

31.3.94 31.3.94 N/T

# *The Council of the City of Lismore*

*Council Chambers*

*43 Oliver Avenue, Goonellabah, N.S.W.*

TELEPHONE (066) 25 0500  
FACSIMILE (066) 25 0400

P.O. BOX 23A,  
LISMORE. 2480  
DX 7781

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE



CONTACT Mr Scott-250565

MRS:MR: S/523 94-1196

..... Planning Services.....

March 31, 1994

Mr Peter Hamilton  
1/50 Paterson Street  
BYRON BAY 2481

Dear Sir

## **RE: MULTIPLE OCCUPANCY REVIEW - WITHOUT PREJUDICE**

Council refers to your letter of February 7, 1994 in which you ask several questions in relation to the subdivision prohibition within lands approved for multiple occupancy use.

The following comments are made in the light of the experience of staff currently employed by Council and their capacity as being responsible for assessing development applications for multiple occupancy and without reference to legal counsel. Comments are offered without the benefit of legal advice and are framed to respond to each of your queries on the basis of information available.

1. (a) That all the owners, as per Council records, are signatories on the DA form. That the land is known to Council as being within one lot or title (Deposited Plan), where an application involves several titles it is practice to require consolidation of titles prior to release of the first Building Application for a structure with the approved Multiple Occupancy (MO). Council as a condition/s of consent establishes a requirement prohibiting subdivision and that the development be in accordance with relevant requirements of SEPP No. 15.
- (b) No subdivision of approved MO is permitted. Although the strata subdivision of Billen Cliffs MO was permitted as a one-off experiment after the planning instrument of the day was amended to permit this to occur. The exact detail is unknown to the author of this response. Other than one case Council, again to the knowledge of the author, has not approved any MO's on land less than 10 ha.

As a general comment in relation to consent enforcement/compliance Council and staff are somewhat reliant on the "good faith" of developer/applicants to abide with approval requirements. This arrangement being somewhat of a necessity due the recent past staffing levels and work loads. Council's Planning Services Division has commenced a process of checking compliance with all DA's approved since 1990.

2. Copy of title showing all owners of the land and existing and/or proposed means of ownership (company, co-op, trust etc). Signatures and/or written concurrence of all owners of the land on the DA form. Documentation as indicated by cl. 3.2.1 of the exhibited draft DCP. Council has computer and hard copy record of property information of a general nature (eg size of holding, copy of the Deposited plan), this is included with the DA is made up.

3. Generally the above information has not been supplied with DA's. The level and detail of ownership informations tends to vary widely from application to application and is very much dependent on who prepares the application and their understanding of SEPP No. 15 and its requirements. Council has in the past requested ownership details of the applicants and documentation to that effect, particularly where it is specified or implied in the DA that the land is co-owned and only one person has submitted the application.
4. Yes, please refer to attached list of typical conditions of consent. This was attached to Council's Discussion Paper on Multiple Occupancy. Those application conditions are marked with an asterisk.
5. Council has recently sought and obtained legal opinion from both the Department, and Counsel, into various aspects of SEPP No. 15 and its administration. These opinions relate to compliance with the aims and objectives of the policy, defining home improvement areas and other aspects of DA's submitted to Council (see attached).
6. No, I agree with your comments in respect of company, tenants-in-common etc shares not be construed as a breach of the Policy. Council has not historically received copy of MO internal management and structural arrangements and have assumed that when MO's occupants prepare such documentation that this is usually undertaken with legal advice and direction conforming to the SEPP.

A simple checklist which requires evidence of ownership as supplied by the Land Titles Office and internal management statements, articles of association or similar, is desirable.

7. Council is concerned that shares sold on the basis of, or relating to, a specific area of land within an MO would constitute a breach of the policy. Council, in such instances would be prudent to request details of contract of sale, ownership entitlements and internal management statements or the like.
8. Council is of the opinion that the issuance of a separate Certificate of Title in respect of cl. 2(c)(ii) of SEPP No. 15 is a form of separate land title and therefore, breaches the policy. Council will seek legal clarification of this issue.
9. (a) Council's understanding of this issue is that where a lease is established, and exceeds a period of five years, it is deemed to be a subdivision as defined in the Local Government Acts (the 1993 Act having retained the 1989 subdivision provisions) Yes!  
(b) Council has not encountered this situation, however, it would be prudent to establish a condition of consent that either the establishment of leases over land for a period exceeding five year not be permitted, or a restrictive covenant be placed on titled limiting/prohibiting leasing arrangements.
10. Yes, Council is of the opinion that the examples (b), (c), (d) given would breach the intention of clause 2(c)(ii). It may logically be assumed that such instances involve the creation of separate legal rights to parts of the land. Council would, in relation to example (a), have to examine the documentation establishing the proportioning of exclusive use of the land before forming an opinion whether or not it is in breach of the policy.
11. Council has no experience in these matters and would seek legal opinion prior to forming a definitive position. However, it is submitted that a registered lease giving a person exclusive use to a part of the land would appear to breach the intention of the subdivision prohibition provisions of the Policy.

I apologise for not responding to your letter earlier, and trust the responses made are of some assistance.

Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon  
**GENERAL MANAGER**

per:-



7.2.94

N/T

Unit 1, 50 Paterson Street,  
Byron Bay, 2481  
858 648

7.2.94

Attention: Nick Jeradivich,

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

Dear Nick Jeradivich,

**Re: Lismore Council Review of Multiple Occupancy**

I write in connection with the Council's Review of Multiple Occupancy in respect to the prohibition of subdivision in SEPP-15 (the Policy) and in particular the following clauses:-

**Aims and objectives,**

2(c)(ii) ... to facilitate development ...

in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements;

**Multiple occupancy**

7 ... development may be carried out ... where ...

(1)(a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Titles Act 1973;

(b) the land has an area of not less than 10 hectares;

(3) Nothing in subclause (1)(b) shall be construed as authorising the subdivision of land for the purpose of carrying out development pursuant to this Policy.

**Subdivision prohibition**

10(1) Where development is carried out on land pursuant to this Policy, the issue of a council clerk's certificate, under the Local Government Act 1919, or of a council's certificate under the Strata Titles Act 1973, required for subdivision of the land is prohibited.

**Suspension of certain laws**

13(1)(a) ... section 37 of the Strata Titles Act 1973; and

(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of the land for certain purposes,

to the extent necessary to serve that purpose, shall not apply to the development.

(For full extracts of these clauses see Attachment "A").

In the following questions, I am assuming that in administering Clauses 7, 10 and 13, that each of these will be read in the context of Clause 2(c)(ii).

I seek your reply to the following questions.

In regard to all of the following questions I am setting aside consideration of the Home Improvement Area of 5000 square meters as clearly this provision is not to be confused with, or to be treated as, a subdivision within the Policy.

I ask these questions notwithstanding the proposed clause 3.2.1. on "ownership" in the Draft D.C.P. currently on display.

1. How does Council satisfy itself:
  - (a) that the above requirements of the Policy are met when processing an MO DA?
  - (b) that these requirements are maintained in the case of an approved DA?
2. What documentation does Council consider should be included in an MO DA to assess if the above provisions are, or are not, met?
3. Where such documentation has not been supplied in an MO DA, has Council at any time sought additional information on which to assess if the above provisions have been met, and if so, what typical information has been sought?
4. Has Council at any time attached a condition of consent to an approved MO DA, in respect to the above provisions, and if so would you please supply details of typical wording of such a condition(s)?
5. Has the Council at any time, had cause to seek legal opinion or advice from the D.O.P., on how the above provisions at the DA stage, should be administered and subsequently monitored, and, if so would you please supply details of same?
6. Preamble  
Clause 2(c)(ii) of SEPP-15 refers to "company shares" as one way in which "separate legal right to part of the land" might conceivably be obtained.

Ownership of land by a "company" is of course, not an unusual form of ownership used by community land sharing groups.

#### Question

Where residents of an MO own a "company share" in the property and it is this share which carries with it entitlement to reside on the property, and, on leaving the property it is this "company share" which is sold to the incoming member, does this constitute a "separate legal right to part of the land"?

Metropolitan West Region:

Greystanes High School  
St. Clair Public School

Metropolitan North Region:

Gosford High School  
Warrawee Public School

Metropolitan South West Region:

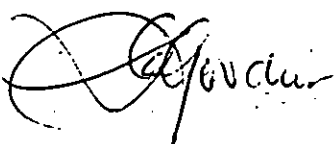
Elderslie High School  
St. Johns Public School

Your advice regarding any preferred venue would be appreciated. It is intended to arrange a separate Arbor Day function for the Minister for School Education to attend.

Mr. Paul Cruickshank, of Greening Australia, indicated that his organisation would be available to assist schools hosting the above Arbor Day ceremonies. Residue funding is available from the Green Train Project to assist schools with these two celebrations.

An early response to the above proposal would be appreciated to enable all necessary arrangements to be made for these co-operative endeavours with Greening Australia to further the cause of Environmental Education.

Yours sincerely,



DON GOODSIR,  
Director, Sylvania Cluster,  
Chairperson,  
Met. East Region  
Environmental Education Committee.

10th March, 1992.

Copy to: Mr. P. Cruickshank  
(Greening Australia)

G:D/O:3/ARBOR.CEL

**Comment**

*It is my opinion that this will not constitute a breach of the policy unless there has been an "agreement" or "dealing" etc providing exclusive right to a part of the land. ("Exclusive right" here may include an encumbrance on this "right" in favour of the community).*

*It is my opinion that the situation in respect to a company share also prevails in the case of other ownership systems such as Joint Tenants, Tenants-in-Common, Trusts and the like.*

*I ask the rhetoric question, "What criteria or check list of indicators is used to hold or determine, that there exists a 'separate legal right to part of the land'?"*

7. *Where shares are sold on the basis of being related to a specific area of land, for example 4 acres, would Council on this evidence only, consider this to be:-*

*(a) a breach of the Policy, or,*

*(b) prima facie evidence that there may be a breach of the Policy?*

8. *Where there should be a shared title such as Joint Tenants or Tenants-in-Common, and a separate Certificate of Title (CT) exists, or by policy is to be created, for each of the tenants, would this constitute a breach of the Policy?*

9. *(a) Where an individual lease is granted for the exclusive use of a portion of the land under the NSW Local Government Act 1919 or 1993, and the lease exceeds a period of five years, would this constitute a breach of the Policy?*

*(b) If the answer to question 9 is "Yes", what steps if any, has or does Council see that it can take to ensure that this situation does not prevail, such as the placing of a caveat on the land title?*

10. *Where a share is related to a portion of land (not overtly stated as being for the "exclusive use" of the share holder) and:-*

*(a) is a pro rata proportion of the property (but not delineated by pegs in the ground or shown on a plan of the property or the like), or,*

*(b) is an area pegged on the ground, or,*

*(c) is an area shown on a plan of the property, or,*

*(d) is described in some way so as to be identifiable,*

*would these respectively, be considered as being a breach of the Policy?*

11. *Where a lease is given by the community body to a member for the exclusive use to a part of the land (subject or not, to a specific encumbrance in favour of the community) and where:-*

*(a) such a lease is not registered, and,*



# Department of Education

MIRANDA EDUCATION RESOURCE CENTRE  
Kingsway, Miranda. 2228

Telephone:

525-0604

FAX

540-2993



Dr. Ken Boston,  
Director General of Education,  
Dept. of School Education,  
55 Market Street,  
SYDNEY. N.S.W. 2000.

Dear Dr. Boston,

Re: Arbor Day Celebrations

On 11th February, 1992, I attended a meeting of the Greening of Schools Committee to discuss ways of celebrating Arbor Day on 27th July, 1992. At the meeting it was agreed that an Arbor Day pamphlet would be sent to all schools and that support would be given to two Arbor Day Ceremonies where the Minister for School Education and the Director-General of School Education would be invited to officiate and participate in a tree planting activity.

Schools enjoy hosting such occasions and principals have much pleasure in organising these events if given the opportunity. Arbor Day often serves as a focal point for Environmental Education Programs. This year's theme for Arbor Day is "Replant, Repair, Renew".

It gives me great pleasure to invite you to attend an Arbor Day function on Monday, 27th July, 1992, at a school to be determined. Such a school could be arranged to suit your itinerary for that day, or for a day later in Arbor Week.

Last year a ceremony was held at Summer Hill Public School in Metropolitan East Region, where the Minister for School Education, Mrs. Virginia Chadwick, launched Greening Australia's Model Schools program. This year a venue in another region might be appropriate. Other model schools could be considered. These are:-

## Model Schools

### Metropolitan East Region:

Burwood Girls High School  
Beverly Hills North Public School



(b) such a lease is registered,

would these respectively, be a breach of the Policy?

As a case in point in respect to the above I enclose herewith a copy of advertisements for MO shares which are related to a specified area of land.

In the context of the various advertisements by this developer, it is my opinion that the association of shares with an implied exclusive use of an area of land, is prima facie evidence that a breach of the Policy may exist, and that further documentation would be necessary to establish this one way or the other.

In view of the current statewide Review of SEPP-15 by the DOP you will no doubt appreciate that your answers to the above questions will greatly assist Pan-Com's submission to the Department in respect to their Review.

Thanking you in anticipation of your earliest answers to the above questions.

I await your reply.

Yours sincerely,

  
.....  
Peter Hamilton

c.c. Councillor Roberts  
DOP  
Jonathan

County of *Drake*  
AND DISTRICT OF *Grafton*

Parish of *Ogilvie*  
LAND BOARD DISTRICT OF *Grafton*

Occupancy License No.

Holding Eastern Division

Indication of the Section of the Land Board District of Grafton

~~in R55534 from Sale Notified 30.6.22.~~

~~64. 30. 22. 12. 12. Hamilton (1000)~~

Green Edge area under consideration for permanent disposal

Edge: R67904 for Public School Notd 23rd Sept. '38

in Edge J.H. Golding. Annual Lease 1923/3

7075/13750

This showed site is  
halfway between  
Banyulid + Tiedham

Reservation recorded by  
Lands Dept.

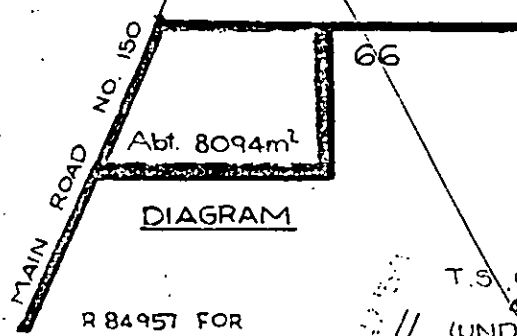
56 0987

A.E.H. Wilson

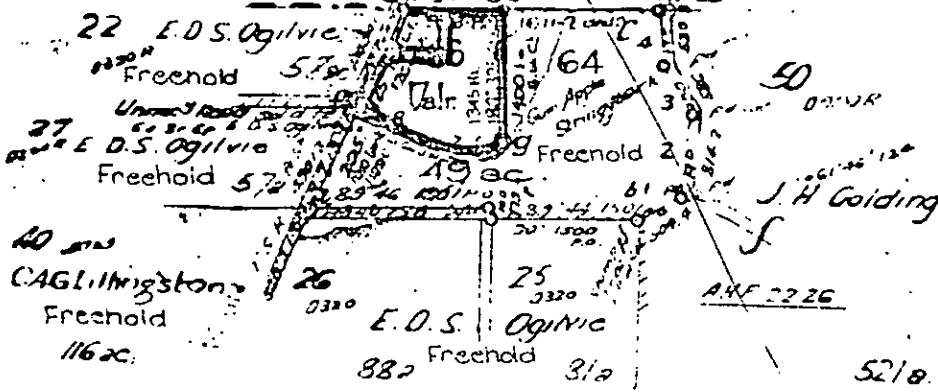
17.07.22

0208 ex. r

23/4/36



T.S. C. & W.R.  
49020  
(UNDER P.P. BOARD  
CONTROL.)



6A - 97150ac  
6B - 02150ac  
from Feb 50

42 Feb 41 42

to Corners

in 116 64 po.

inner 50. 64

162.3. 64

38.9.50. 58

Cor 6.6

143.64.66

79. 66

52.64.66

Reference

1. 63'51 804.4
2. 8'00 853.3
3. 332'19 573.1
4. 354'08 559.4
5. 201.39 218.0
6. 248.57 128.2
7. 287.12 111.4

The Commissioned by Sir G Lindsay 18.1.27 FB 1312  
Plan re-approved  
Portion 6A for 49 acres } Cate R.D. 97-61.4  
Portion 6B for 17ac } Cate R.D. 97-61.4

A.E. Harris  
Actg. Officer in Charge 27th Jan 31

5th Jan 23

J.W. Close

22nd Jan 23

22nd March 1923  
21st March 1923  
21st March 1923

\*\*\*\*\*

EXTRACTS OF THOSE SECTIONS IN SEPP-15

RELATING TO PROHIBITION OF SUBDIVISION

\*\*\*\*\*

2. Aims and objectives, etc

(c)(ii) ... to facilitate development ...

in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements;

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... development may be carried out ... where ...

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(3) Nothing in subclause (1)(b) shall be construed as authorising the subdivision of land for the purpose of carrying out development pursuant to this Policy.

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(1) Where development is carried out on land pursuant to this Policy, the issue of a council clerk's certificate, under the Local Government Act 1919, or of a council's certificate under the Strata Titles Act 1973, required for subdivision of the land is prohibited.

13. Suspension of certain laws

(1) For the purpose of enabling development to be carried out in accordance with this Policy or in accordance with a consent granted under the Act in relation to development carried out in accordance with this Policy-

(a) section 37 of the Strata Titles Act 1973; and

(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of the land for certain purposes,

to the extent necessary to serve that purpose, shall not apply to the development.

End

*The Council of the City of Lismore*

*Council Chambers*

*43 Oliver Avenue, Goonellabah, N.S.W.*

*Send DCP  
of Use re ANSON*

P.O. BOX 23A,  
LISMORE, 2480  
DX 7761

TELEPHONE (066) 25 0500  
FACSIMILE (066) 25 0400

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE



CONTACT Mr Scott-250565

MRS:MR: S/523 94-1196

Planning Services

March 31, 1994

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1/50 Paterson Street  
BYRON BAY 2481

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Yours faithfully

PT Muldoon  
**GENERAL MANAGER**

per:-

A handwritten signature in dark ink, appearing to be 'PT Muldoon', written over the printed name and title.

MASTER

Unit 1, 50 Paterson Street,  
Byron Bay, 2481  
858 648

7.2.94

Attention: Nick Jeradivich,

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

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13(1)(a) ... section 37 of the Strata Titles Act 1973; and

(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of the land for certain purposes,

- 15 Is there an interest by members in attaining higher levels of education or trade skill? None/some/a lot
- 16 (a) Current cost of shares (if any) or equivalent? ....  
 (b) Original cost of shares (ie to the first residents) ?  
 Year ..... Original cost .....
- 17 Are shares (or equivalent) currently:  
 (a) not available? ... y/n  
 (b) available to the public  
 (ie. on a first come basis)? ... y/n  
 (c) conditionally available, (eg subject to house available for purchase; or an approved building site; or on approval of other resident members; or the like? ... y/n
- 18 Has there been any experience of being discriminated against, in not being able to obtain building finance from a lending institution like a bank? .... y/n
- 19 (a) Are the financial assets of members (other than shared assets owned by the community) known? y/n  
 (If NO go to next question.)  
 (b) Financial assets available to residents (other than shared assets owned by the community)
- | Number of residents | Range            |
|---------------------|------------------|
|                     | Under \$10,000   |
|                     | 10,000 - 100,000 |
|                     | Over \$100,000   |
- 20 Average weekly income (after taxation if any)?  
 (Tabulate: see The Channon Precinct Survey for typical details)
- 21 Individual weekly cost of living (average)? ....  
 (Tabulate: see note to question 20).
- 22 Is the budget of members "balanced" by reducing the cost of living, rather than increasing the level of income? .... y/n
- 23 Average total vehicle trips off the property per day? ....
- 24 Are there seen to be social benefits in living on a community? .... Nil/ some /a lot
- 25 What are the primary values, beliefs and interests shared by the residents? ....
- 26 What was the main attraction/reason in seeking to form an MO? ....



to the extent necessary to serve that purpose, shall not apply to the development.

(For full extracts of these clauses see Attachment "A").

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6. Preamble  
Clause 2(c)(ii) of SEPP-15 refers to "company shares" as one way in which "separate legal right to part of the land" might conceivably be obtained.

Ownership of land by a "company" is of course, not an unusual form of ownership used by community land sharing groups.

#### **Question**

Where residents of an MO own a "company share" in the property and it is this share which carries with it entitlement to reside on the property, and, on leaving the property it is this "company share" which is sold to the incoming member, does this constitute a "separate legal right to part of the land"?

- 5 Background of community; number of residents; land management; housing; educational status, trade, skills etc. See, Lismore City Council, "M.O. Report" Barker and Knox, 1985, for typical questions.
- 6 Length of residence on the community (years)? ....
- 7 Percentage of houses on the community built by the resident, or residents, on the community? ....
- 8 Recognising that a community may not connect to town services even though they are available, is the community connected to the town supply of:-
  - (a) water .... y/n
  - (b) power .... y/n
  - (c) telephone .... y/n
- 9 Is there a community desire to obtain a level of "self sufficiency":
  - (a) in food production ..... y/n
  - (b) in generation of income... y/n
  - (c) infrastructure resources  
eg. water, electricity .. y/n
  - (d) Other (specify) .....
- 10 Is there a bushfire management policy within the property? .... y/n
- 11 Number of houses rented on a long term basis? ....
- 12 Extent of communal facilities  
Shared laundry/ies .... Communal eating/meeting area ...  
Recreational facilities (eg playing field) ... Community workshop/space (eg kiln, garage workshop, craft space)  
... Other (specify) .....
- 13 Range of the current replacement value of houses (eg what would an insurance Company pay out if all houses were totally lost in a bush fire. Note for example, that this would include paid labour notwithstanding that the original house may have been built using voluntary labour.)
 

Number of houses	Range
I	Under \$10,000
I	10,000 - 70,000
I	70,001 - 100,000
I	Over 100,000 (Specify)
- 14 Are there seen to be educational advantages, (for adults and children), in living on a community? ....  
Nil/ some/ a lot

**Comment**

*It is my opinion that this will not constitute a breach of the policy unless there has been an "agreement" or "dealing" etc providing exclusive right to a part of the land. ("Exclusive right" here may include an encumbrance on this "right" in favour of the community).*

*It is my opinion that the situation in respect to a company share also prevails in the case of other ownership systems such as Joint Tenants, Tenants-in-Common, Trusts and the like.*

*I ask the rhetoric question, "What criteria or check list of indicators is used to hold or determine, that there exists a 'separate legal right to part of the land'?"*

7. *Where shares are sold on the basis of being related to a specific area of land, for example 4 acres, would Council on this evidence only, consider this to be:-*

*(a) a breach of the Policy, or,*

*(b) prima facia evidence that there may be a breach of the Policy?*

8. *Where there should be a shared title such as Joint Tenants or Tenants-in-Common, and a separate Certificate of Title (CT) exists, or by policy is to be created, for each of the tenants, would this constitute a breach of the Policy?*

9. (a) *Where an individual lease is granted for the exclusive use of a portion of the land under the NSW Local Government Act 1919 or 1993, and the lease exceeds a period of five years, would this constitute a breach of the Policy?*

*(b) If the answer to question 9 is "Yes", what steps if any, has or does Council see that it can take to ensure that this situation does not prevail, such as the placing of a caveat on the land title?*

10. *Where a share is related to a portion of land (not overtly stated as being for the "exclusive use" of the share holder) and:-*

*(a) is a pro rata proportion of the property (but not delineated by pegs in the ground or shown on a plan of the property or the like), or,*

*(b) is an area pegged on the ground, or,*

*(c) is an area shown on a plan of the property, or,*

*(d) is described in some way so as to be identifiable,*

*would these respectively, be considered as being a breach of the Policy?*

11. *Where a lease is given by the community body to a member for the exclusive use to a part of the land (subject or not, to a specific encumbrance in favour of the community) and where:-*

*(a) such a lease is not registered, and,*

-----  
STATE OF THE ENVIRONMENT REPORTING  
IN RESPECT TO MULTIPLE OCCUPANCY SETTLEMENT  
-----

-----  
PREAMBLE  
-----

STATE OF THE ENVIRONMENT ANNUAL REPORTING BY LOCAL GOVERNMENT

The Local Government Act 1993 requires councils to prepare annual reports on the "state of the environment" (SOE) and to this end requires the Environment Protection Authority (EPA) to prepare guidelines for the preparation of these reports. These guidelines are contained in "SOE REPORTING BY LOCAL GOVERNMENT: Environmental Guidelines", 1993.

The first SOE Report is to be made in May 1994.

The guidelines set out "themes" and "indicators" to be considered. The Act requires that there be community consultation in preparing these reports.

In both the statewide MO review being conducted by the DOP, and, the MO survey being prepared by the Lismore City Council, it would appear to be appropriate that consideration be given to using the "themes" and "indicators" outlined in the above publication on the grounds of efficiency, viz to avoid unnecessary duplication by council staff and repetitive returns by MO communities.

The following is a checklist of "themes" and "indicators" that are seen to have relevance to the "state of MO settlement" and hence may be found to be useful in preparing questions in any review of MO. (It is to be noted that any particular "indicator" may apply to more than one "theme" area).

.4.

(b) such a lease is registered,

would these respectively, be a breach of the Policy?

As a case in point in respect to the above I enclose herewith a copy of advertisements for MO shares which are related to a specified area of land.

In the context of the various advertisements by this developer, it is my opinion that the association of shares with an implied exclusive use of an area of land, is prima facie evidence that a breach of the Policy may exist, and that further documentation would be necessary to establish this one way or the other.

In view of the current statewide Review of SEPP-15 by the DOP you will no doubt appreciate that your answers to the above questions will greatly assist Pan-Com's submission to the Department in respect to their Review.

Thanking you in anticipation of your earliest answers to the above questions.

I await your reply.

Yours sincerely,

  
.....  
Peter Hamilton

c.c. Councillor Roberts  
DOP  
Jonathan

2.2 If there area feral animals on the property does the community have a policy re containing or eradicating such animals?

2.3 Does the community have a policy on weed control and management?

Threatened species of flora and fauna

2.4 Are there rare and/or endangered species of flora and/or fauna on the property?

3.0 WASTE AND POLLUTION

Waste Management Policy

3.1 Does the community foster alternative forms of sewerage disposal and the reuse and recycling of materials?

3.2 Does the community have its own garbage disposal area?

4.0 ENVIRONMENTAL RESTORATION PROJECTS

4.1 Have any members of the community been involved in restoration activities or in a Landcare group?

4.2 Are there areas of old growth forest on the property?

4.3 Is the land considered to be degraded and if so, what rehabilitation or restoration has been undertaken?

5.0 HUMAN ACTIVITIES AND CHARACTERISTICS

Demographic

5.1 Demographic data; (population, ethnicity, age, economic status, dwelling occupancy density, employment, trend in growth rate, and the like)?

Human impact on the rural environment

5.2 Impact on air quality, noise and the like. Use of chemical fertilisers, contaminated sites, waste disposal sites, heritage sites and the like. Visual impact of the development from vantage points outside the property?

Energy efficiency

5.3 Level of energy generation (solar, wind, water organic etc)?

Land type

5.4 Degree to which the land is utilised within its capability?

\*\*\*\*\*  
**EXTRACTS OF THOSE SECTIONS IN SEPP-15**  
**RELATING TO PROHIBITION OF SUBDIVISION**  
\*\*\*\*\*

**2. Aims and objectives, etc**

*(c)(ii) ... to facilitate development ...*

*in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements;*

**7. Multiple occupancy**

*... development may be carried out ... where ...*

*(1) (a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Titles Act 1973;*

*(b) the land has an area of not less than 10 hectares;*

*(3) Nothing in subclause (1)(b) shall be construed as authorising the subdivision of land for the purpose of carrying out development pursuant to this Policy.*

**10. Subdivision prohibition**

*(1) Where development is carried out on land pursuant to this Policy, the issue of a council clerk's certificate, under the Local Government Act 1919, or of a council's certificate under the Strata Titles Act 1973, required for subdivision of the land is prohibited.*

**13. Suspension of certain laws**

*(1) For the purpose of enabling development to be carried out in accordance with this Policy or in accordance with a consent granted under the Act in relation to development carried out in accordance with this Policy-*

*(a) section 37 of the Strata Titles Act 1973; and*

*(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of the land for certain purposes,*

*to the extent necessary to serve that purpose, shall not apply to the development.*

**End**

CHECKLIST OF THEMES AND INDICATORS FOR CONSIDERATION IN  
PREPARING ANNUAL SOE REPORTS IN RESPECT TO MO SETTLEMENT

- NOTES (1) Headings in bold type are those used in the EPA Guidelines on SOE Reporting by councils).
- (2) The SOE "indicators" in this checklist have been selected on the basis of possible relevance to MO settlement. Some have rephrased and/or amplified.

**1.0 AREAS OF ENVIRONMENTAL SENSITIVITY**

- 1.1 Are there areas on the property which you considered are "environmentally sensitive" and the community takes steps to protect or conserve?
- 1.2 Does the community engage in reforestation of native trees on the property?
- 1.3 Are there creeks, rivers (shared), springs, dams, bores or the like on the property?
- 1.4 Is the quality of water held as being a valued natural resource?
- 1.5 Are steps taken to attain the highest possible level of the quality of the water, and, that natural water sources are not polluted by eg sewerage; toxic chemicals or the like?
- 1.6 Have steps been taken to verify if there are any Aboriginal sites of significance on the property?
- 1.7 Is there a pressure to erode sensitive environmental areas by, for example, clear felling of trees, or over grazing?

Unique landscape or vegetation

- 1.8 Are there areas on the property which you consider have unique features, or are unique vantage points, or, contain unique vegetation?
- 1.9 Is there a bushfire management plan for the property?

**2.0 BIODIVERSITY**

Wildlife and Habitat Corridors

- 2.1 Are there wildlife habitats and corridors on the property?



# *The Council of the City of Lismore*

*Council Chambers  
43 Oliver Avenue, Goonellabah, N.S.W.*

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FACSIMILE (068) 25 0400

P.O. BOX 23A,  
LISMORE, 2480  
OX 7761

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE



CONTACT **Mr Scott-250565**

MRS:MR: S/523 94-1196

Planning Services

March 31, 1994

Mr Peter Hamilton  
1/50 Paterson Street  
BYRON BAY 2481

Dear Sir

## **RE: MULTIPLE OCCUPANCY REVIEW - WITHOUT PREJUDICE**

Council refers to your letter of February 7, 1994 in which you ask several questions in relation to the subdivision prohibition within lands approved for multiple occupancy use.

The following comments are made in the light of the experience of staff currently employed by Council and their capacity as being responsible for assessing development applications for multiple occupancy and without reference to legal counsel. Comments are offered without the benefit of legal advice and are framed to respond to each of your queries on the basis of information available.

1. (a) That all the owners, as per Council records, are signatories on the DA form. That the land is known to Council as being within one lot or title (Deposited Plan), where an application involves several titles it is practice to require consolidation of titles prior to release of the first Building Application for a structure with the approved Multiple Occupancy (MO). Council as a condition/s of consent establishes a requirement prohibiting subdivision and that the development be in accordance with relevant requirements of SEPP No. 15.
- (b) No subdivision of approved MO is permitted. Although the strata subdivision of Billen Cliffs MO was permitted as a one-off experiment after the planning instrument of the day was amended to permit this to occur. The exact detail is unknown to the author of this response. Other than one case Council, again to the knowledge of the author, has not approved any MO's on land less than 10 ha.

As a general comment in relation to consent enforcement/compliance Council and staff are somewhat reliant on the "good faith" of developer/applicants to abide with approval requirements. This arrangement being somewhat of a necessity due the recent past staffing levels and work loads. Council's Planning Services Division has commenced a process of checking compliance with all DA's approved since 1990.

2. Copy of title showing all owners of the land and existing and/or proposed means of ownership (company, co-op, trust etc). Signatures and/or written concurrence of all owners of the land on the DA form. Documentation as indicated by cl. 3.2.1 of the exhibited draft DCP. Council has computer and hard copy record of property information of a general nature (eg size of holding, copy of the Deposited plan), this is included with the DA is made up.

3. Generally the above information has not been supplied with DA's. The level and detail of ownership informations tends to vary widely from application to application and is very much dependent on who prepares the application and their understanding of SEPP No. 15 and its requirements. Council has in the past requested ownership details of the applicants and documentation to that effect, particularly where it is specified or implied in the DA that the land is co-owned and only one person has submitted the application.
4. Yes, please refer to attached list of typical conditions of consent. This was attached to Council's Discussion Paper on Multiple Occupancy. Those application conditions are marked with an asterisk.
5. Council has recently sought and obtained legal opinion from both the Department, and Counsel, into various aspects of SEPP No. 15 and its administration. These opinions relate to compliance with the aims and objectives of the policy, defining home improvement areas and other aspects of DA's submitted to Council (see attached).
6. No, I agree with your comments in respect of company, tenants-in-common etc shares not be construed as a breach of the Policy. Council has not historically received copy of MO internal management and structural arrangements and have assumed that when MO's occupants prepare such documentation that this is usually undertaken with legal advice and direction conforming to the SEPP.

A simple checklist which requires evidence of ownership as supplied by the Land Titles Office and internal management statements, articles of association or similar, is desirable.

7. Council is concerned that shares sold on the basis of, or relating to, a specific area of land within an MO would constitute a breach of the policy. Council, in such instances would be prudent to request details of contract of sale, ownership entitlements and internal management statements or the like.
8. Council is of the opinion that the issuance of a separate Certificate of Title in respect of cl. 2(c)(ii) of SEPP No. 15 is a form of separate land title and therefore, breaches the policy. Council will seek legal clarification of this issue.
9. (a) Council's understanding of this issue is that where a lease is established, and exceeds a period of five years, it is deemed to be a subdivision as defined in the Local Government Acts (the 1993 Act having retained the 1989 subdivision provisions) Yes!  
(b) Council has not encountered this situation, however, it would be prudent to establish a condition of consent that either the establishment of leases over land for a period exceeding five year not be permitted, or a restrictive covenant be placed on titled limiting/prohibiting leasing arrangements.
10. Yes, Council is of the opinion that the examples (b), (c), (d) given would breach the intention of clause 2(c)(ii). It may logically be assumed that such instances involve the creation of separate legal rights to parts of the land. Council would, in relation to example (a), have to examine the documentation establishing the proportioning of exclusive use of the land before forming an opinion whether or not it is in breach of the policy.
11. Council has no experience in these matters and would seek legal opinion prior to forming a definitive position. However, it is submitted that a registered lease giving a person exclusive use to a part of the land would appear to breach the intention of the subdivision prohibition provisions of the Policy.

I apologise for not responding to your letter earlier, and trust the responses made are of some assistance.

Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon  
**GENERAL MANAGER**

per:-

A handwritten signature in black ink, appearing to be 'PT Muldoon', written over the printed name and title.

# *The Council of the City of Lismore*

*Council Chambers*

*43 Oliver Avenue, Goonellabah, N.S.W.*

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CONTACT Mr Scott-250565

MRS:MR: S/523 94-1196

..... Planning Services .....

March 31, 1994

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BYRON BAY 2481

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11. Council has no experience in these matters and would seek legal opinion prior to forming a definitive position. However, it is submitted that a registered lease giving a person exclusive use to a part of the land would appear to breach the intention of the subdivision prohibition provisions of the Policy.

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Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon  
**GENERAL MANAGER**

per:-



File  
PETE Ø3

Unit 1, 50 Paterson Street,  
Byron Bay, 2481

17.6.94

Attention Nick Juradowitch.

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

Dear Nick Juradowitch,

Re: DA 93/754 MO 136 Davis Rd., Jiggi  
-----

In the Business Paper of 19 April 1994 in respect to the above matter, I observe with some dismay that I am listed as making a submission to this DA (p68).

I presume the comments are taken from the questions raised in my letter of 7 February 1994.

This letter dealt with the Lismore Council Review of Multiple Occupancy, as my heading in that letter states.

Had it been my intention to make a submission to the above DA, I would have stated this in my heading to such a letter.

While I made reference to the proposed Jiggi MO in my earlier letter, this was by way of example to the questions in principle raised in my letter.

I bring this to your attention for your record.

Yours sincerely,

.....  
Peter Hamilton

✓ c.c. Jonathan

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IN REPLY PLEASE QUOTE



CONT Mr Scott-250565

MRS:MR: DA93/754.....

.....Planning Services.....

April 14, 1994

Peter Hamilton  
BYRON BAY NSW 2481

Dear Sir/Madam

**DEVELOPMENT APPLICATION NO. 93/754-16 SITE MULTIPLE OCCUPANCY  
136 DAVIS ROAD, JIGGI**

I refer to your submission regarding the proposed development of Lot 41 DP 802597, 136 Davis Road, Jiggi.

It is advised that this application, together with a report, will be considered by the Council on Tuesday April 19, 1994 at the South Gundurimba Hall, Coraki Road, Gundurimba. A copy of the report will be available on Thursday April 14, 1994. If you desire to address the Council in the public access session, please contact Mr Graeme Wilson on 250 500 to make arrangements.

Yours faithfully

(PT Muldoon)  
GENERAL MANAGER

per:

A handwritten signature in black ink, appearing to be 'PT Muldoon'.



Follow up letter to other Councils

Answers to the I in the will hopefully be  
as the express letter refers specifically to  
the last Council position. The I may be  
asked, "What position do other Councils take  
in this regard?" and "If there is any  
discrepancy in this regard, what action/advice  
would the I take to ratify/resolve  
such differences?"

Kanally 12/1/94

Re: <sup>my letter to</sup> Council or subdivision

~~Indicators of defects subdiv.~~  
~~displaced patterns~~

- "evenly spaced"
- "equal areas (but may be)"
- method of access eg indiv access to main Rd
- doc. evidence
  - minutes
  - article
  - rules
  - agreements
  - deeds
  - etc

Maclean Council held to be a serious  
offender by DOP in passing  
mo. to permit rural dev not  
otherwise permitted.

Hugh J. 8/2/94

Prohibition of  
subdivision ~~protection~~ (implied)  
can be covered by condition  
of consent

This is sweeping the problem  
under the carpet

Virtually brushed me off,  
saying

Report only to meeting of 15, as  
additional info req, extra  
consultant info, & objections,  
is requiring more time & process.

Add. Q or was it all or been the  
practice to address this as a  
card of consent. If so how & when  
is this monitored?

7.2.94

P.H. O'NEILL

Hugh Johnson

Wrens: I have by the same  
delivery, forwarded a letter  
to Nick J. in respect to the  
question of subdivision <sup>which</sup> ~~and~~ <sup>for</sup> in  
the current DA by Jonathan at  
Jaggi.

I would <sup>app</sup> it if you would call  
~~you please~~  
me when you have had the  
oppn. to read this material.

PH

R/Nick

R/Hugh J.

PETERØ1

\*\*\*\*\*  
EXTRACTS OF THOSE SECTIONS IN SEPP-15  
RELATING TO PROHIBITION OF SUBDIVISION  
\*\*\*\*\*

2 Aims and objectives, etc

(c)(ii) ... to facilitate development ...

in a manner which does not involve subdivision, strata title or any other form of separate land title, and in a manner which does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements;

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(1) Where development is carried out on land pursuant to this Policy, the issue of a council clerk's certificate, under the Local Government Act 1919, or of a council's certificate under the Strata Titles Act 1973, required for subdivision of the land is prohibited.

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(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of the land for certain purposes,

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