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**Multiple Occupancy**

**Of Rural Land**

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Dept of Planning

1989

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Users Manual

NOT FOR PUBLICATION

New South Wales Government  
Department of Urban Affairs and Planning  
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with compliments and apologies  
for the delay.

*Choochin*

16/7/97

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This Manual was commissioned by the N.S.W. Department of Planning for use by those interested in multiple occupancy settlements. It will also be of assistance to Local Government when dealing with development applications. It should be emphasised that the manual is advisory only having been designed to assist in the implementation of State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land.

The Manual was prepared by the Technical Assistance Group, Sydney University. The group comprised a team who together have had a wide range of experience in planning for rural resettlement. Team members include environmental planners, architects, builders, rural economists and most importantly rural advocates who live in and are members of multiple occupancy settlements.

Members come from various locations in New South Wales and are engaged in providing assistance for multiple occupancy at the State and Local Government levels and at the professional and consumer levels. Their experiences cover the first tentative applications around Nimbin in 1973; through the Government's enabling actions to permit multiple occupancy in some locations in 1980; more recently with policy formulation at both the State and Local level; and in the conduct of the Tweed Commission of Enquiry into Multiple Occupancy.

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## 1. INTRODUCTION

Multiple Occupancy is a type of rural development where a group of people, not necessarily related to each other, live on a single property in a number of dwellings, and own and manage the property on a common basis.

The intentions of the groups may vary widely, but they can be generalized to include the aims of State Environmental Planning Policy No. 15 - multiple occupancy of rural lands which are:

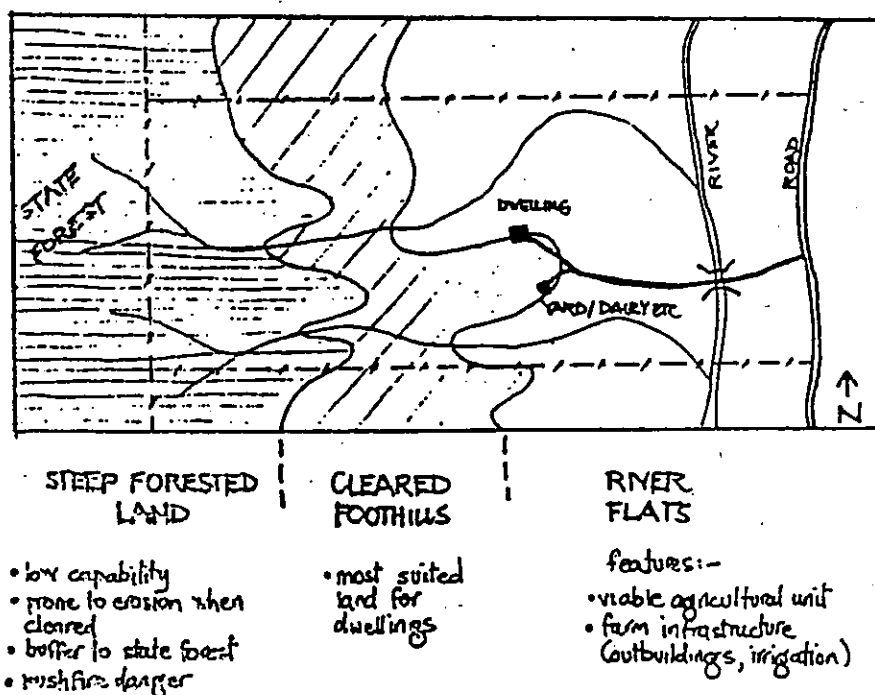
- (a) to encourage a community based and environmentally sensitive approach to rural settlement;
- (b) to enable -
  - (i) people to collectively own a single allotment of land and use it as their principal place of residence;
  - (ii) the erection of multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment; and
  - (iii) the pooling of resources, particularly where low incomes are involved, to economically develop a wide range of communal rural living opportunities, including the construction of low cost buildings; and
- (c) to facilitate development, preferably in a clustered style -
  - (i) in a manner with both protects the environment and does not create a demand for the unreasonable or uneconomic provision of public amenities or public services by the State or Commonwealth governments, a council or other public authorities;
  - (ii) 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; and
  - (iii) to create opportunities for an increase in the rural population in areas which are suffering or are likely to suffer from a decline in services due to rural population loss.

Multiple occupancy has been associated with recent rural resettlement. Some 35% of shires in rural NSW are experiencing a decline in population, and one intention of the Multiple Occupancy Policy is to encourage the rejuvenation of rural areas by the settlement of additional skilled people. Surveys have indicated that some 64% of new settlers have a professional or trade skill, compared with 25% for the Australian community at large.

Some local councils are now adopting design principles for multiple occupancies as illustrated below, for all rural subdivision. The environmental advantages may be quite significant in some cases. For example, the property now occupied by one of the first multiple occupancies, the Co-ordination Co-op at Tuntabla Falls, supported 150 cattle prior to resettlement. It now supports 250 people and 3000 fruit trees, as well as 150 cattle.

In the following examples a typical multiple occupancy development is compared with a typical rural/residential subdivision.

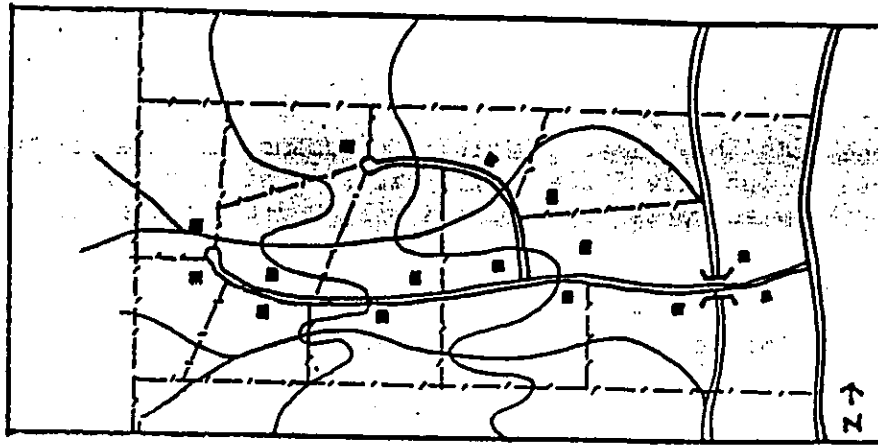
Figure 1. TYPICAL RURAL HOLDING - GENERALISED CAPABILITY



The example property comprises three sections: steep forested land; cleared foothills, and river flats. The forested land has generally a low capability of supporting agriculture, and is prone to erosion when cleared. It acts as a buffer to the adjacent state forest, and constitutes a bushfire danger. The cleared foothills are the most suited for dwellings, as the river flats may be susceptible to flooding. The river flats are the most suitable for agriculture, and the general farm infrastructure, such as outbuildings, roads, and other works.

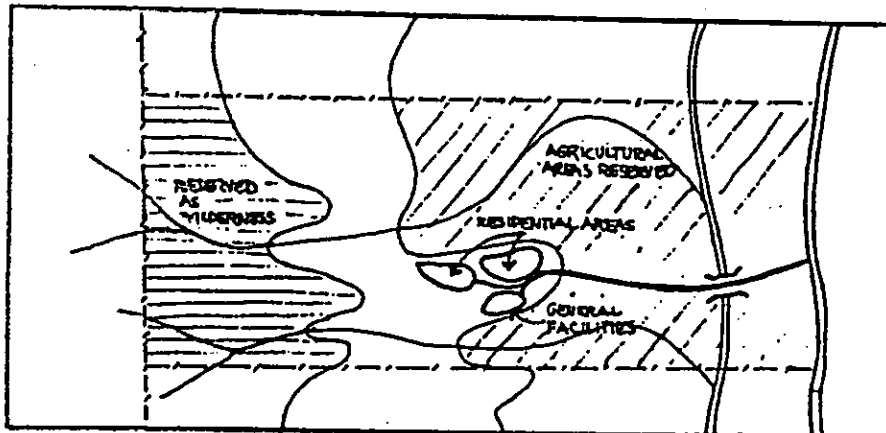


Figure 2 TYPICAL 40 HA./RURAL RESIDENTIAL SUBDIVISION



If the above example property is subdivided according to the typical pattern for forty hectare rural residential subdivision, it may cause the loss of a viable agricultural unit, the loss of farm infrastructure, and a loss of rural amenity. Because of the location of boundaries, few dwellings will be situated in the land most suitable for dwellings, and they may be subject to bushfire and landslip. They will also require construction and maintenance of roads traversing high cost land units, which will be a local council responsibility. The buffer with the state forest will be lost.

Figure 3 TYPICAL MULTIPLE OCCUPANCY



A Multiple Occupancy development will help to overcome many of the deficiencies of the above subdivision example by locating the most appropriate uses in the most suitable areas. Viable agricultural units, farm infrastructure, buffers to the state forest and rural amenity may be preserved. Dwellings may be located in the most suitable areas, and the need for roads minimized, preventing erosion and lowering maintenance costs.

## 2. STATE ENVIRONMENTAL PLANNING POLICY NO. 15 - MULTIPLE OCCUPANCY OF RURAL LAND

State Environmental Planning Policy No 15 - Multiple Occupancy of Rural Land has the effect of permitting multiple occupancy development on certain rural zoned lands, subject to approval by the local council, and the development satisfying planning criteria outlined in the Policy (see Appendix 1). The Policy provides the planning mechanism which was previously available in only limited areas for intending communities to apply for development consent.

Councils may prepare an amendment to its local environmental plan which varies State policy to reflect local circumstances. Such plans will of course require ministerial endorsement before being made.

Existing multiple occupancies which do not have council development approval at the time of the introduction of the State Policy are encouraged to lodge a development application with their local council. In dealing with these applications a council will either:-

- (a) approve it without any changes;
- (b) approve it but require changes as a condition of consent, so as to bring the development proposal in line with the State policy; or
- (c) reject the application, stating the reasons for refusal.

Where a council attaches conditions to its consent or refuses it the applicants have a right of appeal to the Land and Environment Courts.

### 2.1 APPLICATION OF THE POLICY

The Multiple Occupancy Policy applies to selected coastal and tablelands shires, municipalities and city councils (see Schedule 1, Appendix 1). Within these areas, it applies to rural or non-urban zones with minimum land area of 10 hectares. The Policy will not apply to lands in and around Sydney, Newcastle, Wollongong and Canberra which are metropolitan growth areas. It also does not apply to areas such as National Parks and Environment Protection zones, and the Kosciusko subregion.

### 2.2 PLANNING BACKGROUND

The Environmental Planning & Assessment Act, 1979, confers on councils the responsibility for local planning. The intention of the Act is to provide a balance between development and environment protection by ensuring that the environmental impact of proposed changes is fully assessed and where possible minimised prior to changes taking place.

In undertaking its planning local councils are required to implement or take account of any State Environmental Planning Policies Ministerial directions under section 117 of the Act or Regional Environmental Plans.

Local Councils also administer other State government acts relating to matters such as building regulation, rates, road building and maintenance, bush-fire hazard management and health matters.

Some councils still operate under planning schemes which existed prior to 1979 when the Environmental Planning and Assessment Act was introduced. These earlier planning instruments are called Interim Development Orders (I.D.O's), and are regarded as deemed environmental planning instruments.

Councils may also prepare Development Control Plans to give notice of and provide the means of implementing local policies and requirements relating to multiple occupancy. Such a plan explains council's policies for development standards and requirements. Therefore prior to commencing a new Multiple Occupancy development or even purchase of the land, applicants should assess the cost and feasibility of the project by reference to these plans.

### 3. INITIAL STEPS FOR INTENDING COMMUNITIES

The resettlement of land is a task requiring much thoughtful preparation and planning. The steps involved are outlined below. It will not necessarily always follow in that sequence (for example, a person may own land and be seeking co-settlers). However, it is a reasonable progression for most groups, and the rest of this manual has been structured accordingly.

The steps are:

1. Formation of a core group with common aims.
2. Development of legal, financial, tenure and management structures.
3. Development of criteria for site selection.
4. Selection of a site.
5. Assessment of the site, individual and community needs.
6. Preparation of a Site Concept Plan.
7. Preparing and submitting a Development Application.
8. Obtaining approval, conditional consent or refusal from council.
9. Proceeding with the Development or reconsidering alternatives.

#### 3.1 CONSIDERING ALTERNATIVES

In rural New South Wales, local plans have traditionally allotted only one house, or household, per allotment. To assist farmers, additional methods of increasing housing densities have been introduced over the years. Some of these may be viable alternatives to multiple occupancy:

1. Additional rural workers' dwellings have been permitted without subdivision.
2. Small concessional subdivisions may be approved in some local government areas to allow family members to reside on a property, although this form of subdivision is generally being phased out.
3. Cluster or group farm management may be approved under certain circumstances. This type of development is where individual house lots are identified on a piece of land but the majority of the land is maintained under agricultural usage. Guidelines for this form of land tenure can be found in Department of Environment and Planning Circular No. 77.

4. Combined dwellings under the Strata Titles Act or clustered dwellings as envisaged under the forthcoming Community Titles Act, allow individual households to have title to their private area. Other areas are owned collectively by a Body Corporate comprising all owners.

For small settlements, a form of land tenure other than multiple occupancy may well be preferable. The lack of clear, unencumbered title to the household allotment may be a major drawback to some prospective owners.

It is important to note that SEPARATE TITLE TO A PART OF THE TOTAL AREA OF A RURAL HOLDING CONSTITUTES SUBDIVISION AND IS PROHIBITED UNDER THE MULTIPLE OCCUPANCY POLICY. If such separate title is an important requirement, consideration should be given to other alternative forms of rural settlement.

### 3.2 CONSIDERING MANAGEMENT ISSUES

There are two aspects to forming a sound method of managing the communal aspects of the intending community. One concerns the informal, internal management of such issues as the presence of dogs and cats and the other governs the legal structures used to relate to the outside world.

The importance of giving early consideration to internal management issues cannot be over-emphasised. Much trauma can arise when the resolution of internal problems is attempted without previously agreed guidelines. The advice of several hundred residents on resolving major internal issues has been condensed into a chapter in "Low Cost Rural Resettlement" and is recommended reading.

While it is not necessary to have a formal legal structure, it is advisable to do so for the protection of the members. Formal legal structures require compliance with authorities and regulations, but also have some advantages. They can lead to clearer internal management, and clarify rights in the event of a departure from or the dissolution of the community. They may give some assurance of limited liability which informal relationships cannot provide. However, it should be noted that recent changes in corporate law have somewhat eroded the concept of 'limited liability' and members of a company or co-operative may find themselves personally liable if the corporate entity is liquidated with indebtedness.

Ideally, a formal legal structure should be considered before land purchase. The information contained in this manual is intended as a guide only, and detailed advice should be sought where necessary. It is intended to make the reader aware of legal issues and options, and sufficiently well-informed to brief a professional to complete the job. The difficulty of choosing a suitable legal framework should not be underestimated.

To prepare a suitable legal structure a solicitor will require fairly clear guidelines about the intended community operation. It may be unwise to attempt your own agreements rather than use a solicitor or other informed person, as you often find your mistakes at the worst possible time (that is, when there is a problem).

It is most important that the formal relationship between the members be specifically documented. Much discord and apparent unfairness can arise during the operation of the group if this has not been done. The document laying down the rights and responsibilities of the group should cover all circumstances which could arise, and take into account matters concerning the ownership of property and its administration.

### 3.3 CONSIDERING LEGAL ISSUES

When choosing a legal structure for a group, the following points should be considered:

- \* passing of a member's interest on their death or bankruptcy;
- \* transfer of a departing member's interest;
- \* methods of allocating sites for member's homes;
- \* which members are providing the capital assets;
- \* how any profits and losses are to be distributed;
- \* whether the protection of limited liability is required;
- \* the decision-making process of the group;
- \* rights and obligations of members on dissolution of the group;
- \* balance of group and personal rights;
- \* amount of control by external authority;
- \* security of the land and its rights;
- \* ability to be reformed into more suitable structures at a later date;
- \* simplicity and cost to set up;
- \* legally required paper work;
- \* tax susceptibility (e.g. capital, land, income tax, stamp duty);
- \* maximum number of shareholders permitted;
- \* ability to transfer title to house;
- \* ability to exclude unwanted members after purchase;
- \* access to mortgage arrangements for finance of the property as a whole and individual homes; and
- \* problems with loans and grant schemes.

It is important to check the eligibility of incorporated bodies if your settlement plans hinge on a certain activity, form of permit or grant. For example, it will often be difficult to get concessional finance (such as a government subsidy for a bore or dam) if the land owner is an incorporated body. Dairy farm quotas must be granted to individuals. If a builder does not have adequate title to land, they may not be eligible for bank loans or for a home savings grant. Depending on the form of incorporation, if any, the group may be required to pay Land Tax, although there is an exclusion for approved multiple occupancies.

## Distribution of Property on Termination of the Group

The distribution of group property on dissolution of the group is an important factor to be considered in any structure. If the structure is regulated by statute such as partnerships, companies, co-operatives, or incorporated groups, the legislation itself generally outlines how property is to be distributed on dissolution of the group. In the majority of cases such legislation provides that the debts of the community are first to be paid and then the group property is to be distributed to the members.

In the case of groups which are not regulated by legislation, the distribution is usually conducted in accordance with any rules made by the group. Therefore it is very important in the formative stages to ensure that adequate provision is made by the group for such a contingency. Those groups set up as non-profit bodies may find that, on winding-up, the net proceeds go either to a body or bodies with similar objectives or to 'Consolidated Revenue' (that is, the Government).

## Outlays and Expenses

Buying land and operating a community results in a variety of financial obligations. So that the burden of meeting these expenses can be distributed equitably amongst the members, it is important that the group makes express provision in this regard. It is common to have individual members contribute to the payment of such costs on a basis proportional to their interest in the community.

## Interim Bodies

A group may prefer some simple legal structure during its formation. Once the body has formed, all parties can be involved in determining the final structure.

It is quite possible for one company to own another (commonly called nesting). This allows groups to move out of corporate structures that are no longer suitable for it. This is not a good idea to do right from the start as it may, for example, make it more difficult to get exemption from various taxes.

## Fees

Some forms of incorporation may require professional audits of the group's books. For a co-operative or a company, this can easily amount to \$700-1000 per year. A clear statement of the paperwork required for a particular structure and the cost involved is important.

### Shares and Levies

Not all shares need to be of the same type or value and not all need to be issued at the one time. For example, this allows children to take up shares when they reach adulthood. Shares of different types can carry different voting rights and can receive different types of dividend. Some groups may wish to investigate the option of deducting unpaid levies from shareholdings of defaulting members.

### Prospectus

The National Uniform Companies Act has strict regulations regarding the issue of shares. It is probable that a group selling shares in land (including co-operatives, companies, trusts and voluntary associations) will be obliged to issue a prospectus before the shares can be sold. This may cost many thousands of dollars.

Legally, the finding of a "shareholder" without a prospectus can only occur as a spontaneous connection and/or a group with common interests. If your group can arrange this, prospectus may not be necessary.

### Rights to Homesites

Clause 11 of State Environmental Planning Policy No. 15 prohibits subdivision of land proposed to be development under the policy. Various methods of creating actual or implied subdivisions of multiple occupancies which have been used in the past are now not available.

### 3.4 CHOOSING A LEGAL STRUCTURE

The choice of legal structure is dependent on the aspirations of the group. At present the basic choices are:

1. tenants in common
2. joint tenancy
3. voluntary association
4. partnership
5. co-operative
6. public company
7. private company
8. company limited by guarantee
9. trust
10. charity or religious association
11. single legal owner
12. combinations of structure (e.g. trust with partnership)

Where there is no legal structure previous experiences have indicated that there are problems with multiple occupancies. In these cases where common law becomes a de-facto means of settling disputes. Formal legal structures avoid this costly litigation. There may also be problems for groups without formal legal structures when applying for development consent.



A good, though technical reference for information on the choice of legal structures is "Business Law of Australia" available from many libraries.

It is worth noting that most legal structures can be shaped by the inclusion of special provisions to fit more closely to a particular group. One form of legal structure can be made to fulfil functions commonly associated with another form. Thus, a company can carry out the role of a trustee which is fairly common. However, this is not always through choice but rather through insufficient forethought.

All forms of legal structure, excepting Rural Co-operatives, are subject to Land Tax. An amendment in 1986 to the Land Tax Management Act, 1956, has provided an exemption which applies from 1st January 1987 to land approved for Multiple Occupancies and occupied in accordance with an environmental planning instrument.

### Tenants in Common

This method requires the land to be held in undivided individual shares, with the Title Deed in the names of all those purchasing the land. There is an assumption that where names appear together on a Title Deed, they are automatically 'Tenants in Common' unless some other provision has been made.

Usually, a person has a share in the land in proportion to the amount of money they have provided toward the purchase price. No one tenant has the right of possession of any particular part of the property. They may have unequal share.

Members may dispose of their shares as they like, although this may be internally regulated by the rules of the group. However, these rules may not be legally tight in all respects, as the land cannot be sold or mortgaged unless all parties co-operate. The rules may stipulate, for instance, that a member must sell their portion to the other owners if they wish to leave (or at least to offer it to them), or in the case of a sale to an outsider, the purchaser obtain the approval of the remaining tenants. On the death of a member, the disposal of their share may be by Will or by the normal rules of intestacy.

A problem involving time and expense with this form of ownership is that when a new member wishes to buy into the group a formal transfer of the land must be registered. The current members transfer their shares to the new combination of members. This can involve a valuation of the assets. The holding of land as tenants in common is sometimes employed by groups of persons who have formed themselves into voluntary associations or partnerships.

### Joint Tenancy

This method of owning land differs from Tenants in Common only in that it is one in which all of the members have their names on the Title Deed as joint tenants, subject to the Rules of Survivorship. The law requires that the interest of one joint tenant passes automatically on their death to the surviving joint tenant or tenants, irrespective of the provisions of the person's Will. The longest surviving member eventually owns the lot.

Problems arise where one or more joint tenants wish to sell their interest but the others do not. It is then necessary to make an application to the court to have an order made for partition of that member's interest from the whole to enable a sale to go ahead. Where subdivision is not possible, a trustee is appointed for the sale of the property. In NSW, a 'joint tenancy' can be turned into a 'tenancy in common' if an existing tenant assigns their share or interest to an outsider.

This structure is generally unsuitable for large-scale settlements.

### Voluntary Association

If the people buying the land organize themselves into a formal group with a name and a set of rules governing their relationship and the land, but without becoming incorporated (by forming a company or co-operative, they would in the eyes of the law, be a Voluntary Association. Recently, NSW has introduced a law permitting the incorporation of Voluntary Associations. Under this legislation personal liability is limited.

### Partnership

If one of the objectives of the group is the acquisition of gain or profit for distribution amongst its members, a partnership arrangement may be in order. If so, the community can take advantage of the back-up rules provided for in the Partnership Acts. The members may, for instance, jointly own and work a commercial farm whose produce is sold and the profit goes to the support of the community. It would be in the nature of a business.

The Act contains a number of provisions which apply where the partners have not made adequate provision in their written document or oral agreement. (Oral agreements are not recommended). As the rules of the Partnership Act are subject to any express or implied agreement between the parties, the partnership deed can include any matters to cater for the particular situation envisaged. These would include, for example, making provision for regular meetings to communally manage the land.

It is important to note that in partnerships there is not the protection of limited liability, as there is with a company or co-operative. This means that if the partnership becomes insolvent and debts have been incurred by the partnership which the assets of the partnership (including the land) cannot pay, then the private assets of the partners may be taken to meet the debts. This does not happen with a company or co-operative, where members would lose only their investment in the project, that is, the amount they have invested and undertaken to invest in the company.

The Partnership Act is sometimes required to fill the void in the 'partnership at will' situation. It often occurs that new settlers band together and, without any formalisation of affairs, will haphazardly contribute land, capital, building materials, labour and skill to the community. Usually it is without ever questioning their legal positions. If the social system within the group breaks down, and the question of property division or other matters come up, the rules provided in the Partnership Acts are then used. If no partnership or constructive trust can be inferred, some of the group may be treated as mere licensees and expelled from the land.

In summary, where there is a relatively small stable membership, a partnership, adequately regulated by written agreement seems a reasonably suitable medium for joint ownership and organization of a community with a commercial interest.

#### Co-operative

Co-operatives are widely used, for example to provide credit, insurance, health services, marketing of produce, increased bargaining power and so on. They are formed under the Co-operative Act.

The minimum number of adults required to be share holders in NSW is 7 persons. Yet there is no reason why fewer than the minimum number of people who are contributing money to buy the land cannot issue several shares at a low value to satisfy this requirement. This 'extended community' concept may have benefits because of the extra variety and input of more members. The founding members can be the directors of the Co-op and thus have day-to-day management of affairs. Although directors are, under the Act, required to retire every few years, they can essentially be permanent directors by merely being re-elected at the meeting at which they retire.

Unlike the Corporate Affairs Commission, which must incorporate a company which fulfills their formal requirements, the Department of Co-operative Societies has wide powers regarding incorporation under the Co-operation Act and they often take considerable time to process applications.

Co-operatives, like companies, are distinct legal entities, separate from their members. The co-operative holds the land in its own name, it can sue and be sued, and has perpetual succession (that is, it continues to exist despite the comings and goings of members). Basically it can do everything an ordinary person can legally do within the limits of its Objects and Powers. It simplifies matters enormously having a co-operative or company as the legal entity responsible rather than a group of people. Of course the people involved control what the co-operative does, subject to the Act.

The Act requires that the co-operative shall have the powers conferred from time to time by its Rules, and proposes a substantial list of powers which may be included although they are not exhaustive. Important examples are the power to sell or let land to its members and provide facilities for education, recreation or other community purposes.

Naturally, objects and powers can be tailored to meet particular contingencies. Co-operatives may only be formed with limited liability, a desirable feature if numerous unknown people are involved. The Act has many detailed provisions covering situations which may arise. Sections deal with a variety of areas such as the effect of bankruptcy and death on the individual members and their funds or shareholding. Other provisions in the act deal with cessation of members and expulsion. A member wishing to leave may have his share repurchased by the co-operative or transferred to a new member acceptable to the directors.

There are registers and accounts to be kept, returns to be filed, meetings to be held and audits to be done. Management is by the Board of Directors, with various rules setting out the decision-making process, but there is no reason why there should not be free and informal discussions during such meetings, with decisions being reached by consensus of members present. Model rules are usually provided and these can be adapted to suit particular needs.

There are disadvantages in the co-operative method. Amongst these would be the inherent formalities in running the co-operative, such as regular director's meetings, the need to obtain the formal approval of the Registrar and of limiting the rules within the ambit of the Act. It often takes considerable time to get a co-op registered (8-10 months sometimes). The Registrar of Co-operatives has the power to overrule some decisions made by the co-op. The range of investment possibilities are limited to banks, some building societies and prescribed securities. Alterations to the co-op Rules are subject to consent by the Registrar of Co-operatives.

Overall, the co-operative seems a reasonably good method of buying land and operating a community especially where membership will be large. It enables the community to exist independently of its members. Rural co-operatives are exempt from Land Tax. A company (except a company limited by guarantee) can convert to

a co-operative society if it has so resolved in a General Meeting and invites the Registrar of Co-operatives to rule what alterations to its Articles are necessary.

### Public Company

Public companies differ from private companies in that the share capital is available to a wider cross section of society and more persons can be shareholders. A public company's affairs can be ordered so that it is a 'co-operative' for the purposes of the Income Tax Assessment Act and is taxed accordingly. It is also generally faster to incorporate than a standard co-operative. The power of the Corporate Affairs Commission to overturn otherwise validly passed special resolutions is much less. The range of investment opportunities is not restricted. One disadvantage of a public company is the possibility of a takeover by the purchase of shares on the open market.

There may be a large cost associated with forming a public company. At the very least, a Prospectus will be required. In many respects, a public company may be a more convenient form of structure than a co-operative.

### Private Company

This is a commonly used method of purchasing land and organizing the community. It allows the greatest flexibility in internal organization. Companies are incorporated under the Federal Uniform Companies Act, and the general company law principles apply to any matter pertaining to the creation, maintenance and organization of a company and of the rights and responsibilities of its members. The company is a legal entity in its own right, and has perpetual succession. Most importantly, the liability of a private company is limited. Unless expressly excluded or modified by the Memorandum or Articles of Association of the Company (the Rules), it has all the powers set forth in the state company code. It should be noted, however, that there is a maximum number of members allowed in a private company.

Companies are often used to act as, for example, trustees for a Voluntary Association. Some communities have companies and other forms of incorporation 'nested' several deep. This often gives rise to problems not foreseen when first set up. The company may sue a member and a member may sue the company to enforce or restrain breaches of the Memorandum and Articles of the Company.

There are many advantages in the company structure. There is easy transferability of member's interest which is tied to the purchase and sale of shares (usually with the directors' approval). The company continues to exist irrespective of these transfers of shares. Stamp duty on transfer of shares is based primarily on their value. An expert valuation to establish this value will be required.

It should be noted, that it may be expensive to set up a company. Usual expenses are filing fees, plus solicitors' costs, and a fee every year for the lodgement of the Annual Return. Many

procedural matters require attention, such as the holding of meetings, the keeping of books, filing of accounts, maintenance of registers, and ensuring that all of the paperwork required to be kept or filed under the Act is in fact, filed. Every community that uses the company structure should have a copy of the Companies Act. A simplified guide in this field is the publication "Proprietary Company Practice Manual", by R.W. Miller, published by the Law Book company.

The Income Tax Assessment Act imposes obligations on companies. If a company makes a profit it is taxed at the company rate and will generally be required by that Act to distribute a specified proportion of its after-tax profits to its members. Failure to make a sufficient distribution could result in the company being liable to pay penalty tax on some of its income. This may be avoided by including a non-profit clause in the Articles. Hence a community with commercial aims in mind may decide to steer clear of the company structure because of the tax burden, and may prefer a trust or co-operative.

If income is not to be divided on the basis of the number of shares held by each shareholder, as is the normal case, then each shareholder could be given their own class of shares and income divided between the classes in some acceptable fashion (eg, by work done).

A Prospectus may be necessary, if a company is to be formed, unless, the members come together spontaneously. A Prospectus and its associated requirements can be quite expensive.

#### Company Limited by Guarantee

In NSW, there is the possibility of forming large companies limited by guarantee. More than 50 shareholders are possible and the lower limit is 7. In other respects, they resemble a private company. This form suits a company with members but no share capital. Members are liable only to the extent of their guarantee (a nominal amount such as \$5).

Some of the significant differences of this form of incorporation are that profits, surpluses and assets cannot be distributed to shareholders on winding up the company and this form of company has no shareholders, only members. Members can pay a refundable entry fee. Since there is no share capital, the money for land purchase, etc will have to be raised by other means (for example, by loans). Once the level of the guarantee is set, it cannot be altered. This may raise problems with expanding membership. Both the company and its members are liable for income tax in the normal fashion.

There is also the possibility that any division of the company into implicit shares (for example, construction of dwellings on designated sites) will be treated as a conversion of the company from one limited by guarantee to one limited by share capital. Stamp duty and other fees may have to be paid when forming this type of company.

A proprietary company cannot convert to one limited by guarantee. The company limited by guarantee could buy the shares of the proprietary company although this would attract stamp duty.

### Trust

A properly organised trust can be a good way in which to operate a community, although there are a few complexities which may make it undesirable for some groups.

Irrespective of the type of trust, beneficiaries are powerless to remove trustees without expensive recourse to the Equity Court. This is a serious problem. There is more than one instance of residents being evicted from communities in which they have lived for some time because of a change in the attitudes of trustees - often long gone from living in the community. Internal management is not possible, as a wronged beneficiary would have to sue the trustee in the Equity Court. All outside dealings would have to be conducted through the trust and outsiders would also have to sue the trust.

A trust could be made where members have bought the land, are registered as the owners and are paying it off, and then further members arrive and contribute to the repayments. The registered owners should execute a trust deed stating they hold the land as trustees for all the members. Eventually it may be best to reorganize the form of ownership in some other manner.

Due to a rule known as the "Rule Against Perpetuities", a trust can only operate for a finite period, at the conclusion of which the property reverts to the beneficiaries (for example, the members).

(a) Expressly Constituted Trust. By this method, the trustee(s) holds the land in its name on trust for the members, allocating various parts to members for their use and occupancy or lease with the remainder being administered by the trustee. The trustee can be one or more persons or a company, ideally with the members (who are the beneficiaries under the trust) as directors of the company. However, if a corporate trustee is decided upon (which has limited liability, unlike a private person) with its associated expense and structuring, the group may merely use the company structure itself without the further complexities of a trust.

(b) A Unit Trust is another most useful structure of this type. Units are held under the trust by individual members and the holding of a particular unit entitles the owner to the use and occupancy of the land. A unit trust has easy transferability of units to income members who purchase the units of outgoing members or subscribe for new units. The trustee's consent can be made a prerequisite for a sale but it should be clear that the trustee is the obedient servant of the members.

It should be noted that the use of a Unit Trust for separate entitlement to part of a rural holding, has been found to be subdivision and is prohibited under the Multiple Occupancy Policy.

Any income earned by the unit trust would be taxable in the hands of the trustee unless a distribution is made to the unit holders where it would be taxable in their hands. Owing to many of the complexities in the taxation field regarding unit trusts it is often preferable for an accountant to be engaged to advise the community on taxation matters.

- (c) A Private Trust must benefit a designated category of persons who can be identified with certainty. Thus a family trust where a parent holds property for their named children is a valid private trust.

It would be possible to arrange a trust (with a named Trustee) that could ensure that each member may enjoy the benefits of the trust personally. When the trust was dissolved, members at the time would have the right to sell up the property and take a share of the proceeds.

The land could be given outright to some individual, expressing the hope (not the legal obligation) that the land would be used for the purposes it was supposedly given.

- (d) A Charitable Trust or a Trust for the Benefit of a Religious Society is also possible. These are known as public trusts and therefore, must be open to a sufficiently wide number of people to be categorised as public, as well as passing the tests of what constitutes a 'charity' or 'religion'. Since land in a multiple occupancy is settled for the benefit of the settlers, this is not very 'charitable'.

- (e) Constructive Trust. Although uncommon in practice, the situation may arise that while the land on which a community has been established is owned legally by one person the beneficial ownership of the land may be vested in the various members, although there is no written agreement to this effect. Where many improvements have been effected by persons other than the legal owner (that is, the registered proprietor) or the money to buy the land was advanced by the members, it may be unfair to allow the legal owner rights to the property and improvements. (for example, on dissolution of the community), and therefore a Constructive Trust may be implied by law. The result is that the members or persons who have contributed to its purchase and improvement will be regarded as the true (beneficial) owners of the land. It should be noted that the adult beneficial owners can generally direct the legal owner to transfer the title of the land to them and become owners, either solely or



### 3.5 LAND SELECTION

In NSW, multiple occupancy settlements are located principally on the coastal strip east of the Great Dividing Range, with a growing number on the tableland. The most important considerations in the selection of a region appear to be the physical and social environment of an area. Like-minded persons in a region may be able to give considerable support in the development of community projects, employment and education opportunities as well as offering traditional neighbourliness.

Serious consideration should be given to the employment opportunities that are present or may arise in a region. It is a popular fallacy that settlers will be self reliant and are not interested in obtaining outside work. In a 1985 survey conducted for the Bureau of Labour Market Research, it was indicated that 37 per cent of NSW land sharers were employed and that a further 66 per cent of the unemployed would prefer to have employment.

Unemployment in rural areas is generally greater than in urban areas and the availability of work is likely to be less than the potential settler might expect. Often professional and trade opportunities have been taken by earlier settlers, and cottage industries may experience an oversupply with increasing competition. Generally, a farm that becomes a multiple occupancy is unable to support one traditional farm family, let alone several families, unless there is a major change in capital and labour inputs, and management techniques.

There are many matters to consider when choosing rural land. Preliminary knowledge of these matters is important when evaluating alternative allotments.

The first and major consideration is determining whether multiple occupancy is a permissible form of land use on the allotment to be purchased. Land advertised as "suitable for multiple occupancy" may nevertheless be excluded from the Policy. Local councils in the region should be able to provide a firm indication of those lands which may be suitable.

It is important to realise that land which has a low purchase price may not be a valuable form and may require large amounts of capital to develop. In the long run, it is probably easier to raise a larger initial lump sum of capital than to have to raise it when occupying the land - along with building costs, car running costs etc.

The following points indicate the range of potential problems that may arise when purchasing rural land.

Access to community facilities (eg. school bus routes), employment opportunities and public transport arteries. Maximum tolerable commuting time (especially if frequent) and cost are major considerations. Many councils require extensive and costly upgrading and dedication of public roads to the sites of potential communities as a condition of development approval. Legal rights of access may be straight lines on a map, but may cross creeks and cliffs on site, which make it impractical. Check thoroughly right of access (especially through other people's property) before purchase. Also check that homesites are not on someone else's legal access.

Aesthetic Value is a self-determined criterion. Ensure that unwanted quarrying, clearing, subdivision etc will not take place on neighbouring land.

Agricultural Suitability is dependent largely on climate, topography and soils. Variations in these may mean that the land is unsuited to your farming intentions. The Department of Agriculture can assist in clarifying this.

Area of land is important. Small allotments may be difficult to make a living from, or require greater residential densities than is desired. However, large allotments have greater fencing and weed control costs. Check with council the minimum lot sizes suitable for multiple occupancy development.

Bushfire risk varies from one area to another. Consult the council Bushfire Officer about the local fire history. Personal hazard may be reduced by shelters and other prevention measures if your land has been identified as having a high risk of bushfire.

Building Permission is not always obtainable, and council advice should be sought prior to the purchase of the land. There may also be certain restrictions on building for example, in areas prone to land slip or flooding.

Catches may appear in contracts for sale of land that, for example:

- \* absolve in perpetuity a neighbour/vendor from the cost of erection of a boundary fence;
- \* grant the seller the first option to buy back the land if it goes up for sale, or first option if the land is made available for lease or agistment; and
- \* may entitle the seller to timber, mineral or other rights for several years after sale.

Have your solicitor explain each clause in the contract to you clearly before signing.

Checks are important for water supply. Building within 50 metres of them, clearing alongside, or damming are usually prohibited. Drought and flood effects may not be apparent. Councils often require all-weather access.

Covenants are applied to the land by previous owners. They are legal agreements regarding, say, the use of the land. They might for example, specify a dwelling cost in excess of \$25,000, or that recycled materials are not to be erected on the site. The land title will indicate which covenants apply.

Cottage Industries in rural areas are often regarded as "prohibited development" industries are commonly directed to industrial estates where services are more suitable. The local council can explain the situation in your Shire or Municipality. There are however opportunities for "home industries" depending on the scale of operations permitted.

Children may wish to live on the property in separate dwellings in years to come. Questions such as will they be able to obtain separate shares? all need to be addressed at an early stage. Is there enough room for them?

Consultants may help, if you feel lost with the land selection problem. An example is an environmental planning or Permaculture consultant. A check should be made of consultants' references, and/or previous work before employing them.

Community Support - you may be wise to buy in an area where there are other new settlers. They can be helpful in providing support for community undertakings such as child-care, education and entertainment.

Climate may present seasonal extremes, and variations in 'micro climate', (the different climatic characteristics of areas relatively close to each other). Building location should take account of this.

Cleared Areas on the Land should be utilised in planning the development concept. Rather than cut down trees in forest areas the use of cleared land for roads. Clearing land for roads, houses, agriculture and other uses may be the best way to proceed. In cleared areas the local Soil Conservation Service can give advice on soil protection and tree planting programs.

Charges against a property may be considerable. They include Pasture Protection Board rates, council rates, levy for major works (eg water works, roads), bushfire brigade, levy, noxious weeds levy, insurance etc. Adjacent owners may also indicate possible liabilities.

Density varies with allotment size under the Policy. An indication of the maximum permissible number of dwellings for allotment sizes allowable under the Multiple Occupancy Policy is as follows:-

10 ha .....	4 dwellings
40 ha .....	12 dwellings
100 ha .....	27 dwellings
more than 360 ha ....	80 dwellings (maximum)

Development Approval will be required before Multiple Occupancy development can proceed.

Easements over land may exist or be proposed by various statutory bodies. These should be found during title searches. There are often building restrictions on areas affected by easements.

**Existing Dwellings** there are many advantages to a block with an existing dwelling. It may increase the purchase price, but also provides immediate shelter, a base for farm administration, and a place for guests and basic facilities. When buying land with a dwelling that has already been erected, check that building permission, if required, has been given and that the building conforms to Ordinance 70 of the Local Government Act. If it does not, rectification work may be required by council.

Council should be asked to provide a Section 317AE Certificate (Certificate of Compliance) under the Local Government Act, 1919 before contracts on the purchase of a property with an existing dwelling are completed. This certificate states that in all respects the building complies with the Local Government Act and ordinances.

Where the design of a building or structure is of an unusual nature it may have been not envisaged under Ordinance 70 building control. Section 317(m) of the Local Government Act allows a Council to accept buildings which are structurally sound but would not otherwise be permissible.

Fences are a mutual responsibility, and landowners are obliged by law (eg, the Dividing Fences Act of 1951) to pay half the cost of a common boundary fence as specified in the Act. Check carefully the condition of boundary fences and speak to your potential neighbours about their requirements before buying. If the property adjoins a public road, a stock route or Crown land, you may have to pay the entire cost of fencing that portion of the boundary. Fences are not always located on the property boundaries for reasons of convenience. You have no legal right to land included in your block by such a fence.

Good fences are important because substantial fines can be imposed on landowners whose stock stray through fences. If they meet a car in their travels it may result in a public liability claim.

Feral Animals are in plague proportions in some areas. You may be required by law to lay baits or use other methods to remove rabbits or other pests. Neighbours may be particularly unfriendly if you don't do this. The Pastures Protection Board can give advice on this aspect.

Flooding: see areas unsuitable for building in 'Where and When Not to Build'.

Frost Free Days is an important statistic as it limits crop viability. Even coastal shires suffer from frost.

Insurance cover may be well advised. If, for example, a fire begins on your property and burns out your neighbours, you can be sued for damages. Get a quote for public liability insurance from an agent - for at least \$5 million. Insurance may be cheaper if a number of different policies are purchased from a single organization.

Mining Leases: see Catches

Mountain Tops may be prohibited for building. They may also throw early shadows that may lead to very cold winter nights, frosts and poor responses from solar panels.

Neighbours are important, and should be advised of your intentions. If they don't like your ideas, they can hinder Development Approval. They are also a major source of local knowledge about bushfires, fencing, land values and other matters.

Noise exists even in the bush. Hilly public roads may mean noise from heavy vehicles. Sound from quarries, mines, chain saws and trail bikes can travel for miles. Check on both weekdays and weekends for noise sources.

Options to purchase may be used to protect the land from sale while you seek finance. If they include a clause such as 'subject to acceptable finance and subject to development approval, you need not lose your deposit if the sale does not proceed. A solicitor can advise on such an option.

Price may fluctuate according to season and demand. (eg, land in spring looks better and is more expensive). It may be more farsighted to include one or two more shareholders and obtain significantly better land than to settle for an inferior block.

Power supply may be obtained from a number of sources. If solar energy is likely to be used, ensure that possible positions of collectors are not shaded from low-altitude sun by hills. Wind generated electricity is really only feasible when the average daily wind speed exceeds 24 Km/hr for several hours a day and thus suitable sites are limited.

Connection to mains electricity is expensive, and quotes should be obtained prior to purchase. Court appeals have demonstrated that it is not essential for mains power to be installed to the property.

Purchase Price of the land may be considerably increased by the amount of cleared land and its improvements (eg, fencing, dams). It will often be cheaper in the long term to buy a farm with such improvements already in place - if you wish to farm your land.

Roads external to the property may require extensive upgrading to carry the extra traffic of the multiple occupancy. This can be very expensive.

Internally, roads can be expensive to build and maintain. Some soils are untrafficable when wet (and that could be for several months at a time). Roads on steep grades are subject to severe erosion which is expensive to correct. Sufficient 'most weather' roads will be needed for access to households.

School Access may be important. Children may commute some 2400 times during their school years, and it may take a few hours each way. Consider their needs for social and sporting life as well. The educational philosophy of their future school may also be important.

Telecom will probably install a telephone if desired. Charges vary according to distance from an exchange. Installations may be delayed for several years if there has been a rapid increase in demand. Get a written estimate for connection charges prior to purchase.

Topography affects microclimate. Northeast to Northwest slopes are good for house sites and growing crops. Frosts may be reduced on these slopes.

Transitional Dwellings may be required initially while home sites are being identified and permanent dwellings erected. The Low Cost Country Homebuilding Book contains further information on this subject.

Water Supply is a critical factor in land selection. The water supply should be

- \* reliable, especially in drought;
- \* adequate for house, garden, stock and crops. Large animals may require 40-60 litres per day, and gardens much more;
- \* of suitable quality, especially for drinking water. Many bores and wells do not contain drinkable water due to mineral or bacterial content. Creek water may be polluted from sources upstream, for example, by chemical runoff. The Departments of Agriculture, Water Resources or Health should be able to assist in determining water quality;
- \* enough to provide a reserve for bushfire fighting; and
- \* capable of expansion by means of water management schemes such as dams. Dams on creeks often require the consent of the Department of Water Resources.

Waste Disposal is one of the major concerns. Soil type affects disposal of sewerage, sullage and garbage. This is an item councils are required to consider when examining a multiple occupancy development and you should be clear about the disposal methods contemplated.

Weeds are often declared 'noxious' and must be removed from land under penalty of a stiff fine. Removal of large areas of blackberry and groundsel for example can be both expensive and require the use of chemical sprays. Manual control methods are not as practical as they may sound. The Noxious Weeds County Council can offer advice.

### 3.6 LAND PURCHASE

It is important to consult with the land council prior to any final negotiations to purchase a particular property. Determine their attitude to a proposed development, and any constraints or conditions that may apply or be applied.

Raising Finance. When choosing a legal framework, keep in mind that it may be necessary to raise money both for the property as a whole and for individual homebuilders. This may entail borrowing money against a mortgage. Where clear title is not held on a house to be erected, it may be difficult to find a lender who will provide funds.

Conveyancing. When purchasing land, the actual transfer of ownership is known as conveyancing. This is normally carried out by solicitors but you are entitled to do the job yourself. Kits for this purpose have been developed by the Law Consumers Association.

Stamp Duty. Stamp Duty is generally payable on any document brought into being, and would be payable on every purchase of land by any group. Similarly, stamp duty is invariably payable when the property is distributed amongst the various members of the group upon dissolution. There are, however, some stamp duty concessions in the various Stamp Acts in connection with the purchase of land. If you are not careful, you can end up paying stamp duty several times.

Strategies for Buying Land. In many cases the initial members of a group who want to purchase land will be in a position to do so before the entity which is to embody the community has in fact been formed. Often it is necessary for one or more of the members to enter into a contract for the purchase of the land so that the opportunity to purchase it is not lost before the entity is formed. An obvious example would be where a company is to be formed but the promoters have made an offer to purchase the land which must be accepted before the company can be incorporated.

A number of legal devices exist enabling land to be bought on behalf of others or on behalf of another entity. If it is likely that the entity which is to eventually own the land cannot be

formed before the offer to buy land lapses. An 'option to purchase' can be entered into by some of the members. This means that for the payment of a certain sum to the seller, the seller agrees to give the members an exclusive right to purchase the property for a specified time, or until a specified condition is met (such as Development Approval). This is the preferred method. Alternatively, the promoters of a company can enter into a contract with the seller on behalf of the company which is to be formed.

It should be noted, however, that the Stamp Duty Acts encompass most agreements to buy land. It is suggested that where the entity which is to own the land has not been formed or where some of the members wish to buy land, or act on behalf of other members, that legal advice be taken to avoid the imposition of excessive stamp duty.

Caution should be exercised over the payment of any monies under contracts to buy land. In particular, it should be remembered that if the buyer defaults under the contract, normally the seller is entitled to claim any deposit paid. Care should always be taken when buying land, and prospective purchasers should be certain that they do wish to buy the particular parcel of land in question, before commencing legal transactions.

In addition to purchase costs, other costs may include consultants fees, Section 90 and 94 fees and Development Application fees. Costs associated with the construction stage of development, such as Building Application fees, septic tank application fees, owner builder permits, builder's long service levies etc. are not discussed in this manual. Refer to the D.E.P. publication "Low Cost Country Homebuilding", or consult your local council's Health and Building Department.

Legal advice should always be sought before entering into any contracts.



#### 4 PREPARING A COMMUNITY CONCEPT PLAN

Having considered the broad range of opportunities and alternatives in land selection and community organization, a group should now be in a position to address their requirements to a specific site in detail. The outcome of this process is a Concept Plan of the proposed use of the site, which forms the basis of a Development Application to council.

The steps necessary to prepare a development application are very closely related to the establishment and clarification of a group's own intentions with regard to settlement on a piece of land. They should not be considered as superfluous to undertaking a multiple occupancy project. Indeed, they form the basis of a detailed understanding of the potential of the land, and the capabilities of the group.

The logical sequence of steps in this process is:

1. The preparation of an Existing land Use Plan, from an assessment of the land's capabilities.
2. The preparation of a land capability plan.
3. An assessment of individual and community needs.
4. The development of a Concept Plan.

Information gathered and recorded throughout these stages forms the basis of a development application.

If possible, land should not be purchased unless Development Approval for the Multiple Occupancy has been obtained. If this is not possible, at least a Land Capability Assessment should be made prior to a final commitment.

##### 4.1 LAND CAPABILITY ASSESSMENT

An assessment of the land's capability is the first step in matching a group's needs with the physical resources of the land. The results of a Land Capability Assessment are best shown on a drawing which may be called a Land Capability Plan.

This plan should show the natural features and any special features of the land. The group can then evaluate, discuss and establish the areas for specific uses and settlement types, and determine the capability of the land for its proposed use. A Development Application based on the Land Capability Plan may then be prepared.

To be of greatest use and benefit to the group, the plan (or maps) should include as much information as possible. Its use will likely extend far beyond the preparation of the development application by providing a useful reference for future land use planning.

Determining the natural and special features will entail some investigation both on and off the land. Not all the information listed is required for a development application, but it is relevant to gaining a comprehensive understanding of the property.

Other relevant information may be obtained from previous owners; neighbours; local council building, planning, engineering, and bushfire officers; Department of Agriculture, Water Resources, Health, Mineral Resources; Soil Conservation Service and Forestry Commission; local timbermills; logging contractors, and the local Weather Station. A library, local history museum or historical publications may also provide some data.

Assistance and valuable advice may also be given by regional and local multiple occupancy groups and owner builders.

#### 4.2 DRAWINGS

A scale of 1:5000 should be adequate for most properties, depending on their size, but a larger scale of 1:2500 will show detail more clearly. Council's sometimes specify certain scales for development application drawings, and it is a good idea to check these requirements prior to preparing plans.

Existing maps of a different scale can be photographically enlarged or reduced to the desired scale.

The overall size of the plan should preferably be one of the standard 'A' sizes drawings on tracing paper or plastic film. Dyaline or prints are to be taken from these for use on site. Ink and film are the most durable media, although film is a little more difficult to use than tracing paper. Film is virtually unaffected by water, whereas tracing paper alters in size with changes in humidity, and becomes useless if wet. Reproduction of paper copies can be by photocopy for sizes up to A3.

General topographic information be obtained from maps prepared by the Central Mapping Authority at a scale of 1:25,000. These are widely available at newsagents and camping goods outlets. In addition, there are orthographic aerial photos of some areas, which are to scale and show contours. Aerial photos can be of assistance in preparing drawings. Other sources of data are the Department of Lands and the council's Local Environmental Plan.

All drawings should show scale, north point, property boundaries, contours, and contour interval. Some skill in preparation is required, and drawings should be clear and easy to understand.

It may be of use to work with more than one original, each showing some different aspect of the whole, which can be overlaid if desired to give a composite picture. Working groups can sketch either on prints or on film laid over prints with coloured felt pens, thus preserving originals.

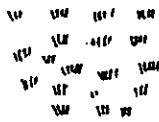
Three dimensional models may also be of use.

### 4.3 ENVIRONMENTAL FEATURES

As shown on an Existing Land Use Plan, the Natural Features should include:



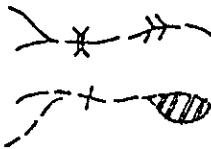
Existing forest with the following if possible: forest types (eg wet sclerophyll), predominant tree species, original forest areas, forest regrowth areas (with ages if known), and soil types.



Existing cleared areas showing - present uses, ground covers, soil types, topsoil depths and agricultural classification, fencelines and condition, historical uses including crops, fertilizers and pesticides when used.



Other vegetated areas with vegetation types (eg orchards) generally as for above.



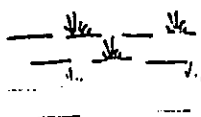
• Bore

Existing watercourses with any waterfalls, large and deep pools, eroding or unstable banks, springs, bores, permanency of these water sources, and water quality (eg drinking or washing).

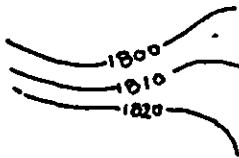
Any existing (or eligible) irrigation licences on streams or bores.



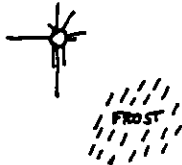
Existing dams, with capacities, water holding ability, catchment areas and water quality.



Marsh lands, land slips, potentially unstable areas, areas of soil erosion, critical slopes (which may be unsuited for buildings), flood prone areas and areas subject to

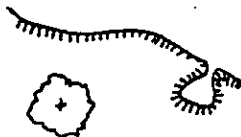


Contour lines at 10m intervals or a lesser interval if possible (perhaps for water management planning such as the Yeomans Keyline method).



Average monthly rainfall, average monthly temperatures, wind roses which show seasonal or monthly wind directions and strength; frost prone and frost free areas.

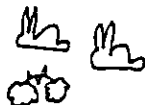
There may be other special features warranting inclusion:



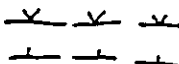
Cliffs, caves, visually significant ridge lines, other visually significant areas or objects (eg large rare tree).



Fragile flora areas, fragile wildlife habitats (eg marshes for migratory birds or a wombat village), aboriginal sites, areas of scientific interest.



Feral animal areas (eg rabbits or pigs), areas of noxious weeds such as blackberry or groundsel bush.



Powerlines or, telephone lines, any existing waterlines and sizes.



Existing tracks and roads including width, condition and troublespots (especially when wet, soft or slippery). Check for any access easements, rights of way or travelling stock routes.



HOUSE

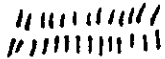


SHED

Existing buildings with condition and uses.



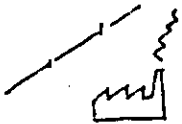
Areas of high bushfire risk (from council Fire Officer), and fire history.



Erosion control or flood mitigation works such as channels or levy banks.



Agricultural improvements, orchards, stock watering points, stock yards, existing irrigation and irrigation areas.



Neighbouring land uses, especially those which may conflict with the group's proposals.



Quarries, gold leases and other mineral leases, agricultural leases, and the duration of these leases.

#### 4.4 COMMUNITY AND INDIVIDUAL NEEDS ASSESSMENT

So that appropriate planning may be done, it is necessary for a group to clearly establish its size (including children), and the individual needs and living requirements of its members.

Perhaps the best way to do this is to use a questionnaire, recording information.

The information from the questionnaire and the land capability assessment may then be evaluated by the group and used to develop a CONCEPT PLAN of the proposed development.

A sample questionnaire is at figure 4.

#### 4.5 WHERE AND WHERE NOT TO BUILD

The locations of areas for specific uses and settlement types can both be identified by the group, working on clear film overlays as mentioned above, and when established transferred to a CONCEPT PLAN drawing.

Perhaps the most important first consideration for most groups is to establish suitable areas for buildings. This is most easily done by first eliminating the areas not suitable.

Areas which are unsuitable for building or where costs may be high include:

- \* good agricultural land;
- \* land within 50m of a watercourse (to avoid runoff pollution, especially in high rainfall areas);
- \* drinking water catchment areas;
- \* land subject to slip, flooding or erosion;
- \* flora and fauna reserves, other reserves (eg coastal protection), or environmentally fragile areas;
- \* easements, rights of way and adjoining properties (check your boundary locations!);
- \* publicly visible prominent ridge lines;
- \* any other environmentally sensitive areas which the group decides;
- \* areas with a slope greater than 18 degrees
- \* high bushfire risk areas;
- \* areas of difficult access;
- \* areas of excessive groundswell or potentially unstable;
- \* areas heavily frost prone or shaded from winter sun;
- \* land containing important aboriginal relics.

Figure 4 WOMBAT FARM QUESTIONNAIRE

THIS QUESTIONNAIRE IS AIMED AT CREATING A CONCEPT FOR SIDONA FARM THAT IS FOSTERING FOR THE FARM AND FOR YOU — THE PEOPLE WHO WILL LIVE THERE. WE WOULD LIKE TO KNOW WHO YOU ARE AND WHAT YOU WILL REQUIRE OF THE FARM. AS YOU KNOW SIDONA FARM IS AS YET LARGELY UNDEVELOPED, THIS ENABLING A UNIQUE OPPORTUNITY FOR GOOD DESIGN & FORETHOUGHT TO PREVENT THE MISTAKES AND PITFALLS THAT HAVE PREVIOUSLY OCCURRED. PLEASE FILL IN TO PROVIDE ANY INFORMATION THAT YOU FEEL IS NOT EXPLICITLY REQUESTED IN THIS FORM AND WOULD BE OF ASSISTANCE.

ONCE YOU HAVE ANSWERED THE QUESTIONNAIRE, THE RESOURCES AND OPPORTUNITIES THAT THE FARM OFFERS WILL BE MATCHED WITH YOUR REQUIREMENTS TO DEVELOP A RECOMMENDED CONCEPT PLAN FOR SIDONA FARM. LISMORE CITY COUNCIL, AS THE LOCAL PLANNING AUTHORITY, NEEDS TO BE CONVINCED OF THE FEASIBILITY OF THIS PROPOSAL TO DEVELOP SIDONA FARM.

NAME OF SHAREHOLDER:

PREFERRED TITLE:

## PROFILE OF SHAREHOLDERS FAMILY:

THE RESULTS OF THIS SECTION OF THE SURVEY WILL PROVIDE THE GENERAL DEMOGRAPHIC NATURE OF THE COMMUNITY, THE PROPOSED OCCUPATIONAL STATUS, LIKELY VEHICLE TRIP PATTERNS FOR ROAD DESIGN, GENERAL HOUSEHOLD TYPES REQUIRED AND THE LIKELY STAGING OF RESIDENCY REQUIREMENTS.

	RELATIONSHIP TO FAMILY	MALE/FEMALE	AGE	OCCUPATION ENVISAGED WHEN RESIDENT	RESIDENCY REQUIREMENT ESTIMATED ARRIVAL YEAR	FULL OR PART-TIME RESIDENT	DO YOU OWN A VEHICLE	HOUSING TYPE PREFERRED	WILL YOU BE IN FULL-TIME RESIDENCE	ANY OTHER COMMENTS
1										
2										
3										
4										
5										
6										
7										
8										
	↑ E.G. SHAREHOLDER, SPOUSE, FRIEND, NEAR RELATIVE, PARTNER, ETC....			↑ E.G. STUDENT, CRAFTS PERSON, UNEMPLOYED, RETIRED, PROFESSIONAL, ETC....	↑ FULL-TIME TO EXPLAIN IN DETAIL YOUR PROPOSED RESIDENCY PATTERN AT SIDONA FARM	↑ PLEASE STAGE IF TRUCK OR OTHER BEAST YEARLY	↑ PLEASE SPECULATE OVER FARM ABOUT THE TYPE OF HOUSING THAT COULD BE PLANNED FOR. (AIR-CON, ETC.)			

FACILITIES REQUIRED: TO HELP US DEVELOP AN UNDERSTANDING OF THE FACILITIES TO BE PLANNED FOR, PLEASE INDICATE WITH A TICK YOUR ANTICIPATED USE OF THE FOLLOWING FACILITIES.

	TOILET	SHOWER	BATH	LAUNDRY	PHONE	KITCHEN	OUT DOOR AREA	POOL	MAINTENANCE	TOUCH SCREENS	WARRANT	VEHICLE	WAGON	DECKING	POSTING BUILDING	WRITE IN ANY OTHERS
DONT NEED																
WANT EXCLUSIVE PERSONAL USE																
ONE FOR FAMILY IS SUFFICIENT																
SHARE WITH THE GROUP ON THE HILL WHERE WE LIVE																
ONLY ONE NEEDED FOR THE WHOLE FARM																

FINALLY, A FEW SPECIFIC QUESTIONS:

- \* DOES YOUR FAMILY REQUIRE A SEPTIC TANK ☐ (SOME SITES MAY NOT BE SUITABLE). DO YOU PREFER CLUMPING TOILETS ☐ (SOME TYPES OF NON-FLUSH COMPOSTING TOILETS HAVE YET TO BE DEVELOPED), OR THE WASH CLOSET (HOLD-IN-CLUMPING) ☐.
- \* DOES YOUR FAMILY REQUIRE TO BE CONNECTED TO THE MAINS ELECTRICITY ☐ (SOME NEARBY SITES ON THE FARM MAY BE EXPENSIVE OR UNPRACTICAL TO CONNECT).
- \* DOES YOUR FAMILY REQUIRE A FLAT SITE FOR CONCRETE SLAB-ON-GROUND HOUSE CONSTRUCTION ☐.
- \* ANY COMMENTS ABOUT THIS QUESTIONNAIRE? .....

THANKS

Areas which are GOOD for buildings and the people who use them:

- \* have flat or moderate slope;
- \* are exposed to cooling summer breezes;
- \* are protected from strong winds and afternoon summer sun warmer localities (vegetation can do both of these);
- \* are protected from heavy frost and open to long hours of winter sun, especially morning sun;
- \* have adequate subsoil for building support and adequate absorbent soil at a lower contour for waste disposal and gardens;
- \* are elevated to enjoy any nice views;
- \* are easily accessible with children and goods during rain. Note that for some groups and individuals this is an area of compromise, (ie difficult access can mean peace and quiet);
- \* are adequate access for building materials during construction;
- \* have convenient access for phone, power and other services if required; and
- \* have a suitable water supply can be provided.

Very often areas facing north to northeast located just below ridge lines are ideal locations.

#### 4.6 SETTLEMENT TYPES

A variety of clustered settlement are enabled by the Policy, and Ordinance 70 of the Local Government Act which regulates building in NSW.

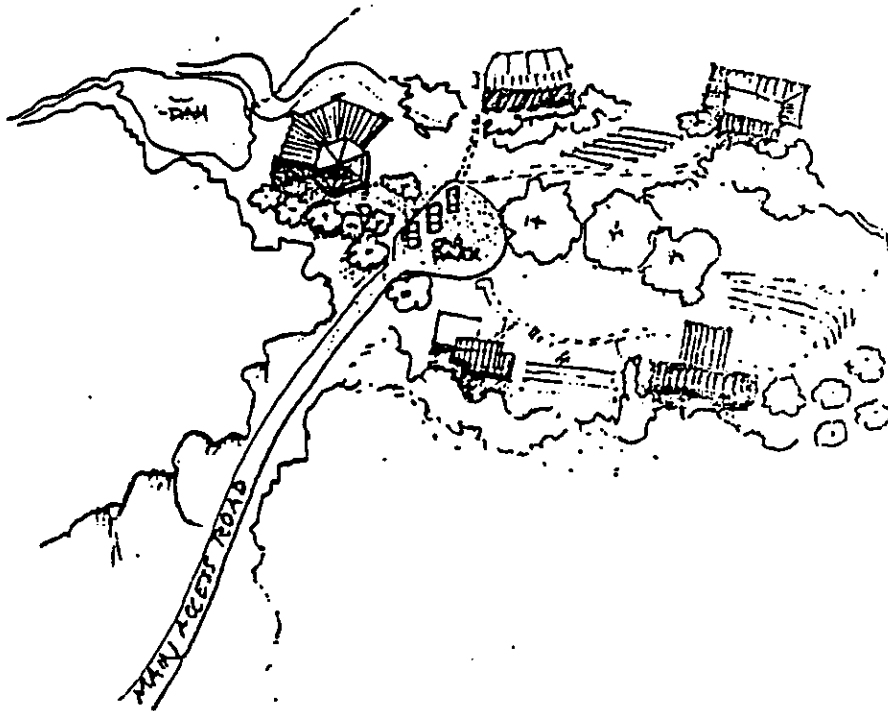
Clustered Settlements are like a small village of houses grouped together. They encourage and allow easy social interaction and mutual support for of adults and children (even modest distances are a barrier to small children). They minimize service costs such as water supply, access roads (where one road and one carpark will usually serve the cluster), and perhaps power supply and waste disposal; They give group protection in case of bushfire or other emergencies.

It is important that clustered dwellings have adequate separation from each other to allow for privacy and gardens. Outdoor and perhaps covered communal areas with facilities for children and adults may be provided separate from house areas.



Clusters usually vary from 2 to 8 dwellings. A common form of multiple occupancy consists of separate clusters with some dispersed dwellings.

FIGURE 5. A CLUSTERED SETTLEMENT



Dispersed dwellings are scattered across the property. They have disadvantages of:

- \* requiring additional access roads with extra construction and maintenance costs;
- \* requiring extra service lines and costs (especially water, including tanks);
- \* isolating people (especially young children and breaking up the sense of community on the land;
- \* leaving few areas of the site visually and physically untouched by development and not available or suitable for other uses;
- \* increasing the risk of loss in the event of a bushfire; and
- \* increasing the pressure for future subdivision in areas which may be totally unsuitable for this purpose.

On the positive side, they give the maximum in privacy for the inhabitants, and may work best for small multiple occupancy groups who have a low density of settlement.

#### 4.7 DWELLING TYPES

A range of dwelling types may be erected under the Policy. These are usually designated as Self-Contained, Expanded or Transitional.

The Policy restricts the number of dwellings which may be built on the property. The Policy also limits the total number of people by the ratio of four persons to each dwelling. This does not exclude any one dwelling housing more than four people, but means that the total number of people housed on the land must not exceed four times the maximum number of houses permitted:

Self-Contained dwellings are the normal kind of dwelling that everybody is familiar with. As the name implies, they contain all normal facilities such as living areas, bedrooms, kitchen, laundry, bathroom and toilet.

An Expanded Dwelling is a group or cluster of buildings which together function as a dwelling house. These can vary a little but usually consist of separate living and sleeping structures which share some or all of the facilities such as kitchen, bath or shower room, laundry and toilet.

Most expanded dwellings share a central kitchen, and usually have some communal living space, often under the same roof, or close by. Separate living spaces may also contain minimal cooking facilities.

Expanded dwellings may be the most economical form of residential accommodation as the cost of facilities is shared with a number of people. They allow for easy construction of individual spaces as these are usually of a modest size with a minimum of services required.

Transitional Dwellings involve both movable dwellings such as a caravan, and other buildings such as sheds or similar structures licensed for occupation by council.

Most groups have members wishing to occupy their holding before or shortly after purchase agreements are made. This pattern of early settlement minimizes living costs immediately after purchase, assists in site planning, and enables food crops to be established.

As members will continue to require accommodation whilst council applications are made, the licence periods suggested are two years initially, renewable for twelve months. Council may also approve occupation of an uncompleted dwelling.

Transitional dwellings may be subsequently used as sheds, community buildings, or visitor accommodation, provided that appropriate facilities are included and development and building approvals obtained.

#### 4.2 NON-RESIDENTIAL DEVELOPMENT

Apart from houses, other sorts of structures may also be required. This form of development is termed Ancillary Development. It is development that is secondary but incidental to a permitted use. As non-intensive agriculture is normally permitted without consent in rural zones, development "ancillary" to agriculture is also permitted, without council's consent (agricultural sheds are an obvious example, also fences). If houses have been permitted on the property, then development "ancillary" to this housing is also permitted, with council's consent.

Examples of the sorts of development ancillary to housing that the council may be prepared to permit is listed below.

Groups with up to say 10 households may require the following:

- \* workshop with under cover space for vehicle repair;
- \* some secure storage space; and
- \* perhaps a central community building.

Groups with more than 10 households may require a variety of communal buildings depending on the nature of the group:

- \* one main community building with kitchen, eating and activity area or hall (eg for meetings and workshop), administration office, library, laundry, public telephone and toilets nearby;
- \* a health centre, child care facilities, general store and food co-op may also be included, and vehicle access with nearby carparking should be provided;
- \* craft workshops, potteries, bakeries, spiritual centre;
- \* farm machinery shed, barn(s) for farm produce and materials;
- \* mechanical workshop and storage as above;
- \* nursery, preschool, infants and perhaps primary school with associated play areas;
- \* sporting and recreation facilities eg tennis court; and
- \* visitors and non-resident members accommodation and camping areas.

The need for and extent of community buildings will depend upon the size of the group, the types of community buildings required by the group, and the availability and accessibility of existing and proposed facilities in the wider community.

Home Occupations and Home Industries are allowed without the consent of council. They are defined in the Environmental Planning and Assessment Model Provision 1980, a copy of which is available from your local Council.

The council may also be prepared to consent to some forms of home industry (eg crafts). These are normally allowed in rural zones.

Permissible Uses. If the proposed development cannot be considered as a home industry or an ancillary use, then check which uses are permissible in the rural zone. To do this, check the land use table of the planning instrument (called an I.D.O. or L.E.P.) relating to the local government area (ask council, or look at the Section 149 certificate obtained from the council when the property was purchased.

Ancillary uses such as "rural industries" (which involve processing produce from the land) or "tourist facilities" may be permissible with the council's consent. A development application must be submitted for any of the permissible uses considered by the council. This may need to be done separately from the development application for multiple occupancy.

Community Buildings should be located in those areas identified as generally suitable for buildings, and on the main internal access road if appropriate. They should be reasonably central to the whole property, but sufficiently distant from residential buildings to minimize disturbances.

If possible, workshops and sheds should be located in areas where visual disturbance to the landscape is minimized. Appropriate vegetation may assist greatly in this.

Consideration should also be given to the future provision of community buildings, and sites set aside for these purposes.

#### 4.9 USES FOR REMAINING AREAS OF THE PROPERTY

All areas of the site should be considered by the group and given some role to play, be it an active, passive, conservative or future use designation.

Consideration should also be given to a Management Plan for these areas. Some councils may require an indication of land, bushfire, or conservation management for the property at the development application stage.

Settlers might find that their initial approach to land management and use may change over time as their contact with the land and understanding of other methods increases.

Some areas may also have more than one use;

- \* All the cleared good agricultural land should be allocated for crop or food production, be it for communal use or individual use (by later arrangement with the group).
- \* The remaining cleared areas may be set aside for agricultural uses, such as grazing or orchards, or for scenic protection, wild life protection, environmental protection, water catchment, forest regrowth, future or other uses.
- \* Forested areas may be allocated for wildlife or environmental protection, water catchment, selective logging (eg for building materials), clearing (eg for bushfire protection of a residential area) or other uses.
- \* All prescribed streams should be protected from environmental damage.
- \* All marsh lands should be reserved for wildlife or environmental protection, including a surrounding buffer area.
- \* Regeneration areas should be identified in those areas damaged by the effects of erosion, dieback, bushfire, overcultivation, excess salinity and residual toxicity from pesticides and herbicides.

Organizations such as Permaculture and Afforestation groups may be of assistance with regeneration methods.

- \* Note that areas for environmental or wildlife protection and wildlife generally are very badly affected by domestic pets - specifically dogs and cats. These animals may also create problems between residents and neighbours.

#### 4.10 STAGED DEVELOPMENT

A Multiple occupancy group may find it necessary to stage their development over a period of time, perhaps many years. Staging should allow for a reasonably balanced development of residential and community buildings together, so that facilities grow as the population increases.

A development application should show the likely stages of development on the land. The first stage should be clearly shown while future stages may be in less detail. Groups frequently occupy future community buildings for transitional accommodation while permanent dwellings are constructed. This should be clearly indicated in the development application.

A staged development would have a case for proportionately staged Section 94 contributions to council, in keeping with the number settled on site. This case should be presented to council when the development application is lodged.

#### 4.11 SOCIAL IMPACT

In creating a multiple occupancy you will affect the social infrastructure of an area. For example you may:

- Create an increase in demand for community facilities and services which are not provided on site, such as library, sporting or school facilities.
- By the provision of community facilities and services on site, bring benefit to the wider community by increasing the richness and variety of social contact and learning opportunities available (such as from workshops).
- Bring benefit to an existing village centre or centres, especially those with a static or declining population, and bolster the use of services provided in those centres.

In addition to this, there is likely to be an economic benefit to the village, which will in turn also have beneficial social effects.

The group should survey the community facilities which exist or are proposed in the surrounding area, and their distance from the property. This may help to decide the type of facilities which should be provided on site.

In considering a multiple occupancy development application, council is required to consider the impact of a range of factors listed in the Policy.

#### 4.12 POSSIBLE CONTRIBUTIONS TO LOCALITY - SECTION 94

Section 94 of the Environmental Planning and Assessment Act 1979, allows local councils to obtain contributions either in terms of land dedication or monetary amount towards the cost of providing public amenities and public services.

To justify imposing a development condition requiring a contribution the council needs to be satisfied that the proposed development will or is likely to require the provision of or increase the demand for public amenities and public services within the area. Contributions obtained are to be held by councils in trust until such time as they can be used for the purpose for which they were collected i.e. road improvement.

Before imposing a condition of consent the Council should have considered the following preconditions set out by the Act, and the various tests established by the Court:

- \* The council must form an opinion that the proposal "will or is likely to require the provision of or increase the demand for public amenities and public services within the area"; (a.g., by virtue of population increase). The condition, also, must be fairly and reasonably related to the development.
- \* The contribution sought must be for the purpose of providing, extending or augmenting those public amenities and public services. Examples of public amenities and services which contribution to, or the dedication of land, have been required by the Court under s.94, include drainage, open space, and traffic planning study (consequent on the findings and adoption of that study). Rural examples may include access roads, nature walking trails, access to scenic vantage points, community halls, land for neighbourhood centres, etc.
- \* The Court had held that there must be a causal nexus between the development and a decline in the amenity of the area and this decline must be substantiated. For example, the council will need to show that "the expected increase in population in the locality with the expectant resultant demand for increased facilities ... (will) necessarily result in a decline or a depreciation of the amenities in that neighbourhood". It would seem that it is imperative to establish an amenity decline.
- \* There must be a physical nexus between the condition sought and the development proposed. In addition, the contribution must be spent in the "immediate location". In one case it was held that a contribution for open space had to be spent in the area "... proximate enough to the site to present a reasonable connection with the needs generated by development on it".

- \* The council should at all times be able to indicate precisely how the finances are being applied. Provision should be made for the establishment of a Trust Fund including a balance sheet itemizing headings of income and expenditure. It is also recommended that council should prepare a discussion document outlining the different revenue options to be used to provide services and the proportion of the costs of the services being borne by contributions, loans, or special purpose grants.
- \* The contribution must be spent within a reasonable time. If not, the contribution would not be a valid levy under s.94. Long term projects would not appear to be appropriate subjects for a s.94 levy. In this connection it may be relevant to consider whether, in a slowly developing area, a trickle of s.94 contributions would be insufficient to do anything.
- \* Contributions must be reasonable. This is a complex matter of no easy solution, each case depending on the facts and circumstances relevant in the area. Certainly, a reasonable contribution cannot be an exaction or tax.
- \* The courts will permit discounting in cases where, for example, the development may be "of environmental planning advantage to the community". The Court has addressed the level of contribution in terms of the average land value in the area rather than the value of the particular site, and the need for discounting in individual cases.

A recent Commission of Enquiry into Multiple Occupancy in the Shire of Tweed made the following recommendations which may have relevance to other councils in New South Wales.

- \* Contributions should be assessed for each multiple occupancy development on a case by case basis as likely demand for services may vary from one multiple occupancy to another, and between multiple occupancies and other forms of rural settlement and development.
- \* Communities should be encouraged to provide services within their development. The large communities would offer more opportunity for in-house services. Services provided within the communities should be offset against council's requests for contributions. Requests for open space contributions could be offset where areas for environmental protection or wildlife refuge are provided within the multiple occupancy development. These areas may be defined and controlled by the conditions of development consent. Areas of common use should also be considered.



- \* Provisions for contributions in-kind should be available. Provision should be made for Section 94 payments to be made in instalments. Instalment payment could be tied to applications for building approval for individual dwellings within the multiple occupancy development, allowing payment as development proceeds. Perhaps a limit of within five years from development approval could be fixed. These arrangements would further the objectives of multiple occupancy in relation to low income groups.
- \* In regard to annual council rates applied to multiple occupancies, it has often been stated that the present rating system, which is applied to zoning and not to the number of dwellings, is inequitable. If there is an escalation of Multiple Occupancies there could then be a disadvantage to council.

On the Department of Local Government's submissions to the inquiry, the basis of the NSW rating system is related to the value of land, and not to the demand on council for services. It would be unwise, therefore, short of an overall review of the rating system in NSW, for Local Government to propose that rates in the Tweed Shire be linked to demand for services.

#### 4.13 CONSOLIDATION OF ALLOTMENTS

The State Policy requires that the land for a multiple occupancy development comprise a single allotment. If the subject land consists of more than one parcel then council's Development Approval should contain a condition requiring that the allotments be consolidated into one parcel prior to the release of Building approval.

#### 4.14 VARIATIONS UNDER STATE ENVIRONMENTAL PLANNING POLICY NO. 1 DEVELOPMENT STANDARDS.

This State policy allows councils to vary a particular "development standard" if there is good reason to do so. Most matters can be dealt with by Council but in some cases the approval of the Department of Planning is also necessary. The policy is intended to introduce flexibility into the planning process, and will in some cases allow multiple occupancy development applications to be lodged:

- \* where the area of land is marginally less than the set minimum (10 ha);
- \* where more dwellings are required than the specified maximum; and
- \* where a higher density of dwellings/area is required.

To use this policy you should lodge an "objection to the development standard" with your development application. This should indicate the reasons why the variation is appropriate in your case. Where the variation is likely to set an undesirable precedent, and lead to further applications of the same sort, council may oppose the development as this would ultimately undermine the development standard. In such circumstances, the council may choose to prepare a local environmental plan to make the development permissible.

If an application under State Policy No. 1 is refused, you are able to appeal to the Land and Environment Court in the normal way. The Court will consider the arguments you have presented for varying a development standard and weigh this against the "public interest".

## 5 LODGING A DEVELOPMENT APPLICATION WITH COUNCIL

### 5.1 PREPARING A DEVELOPMENT APPLICATION

A Development Application is a formal description of the intended use of land which is presented to council in order to obtain its consent for this proposed use within the Local Government Area. Multiple occupancy development requires a development consent.

The detail of information provided should be appropriate to the scale and complexity of the development. Consultants may be of assistance with complex Development Applications.

A Development Application for multiple occupancy consists of five main parts:

1. A completed form;
2. A lodgement and processing fee;
3. Three copies of the drawing(s) of the proposal, (one set coloured if necessary);
4. Three copies of a statement describing the development proposal, the ownership structure, the environmental effects of the development and how the applicant intends to deal with adverse effects; and
5. Any supplementary information required by council, for instance a fire management plan.

The development application form is a straightforward document. Blank forms are available at your local council. It must be signed by the OWNER of the land.

Development application fees are based on the estimated cost of the development. For conventional construction these may be standard recommended rates, but if your multiple occupancy is a low cost development then:

- \* Most of the buildings will likely be constructed from materials obtained on site, such as poles, earth bricks, and stone. Many other materials will be recycled, such as sinks, baths, windows and doors; and
- \* It is likely that most if not all buildings will be owner-built using on site labour.

In these circumstances, you should indicate this clearly, and request that council reduce the cost estimate accordingly.

Development Application fees are set at a maximum, but some councils charge less than this. The maximum rates (1988) are:

Development Cost	Application Fee
Up to \$100,000	\$50 plus \$3 per \$1000
\$100,000 to \$500,000	\$350 plus \$1.50 per \$1000 over \$100,000
\$500,000 to \$1m	\$950 plus \$1 per \$1000 over \$500,000
\$1m to \$10m	\$1450 plus \$0.75 per \$1000 over \$1m

Note: For advertised development the maximum additional fee is \$500.00.

The plan drawing(s) should be taken from information on the Existing Land Use Plan and the Concept Plan. The plans should be at the scale indicated by Council as satisfactory. In the case of three houses, this would be a relatively simple drawing, though for 4 or more dwellings, more detail should be shown.

Accompanying the plan drawings should be a written document covering the following:

- \* a description of the proposed development, with the anticipated number of persons and number of dwellings to be accommodated on the land in the short and long term. Details of the provision for water supply and waste disposal, and if applicable, the stages of development, including people and dwelling numbers should be included;
- \* a description of the ownership structure or body which owns the holding;
- \* a statement of the objectives of the proposed multiple occupancy in relation to the use of the land;

- \* consideration of various environmental factors which affects the development, setting out any steps to mitigate adverse environmental impact;
- \* a consideration of the social impact of the development;
- \* any in-kind Section 94 contributions, and any information to reduce the need for Section 94 contributions, for example, by the provisions of community facilities on site; and
- \* any other information which may assist council to understand and consider the application, such as a land management plan or a fire management plan.

At appendix 1 - is an example of a multiple occupancy development application.

## 6. COUNCIL'S ROLE

### 6.1 ASSESSMENT OF A DEVELOPMENT APPLICATION

Upon receipt of a development application a council examines it to determine if it contains adequate information to assess the application. Section 32(2) of the regulations to the Act provide that if council requires additional information it should request, in writing, such information within 21 days of receipt of the application, Councils are bound to determine the complete development application within 40 calendar days.

Section 90 of the Environmental Planning and Assessment Act 1979 specifies matters to be taken into consideration by the council when determining a development application. The State Policy also lists matters to be considered.

In assessing a development application it is the role of the council to determine whether the proposed development is likely to create an overall positive or adverse impact on the environment. In this context, the definition of environment includes the social, economic, man-made and natural environment. Section 90 of the Act, and clause 9 of the Policy provide the base for this assessment. To assist council in this task a development application should define any management plans which mitigate any likely adverse impact a development may create. For example, in a bush-fire risk area a Fire Hazard Management Plan is desirable.

The State policy requires that proposed developments of four or more dwellings be regarded as Advertised Development. This requires the development to be advertised prior to council ?????? the matter. The intent of this is to inform neighbouring owners and other interested persons of the proposed development and allow such persons to register their comments with council.

Council is required to inform adjoining owners of the proposal in writing, advertise in local papers and place development applications on public exhibition. Costs of this advertisement may be charged to the applicant.

Councils Consideration of public submissions received is based on planning grounds rather than emotive responses.

#### Consultation

In the processing of Development Applications, it is a regular procedure for the Town Planning Department of council to seek the advice of other council departments such as Engineering for roads, Health and Building for waste disposal or the Fire Control Officer for bush-fire hazard assessment.

Council may also consult with relevant government agencies such as the Soil Conservation Service or the Department of Agriculture.

#### Council Determination

Determination by council of the Development Application results in either unconditional consent, conditional consent or refusal.

Should council decide to include consent conditions it is common practice to negotiate the conditions. If no mutually acceptable compromise is reached and council includes the conditions in the consent, the applicants have the right to appeal to the Land and Environment Court.

In the event of refusal of the application, the applicant may either appeal, submit a new application or abandon the proposed project on that particular property.

### 6.2 APPEALS AGAINST COUNCIL DECISIONS

#### Appeal by Applicant

Section 97 (1) of the E.P.A. Act states that an applicant who is dissatisfied with the determination of a consent authority may appeal to the Land and Environment Court within 12 months of receiving the notice of the date of determination of the application.

#### Appeal Process

The Land and Environment Court Act specifies the process for such appeals. Generally in the above cases the Registrar of the Court arranges a conference between the parties, presided over by an assessor. The purpose of the informal conference is to attempt to reach an agreement between the parties. To propose such a conference, the applicant should approach the Clerk of the Court.

Where the parties do not agree upon a decision to be made or do not consent to the assessor deciding the proceedings the assessor reports to the court and sets out his views of the issues of

## Development Approval

Council is bound to reply to a development application within 40 calendar days. However, where the application has to be advertised, the council may require a longer time to properly process it because of the statutory exhibition period required.

A non-reply can be legally deemed as non-approval of an application. In rejecting an application council must list reasons for that rejection. Negotiation/appeal to a full meeting of council may help prior to court proceedings commencing, though if this fails, an appeal to the court is the only course of action.

Development Approval is valid for a period of two years (or three with extension), allowing time for refinement prior to commencement. It does not commit a group absolutely to a proposal, though amendments to an approval will be required if a group changes its broad principles or overall plan.

A group wishing to depart from their original Development Approval may submit an amended application to council (under section 102 of the Act). Depending on the degree of changes involved, Council may charge an extra fee or make no extra charge for the application. Minor changes may not require any application or fee, so check with council officers first.

Substantial Commencement of the development consists of some physical works which show a genuine commitment to carry out the project as approved, such as the construction of a road or water supply. Unless development is "substantially commenced" within the 2 year period, the approval will lapse and an application for a 12 month extension must be lodged prior to expiry of the original approval.

After issue of a development approval and prior to any building work taking place, Building Applications for each building must then be submitted. Building applications described by means of drawings and written specifications, the detailed construction of the proposed development. The publication "Low Cost Country Homebuilding" is intended as a guide for aspiring homebuilders in these matters.

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## APPENDIX 1

### SAMPLE MULTIPLE OCCUPANCY DEVELOPMENT APPLICATION

Written statement to be accompanied by a development proposal plan

The Shire/Town Clerk

I, ....., as secretary of the Craft Co-operative Society Ltd., do hereby apply on behalf of the society's members for development consent to carry out the development described below:

Lot ....., D.P. ....., Parish of ....., area 115 hectares located on the northwest side of ..... Road, presently owned by ....., of ..... (written consent of the owner to this application is appended).

#### Nature of the Development

It is proposed to develop the above property as a community settlement and craft co-operative, with members pursuing skills such as pottery, spinning and weaving and wood carving. Some ancillary agricultural production is anticipated, to serve the food needs of residents, and a small mixed flock of sheep and goats associated with textile craft production.

#### Population

The total area of the property is 115 hectares which would allow development of residential accommodation for 115 people at the maximum. Under the alternative formula of 1 house for 5 hectares this would allow 23 houses. It is the society's present intention to develop no more than 20 houses for a maximum population of 100 persons.

#### Residential Areas

Land suitable for the erection of residential buildings has been identified on the Development Plan. Three residential areas have been designated 'A', 'B', and 'C' and development approval is sought for development on 'A' to accommodate 20 persons (4 houses), in 'B' to accommodate 50 persons (10 houses) and 'C' to accommodate 30 persons (6 houses).

#### Residential Area 'A'

Development in Residential Area 'A' will comprise four self-contained family dwelling units.

#### Residential Area 'B'

Development in 'B' will comprise four self-contained family dwelling units to accommodate 20 persons and a community housing facility for single persons to accommodate 30 persons in the equivalent of six expanded dwellings. This will consist of a community meeting centre, craft workshop and central laundry

common to the six dwellings, and six separate kitchen and ablutions buildings at separate locations within Area 'B'. Clustered around each of these buildings will be a number of separate buildings comprising the individual bedroom and living room areas for each of the 30 persons.

#### Residential Area 'C'

Residential Area 'C' will accommodate 30 persons in three "hamlets" servicing 10 persons each. Each of the three hamlets will have a central free-standing kitchen, laundry and meeting area, and be surrounded by four detached satellite buildings containing bedrooms with attached bath, toilet and lounge room facilities for the occupants.

#### Understanding re further development

It is understood that separate building approval must be obtained to construct these buildings once this development approval is obtained. It is further understood that if the Society wishes to build any extra houses or locate houses outside the designated areas, then a revised development application will be necessary.

#### Costs of Development

Building will utilize local timber cut from the property and make extensive use of field stones in residential area 'C'. Most dwellings will use secondhand and recycled materials and an estimated 85% of construction will be by owner builders. Only in the case of two houses in Residential Area 'A' will there be conventional brick-veneer homes built by a local building contractor. The estimated cost of these two is \$60,000. The estimated cost of all other houses and expanded houses is \$8,000 per dwelling unit making a total value for the development of \$204,000 (\$60,000 + \$8,000).

It is understood that under the Planning and Environment Regulations a maximum fee of \$350 plus \$1.50 for each \$1,000 above \$100,000 may be charged - a total of \$506. However, following discussions with council's planning officer, it is understood that council is prepared to accept \$250 to meet its legitimate costs in processing this development application and a cheque for \$250 is therefore included.

#### Statement of Environmental Effects

The land is currently used as grazing for beef cattle and there has been some timber cutting in the past. Soils are sandy loams, with poor fertility. Fencing exists, but is in need of repair. Adjoining properties are let out for cattle grazing. The population of the surrounding area has been falling in recent years, but there is an adequate network of all-weather roads and a school and shops some 12 km away. The land would not support the prospective residents through agricultural productivity alone, but it is intended that the residents will intensify production of the most suitable areas of the property. The remainder will benefit from repair of fencing, suppressing of weeds, as well as reafforestation and pasture improvement.

The site identified for residential building is gently sloping stable land, flood free. No dwellings will be erected closer than 50m to a creek. Water supply will be from two spring-fed dams supplemented by rainwater. The existing track between the residential area and the slopes will be maintained as a fire break, with vegetation being cleared or trimmed to a width of 5 m and the provision of irrigated areas of cultivation around the dwellings will provide further protection from bush fire. Wastes will be disposed of by anaerobic decomposition in a digester system, which will also be used for the production of methane, using a system established for farm-scale operations in France (details attached).

It is considered that the impact of the proposed development on the existing development will be satisfactory from a physical and socio-economic point of view, (where it is felt necessary, extra information should be included here on environmental aspects of the proposal).

#### Ownership

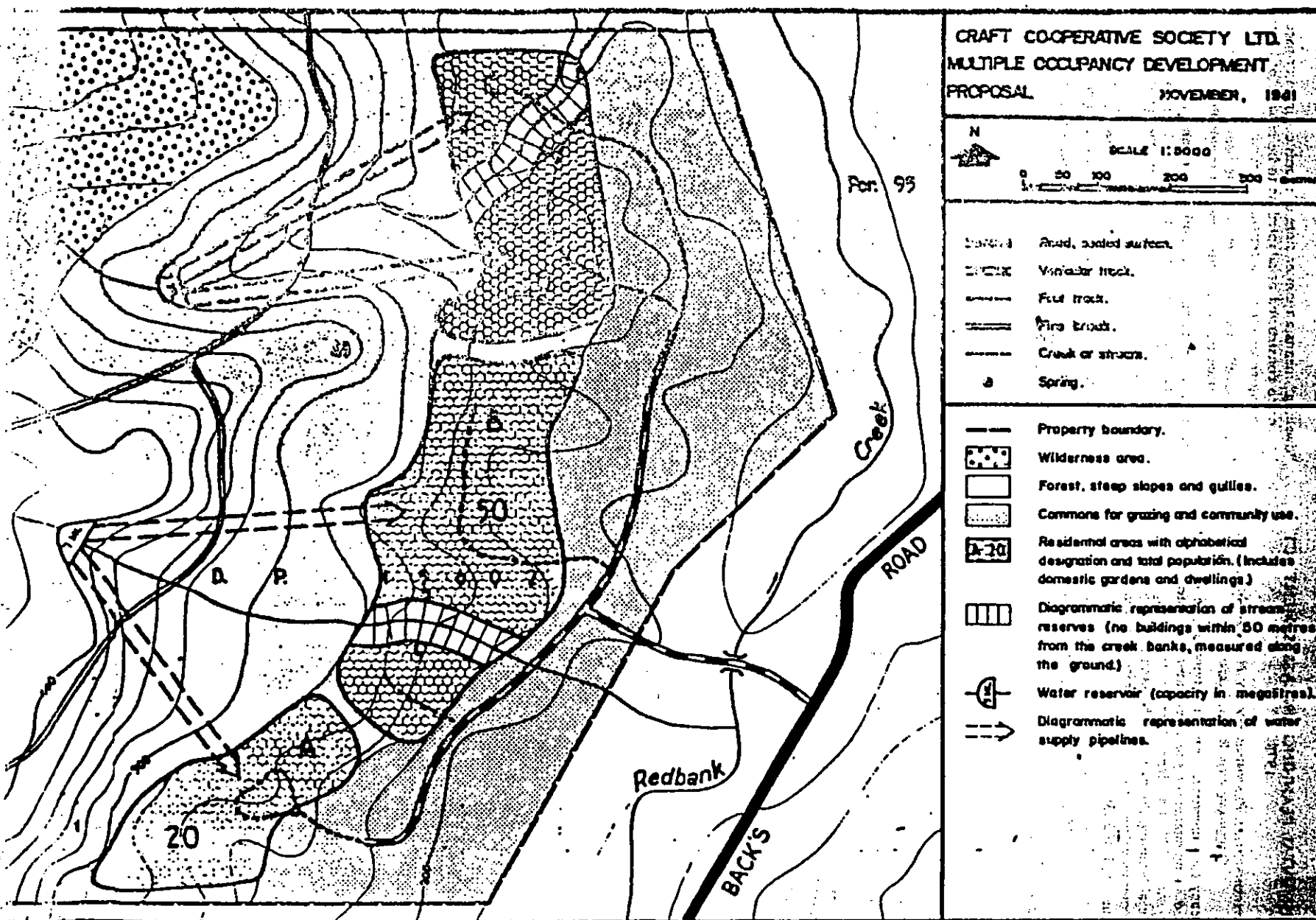
The Craft Co-operative Society Ltd. is a community settlement society established under Division 4 of Part II of the N.S.W. Co-operation Act 1923 as amended. Attached is a Statutory Declaration to the effect that the adult persons who will be resident on the land are members of the Co-operative which holds title to the land.

#### Attachments

1. Development application form (from council).
2. Development proposal map (see sample from D.E.P. page 524).
3. Fee (as agreed with council).
4. Supporting information (e.g. methane digester).
5. Statement of ownership (statutory declaration).

MULTIPLE OCCUPANCY DEVELOPMENT PLAN

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## APPENDIX 2

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

#### STATE ENVIRONMENTAL PLANNING POLICY NO. 15—MULTIPLE OCCUPANCY OF RURAL LAND

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the State Environmental Planning Policy set forth hereunder in accordance with the recommendation made by the Minister for Planning and Environment. (83-10203).

BOB CARR,  
Minister for Planning and Environment.

Sydney, 20th February, 1988.

#### Citation

1. This Policy may be cited as State Environmental Planning Policy No. 15—Multiple Occupancy of Rural Land.

#### Aims, objectives, etc.

2. The aims, objectives, policies and strategies of this Policy are—

- (a) to encourage a community based and environmentally sensitive approach to rural settlement;
- (b) to enable—
  - (i) people to collectively own a single allotment of land and use it as their principal place of residence;
  - (ii) the erection of multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment; and
  - (iii) the pooling of resources, particularly where low incomes are involved, to economically develop a wide range of communal rural living opportunities, including the construction of low cost buildings; and
- (c) to facilitate development, preferably in a clustered style—
  - (i) in a manner which both protects the environment and does not create a demand for the unreasonable or uneconomic provision of public amenities or public services by the State or Commonwealth governments, a council or other public authorities;
  - (ii) 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; and
  - (iii) to create opportunities for an increase in the rural population in areas which are suffering or are likely to suffer from a decline in services due to rural population loss.

#### Land to which this Policy applies

3. (1) Except as provided by subclause (2), this Policy applies to land within the cities, municipalities and shires specified in Schedule 1.

(2) This Policy does not apply to land specified in Schedule 2.

#### Revocation of environmental planning instruments

4. This Policy repeals Interim Development Order No. 48—Mittagong.

#### Amendment of certain environmental planning instruments

5. Each environmental planning instrument specified in Column

"dwelling" means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile;

"ground level" means the level of a site before development is carried out on the site pursuant to this Policy;

"height", in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point;

"home improvement area" means the area of land, not exceeding 5 000 square metres, around a dwelling;

"prime crop and pasture land" means land within an area—

(a) identified, on a map prepared before the commencement of this Policy by or on behalf of the Director-General of Agriculture and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses;

(b) identified, on a map prepared after the commencement of this Policy by or on behalf of the Director-General of Agriculture marked "Agricultural Land Classification Map" and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land for special agricultural uses; or

(c) certified by the Director-General of Agriculture, and notified in writing, by or on behalf of the Director-General of Agriculture to the council, to be prime crop and pasture land for the purposes of this Policy;

"the Act" means the Environmental Planning and Assessment Act 1979.

(2) For the purposes of this Policy, the council may, in respect of development proposed to be carried out pursuant to this Policy, treat 2 or more dwellings as a single dwelling if it is satisfied that, having regard to the sharing of any cooking or other facilities and any other relevant matter, the dwellings comprise a single household.

#### Relationship to other planning instruments

7. Subject to section 74 (1) of the Act, in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before, on or after the day on which this Policy takes effect, this Policy shall prevail to the extent of the inconsistency.

#### Multiple occupancy

8. (1) Notwithstanding any provision in an environmental planning instrument concerned with the use of land for the purposes only of a dwelling or dwellings (as the case may be) in rural or non-urban zones, development may, with the consent of the council, be carried out for the purposes of 2 or more dwellings on land to which this Policy applies within such a zone where—

(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;

(c) the height of any building on the land does not exceed 8 metres;

(d) not more than 25 per cent of the land consists of prime crop and pasture land;

(e) the land is not used for any other purpose; and

and, in addition, a caravan park or any other form of holiday, resort or recreational development.

(2) the council may consent to an application made in pursuance of this clause for the carrying out of development whether or not it may consent to an application for the carrying out of that development pursuant to any other environmental planning instrument.

(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.

#### Matters for council to consider

9. (1) A council shall not consent to an application made in pursuance of clause 8 unless it has taken into consideration such of the following matters as are of relevance to the development the subject of that application:

- (a) the means proposed for establishing land ownership, dwelling occupancy rights, environmental and community management will ensure the aims and objectives of this Policy are met;
- (b) the area or areas proposed for erection of buildings, including any proposals for the clustering of buildings;
- (c) the area or areas proposed for community use (other than areas for residential accommodation and home improvement areas);
- (d) the need for any proposed development for community use that is ancillary to the use of the land;
- (e) the availability and standard of public road access to the land;
- (f) the availability of a water supply to the land for domestic, agricultural and fire fighting purposes and, where a proposed water supply is from a river, creek, dam or other waterway, the effect upon other users of that water supply;
- (g) if required by the applicant, the availability of electricity and telephone services;
- (h) the availability of community facilities and services to meet the needs of the occupants of the land;
- (i) whether adequate provision has been made for waste disposal from the land;
- (j) the impact on the vegetation cover of the land and any measures proposed for environmental protection, site rehabilitation or reforestation;
- (k) whether the land is subject to bushfires, flooding, soil erosion or slip and, if so, the adequacy of any measures proposed to protect occupants, buildings, internal access roads, service installations and land adjoining the development from any such hazard;
- (l) the visual impact of the proposed development on the landscape;
- (m) the effect of the proposed development on the present and potential use, including agricultural use, of the land and of lands in the vicinity;
- (n) whether resources of coal, sand, gravel, petroleum or other mineral or extractive deposits will be sterilised by the proposed development;
- (o) the effect of the proposed development on the quality of the water resources in the vicinity;
- (p) any land claims by local aboriginals and the presence of any aboriginal relics and sites;
- (q) whether the land has been identified by the council as being required for future urban or rural residential expansion;
- (r) whether the development would benefit an existing village centre suffering from a declining population base or a decreasing use of the services provided in that centre.

(2) The council shall not consent to an application made in pursuance of clause 8 for the carrying out of development on land for the purpose of erecting dwellings if the site plan accompanying the application identifies—

(b) any part of the land which is subject to a risk of flooding, bush fire, landslip or erosion or any other physical constraint to development of the land in accordance with this Policy;

(c) any part of the land that is prime crop and pasture land;

(d) any areas of the land to be used for development other than for dwellings;

(e) the source and capacity of any water supply, electricity, telephone and waste disposal systems for the dwellings; and

(f) the proposed access from a public road to the area or areas in which the dwellings are to be situated.

#### Density of development

10. (1) Subject to subclause (2), a council shall not consent to an application made in pursuance of clause 8 for the carrying out of development on land unless the number of proposed dwellings on the land, together with any existing dwellings on the land, does not exceed the number calculated in accordance with the formula specified in Column 2 of the Table to this clause opposite the area of the land specified in Column 1 of that Table.

(2) If the number calculated in accordance with the formula as referred to in subclause (1) includes a fraction, the number shall be rounded up to the nearest whole number in the case of a fraction of one-half or more or rounded down to the nearest whole number in the case of a fraction of less than one-half.

TABLE

Column 1	Column 2
Area of land	Number of dwellings where A represents the area of the land the subject of the application (measured in hectares)
Not less than 10 hectares but not more than 210 hectares	$4 + \frac{A - 10}{4}$
More than 210 hectares but not more than 360 hectares	$54 + \frac{A - 210}{6}$
More than 360 hectares	80

(3) Even if the number of proposed dwellings on land the subject of an application made in pursuance of clause 8 together with any existing dwellings on the land does not exceed the maximum number of dwellings permitted by subclause (1), the council shall not consent to the application if those dwellings are so designed that they could, in the opinion of the council, reasonably accommodate in total more people than the number calculated by multiplying that maximum number of dwellings by 4.

#### Subdivision prohibited

11. (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 the subdivision of the land is prohibited.

(2) Subclause (1) does not apply with respect to the subdivision of land for the purpose of—

- (a) widening a public road;
- (b) making an adjustment to a boundary between allotments, being an adjustment that does not involve the creation of any additional allotment;
- (c) rectifying an encroachment upon an allotment;
- (d) creating a public reserve;
- (e) consolidating allotments;
- (f) excising from an allotment land which is, or is intended to be, used for public purposes.

## Advertised development

12. (1) This clause applies to development to be carried out pursuant to a consent referred to in clause 8, being development for the purposes of 4 or more dwellings (whether existing or proposed dwellings):

(2) Pursuant to section 30 (4) of the Act, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development to which this clause applies in the same manner as those provisions apply to and in respect of designated development.

## Monitoring of applications

13. Where a council receives an application made in pursuance of clause 8, the council shall, within 30 days of determining the application, forward a copy of the application to the Secretary together with a copy of the notice of the determination of the application.

## Suspension of certain laws

14. (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—

- section 37 of the Strata Titles Act 1973; and
- any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of land for certain purposes,

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

(2) Pursuant to section 28 of the Act, before the making of this clause—

- the Governor approved of subclause (1); and
- the Minister for the time being administering the provisions of the Strata Titles Act 1973 referred to in subclause (1) concurred in writing in the recommendation for the approval of the Governor of that subclause.

## SCHEDULE 1

Armidale	Kyogle
Ballina	Lake Macquarie
Barraba	Lismore
Bathurst	Macleay
Bega Valley	Manilla
Bellingen	Merriwa
Bingara	Mudgee
Blayney	Mulwaree
Bombala	Murrumbidgee
Byron	Muswellbrook
Casino	Nambucca
City of Greater Cessnock	Nundle
City of Greater Lithgow	Nymboida
City of Maitland	Oberon
City of Shoalhaven	Orange
Coffs Harbour	Parry
Cooma-Monaro	Port Stephens
Copmanhurst	Quirindi
Dumaresq	Richmond River
Dungog	Rylstone
Eurobodalla	Scone
Evans	Severn
Glen Innes	Singleton
Gloucester	Tallaganda
Gunnedah	Tenterden
Guthrie	Tenterfield
Great Lakes	Tweed

(Cl. 3)

## SCHEDULE 2

Land which is a national park, historic site, nature reserve, Aboriginal area, state recreation area, protected archaeological area or game reserve within the meaning of the National Parks and Wildlife Act 1974.

Land which is a reserve within the meaning of Part IIIa of the Crown Lands Consolidation Act 1913 or which is vacant land within the meaning of that Act.

Land which is subject to the Western Lands Act 1901.

Land which is a State forest, flora reserve or timber reserve within the meaning of the Forestry Act 1916.

Land which, under an environmental planning instrument, is within an area or zone (within the meaning of that instrument) identified in that instrument by the description—

- Coastal lands acquisition;
- Coastal lands protection;
- Conservation;
- Escarpment;
- Environment protection;
- Environmental protection;
- Open space;
- Rural environmental protection;
- Scenic;
- Scenic protection;
- Water catchment;
- Proposed national park,

or identified in that instrument by a word or words cognate with any word or words used in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), or (l) or by a description including a word or words so used and any other word or words.

## SCHEDULE 3

(Cl. 5)

Column 1 Environmental Planning Instrument	Column 2 Clause or Matter
Interim Development Order No. 40—Lismore	15 and 16 (3)
Interim Development Order No. 2—Shire of Bibbenluke	23
Interim Development Order No. 80—Shire of Coffs Harbour	24A
Interim Development Order No. 1—Shire of Evans	28, 29, 30 and Schedule 5
Interim Development Order No. 1—Shire of Severn	13A
Interim Development Order No. 1—Shire of Terania	13A and 13B (3)
Interim Development Order No. 2—Shire of Tweed	12A
Interim Development Order No. 1—Shire of Ulmarra	13A
Interim Development Order No. 2—Shire of Wingecarribee	The matter in Column 1 of the Table to clause 66 relating to portions 26, 27 and 28, Parish of Bundanoon, Penrose and the matter specified opposite thereto in Column II of that Table
Interim Development Order No. 1—Shire of Woodburn	13B
Gloucester Local Environmental Plan No. 4	13
Great Lakes Local Environmental Plan No. 11	12

Not

#### TABLE OF PROVISIONS

1. Citation
2. Aims, objectives, etc.
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6. Interpretation
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#### SCHEDULES