for subdivision. In addition, if the scheme enables a community to lease an area for a group to occupy, the land will be separately valued and the same rules will apply.

If the land is not adapted to separate occupation and is not leased, it will not be separately valued and will be rated as a single parcel in accordance with the usual principles under the Local Government Act. This would happen in those hamlet developments in which there are some communal facilities which would make it impossible to divide the land into separate occupations.

There is no evidence available at present in the light of the above comments to suggest that the present rating and valuation laws are inadequate to cope with the concept of multiple occupancies on farms.

The Local Government (Rates and Charges) Amendment Act, 1983, currently prevents councils generally from varying the existing rate structure. Upon receipt of an application from a council, however, the Minister may consent to such a variation.

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.../2

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DEPARTMENT OF LOCAL GOVERNMENT

Minute

Subject:- BUILDING REGULATIONS

40608-0899

A Paper Delivered by Lyall Dix of the Department of Local Government of New South Wales to a Seminar Organised by the Land Commission of New South Wales at Nimbin, dated 19th April 1983.

Mr/Madam Chairman,

I would like to take this opportunity to thank the organisers for their kind invitation and to participate at this seminar on behalf of the Department of Local Government. This particular paper will be primarily focused upon the building control aspects of multiple occupancy.

To give a quick introduction of building regulatory legislation the responsibility for such control i.e. the law that governs erection of buildings, in Australia, rests constitutionally with the individual states and territory forming the Commonwealth. The day to day application and administration of this control has been vested by the states to local government, i.e. councils. The states have retained the right, however, to formulate and promulgate building regulations. In summary the state makes the law, the councils administer it.

To outline my position I am the head of the Building Branch of the Department of Local Government, having been appointed to this position some six months ago. The major function of this branch is to recommend changes to existing legislation or appropriate new legislation as it affects building regulations to the Minister for Local Government to ensure that such legislation is kept up to date with changing needs and technology.

The Minister in assisting him in this process is advised by the Building Regulations Advisory Committee of which the Department's representative, i.e. myself, is the Chairman. BRAC is composed of various building industry and Governmental representatives which give it a broad based view of any matters before it. This also ensures adequate consideration of any proposed legislation by a wide spectrum of organisations involved in the building industry.

In more recent times building regulations have adopted a national approach. This national approach to building regulations started at the Local Government Minister's conference in 1964 and was further re-inforced by the 1980 conference with the formal establishment of an inter-state building regulatory committee. This committee has produced a document entitled The Australian Model Uniform Building Code (AMUBC). This is a technically orientated code and it is an endeavour to maintain uniformity of technical requirements of building regulations throughout the nation.

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The regulations in New South Wales are based upon the AMUBC and are promulgated as an ordinance under the Local Government Act, namely Ordinance No. 70. The purpose of building regulations is to seek the minimum standard of control whilst maintaining adequate public health and safety and to a lesser extent amenity. As a consequence the majority of building regulations deal with fire requirements in multi storey buildings, however, building regulations also encompass house construction. The current trend of building regulations as reflected in the AMUBC and thus Ordinance 70 is towards what are called performance standards. This is a departure from the previous form of regulation which were descriptive,

e.g. previous requirements for timber wall framing was 4" x 2" hardwood studs at 18" centres.

The Ordinance now states a performance standard namely, a building shall be designed and erected so that it is structurally sound in accordance with the principals of structural mechanics and capable of sustaining the most adverse combination of loads to which they will be subjected. The Ordinance then states various ways of obtaining this performance criteria that is deemed to comply provisions. To follow the example the Ordinance states that if a house is designed and erected in accordance with the timber framing code and the wind loading code it would meet the performance standard.

This new approach to building regulations is of benefit to people desireous of erecting unusual type structures, e.g. yurts, pole frame, mudbricks and pise construction. However, it is the Council's role to e nsure that the building proposed to be erected will meet these performance standards and in that regard sufficient documentation would need to accompany any application so that the Council can adequately discharge its duties imposed upon it by the Ordinance.

The Department offers assistance to councils in a number of ways in their administration of building regulations by:

- having experienced building advisory officers available for phone enquiries, interviews etc whom can give expert advice in the interpretation and intent of building regulations,

- issue Building Regulation Advisory Notes on particular matters that may have been of concern to councils or that the Department feels the need to explain to councils' building surveyors. Some 70 have been issued to date.

On a matter that is more pertinant to the participants of this seminar the Minister has recently been requested to endorse the second draft of the low cost country home book. The matter has been referred to departmental officers and a number of matters require amendment to ensure the document is legally correct. Currently negotiations are being carried out to address these anomalies. It is hoped that if successful I would recommend the endorsement of the document to BRAC who may make a similar recommendation to the Minister. It will be up to the Minister, however, to make his own decision in respect of his personal endorsement. Conversely I could not recommend that the Minister endorse the document until the Department is satisfied itself of its accuracy.

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I take this opportunity to advise members of the public that there does exist a department of Local Government with a branch specialising in building regulations and that although we sit in an ivory tower in Sydney we can become divorced from problems that may exist in the field. In this regard I take this opportunity to ask you that if you see a problem with the existing building legislation then write or phone the Department outlining the problem with reasons and explanations to support your case and suggest any possible solutions. We tend to take the view that a problem does not exist unless we are told or we perceive a need for a change.

I point out however, that due to the existance of the AMUBC and the Government's desire for uniform building regulations, changes to Ordinance 70 are complex and slow as all the other states are involved.

Please make use of the Building Advisory Service; it is available to the public as well as the Councils. If you desire an interpretation of a particular problem which you feel is significant to the industry or your community, I can arrange for a Building Regulation Advisory Note outlining the Department's view to be sent to all the Councils in the State. I point out, however, that the final decision for interpretation of the Ordinance is up to the individual councils.

I welcome any questions that you may have and if you prefer, feel free to ask me questions on an individual basis during the rest of the seminar.

L. Dix,
Chief, Land and Building
Development Branch.

Lyall Dix

I will be addressing basically the building regulations. To outline my work position: I am in charge of the building branch located within Department of Local Government. Its main function is to advise the minister on up to date regulations dealing with buildings - that is, new legislation and changes to existing legislation. To give a quick introduction: the law that governs the erection of buildings rests constitutionally with the States, -individual States and Territories. The day-to-day application of the administration of building regulations has been vested into Local Government hands, that is, Councils. The State Government, however, has retained the right to formulate and promulgate building regulations. So, in other words, State Government makes the law and Councils carry it out. The minister, to assist in advising him, has constituted the Building Regulation Advisory Committee which has been going since 1921. B.R.A.C. is composed of a multitude of people from the building industry and hopefully gives a concensus view of any changes to the legislation so that mistakes are kept to a minimum and also so we are kept up to date.

In more recent times building regulations have adopted a national approach. This national approach stemmed from the Local Government ministers' conference in 1964 and was further reinforced in 1980, by the formal signing, or proposed signing , of an interstate agreement. From this Local Government Ministers' conference there was a committee formed and they produced the Australian Model Uniform Building Code. This is a technically oriented code, -in other words it only contains technical provisions, and it is an endeavour to maintain uniform building regulations throughout Australia as a whole.

The regulations in N.S.W. are based on the A.M.U.B.C. and are provided as an Ordinance under the Local Government Act, namely Ordinance 70. The purpose of building regulations is to maintain an adequate standard of public health and safety and to a lesser extent amenity. The majority of building regulations do not deal with houses but with fire regulations in multi-storey buildings or mainly all public buildings. The classic example is the building you are in now, a public building. There's a fire-exit sign, there are panic bars on the door etc.

Now the current trend of building regulations, as reflected in the AMUBC and entrenched in Ord. 70 now, is towards performance standards. This is a departure from the traditional form of building regulations and will assist people in innovative and novel forms of construction. I can give an example of this. Previous requirements for a timber frame wall were 4 x 2 hardwood and 18 inch centres. That's been going on for many, many years. Now the Ordinance doesn't state that any more. It states that a building shall be erected so that it is structurally sound and capable of taking wind loads. Now the Ordinance calls up various provisions so they are deemed to comply with that standard like the light timber framing code. However, if you don't wish to erect in accordance with the light timber framing code you may do so, but its up to you to convince the Council that what you are building is structurally sound. That may mean going to an engineer or someone like that. Council's role, and that is reinforced throughout the Ordinance, is to ensure that these standards are met. Really, its up to you, if you want to go for some novel form of construction, to have sufficient documentation to convince the Council officers and the Council. Now the Department of Local Government offers assistance to Councils and to the public in a number of ways and especially to Councils in the administration of building regulations by having a number of Building Regulation Advisory Officers. These are so called experts available for phone enquiries and interviews who can give advice in relation to the intent and purpose of regulations. We also issue Building Regulation Advisory Notes which give the Department's interpretation of building regulations. We have issued about 70 to date.

On a matter that is a bit more pertinent to the seminar, the Minister has been recently requested to endorse the second draft of the 'Low Cost Country HOme" book. The Minister has referred it to the Department. The officers in the branch have been through it and there are a number of anomalies, I think

about 13 or 14. We are currently negotiating with the Department of Environment and Planning and T A G to overcome these ano malies so we can put a recommendation to B R A C for its endorsement. However, if the Minister wishes to endorse it, that's personally up to him, of course. The converse applies, that if the department can't overcome the anomalies and the document may be legally incorrect, then we couldn't recommend that he endorse it.

I would just take this opportunity to advise members of the public that there does exist a department of Local government witha branch specialising in building regulations and that we do sit in an ivory tower down in Sydney and that we can become divorced from problems in the field. In this regard, I take the opportunity to ask you, if you see a problem that is persistent, please write us a letter, outline the reasons, what the problem is, any suggestions, and we can consider it. Obviously it will have to go to BRAC. The view of the Department is that we don't see a problem unless we are told or unless we see a need for a change. The current view is that there has to be a perceived need to change building regulations and of course it has to take into account economic considerations. I point out, however, that the wheels of bureaucracy are slow and I've only been a public servant for six months and I find it fairly frustrating from inside. Because of the uniform approach to building regulations, changes to Ordinance 70 are very complex and very slow because the other states have to become involved and conversely when they want to change their laws they have to involve us.

So I ask you tomake use of the Building Advisory Service if you wish. If you want an interpretation of a particular problem that you feel is significant and if you make a case for any interpretation that is fairly significant, I suggest that the Rural Resettlement Task Force make a submission to the Department and we could carve out the issuing of a Building Regulation Advisory Note. I've also already had a couple of discussions in relation to a few problems - mezzanines and walls in particular.

I'd like to conclude by saying, if you have a complaint about a building inspector, go and see your Council don't come and see the Department and if you have a complaint about the building regulations, come and see the Department.

ROBYN READ - LAND CO-ORDINATION UNIT -

THE FAR NORTH COAST AND THE COSTS OF DEVELOPMENT

In this paper I want to talk about two things: firstly a very broadbrush overview of this sub-region, from Ballina to the border, and Casino to the coast, in which many multiple occupancy developments have occurred; and secondly, some financial costs of multiple occupancy to the wider community

Firstly, looking at the wider community in which the multiple occupancy movement lives - the Far North Coast, I want to outline some of the major issues facing the sub-regional population generally. I realise this overview is outside those matters addressed in the discusson document on multiple occupancy but they are the wider planning context in which decisions about land use occur.

REGIONAL ISSUES

In 1983 my Unit established a working party of State and local government officers which repoted to Government last year. That Report said:

The Far North Coast can be characterised by a number of factors:

* its population is growing faster than any other region in the State
* its unemployment level is the highest in the State
* its traditional economic (agricultural) base is substantially declining
* its communication links, both within the region and with the State's major urban centres, are difficult

* its services have been developed to provide for fewer, and differently located, people
* its land resources are being subjected to competing demands in a vacuum of agreement as to their best use
* it is subject to a high level of development pressure

To ensure the best use of available public funds it is critical that growth is managed to avoid fragmentation of resources.

To a greater or lesser extent, a combination of the above factors can be found in other regions of the State. The uniqueness of the Far North Coast is that it has all these characteristics.

In addition they are set in a physical environment of unique qualities which require sensitive management.

Other sub-regional concerns were identified which need to be addressed but which were tangential to the major thrust. Those other areas identified for further work are:

* the changing roles of regional centres
* the affordability and changing pattern of demand for housing
* the inter-and intra-regional communication patterns
* the critical position of recurrent funding for government agencies and the 'catch up' gap that is already appearing
* the resolution of the flood-prone lands issue

I am well aware that the philosophy of the New Settler movement seeks to provide alternative solutions to some of these issues. Nonetheless, the shrinking cake has to be better shared for the total population and those who live in multiple occupancies need to be aware of problems facing the whole community in this period of rapid change.

SOME REGIONAL PROBLEMS:

Some indications of the scale of the problem on the North Coast are:

* use of demountable classrooms has increased from 45 in 1977 to over 500 in 1983
* annual expenditure of $13.5m (1983) for conveying school pupils
* requirement for 5 additional Resource teachers and 42 extra therapy hours/week for special therapy
* non-metropolital NSW has 11.5 places per 1000 population for higher education, Northern River CAE has 2.6
* shortage of nursing home beds, heavy pressure on hospital beds and a maldistribution of health service along the coast
* lack of 5th schedule institutions and of beds for chronically ill psychiatric paediatric patients or the developmentally disabled. These patients have to go to the Hunter region
* allocation of limited main road funding to maintenance and away from major road improvements
* costs of capital works for upgrading of roads to service rural lots are up to $80,000 per km. the roads often service new low density rural lots resulting in cross subsidies from urban ratepayers.

I have outlined only some of the issues and indicators of the problems in the Far North Coast (I have not, for example, talked about community service provision or the decline in the traditional economic base agriculture) because I do not believe the New Settlement movement perceives itself as isolates; nor is it arrogant enough to belive its solutions are generally applicable, but it does have the skills to assist in building a better North Coast and of being part of a wider community seeking to address major sub-regional issues.

COSTS OF METROPOLITAN DEVELOPMENT

Now, turning from the broad to the narrow - the 'Who Pays' question. I want to focus on the costs to State and local governments resulting from the development of a multiple occupancy and to tease out some of the issues. In looking at this, I am not taking the global perspective and trying to discuss all costs relating to the settling of an individual in an alternative environment.

As background, let me describe some of the work my Unit has been involved in, in Sydney. In examining the impacts of new estates on the fringe of the city, we have looked at the capital cost to Government of providing infrastructure for each new lot produced; that infrastructure includes water/sewer, electricity, roads, schools, further education, health and community services.

For a 5 year program of more than 50,000 lots, the unrecoupable cost is more than $600m. Although these are indicative figures only for the cost per lot is well over $10,000. Local Government also has heavy costs with provision of amenities and services, the big ticket item being roads. It is estimated that up to $1,700 of Local Government expenditure per lot is not recouped

and as with the State, has to be met from broader community contributions, in Councils' case through rates.

Thus much new development is expensive and financed by the general community. Rating and pricing policy work attempts to design formulae that are equitable, e.g. should established rate payers be financing services for new residents.

The land and house buyer pays too, for the State does not absorb all the costs of services. The developer also has significant road, water, sewer, social amenities, and electricity costs to pay under Section 91 and 94 of the E.P. & A. Act. and these costs are passed on to the purchaser. Thus, affordability becomes harder.

One glimmer of hope in the cost of the growth of the cities is the cost of redevelopment which is much cheaper - a preliminary estimate is that it only costs Government $1,000 for a dwelling lot equivalent.

Given that people continue to live in the cities in such greater absolute numbers than those who want to 'go coastal' let alone 'go bush', redevelopment and medium density presents an attractive financial solution. Enough people are now voting with their feet and leaving the city for some attention to be spent on affordable non-metropolitan housing solutions. I know that the current Minister for Housing is conerned about these issues.

I have described some of the aspects of development costs to lead me to a number of points. These are:

* development costs - but some forms are cheaper than others for the general community to finance
* in Sydney a sophisticated methodology has been developed to assist Government make growth choices
* and finally, gratuitously and drawing a long bow, I believe that the scale of the problem and growing size of the population (another half million in 10 years in Sydney alone) must be a backdrop to all discussions of what Government's expenditure priorities are.

NORTH COAST - INTRODUCTION OF COSTING

Now let me turn to the North Coast. Last year the Unit published a Report on the Far North Coast as I have said. We set up that working party in an attempt, amongst other things, (such as developing a regional framework strategy) to get the North Coast State agencies and councils to approach the costs and management of development in the same methodical way as we have begun to do in Sydney.

In the most simplistic terms we tried to develop consciousness and methods to deal with the fact that any development costs money and by directing development into certain locations rather than letting it occur willy-nilly, it would be more cost-effective for the community at the end of the day, e.g.

* urban developments should first go into areas with sewerage systems with existing capacity
* the capacity of existing schools should be taken into account
* ad. hoc development would add enormously to the costs of road funding etc. etc.

The Report was necessarily broad and focussed, in part, on urban land supply and tourist futures but looked broadly at what was happening in rural zonings. The proliferation of rural residential development was identified as particularly worrying not only because of its impact on agricultural lands, but also because of the high servicing costs.

COSTS OF MULTIPLE OCCUPANCY

Turning to multiply occupancy, my feeling is that there is a swings and roundabouts element in the costs of multiple occupancy.

~~The attached~~ table which I have drafted shows the allocation of capital and maintenance costs of services normally required when development occurs, and indicates how this may apply in the case of multiple occupancy. It shows:

* physical services normally financed by Councils (water, sewerage, roads) - with the exception of maintenance of access roads - are much less of a financial burden to Council in the Multiple Occupancy situation, than in other zonings, with the exception of agriculture
* services of statutory authorities - will show no more cost than with other forms of non-metropolitan development, given that there is a 'country subsidy' anyway
* State services do present special problems in all rural areas - with education services presenting the highest cost because of the scattered nature of development.

As for Councils' running costs, multiple occupancies exert extra demands. Increased staff time is required to handle higher rural densitites (for fire services etc.) and different development forms (building/health inspector). [Here I get libbed about how that was legitimate expenditure if rates were improved]

Earlier in this paper I said that rating and pricing policies out be based on principles of equity. I have not looked at the full implications of the special or differential rate for multiple occupancy, except as I said earlier to 'feel' that it is a ~~savings~~ swings and roundabouts issue. But let me just outline the order of difference the multiple occupancy rate means to a Council. And the following calculations are indicative only.

* In Lismore, the 22 legal Multiple Occupancies were rated in total at $31,000 (1985) - an average of $1,409 per Multiple Occupancy.
* Around 700 people live on these Multiple Occupancies. Assuming 3.2 persons per household, this represents 220 households.
* If these households were treated as separate rural-residential dwellings rated as general urban at 3.2% of the value of their land (and the land was an average 2 hect. lot) then council would be receiving say, $176,000 per annum in rates for the same number of people.

* If all the households were on separate parcels where the majority of income was derived from agriculture then council would receive around $59,000 in rates.

While the land costs used in this calculation are average (and provided by Lismore Council) it looks as though Multiple Occupancy zonings represent between $28,000 - $145,000 in foregone income to the Council.

[Here I emphasised these were notional figures and the real issue was to provide affordable housing]

While it is conceded that Councils' costs in waste disposal and maintaning water/sewerage and on site roads are considerably less with Multiple Occupancies, it is also argued that Multiple Occupancies present councils with additional costs. These are not just in running costs as described above but also in servicing more people in general items and in new activities such as legal costs for various Multiple Occupancy related battles. I understand costs for one Multiple Occupancy case alone represent 3 years total rates for all Multiple occupancies in Lismore.

In talking about these actual costs, I remind you that I said earlier that were other costs/benefits in the global sense which I was not discussing e.g. the New Settlers contribution to the wider community. No doubt many of you will want to bring these into the debate.

And just to put a more positive finish on the rates issues - if Multiple Occupancy had not come to Lismore, the properties they occupy would only be contributing $10,000 in rates not $31,000.

Nonetheless, detailed work needs to be done to establish the real costs, both capital and recurrent, of multiple occupancy as against other settlement forms. Armed with these costs, informed debate can occur over specifics such as:

* should multiple occupancy be approved in areas where the costs (e.g. of school transport or buildings) will increase substantially
* should a per. dwelling or local rate be levied where specific services are required at a higher order than for one subdivision, e.g. roads
* should 'commercial' multiple occupancies offer residents access to cheaper than such subdivision rates if one single multiple occupancy rate is adopted
* what minimum standards are adequate for development and should be used as the basis for development levies
* what Sec. 94 guidelines are applicable to Multiple Occupancy

I hope this paper has opened up some issues about the wider planning concern for the region in which multiple occupancies have occurred and that it has generated some concern to establish the costs of this form of development. Quantifying these costs will, I believe, strengthen the case for multiple occupancy throughout the State.

Multiple occupants are pressing for new and wider opportunities to settle; they are challenging some of the old sacred ~~cousin~~ cows planning and building; they hold out the promise of doing things differently. But if they are going to end up making the same demands on the community as other forms of settlement, then they must bear the same cost burden.

PH
Rob

Peter's Return to Dave L.

New South Wales Government

Land Co-ordination Unit

Dear Dave,

I shifted from the text of this paper (esp. where marked on pages 8 and 9).

You may have that on the tape. I was trying to emphasise that affordable housing was the primary objective and that must be calculated into the debate

Forwarded with Compliments

Robyn Read 6th May '85.