

MASTER

MASTER

UNIT 1,  
50 PATERSON STREET,  
BYRON BAY, 2481  
(066) 858 648

DEAR . . . . .

RE: MORE (MO REVIEW COLLECTIVE) UPDATE 17.11.93.

HEREWITH COPIES OF...

A. LISMORE REPORT TO THE COUNCIL [MY DOC.(E)] FOLLOWING  
PUBLIC DISPLAY OF COUNCIL'S PREFERRED OPTIONS. (THE  
RECOMMENDATIONS AS INCLUDED, WERE APPROVED BY COUNCIL ON  
16.11.93 WITHOUT COMMENT).

B. SUBMISSIONS MADE TO THE DISPLAY MATERIAL.

C. LETTER FROM DOP TO COUNCIL ADVISING OF STATEWIDE  
MO REVIEW.

I AIM TO PUT TOGETHER A "COLLECTIVE" COMMENT/REBUTTAL TO THE  
OBJECTIONS MADE. YOUR COMMENTS/ISSUES OF CONCERN ETC.  
WOULD BE APPRECIATED ASAP OR BY MID DECEMBER AT THE LATEST.

BASED ON THIS, I LOOK TO OUR MAKING A SUBMISSION TO THE  
CONSULTANTS AT THE APPROPRIATE TIME, POSSIBLY BEING BEFORE  
XMAS OR EARLY JANUARY.

TO ASSIST IDENTITY WHERE REFERENCE IS MADE TO THE MATERIAL,  
EACH DOCUMENT HAS BEEN MARKED (A) THROUGH (E), AND A LINE  
SCALE NOTED ON THE LEFT HAND SIDE. EG. A2:10 = DOC(A), PAGE  
2, LINE 10 (OR THEREABOUTS).

I AIM TO FORWARD TO YOU MY OWN COMMENTS/REBUTTAL AS SOON AS I  
AM ABLE TO PREPARE SAME.

THE CONSULTANTS HAVE SENT OUT A 30 QUESTION SURVEY TO ALL  
COUNCILS INVOLVED WITH MO. AN ANALYSIS OF THIS IS EXPECTED  
IN MID DECEMBER. I EXPECT TO GET A COPY OF THIS AND WILL  
FORWARD YOU A COPY FOR YOUR COMMENT.

PAN-COM NEWSLETTER IS BEING PREPARED BY SIMON; GRETA AND  
GRAHAM (IRVINE) AND WILL BE DISTRIBUTED SHORTLY.

GENERAL PAN-COM MEETING AT THE CHANNON HALL, 3PM SUNDAY 12  
DEC. (THIS IS THE CHANNON MARKET DAY).

REGARDS,

. . . . .

Scott-Nick

Simon

Happ

Spore

17

Belton

✓ Pundon

✓ ~~Edie~~

✓ Inure

✓ ~~Rob~~

~~Jones~~

✓ Dove L

Wandwich

Spain

✓ Di

Kenally Benefits of

✓ Kevin C.

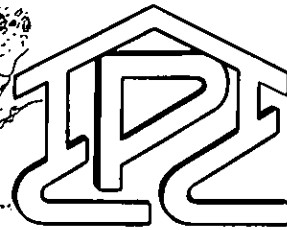
✓ Col. J.

Don H.

✓ McPherson

and... briefs etc.

See master list for Dist.



PAN-COMMUNITY  
COUNCIL  
P.O. BOX 102,  
NIMBIN 2480

MAKERR  
to DDP

25.8.93

MOST URGENT

858648

FAX 857830

(Mark to ring above number)

Attention: Mr. Jim Clark.

Manager,  
Department of Planning,  
Northern Region Office,  
49 Victoria St.,  
Grafton, 2460

Dear Sir,

Re: Aims of SEPP-15, Multiple Occupancy

1. Further to our conversation on the 24th August this is to confirm our verbal request for clarity as to the appropriate reading of Aim 2(c)(iii) of SEPP-15.

In respect to your correspondence to the Lismore City Council of 15 July 1993 (Your ref. NJ: CW: S/285), we seek your confirmation that we should not read all the subclause in the Policy as automatically being cojoined, and, in particular that Clause 2(c)(iii) need not necessarily be met for an MO DA to be considered, as per your verbal advise.

As mentioned in our conversation, the wording in your above letter has been the cause of a great deal of stress and concern to members of the Pan-Comm Council.

In this regard we attach herewith a copy of advice from Professor David Spain for your information. We note that this advice supports your opinion that the several parts of the Aims, should not be read as cojoined.

(We are further advised that the relevant sections of the Interpretation Act 1987, also reinforce the above view).

As to the intent of those who drafted SEPP-15 we believe it is now common ground that historically, it was the intent that the several parts of the Aims be read as disjoined.

(We would draw to your attention in this regard, that a number of our members were intimately involved in the preparation of SEPP-15).

As mentioned on the phone, within a few days the Chief Planner of Lismore City Council, will be finalising his report to Council, on the progress to date, of the Council's Review of MO.

While it appears that the Council acknowledges that the view expressed in your above letter, is an "opinion", there nevertheless are those outside the staff who take the view that your letter should be read at its face value, and that all the subclauses of the Aims should be read as cojoined.

We consider that it is most important that clarity be established in this regard as a matter of urgency, and to this end we appreciate your offer to advise the Council of the appropriate reading of your letter of 15 July.

As speed is of the essence in respect to the forthcoming Council meeting, we would greatly appreciate it if you could see your way clear to FAXing your comments to the Council today, or tomorrow at the latest.

If this should not be possible, we would appreciate it if you would advise the Planner, or his Assistant, by phone of the forthcoming clarification.

2. Also as mentioned, we are most concerned that Aim 2(c)(iii) is quoted in your Project Brief for the Statewide Review of MO, in a way which seems to us may be misread that it is to be cojoined with other parts of the Aims.

To overcome this potential confusion we ask that either;-

- a. those who have been invited to tender be advised, before the closing of tenders, that clause 2(c)(iii) should not be read as cojoined with other parts of the Aims,

or failing this,

- b. that clarification on this matter be built into any formal contract arrangement with the successful tenderer.

We thank you in anticipation of your speedy action in this matter and look forward to assisting you, and your consultant, in the Statewide Review of SEPP-15.

We await your reply.

Yours faithfully,



For and on behalf of the  
Pan-Comm MO Review Collective.



# Department of Planning

## NORTHERN REGIONAL OFFICE

Mr. P. Hamilton  
Pan-Community Council  
PO Box 102  
NIMBIN NSW 2480

N.S.W. Government Offices  
49 Victoria Street,  
Grafton 2460  
P.O. Box 6, Grafton 2460

Telephone : (066) 42 0622 Ext:

Our Reference : G93/00130 JC:DT

27 AUG 1993

Dear Mr. Hamilton,

### STATE ENVIRONMENTAL PLANNING POLICY NO. 15 - MULTIPLE OCCUPANCY

I refer to your letter of 25th August, 1993 concerning the interpretation of clause 2(c)(iii) of State Environmental Planning Policy No. 15. I am advised the Department's letter of 15th July, 1993 to Lismore City Council in this matter has resulted in a change in the Council's administration of applications under the Policy.

2. The Department is unable to provide legal advice on the interpretation of environmental planning instruments. However, the following comments may be of assistance.

3. It was intended that paragraphs 2 and 3 of the previous letter (copy attached) should be read together. While a development proposal needs to satisfy all the aims and objectives, this is only to the extent to which they apply. Objective (c) relates to "facilitating development ... to create opportunities...". If, in the City of Lismore, there are not areas "...which are suffering or are likely to suffer from a decline in services due to rural population loss", then this objective need not be applied.

4. Pursuant to clause 25(2) of the Environmental Planning and Assessment Act, 1979 the aims and objectives of the Policy cannot be applied to prohibit development, which is clearly made permissible by other provisions of the Policy, such as clause 7(1).

5. I have noted your concern relating to the project brief for the proposed review of multiple occupancy. If necessary, this matter will be taken up with the successful tenderer.

6. I trust this clarifies the matter for you. A copy of this letter is being forwarded to the Council.

Yours faithfully,

Malcolm Imrie  
Deputy Manager  
(Northern Regions)

Final Sub. To Council

Sub to Council" (2)

✓ Dent  
✓ Dave Lambert

Pendar

Par Cam

✓ Di R

✓ Eddie B

✓ Rob

✓ Slapp

✓ Linian

✓ Discan

✓ Belton

✓ Irving

✓ Pre "S"

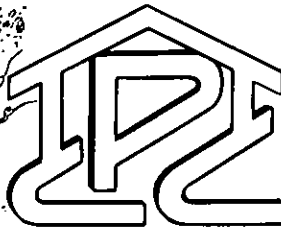
✓ David K

✓ Col

✓ Dan H.

○ McPheat

○ Cumming



PAN-COMMUNITY  
COUNCIL  
P.O. BOX 102,  
NIMBIN 2480

28.6.93

MASTER  
Pan-Com  
Enrolled (2)

SUBMISSION BY THE PAN-COMMUNITY COUNCIL

on the

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

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## INTRODUCTION

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

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

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

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

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

1. The good quality of relationship between people is of great importance.
2. The land should be cared for and enhanced by the M.O. community.
3. Membership of an M.O. should be as cheap as possible with an emphasis on owner-building to ensure the availability of access to low cost housing.
4. There is a strong belief and commitment to self sufficiency in terms of energy, housing and food production.

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

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

## ABBREVIATIONS

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

#####

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

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

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

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

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

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

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

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

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

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

### 6.0.4    "DO NOTHING?"

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

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

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

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

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



### 6.0.6 OTHER POSSIBLE INSTRUMENTS

Council has the option:-

- (a) to prepare an M.O. Code, or, simply to make "policy decisions" as to how the legislation is to be applied. An example of this is the present "M.O. Policy Guidelines for Road Conditions".
- or (b) to introduce a Draft DCP with the express intent of not formalising its adoption until sometime in the future. The advantage of this option is that it could spellout guidelines in precise details and allow these to be tested over time.

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

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

### 6.0.7 AN M.O. COUNCIL ADVISORY PANEL.

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

#### 6.1.0 SUBDIVISION

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

"cannot be subdivided under the Community Title legislation".

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

6.1.2 We support the view expressed that;

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

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

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

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

6.1.5 The Discussion Paper asks:-

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

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

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

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

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

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

**6.2.0 MINIMUM AREA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **WHAT CONSTITUTES "OVERDEVELOPMENT"?**

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

The question may be asked:-

**"WHAT IS THE 'INTENT' IN AN INTENT-IONAL COMMUNITY?"**

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

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

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

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

#### **6.3.0 AGRICULTURAL LAND**

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

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

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

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

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

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

6.3.3 The question is asked;

**"SHOULD THE 25% AGRICULTURAL LAND REQUIREMENT BE  
RECONSIDERED TO ENABLE M.O. DEVELOPMENT ON LAND  
WITH A GREATER PERCENTAGE OF PRIME LAND?"**

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

#### 6.4.0 NON-RESIDENTIAL DEVELOPMENT

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

#### 6.5.0 SITING OF DWELLINGS

**"SHOULD DWELLINGS BE CLUSTERED OR DISPERSED?"**

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

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

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

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

#### 6.6.0 PUBLIC ACCESS

##### 6.6.1 ROAD USAGE PATTERN

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

**"ARE CURRENT ROAD STANDARDS APPROPRIATE?"**

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

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

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

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

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

#### **6.6.2 "IS FLOOD FREE ACCESS CONSIDERED NECESSARY?"**

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

#### **6.6.3 RIGHT-OF-WAY**

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

#### **6.8 WATER SUPPLY**

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

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

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

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

#### **6.9 WASTE DISPOSAL**

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

On site waste disposal should be considered on merit.

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

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

#### **6.10.0 ENVIRONMENTAL RISK/HAZARD**

##### **6.10.1 FIRE PROTECTION**

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

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

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

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

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

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

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

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

#### 6.10.2 FLOODING

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

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

#### 6.10.3 SLIP/SUBSIDENCE

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

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

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

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

#### 6.11 VISUAL IMPACT

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

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

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

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

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

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

#### 6.12 IMPACT ON ADJOINING LAND USE

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

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

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

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

#### 6.13 FAUNA IMPACT

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

Answer: "Yes".

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

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

#### 6.14 SPECULATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

**6.18.0 PAYMENT OF s.94 LEVIES**

**"ARE CURRENT ROAD CONTRIBUTIONS APPROPRIATE?"**

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

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

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

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

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

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

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

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

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

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

**6.19 APPLICATIONS**

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

END



# Department of Planning

## NORTHERN REGIONAL OFFICE

Mr. P. Hamilton  
Pan-Community Council  
PO Box 102  
NIMBIN NSW 2480

N.S.W. Government Offices  
49 Victoria Street,  
Grafton 2460  
P.O. Box 6, Grafton 2460

Telephone : (066) 42 0622 Ext:

Our Reference : G93/00130 JC:DT

27 AUG 1993

Dear Mr. Hamilton,

### STATE ENVIRONMENTAL PLANNING POLICY NO. 15 - MULTIPLE OCCUPANCY

I refer to your letter of 25th August, 1993 concerning the interpretation of clause 2(c)(iii) of State Environmental Planning Policy No. 15. I am advised the Department's letter of 15th July, 1993 to Lismore City Council in this matter has resulted in a change in the Council's administration of applications under the Policy.

2. The Department is unable to provide legal advice on the interpretation of environmental planning instruments. However, the following comments may be of assistance.

3. It was intended that paragraphs 2 and 3 of the previous letter (copy attached) should be read together. While a development proposal needs to satisfy all the aims and objectives, this is only to the extent to which they apply. Objective (c) relates to "facilitating development ... to create opportunities...". If, in the City of Lismore, there are not areas "...which are suffering or are likely to suffer from a decline in services due to rural population loss", then this objective need not be applied.

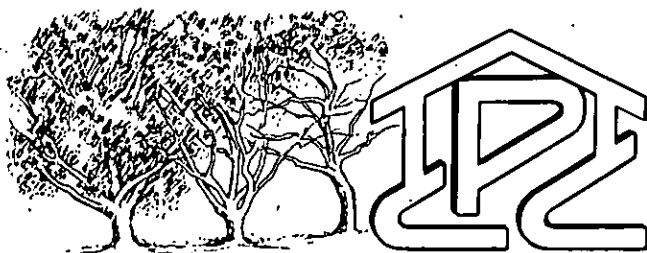
4. Pursuant to clause 25(2) of the Environmental Planning and Assessment Act, 1979 the aims and objectives of the Policy cannot be applied to prohibit development, which is clearly made permissible by other provisions of the Policy, such as clause 7(1).

5. I have noted your concern relating to the project brief for the proposed review of multiple occupancy. If necessary, this matter will be taken up with the successful tenderer.

6. I trust this clarifies the matter for you. A copy of this letter is being forwarded to the Council.

Yours faithfully,

Malcolm Imrie  
Deputy Manager  
(Northern Regions)



PAN-COMMUNITY  
COUNCIL  
P.O. BOX 102,  
NIMBIN 2480

22nd. June 1993

Dear MO,

Approximately 35 people from 17 communities attended the Pan-Com meeting on 13th. June to discuss the Lismore C.C. "M.O. Discussion Paper". It was a great meeting, we moved through a long agenda with a high level of consensus and energy.

Below is a very brief summary of the proposed response to the Council.

What we would like from you is:-

- \* any comments on the summary phoned to Peter Hamilton on 858 648 ASAP.
- \* an independent submission from your MO perhaps based on this summary to be sent to L.C.C. by 30th June, with a copy to Pan-Com.
- \* reference in your submission to any special solutions that your MO has developed to the questions that L.C.C. has raised, eg. a particular design of composting toilet.
- \* Money! the last meeting was generous, but we need more funds for all the costs involved, please send your donations to the above address. \$20 per MO was suggested as a minimum contribution at the meeting.
- \* Contact supportive people not on MO's to send letters of support for MO's to the L.C.C.
- \* That representatives from your community attend a Public Meeting on the MO Discussion Paper being organised by the Council before the matter is to be determined. Please keep an eye open for Council's advertisement for this meeting.

If you would like a copy of the full Pan-Com submission  
please contact Peter Hamilton.

Yours in community,

Peter Hamilton, Simon Clough, Brian Slapp  
(For and on behalf of the Pan-Community Council)

#### CHECK LIST OF ISSUES FOR CONSIDERATION

The number in square brackets is the item number used in the Council's Discussion Paper. It is suggested that this be included so that Council can easily relate your comments, to the relevant section of the Discussion Paper. The comment in round brackets is Pan-Com's recommendation.

ABBREVIATIONS: DCP: Development Control Plan, LEP: Local Environment Plan, SEPP: State Environmental Planning Policy-15..MO of Rural Land.

#### "COUNCIL'S OPTIONS FOR CHANGE TO THE CURRENT SYSTEM OF PROCESSING M.O. APPLICATIONS?"

1. (a) "AMENDING THE LEP TO PROVIDE THE EQUIVALENT OF THE SEPP AND ADDING A DCP?" [6.0] (Not recommended).

MASTER  
PAN-COM  
Emailed  
(b)

(b) "RETAIN THE SEPP AND PREPARE A DCP?" [6.0] (Not recommended).

(c) "AMENDING THE SEPP WITH THE AGREEMENT OF THE MINISTER?" [6.0]  
(Not recommended).

(d) "RETAIN THE PRESENT PROCEDURE?" [6.0] (Recommended)

**PAN COM'S ADDITIONAL OPTIONS.**

(e) "COUNCIL TO PRODUCE AN M.O. USER GUIDE HANDBOOK?" (Recommended).

(f) "COUNCIL TO PREPARE AN M.O. CODE, OR MAKE RELEVANT "POLICY"  
DECISIONS OR A DRAFT DCP?" (May have merit).

(g) COUNCIL TO FORM AN M.O. ADVISORY PANEL?" (Recommended).

2. "WOULD COMMUNITY TITLE DESTROY THE CULTURE AND PHILOSOPHY OF M.O.?" [6.1] (This requires subdivision and hence is not an option).
3. "WOULD SUBDIVISION CREATE DE FACTO RURAL RESIDENTIAL ESTATES?" [6.1] (Subdivision is not possible, hence this option is not available).
4. "IS THE MINIMUM AREA FOR M.O. TOO SMALL?" [6.2] (The minimum area is satisfactory).
5. "IS THE DENSITY (ratio of houses or people, to the area of the land) TOO GENEROUS?" [6.2] (The density is satisfactory).
6. "WHAT CONSTITUTES 'OVERDEVELOPMENT'?" [6.2] (Development in excess of the social needs of the community members).
7. "SHOULD THE 25% AGRICULTURE LAND REQUIREMENT BE CONSIDERED TO ENABLE M.O. ON LAND WITH A GREATER PERCENT OF "PRIME CROP AND PASTURE" LAND?" [6.3] ("Prime crop and pasture" land as defined in the Policy, should be determined by the Dept. of Agriculture in respect to each application).
8. "SHOULD COUNCIL REQUIRE A NOXIOUS WEED CONTROL PROGRAMME?" [6.3] (This would depend upon the actual proposal).
9. "SHOULD SITING OF DWELLINGS BE CLUSTERED OR DISPERSED?" [6.5] (Both clustered and dispersed forms should be available).
10. "ARE CURRENT ROAD STANDARDS APPROPRIATE. [6.6] (Depends on each situation).
11. "IS FLOOD FREE ACCESS CONSIDERED NECESSARY?" [6.6] (No, "mostly flood free" access should be acceptable).
12. "SHOULD RIGHT-OF-WAY ACCESS BE POSSIBLE?" [6.6] (Yes).
13. "HOW IMPORTANT IS THE IMPACT OF M.O. ON WATER RESOURCES?" [6.8] (M.O's should not adversely impact on the water quality and quantity. Health standards should prevail).
14. "SHOULD WASTE DISPOSAL SYSTEMS BE IDENTIFIED IN THE DEVELOPMENT APPLICATION?" [6.9] ( Yes. This should be considered on merit. In respect to toilet waste, composting toilets and pit toilets should remain an option).

15. "ARE EXISTING BUSHFIRE REQUIREMENTS APPROPRIATE?" [6.10]  
(This depends on the requirements in each case).
16. "SHOULD M.O. DWELLINGS NOT BE LOCATED IN FLOODWAYS?" [6.10]  
(In general "No", but each situation should be considered in terms of the particular circumstances).
17. "SHOULD A GEOTECHNICAL REPORT BE REQUIRED WITH A DEVELOPMENT APPLICATION?" [6.10] (Yes where there is reason to believe land slip or subsidence may occur).
18. "SHOULD LANDSCAPING AND REHABILITATION PLANS BE CLEARLY DEFINED AND NOT ADDRESSED AS GENERALISED 'MOTHERHOOD' STATEMENTS?" [6.11]  
(Adverse visual impact should be addressed by Council preparing a DCP or equivalent, for all rural land. Generalised "motherhood" statements should prevail until such time as this is introduced).
19. "SHOULD THERE BE A BUFFER BETWEEN M.O. AND ADJOINING LAND?" [6.12]  
(In general "No". In the event of "conflict" this is a civil matter, and should be dealt with accordingly).
20. "SHOULD ALL M.O. APPLICATIONS BE ACCOMPANIED BY A FAUNA IMPACT ASSESSMENT?" [6.13] (Yes).
21. "IS THERE A ROLE FOR COUNCIL TO PLAY IN RESPECT TO 'SPECULATOR' OWNERSHIP OF AN M.O.?" [6.14] (Yes. A bona fide M.O. is a community of members and cannot be "owned" by a "speculator").
22. "SHOULD COUNCIL 'POLICE' CONDITIONS OF CONSENT AND UNAPPROVED BUILDING DEVELOPMENT?" [6.15] (The relevant legislation requires Council to ensure condition are met. Council should use its discretion as to the extent of "policing". Any "policing" should be across the board so that there can be no implication of discrimination).
23. "SHOULD COUNCIL TAKE ACTION AGAINST ILLEGAL M.O's?" [6.16]  
(Council has a statutory obligation in respect to any illegal development. M.O's should not be singled out in this regard).
24. "SHOULD COUNCIL 'STRIKE' A SEPARATE RATE LEVY FOR M.O.?" [6.17]  
(We support any review that contributes to an overall "equitable" system of rating).
25. "ARE CURRENT ROAD CONTRIBUTIONS APPROPRIATE?" [6.6]  
(This depends on the particular circumstances. Families often share transport. M.O's are relatively low-impact developments).
26. "SHOULD COUNCIL CONTINUE TO REQUIRE A s.94 LEVY AT THE BUILDING APPLICATION STAGE?" [6.18] ( Yes, at the time of each B.A. There should be scope for time payment in cases of hardship).
27. "SHOULD COUNCIL PERMIT 'IN KIND' CONTRIBUTIONS IN LIEU OF A MONETARY CONTRIBUTION?" [6.18] (The legislation requires that 'in kind' contributions be considered in respect to every D.A. "In kind" contributions could include for example, free labour on road upgrading, construction of public recreational or amenity facilities (eg. a hall).



PAN-COMMUNITY  
COUNCIL  
P.O. BOX 102,  
NIMBIN 2480

*RTF 05*  
*Erased*

28.6.93

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

Dear Sir,

re: "Discussion Paper on Multiple  
Occupancy of Rural Land"

Please find enclosed herewith our submission in  
respect to the above "Discussion Paper".

Thanking you in anticipation for your  
consideration of the matters raised therein.

Yours faithfully,

.....  
Simon Clough, Brian Slapp, Peter Hamilton

(For and on behalf of the Pan-Community Council)