

of systematically through SEPP &  
incl. every of in Dis Paper to  
show how all can be dealt  
with in SEPP.

+ Index.

My Personal  
Submission

ATTACHMENT A

Comments

NOTES ON SEPP-15 WITH A VIEW TO ITS APPLICATION  
IN CONSIDERING M.O. DEPLOYMENT APPLICATIONS.

RRTF01

RRTF08  
Cover

Submission On ~~Being an attachment to the~~  
 "Discussion Paper on M.O. of Rural Land"  
 issued by the Lismore Council, 27 April 1993

by Peter Hamilton  
 (Draft 13 June 1993)

SEPP

## 1. INTRODUCTION

I consider that any examination of SEPP-15 with a view to its application in M.O. Development Applications and, possible "modifications" or supplementary other instruments, for example a D.C.P., policy statements, code or the like, requires in the first instance, a close examination of the effectiveness of the existing provisions in the SEPP-15.

It is important I suggest, to satisfy oneself:-

- a. on the ways the present provisions of the SEPP are being interpreted and used, and,
- b. to consider those provisions in the SEPP which are either, not being applied, or applied inconsistently, or infrequently and perhaps could be better used to overcome experienced difficulties.

## 2. EXAMINATION OF SEPP-15

The following is a sequential examination of selected items in the SEPP which I see may have relevance when considering M.O. D.A.'s.

## 2.1 SEPP AIM 2(a)

"to encourage a COMMUNITY based and ENVIRONMENTALLY sensitive approach to rural settlement" (my emphasis).

COMMENT: As "community" is not defined specifically in the "Interpretations" (Item 5), discretion is required in determining whether a D.A. is or is not, a "community based" application within the spirit and letter of the SEPP.

When read in the context of the whole of the SEPP, there are many features which qualify what "community" is to mean in terms of the SEPP.

These include for example, such statements as "collectively own the land", "sharing of facilities", "pooling resources", "construction of low cost buildings" and the like. For further comment on such as these, see below.

In addition reference can be made to the literature both books and journals that deal with lifestyle "community" activities. (A reference list of relevant literature is not included in this paper).

There is in my view an onus on an applicant to spell out what "community" means in the context of their application and if this is not provided, that the Council seek this be supplied by way of "additional information".

It is my experience that the term "community" does mean many different things to resettlers but nevertheless there is a commonly held distinction between ~~what bona fide is held to be~~ "community development" <sup>and</sup> versus "private development".

This "diversity" of application is respected and "protected" in the legislation and I support this as an appropriate principle to be retained. ~~(It is in fact in my view, an essential "building block" of a sustainable system of democracy).~~ <sup>Kept in mind.</sup>

What does not constitute "community" in the context of the SEPP includes for example "de facto subdivision",

All development impacts on the natural environment. In the case of for example, urban development, or industrial development the impact is usually assessed on the basis of obtaining the "minimal impact" on the environment.

While steps to assess the impact on the environment is spelt out in detail in the Planning Act, eg. in s.90 considerations ~~and s.111 requirements~~, I suggest that the encouragement of an "ENVIRONMENTALLY SENSITIVE APPROACH" in the Aim of this SEPP is placing a special attention on "environmental sensitivity", which I suggest, is over <sup>as</sup> ~~an above~~ that dealt with elsewhere in the planning legislation.

In essence I see this to be that the quality of the environment on the property will be positively enhanced due to the proposed development. The distinction here is distinction between a "direct" versus an "indirect" benefit to the environment.

## 2.2 SEPP AIM 2(b)(ii)

"to enable ... the sharing of facilities and resources (and) to collectively manage the allotment"

COMMENT: This Aim gives Council the licence, and I would suggest, the "obligation" to satisfy itself that the spirit and letter of this Aim is met.

It could reasonably be expected that this information include details of for example, constitution of the organisation, articles and memorandum of an incorporated body, regulations, decision making processes including conflict resolution procedures, right of appeal, sanctions and right

of expulsion, inheritance, renting and/or selling of buildings, residential entitlement, transfer of shares or equivalent, environmental management plans.

If such relevant information is not included in the D.A. then the Council should seek it as otherwise it would not be meeting the requirements of the SEPP.

It seems that Council has not always sought such information when it has not been provided.

Where such information is provided it will I suggest greatly assist in distinguishing the "de facto subdivision" from the bona fide community application.

Evidence of how it is proposed that the property be "collectively" owned and managed should be provided.

The requirement of a Social Impact Statement should be considered where appropriate.

### 2.3 SEPP AIM 2(b)(iii)

"to enable - the pooling of resources, particularly where low incomes are involved (and) to develop a wide range of communal rural living opportunities, including the construction of low cost buildings"

Evidence of the income status of the community should be provided or sought by Council. Special recognition and consideration should apply where it is shown that the participants are in the lower income range.

For Council to do other than support those on low incomes would be a contravention of this Aim of the SEPP Policy and while I am not aware that this has been an issue in any court appeal, I am of the view the Court would support this principle on merit.

### 2.4 SEPP AIM 2(c)(ii)

"in a manner which does not involve subdivision ...(or) separate legal rights to parts of the land through means such as agreements, dealings, company shares or trust arrangements."

The introduction of SEPP-15 came about through the efforts of those wishing to live communally with the sharing of facilities and resources.

The Policy does I suggest, clearly set out in "spirit" and "letter" the Aims, Objectives and details to achieve this end.

In drafting the legislation careful attention was given to not providing any loophole that could be used by developers in a way which was inconsistent with the "spirit" of the policy while at the same time, not restricting diverse forms of bona fide communal settlement.

In short this clause of the Policy may be expressed as prohibiting any devious means to circumvent the Aims of the policy in regard to private versus communal ownership of the land.

It is in my view, a credit to the drafters of the legislation that it has been "tight" in this regard. Such attempts that have been made, have been few and far between, and in all probability would not have proceeded had the relevant Councils implemented the relevant clauses in the Policy to determine the bona fides of the applicant.

In essence this may be expressed as those with an ulterior motive to misuse the Policy ought not to apply for M.O. development, and if they do Council should utilise the available provisions in the Policy to prevent such an application being accepted.

The Discussion paper raises the question of "entrepreneurial" M.O. developers. In principle I have no difficulty with the concept of M.O. "entrepreneurial" developers and in fact I can envisage situations where such a developer may have a deal to offer.

The distinction between bona fide M.O. development and de facto subdivision lies as far as I am concerned, in the underlying motivation of the applicant.

If the motivation is to make a quick or easy buck, then it is inappropriate, but if it is to be genuinely instrumentally in the formation of a community, which in turn comes to make decisions collectively on the shape of a Development Application, then all things considered, it could be appropriate.

When considering an application from an "entrepreneurial" developer the SEPP provides ample provisions to determine the bona fides of an application in this respect. (I would go so far as to say that this is not just a discretionary requirement on the part of Council, but an obligatory requirement.)

If adequate information is not included in the D.A. to determine the bona fides, then Council should seek that this be supplied in accordance with the provisions of the Policy.

If Council then wished to proceed with a development application but had some reservations, it could place a condition on the approval that the D.A. would lapse if after a specified period of time, certain conditions were not met.

## 2.5 SEPP Clause 5(2), INTERPRETATION

"... the Council may ... treat two or more dwellings as a single dwelling ..."

This clause provides what is normally referred to as the "expanded house" concept. Different Councils have used different approaches in applying this provision and as far as I am aware, the Lismore Council has in practice, related to each case on its merits and this has not been a source of concern or friction. In most situations this is likely to be a building matter, rather than a planning matter.

## 2.6 SEPP Clause 7(1)(f)

"... the development is not carried out for the purpose of a ... tourist or weekend residential accommodation, except where development for such purposes is permissible under the provisions of another planning instrument ..."

This provision has come about through an amendment to the original Policy and permits such activities as providing weekend tourist accommodation or running a residential workshop on an M.O. (Ref: Dept. of Planning Circular B11, Item 23)

(This provision is not an issue in the Discussion Paper. I mention it here as there may be those who obtained M.O. approval when the Policy was first introduced, and are not aware of this amendment.)

## 2.7 SEPP Clause 8, MATTERS FOR CONSIDERATION

"... Council shall not consent to an application ... unless it has taken into consideration such of the following matters as are of relevance ..."

### (1)(a) "... the means proposed for establishing land ownership"

This should include all relevant documentation on the land ownership, both legal documents and informal agreements, policy statements and the like by for example, unincorporated associations.

Where an entrepreneur (be it an individual or eg. a corporate body) holds a percentage of shares in the community, this information together with the details of the manner in which the shares are held and may be transferred, should be detailed.

### (1)(a) "... the means proposed for establishing ... dwelling occupancy rights..."

This might reasonably include details such as;

- ## rights to "air space" over specified areas of land,
- ## delineation of the "home improvement area" if applicable,
- ## details in respect to selling or letting the dwelling if applicable.

- (1)(a) "... the means proposed for establishing ...  
environmental ... management ..."

This might reasonably include for example, a land management plan.

- (1)(a) "... the means proposed for establishing ... community  
management ..."

As mentioned above this could be expected to include a copy of the constitution, article of association, or like details providing information on the decision making process.

Evidence should be provided to show that ultimate "power" or determining decision making rests with the community and is not vested in an individual (be it a person or a corporate body etc.).

I consider that the provisions in the above clause alone, if fully considered by Council, are likely to provide sufficient information to determine the bona fides of an applicant.

#### 2.8 SEPP Clause 8(1)(g)

"... IF required by the APPLICANT, the availability of electricity and telephone ..." (my emphasis)

The provision of a telephone service and connection to the town supply of electricity should not be used by Council as grounds for rejecting an M.O., D.A.

#### 2.9 SEPP Clause 8(1)(h)

"... the availability of community facilities and services to meet the needs of the occupants ..."

Where an entrepreneurial type development is proposed the absence of any "communal facilities" should be carefully scrutinised by Council as a possible indicator of the proposal being a "de facto subdivision".

#### 2.10 SEPP Clause 8(1)(k)

"... whether the land is subject to bushfires, flooding, soil erosion or slip and, if so, the ... measures proposed to protect occupants ... (and) internal access roads ..."

Apart from the "bushfire" issue (which is dealt with elsewhere) the requirements of this provision in practice, do not appear to have been a problem. In steep terrain where precipices exist consideration should also specifically be given to possible risk from an avalanche.

from Denise Wright re Draft SEPP Subdivision  
re SEPP-15 M10

Intro.  
1. Why the review?

It is stated that the objectives of the review is

"to identify options for change to the planning  
sys regulation & controlling no development.

no reasons are given  
apart from the explanation that the review "is  
to ensure the system of L.O. dev. meets the  
needs of 1990" no explicit reasons are  
given as to why there should be any  
changes at all, though a so called  
"do nothing" option is provided in the introduction  
to Section 6 the Transfer (Section 6.)

It would have

Presumably some difficulties have arisen  
in the processing of M.O. & if this  
is the case it is a pity that therefore  
not all 'spelt out in 'Why the Review'  
for if this had been done, constructive  
attention could have been directed  
to the proposed solutions to these  
"problems".

In the absence of specific <sup>reasons</sup> difficulties  
being identified being given for the next  
event to be taking of the existing mechanisms,  
I suggest that it may be helpful  
that the community enunciate  
these and other concerns expressed so  
that these may be specifically  
addressed by Council in the discussion.

To this end I suggest that specific  
review & attention be given to the following



01

Attachment A

Notes on SEPP-15 with a view to its application in considering M.O. DA's.

Being an attachment to

Comments on the  
"Discussion Paper on M.O. of Rural hand"  
issued by LCC, 27 April 1993

by Peter Hamilton.  
(Draft 13 June 1993)

# 1. Introduction

It is my view that any examination of the SEPP-15 with a view to its application in considering M.O. DA's requires in the first instance a close examination of the SEPP-15, checking what parts are being used or not used & what if any complementary or supplementary instruments may be helpful.

a) in the light of experience

b) difficulties experienced by Council in processing M.O. DA's

c) provisions of the SEPP which have not been utilised in considering consistency of application

## 2. Examination of the SEPP-15

The following is a sequential examination of those items in SEPP-15 which I see may have relevance when considering the adequacy of the SEPP when considering M.O. DA's.

PKS

(A) I have been drawn to  
~~I breaking up consideration in~~  
~~re-grouping the sections in this~~  
way to highlight the actual  
questions which have been asked.

~~There is a response,~~  
The intrinsic <sup>contextual</sup> coverage of  
background etc, which may be  
~~entirely~~ <sup>relevant</sup> if entered to some,  
nevertheless may give credit for  
some, an illusion that  
really everything in the 1110  
garden is noisy.

~~This way <sup>is</sup> ~~fixed~~ be a mistake~~  
Can I suggest needs to be taken  
~~about as to what~~ that one is  
drawn into a ~~at~~ a forensic-state  
by the ~~superficial~~ global's  
user friendly ~~nature~~ presentation  
of the Dis Paper.

# Comments on

~~to be~~

Discussion Paper

On No

of Rural Land

Issued by Hides, 27 April 1993.

by

Dick Hamilton

(Discussion Draft, 13 June 1993)

## Overview

This is a draft discussion paper  
of the Land Discussion Paper No. 1 (27 April 1993).  
In these comments, basically  
I have aimed to concentrate on what I  
see to be the key issue <sup>raised</sup> in the <sup>discussion</sup> paper.

There are primarily 6 items:  
1. Why the Review  
2. Issues  
3. Conclusion

(+) Comments on the other matters covered in the <sup>Comments</sup> paper  
viz

2. What is No
3. Guide to the legislation
4. Hist. & dev. cont.
5. Location & Demand
- and Appendices

and I have dealt with <sup>in detail</sup> ~~separately~~ <sup>self contained</sup> ~~as~~ <sup>in</sup> ~~the~~ <sup>the</sup> ~~paper~~ <sup>the</sup> ~~to~~ <sup>the</sup> ~~this~~ <sup>the</sup> ~~paper~~.

## Contents

## Position Summary

My overall position, as at this date, is that SEPP15 adequately meets the needs of the Committee as the primary planning instrument. That there are no <sup>compelling</sup> reasons to consider ~~excluding~~ SEPP15 from the LEP and substituting a similar section in the LEP.

Such guidelines & direction Council staff might seek as an aid in determining a particular NW DA can I suggest be adequately ~~be~~ provided by way of "policy decisions" or a "Code" or the like. <sup>the adoption of a</sup>

If it is considered that something more formal than this is needed, then this might be in the form of a DEP.

## Preamble

- Purpose of this summary -  
 viz. to highlight only those issues which  
 from my experience  
 a) are or likely to become relevant to  
 MO applicants  
 b) to Council staff & Aldermen/Councillors in  
 ensuring the bona fides of the application  
 & that the pros of the SEPP are correct  
 in "spirit" as well as the "letter" of the law/  
 legislation/SEPPIS

All questions raised in the SP  
 are addressed in the context of & under  
 the relevant section of the SEPPIS.

As this is seen to have the advantage  
 of easily identifying the jurisdiction to  
 require consideration

and c) identify what matters/issues fall  
 outside the SEPPIS and in which the SEPPIS  
 provides no jurisdiction for their  
 consideration.

A Glossary of Terms is given. This has been  
 included here as it is seen that this <sup>user friendly</sup>  
 paper may come to be used as a  
 "plain english" complementary document to  
 other documents.

Many issues which experience has shown are explicit  
 eg. density formula for the nos of people dwelling  
 on the property are not listed or commented  
 upon here as there is little or no grounds  
 for interpretation

The issues which are excluded are those which  
 from my experience are open to 'interpretation'  
 or have not fully used.

NOTES ON SEPP-15 WITH A VIEW TO ITS APPLICATION  
IN CONSIDERING M.O. DEPLOYMENT APPLICATIONS

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It is important I suggest, to satisfy oneself:-

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These include for example, such statements as "collectively own the land", "sharing of facilities", "pooling resources", "construction of low cost buildings" and the like. For further comment on such as these, see below.

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It could reasonably be expected that this information include details of for example, constitution of the organisation, articles and memorandum of an incorporated body, regulations, decision making processes including conflict resolution procedures, right of appeal, sanctions and right of expulsion, inheritance, renting and/or selling of buildings, residential entitlement, transfer of shares

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or equivalent, environmental management plans.

If such relevant information is not included in the D.A. then the Council should seek it as otherwise it would not be meeting the requirements of the SEPP.

② To the best of my knowledge Council has not always sought such information where it has not been provided,

Where such information is provided it will I suggest greatly assist in distinguishing the "de facto subdivision" from the bona fide community application.

Evidence of how it is proposed that the property be "collectively" owned and managed should be provided.

The requirement of a Social Impact Statement should be considered where appropriate.

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This might reasonably include details such as;

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Apart from the "bushfire" issue (which is dealt with elsewhere) the requirements of this provision in practice, do not appear to have been a problem. In steep terrain where precipices exist consideration should also specifically be given to possible risk from an avalanche.

7.

GLOSSARY OF TERMS

"RURAL RESIDENTIAL DEVELOPMENT"

"SEPP" State Environmental Planning Policy. These State policies override the Regional environmental Plan (REP) and the Local Environmental Plan (LEP) notwithstanding that the SEPP may be introduced after the REP and/or an LEP.

"dwellings"

"prime crop and pasture land"