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PART A. INTRODUCTION

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

Abreviations

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

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PART B.

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

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

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

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

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

have addressed this question was when Council drafted the clause!

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and s.313(2)(a) which provides that:
"Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

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

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

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

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

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

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

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

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

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

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

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

consent of Council.

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

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

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

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

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

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

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

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

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

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

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

We hence recommend:-

> "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comphrensive and effective T.P.O., with secure legal standing, be immediately introduced". (Recommendation 1.5(b))
>
> "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area, and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropiate directive, or if necessary relieving Council of its planning jurisdiction." (Recommendation 1.5(c))
>
> "That if a breach of the Tree Preservation Order occurs that Council automatically take action to seek redress as provided under s.126 of the EPA Act:
>
> 1. imposition of a fine up to $20,000,
> and 2. the replanting of nominated trees and their maintenance to maturity,
> and 3. provision of security to cover default."
>
> (Recommendation 1.5(d))
>
> "That a full time "environmental officer" be appointed by Council and given the authority of law to act on their own behalf in the event of a breach of the T.P.O." (Recommendation 1.5(e))

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

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

recommend:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We hence recommend:-

> "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comphrensive and effective T.P.O., with secure legal standing, be immediately introduced". (Recommendation 1.5(b))
>
> "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area, and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropiate directive, or if necessary relieving Council of its planning jurisdiction." (Recommendation 1.5(c))
>
> "That if a breach of the Tree Preservation Order occurs that Council automatically take action to seek redress as provided under s.126 of the EPA Act:
>
> 1. imposition of a fine up to $20,000,
> and 2. the replanting of nominated trees and their maintenance to maturity,
> and 3. provision of security to cover default."
> (Recommendation 1.5(d))
>
> "That a full time "environmental officer" be appointed by Council and given the authority of law to act on their own behalf in the event of a breach of the T.P.O." (Recommendation 1.5(e))

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

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

recommend:-

> "That Council appears to have jurisdiction to require consent for road works associated with M.O. development (by virtue of same being outside the exemption provided in I.D.O. 2, Col.II)." (Recommendation 1.5(f))
>
> "That the provision of an effective T.P.O. and requirement of consent for road works associated with proposed M.O. development are seen to be two effective ways of controlling non bona fide M.O. development." (Recommendation 1.5(g))
>
> "That as educational information re unauthorised development, Council periodically publicise, in the local media etc., that approval is required for road works in connection with proposed M.O. development." (Recommendation 1.5(h))
>
> "That in the event of the development applications made by Tomewin Village Pty. Ltd. and Mt.Carool Pty.Ltd. being rejected or withdrawn that Council proceed with the pending legal action with a view to achieving full restoration of environmental damage along the lines detailed in recommendation 1.5(d) above." (Recommendation 1.5(i))

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

> "That the location and design of internal roads be determined on the merits of the application." (Recommendation 1.6(a))
>
> "That a uniform standard of construction for internal roads should not be adopted and that construction need not be supervised by a qualified engineer." (Recommendation 1.6(b))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART A. INTRODUCTION

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

Abreviations

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

PART B.

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

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

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

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

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

have addressed this question was when Council drafted the clause!

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "That M.O. Development Applications be processed strictly within the statutory time period of 40 days." (Recommendation 1.3(a))
>
> "That to assist in processing applications within 40 days, Council produce a guideline brochure to assist applicants in the preparation of a Development Application. Such a brochure to include model documentation, typical maps, s.90 and LEP 6 3(a) conditions, explaination of possible contributions under s.94, staging, building issues, reference to the 'Low Cost Country Home Building' Handbook and the like." (Recommendation 1.3(b))
>
> "That in considering an M.O. application Council has adequate provison to request the applicant for additional information, and to obtain advice from Government authorities such that it ought to be able to make an assessment of an application within the specified time constraint. It is submitted that additional legislation is not required to achieve this end." (Recommendation 1.3(c))

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

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

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

> "Where consent under the EPA Act, is required ... then in respect of any application for approval of the erection of the building the Council shall take into consideration - (i) means of access genarally and particularly the means of access for the purpose of the removal of nightsoil, garbage and other refuse...."
>
> and s.313(2)(a) which provides that:
> "Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....

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

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

RURAL RESETTLEMENT TASK FORCE

SUMMARY OF RECOMMENDATIONS

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

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

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

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

(SR p.7)

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

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

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

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

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

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

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

COMMISSION OF INQUIRY INTO

MULTIPLE OCCUPANCY IN TWEED SHIRE

SUBMISSION IN REPLY

(10.12.85)

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PART A. INTRODUCTION

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

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

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PART B.

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

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

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

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

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

have addressed this question was when Council drafted the clause!

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and s.313(2)(a) which provides that:
"Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

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

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

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

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

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

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

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

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

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

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

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

consent of Council.

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

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

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

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

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

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

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

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

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

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

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

We hence recommend:-

> "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comphrensive and effective T.P.O., with secure legal standing, be immediately introduced". (Recommendation 1.5(b))
>
> "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area, and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropiate directive, or if necessary relieving Council of its planning jurisdiction." (Recommendation 1.5(c))
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> (Recommendation 1.5(d))
>
> "That a full time "environmental officer" be appointed by Council and given the authority of law to act on their own behalf in the event of a breach of the T.P.O." (Recommendation 1.5(e))

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

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

recommend:-

> "That Council appears to have jurisdiction to require consent for road works associated with M.O. development (by virtue of same being outside the exemption provided in I.D.O. 2, Col.II)." (Recommendation 1.5(f))
>
> "That the provision of an effective T.P.O. and requirement of consent for road works associated with proposed M.O. development are seen to be two effective ways of controlling non bona fide M.O. development." (Recommendation 1.5(g))
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6. In respect to the location and construction standard of internal roads (Tweed PS p.4) it is our view that these be determined on the merits of the application. Roads we submit, if well sited and constructed by experienced persons should be accepted as adequate. (We note that roads on agricultural properties do not even require Council approval, let alone engineering design and supervision!). We hence recommend:-

> "That the location and design of internal roads be determined on the merits of the application." (Recommendation 1.6(a))
>
> "That a uniform standard of construction for internal roads should not be adopted and that construction need not be supervised by a qualified engineer." (Recommendation 1.6(b))

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

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

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

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

¶

.....

PART A. INTRODUCTION

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

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PART B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and s.313(2)(a) which provides that:
"Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

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

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

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

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

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

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

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

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

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

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

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

consent of Council.

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

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

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

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

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

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

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

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

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

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

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

We hence recommend:-

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

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

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

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

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

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

recommend:-

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

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

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

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

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

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

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

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

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

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

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

¶

RURAL RESETTLEMENT TASK FORCE

SUMMARY OF RECOMMENDATIONS

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

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

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

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....

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

5.1 "That with respect to any future M.O. Development Applications

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

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

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

* the aims and objective of the organisation,

* constitution, articles and memorandum, and the like,

* trust deeds and the like,

* statement of the distribution of any proposed profit,

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

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

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

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

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

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

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

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

.....

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

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

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

.....

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

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

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

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

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

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

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

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

RECOMMENDATIONS:

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

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

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

.....

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS

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

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

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

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

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

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B 9. COMMENTS AND RECOMMENDATIONS ARISING FROM THE PRIMARY

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

RECOMMENDATIONS

"That the Director of Land Titles be requested either to release all relevant reports relating to the findings of the various inter-departmental committees examining the issue of a proposed Community or Cluster Titles Act or make available a summary of the activities and findings of these committees." (Recommendation 8.3)

"That the Commissioner seek advice from the Premier as to which Ministerial portfolio might best serve as the focal point for the introduction of a Community Titles Act, and recommend accordingly in the findings of the Inquiry." (Recommendation 8.4)

We would see that the Minister for Housing, the Minister for Natural Resources and the Minister for Planning and Environment might well be considered in this regard.

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Tweed Inquiry

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PART A. INTRODUCTION

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

Abreviations

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

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PART B.

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

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

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

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

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

have addressed this question was when Council drafted the clause!

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and s.313(2)(a) which provides that:
"Where consent under the EPA Act is not required ... the Council shall take into consideration - (a) the matters enumerated in subsection (i)..."

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

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

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

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

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

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

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

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

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

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

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

consent of Council.

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

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

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

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

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

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

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

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

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

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

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

We hence recommend:-

> "That the Tweed Tree Preservation Order is grossly inadequate to effectively achieve protection of significant trees in the Shire. That a comphrensive and effective T.P.O., with secure legal standing, be immediately introduced". (Recommendation 1.5(b))
>
> "That the attention of the Minister for Planning and Environment be drawn to the immunity with which trees of significance may be, and it appears recently have been, destroyed in the Tweed Shire area, and that if immediate rectification by Council is not forthcoming, that consideration be given by the Minister to issuing an appropiate directive, or if necessary relieving Council of its planning jurisdiction." (Recommendation 1.5(c))
>
> "That if a breach of the Tree Preservation Order occurs that Council automatically take action to seek redress as provided under s.126 of the EPA Act:
>
> 1. imposition of a fine up to $20,000,
> and 2. the replanting of nominated trees and their maintenance to maturity,
> and 3. provision of security to cover default."
>
> (Recommendation 1.5(d))
>
> "That a full time "environmental officer" be appointed by Council and given the authority of law to act on their own behalf in the event of a breach of the T.P.O." (Recommendation 1.5(e))

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

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

recommend:-

> "That Council appears to have jurisdiction to require consent for road works associated with M.O. development (by virtue of same being outside the exemption provided in I.D.O. 2, Col.II)." (Recommendation 1.5(f))
>
> "That the provision of an effective T.P.O. and requirement of consent for road works associated with proposed M.O. development are seen to be two effective ways of controlling non bona fide M.O. development." (Recommendation 1.5(g))
>
> "That as educational information re unauthorised development, Council periodically publicise, in the local media etc., that approval is required for road works in connection with proposed M.O. development." (Recommendation 1.5(h))
>
> "That in the event of the development applications made by Tomewin Village Pty. Ltd. and Mt.Carool Pty.Ltd. being rejected or withdrawn that Council proceed with the pending legal action with a view to achieving full restoration of environmental damage along the lines detailed in recommendation 1.5(d) above." (Recommendation 1.5(i))

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

> "That the location and design of internal roads be determined on the merits of the application." (Recommendation 1.6(a))
>
> "That a uniform standard of construction for internal roads should not be adopted and that construction need not be supervised by a qualified engineer." (Recommendation 1.6(b))

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

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