Develop a compendium of legal options on land ownership & member rights & responsibilities incl draft objectives, rules & regulations.
Categorise & give personal comments on the success of her chosen scheme.

Classify into 3 groups for 3- to say half a dozen households in the short term (say first decade) & up to say a dozen households in the second decade - maximum.

Group A1 One tier - ~~Structure~~ Recommended option

A2 " " " " if special circumstances apply
eg one family of 3 generations or more 3-4 households.

A3 " " " Not recommended.
With reasons given

B1 Two tier structure (incorp)
Separate structure for land ownership, & a ~~sep~~ structure for the daily running of the Community/organisation ~~unincorporated~~

B2 " " " Ditto but 2nd tier unincorporated.

C Extended family model

Could incl personal comment/evaluation from participants who have used each of these systems.
- including what would they have done differently with kind right?

Trends in Mergers Voluntary Arr
R/ Fair Trading for what models Reg laws

See my book refs.
- Forming a Coop. Model Rules etc

c/ Rol for assistance
- Graham to revamp his ~~data~~ draft ms.
  or extract Part B
- c/ Avica Manual.
- c/ My "working agreements" book/s.
  (personal etc)

—

Provide sample "Objectives" in each
of train A, B & C - with anonymous
comments on experience - what they
would + would not do if to start
again.

residents separate titles to their houses on the community but at the cost of much dearer purchase costs).

Meanwhile Byron SC also obtained exemption from SEPP 15 and adopted a policy in 2002 which set out the requirements for existing RLC's to convert to Community Tile. To date none have done so.

In July 1996 the Purdon Report claimed that there were some 7000 people living on 251 MO's in 20 of the 67 Local Government Areas (LGA's") of NSW, 80% of these being located in the 8 LGA's of the Rainbow Region, including 64 in the LCC area alone.[49]

In September 1998 an International Communities gathering was held at "Dharmananda"" one of the oldest IC's. The Gathering attracted some one hundred people to celebrate communities and to discuss issues such as the do's and don't's of forming IC's, conflict resolution, legal structures and more.

So, despite some continuing opposition, IC's continue to grow and be created and continue to contribute to the uniqueness of the Rainbow Region.

## Part B : Types of IC Legal Structures Found in the Rainbow Region

Because traditional land laws were not designed to encompass IC's these communities have had to adapt various legal means to secure their interest in the land they live on. The following legal structures used to achieve this have all been tried in the Rainbow Region with various degrees of success, though, for reasons of privacy, the communities cannot be identified here.

1. Strata Title

Under the *Strata Titles Act* it is possible to structure an IC so that each member has an individual title over their house and curtilage, whilst contributing in cash or kind to the body corporate which is responsible for overall supervision and management of the IC. However this Act was intended to apply to high-rise flats and not broad acre communities and although there is one example of this legislation being used for an IC in the Rainbow Region, the consensus among its members seems to be that they find the structure unduly restrictive and inconvenient.

2. Community Title

The *Community Land Development Act* (NSW 1989) and the *Community Land Management Act* (NSW 1989) enable division of land into separate lots with their own titles which are held amongst common property. The group which initially buys the land can thus retain control over common lands and internal roads rather than have that control pass to the local council. However locally, councils have demanded from these communities much the same standards of development as those required of ordinary subdivisions, resulting in very substantial set-up costs, usually passed on to individual buyers of the separate blocks. The upshot can be that block holders end up paying virtually freehold prices for their lots. An advantage of CT is that it enables a very wide range of possible internal arrangements concerning e.g. communal facilities, rules re ideology, farming practices, conservation, pets, building standards etc..

Yet the ideology of this legislation, being largely developer-driven, militates against the development of a community ethos in that it promotes the interests of the individual lot holders at the expense of the community. Unless this is catered for in the internal regulation of the IC it can

lead to the overtaking of the community by speculators whose interests lie in profit-taking rather than the establishment of a genuine community in the place of it being an "extended family".

3. Company Structures

Locally, companies[50] have often been found to be perhaps the most suitable structures for aspiring IC's because of their ease of set up, flexibility and limited liability of members for any debts of the company itself. Unlike CT structures they can be set up quite cheaply, with minimal ongoing costs of an annual company return fee presently of about $200. Possible pitfalls experienced by local company-structured IC's include the danger that unless restraints are put in place governing share transfers and the price of shares and improvements, normal market forces may operate such that the IC has little control over who buys into the community with a consequent loss of communal identity and functions.

4. Co-operative Structures

In ideological terms co-ops are probably the most suitable vehicles for the formation of an IC. They are ideally democratic, self-help organisations which exist to provide services to members rather than profits and thus lend themselves to the purpose of setting up an IC. Under the *Co-operatives Act* (NSW 1993) the powers and duties of co-ops are potentially wide and detailed and can allow for the operation of businesses, buying groups and other activities. A particular advantage of the co-op structure is the comprehensive safety net provided by the Act which covers common problems which may arise, such as disputes between members and liabilities of the co-op.

Co-op IC's can in certain circumstances obtain government financial assistance in setting up an IC.

5. Tenants-in-Common Structures

These structures enable a group of people to buy land together but also for each of them to have their own title deed to the land,[51] entitling them to a nominated proportion of shares in the land. If one of the tenants dies, his or her share of the land passes to the person/s named in that person's will. All tenants-in- common are entitled to use all of the land and to gain their proportion of any rents over it but they do not have any entitlement to possession of any particular part of the property, though they can be empowered to lease parts of it for less than five years and such leases are renewable. The land can only be sold or mortgaged with the agreement of all tenants-in-common and any structures erected belong equally to all. The inherent danger here is that if such agreement cannot be arrived at, a court may order the sale or partition of the property.[52] Although members can make internal agreements between themselves they cannot override the above restrictions relating to the land or fixtures themselves.

6. Joint Tenancy Structures

These structures are similar to Tenancies-in-Common with similar advantages and disadvantages, except that on the death of one party their interest passes to the other tenant/s.

7. Trust Structures

Under these structures a person, group or company can hold the legal title over land for the benefit of others (the beneficiaries). Any change in the trustees requires a change to the Certificate of Title over the land held with consequent legal and registration costs. A particular danger of this structure which has been experienced in the region is that unless the trustees are a part of the IC and living on the land they may be or become distant from the ideals and needs of those living there and this could cause legal problems as the trustees have control over the trust property. In recent years changes to trust laws mean that many of the financial advantages of trusts relating to distribution of trust income and tax rates no longer favour trusts over companies and other legal structures.

8. Unit Trust Structures

In the past this form of structure has been used to overcome the prohibition against subdivision but the ways employed to attempt to achieve this are of very dubious legality and may well not survive a challenge in the courts.[53]Under these structures the community's land is held in trust by a

company from which shareholders hold leases over their blocks for periods of less than 5 years which are theoretically renewable. They are relatively expensive to set up and were not designed for use by IC's.

9. Incorporated Association Structures

It is possible for a group to set up an Association to hold land providing it does not engage in profit-making or trading.[54] However this makes no provision for individuals to sell their interests in the property unless members have some arrangement whereby they lend money to the Association on terms which satisfactorily cover their financial interests. Although such Associations are relatively simple and cheap to set up and grant limited liability for individuals, the capacity to sue and perpetual succession, they were not intended for the purposes of IC's and have not met with much success in the Rainbow Region. Example.

10. Extended Family Structures

Some years ago a case in NSW[3] established that a "family" need not necessarily be constituted by blood or marriage relations but can be made up of unrelated individuals, provided that they all eat together and demonstrate other aspects of family life. Council planning instruments provide that a family home need not be just one structure but may consist of several detached but physically related buildings as long as the separate buildings do not have separate kitchens or bathrooms. However although such structures may have been unofficially tried for rural landsharing communities they confer no legal rights on family members, such that there is no easy way for individual members to recoup any money or "sweat equity"[55] they may have contributed in the event of them wanting to leave. This is akin to the situation of an extended family bonded by blood or marriage in urban society.

11. Hybrid Structures

Some IC's have adopted two-tiered and other structures where the first tier may be a co-operative, company or incorporated association which holds the title to the land and the second tier an unincorporated or incorporated association which is responsible for the day to day management of the community.

Experience in the region suggests that, above all, the legal structure chosen is only as good as the people constituting it, so that an internally cohesive group always has a better chance of making an IC work almost regardless of the IC's legal structure. In contrast, no legal structure will protect a community from dispute and expense if the communards are not of like mind and interests. The more successful IC's tend to be those which gather the foundation group together first and find the land they want once they are confident in the ability of all the members to work and live together, rather than the other way around. This process is facilitated by the common adoption of some ideological, political or spiritual principles by the foundation group which has the effect of keeping the group together and laying down universally agreed principles of living together.

See incl "Types of Legal Structure in Version 1.

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47 LCC Business Paper of Council Meeting held 18/7/95, p. 48

48 Draft Strategy for Rural Residential, Detached Dual Occupancy and Rural Landsharing Communities, October 2000 and the Draft Lismore Rural Housing Strategy, October 2000.

49 at par, 2.3.3. vol 1. However this is likely to be a significant overestimate.
50 Set up under the *Corporations Act* (Cth) and comprising various structures.
[51] *Real Property Act* (NSW 1900) s.100(2)
[52] *Conveyancing Act* (NSW 1919) s. 66G
[53] Spain, D.: "Legal Structuring of Intentional Communities" unpublished manuscript, Nimbin 1998, p.9
54 *Associations Incorporation Act*
[55] *Dempsey v South Sydney Municipal Council (35 LGRA 432)*
[56] An arrangement by which persons exchange their labour on community land for an interest in the land of the community.

# INTENTIONAL COMMUNITIES IN THE RAINBOW REGION OF NEW SOUTH WALES AND THEIR IMPACT ON THE EVOLUTION OF PLANNING AND LAND LAWS

Graham Irvine

SECOND DRAFT

*Abstract: The paper comprises an Introduction and two Parts. Part A outlines the history of Intentional Communities in the Rainbow Region with emphasis on the dialectic between Intentional Communities and governments at all levels and seeks to elucidate the evolution of the current New South Wales' planning laws in this context. Part B describes and analyses the legal mechanisms used by Intentional Communities in the Rainbow Region to legitimize and safeguard their interests in their communities.*

## Introduction

Since their establishment in the 1970's, the Intentional Communities (IC's) of the Rainbow Region[1] have become known around the world as role models in the development of alternative lifestyles. They were formed as a conscious counter-cultural statement of rejection of the consumerist suburban culture of the cities and espousal of ecological sustainability and living with harmoniously nature. They are characterized by the sharing of facilities, of work and of decision-making and, in most cases, by the low cost of their land and housing.

Part of the difficulty experienced by mainstream society in coming to terms with these communities is reflected in the awkward terms coined to delineate them – "multiple occupancies", "rural land-sharing communities".

The term "multiple occupancy" (MO) derives from the NSW State Environmental Planning Policy 15 of 1979 (SEPP 15) which first enabled these communities to be a distinct form of rural settlement. Although the Policy does not specifically define the term, its Introduction states that it is "a type of rural development where a group of people, not necessarily related to each other, live on a single property in several dwellings. These people usually have the desire to: live as a community and build a number of dwellings in a rural setting on unsubdivided land as their main place of residence; manage the land for communal purposes in an environmentally sensitive way; and pool their resources to develop communal rural living opportunities."[2] Clause 2 expands on this by stating that the aims of the Policy include encouragement of communities of low income residents, especially in areas of declining population.

When SEPP 15 was reinstated in 1998 the term "rural land sharing community" (RLC) was substituted for "multiple occupancy" at the request of the RLC peak group, the Pan Community Council (PCC), but was likewise not specifically defined.

"Intentional Community" (IC) is the term favoured by community members themselves, defined by Shenker as, "a relatively small group of people who have created a whole way of life for the attainment of a certain set of goals"[3]

Whereas examples of indigenously based IC's evolved over many generations, thus allowing them to progressively evolve principles and behavioural norms on which to base the rules of the community, the IC's set up in this region have not had the luxury of such an extended time and so have had to impose rules from the start. Some communards still adopt the position that love and goodwill will obviate the need for rules, which they see as antithetical to their self-styled anarchist stance.

However the experience of some 100 IC's in this area, after 30 years, is that idealism does not usually survive the turnover of the initial members and leaving important matters of peoples' rights up to the vagaries of unwritten understandings is a recipe for communal disaster. On the other hand an appropriate legal structure regularises important communal issues such as allocation of areas for individual and communal living and working, protection of private and communal assets; rentals and sales of interests, decision-making and discipline on the community and facilitates the allocation of assets following death of members or dissolution of the community.

## Part A: The History of Rainbow Region Intentional Communities, 1973 - 2002

### Early Days

*Early 1974 saw one of the biggest floods ever to hit the Rainbow Region. At the time the Tuntable Falls community had not yet incorporated as a co-operative and, when the flood rains began, dozens of people squatting on the property were forced to shelter for days in the only existing house on the property, an old three bedroom farmhouse. Amongst this throng was a character wearing a heavy metal cross over a purple velvet smock who called himself Jesus. He was accompanied by his disciple Con, who was convinced that Jesus was the real thing.*
*One misty morning, Con looked out a window to see Jesus crossing the nearby flooded creek on a submerged low-level bridge, which Con, who had just arrived, had never seen. Before anyone could stop him, he had raced into the creek, shouting, "Quick, quick, Jesus is walking on the water and we must follow him."*
*With that he missed the bridge and was swept downstream and caught up in a fence, from which he was extracted, a wiser and wetter man.*

Paradoxically much of the impetus towards establishing the Rainbow Region's IC's originated in Canberra at the 1972 annual university students' festival. There the food provided by the Australian National University caterers was considered so bad that an anarchic group of food guerillas spontaneously emerged and took over the university sportsground to cater to the festival-goers with healthy food, bought or scrounged from markets and elsewhere. This led to some soul-searching amongst the festival organizers, culminating in the decision to break with the tradition of holding the festival on campus.

Organizers for the 1973 festival then began the search for a venue which ended at the foot of the rainbow in Nimbin. These organizers were strongly imbued with the then-prevalent "back to the

land" ethos and with the values enumerated in Wilson[4] and although the thousands they attracted to the 1973 Nimbin Aquarius Festival were not the first or the only people to move to the Rainbow Region to set up RLSC's, the importance of the Festival to the subsequent development of IC's should not be discounted.

Lack of housing and of money meant that many who came to live in the area in the months following the Festival were obliged to live on de facto MO's in any shelter they could find or contrive, ranging from tree houses to ferro-cement domes. Although there had been multiple dwellings on many of these same properties as late as the 1960's, occupied by poor banana growers, on land was then zoned "Non-urban (a)" which limited dwellings to 2 per 40 hectares.

However, Terania Shire Council, which then covered the Nimbin area, following consultation with the state planning authority, did suspend relevant provisions of its plan to permit two MO developments, the Co-Ordination Co-operative at Tuntable Falls and Nmbngee at Lillian Rock in 1976[5]. While Terania Shire Council was prepared to accommodate MO development, it was amalgamated with Lismore City Council (LCC) in 1976 and Lismore took a decidedly negative attitude to MO's, culminating in its issuing several demolition orders on illegal MO buildings in January 1977. Although these were suspended by the Minister for Planning to allow time for the dwellings to be brought up to building standards, the Council's attitude was still one of "formal confrontation."[6].

The Homebuilders Association, (HBA) formed in 1977 to represent the interests of owner home builders negotiated with Lismore City Council (LCC) over these demolition orders and finally in February 1978 Lismore Council announced a moratorium on demolition orders and convened a series of meetings with the Homebuilders, the Planning & Environment Commission and the Local Government Department. This led to the Department of Environment & Planning (DEP) releasing an "Interim Policy: Multiple Occupancy on Farms" in September 1979[7]. Members of the HBA were also involved in preparing the "Low Cost Country Homebuilding Handbook", published by the DEP[8] which remains to this day the standard text in its field.

**Conflict Escalates**

*"One of the great challenges of society today is to maintain standards, and the people of Lismore district until now had been tolerant towards the alternative society. However, when this new society thumbs its nose at law and order and standards it is surely time to speak out." Bruce Duncan, MLA for Lismore, "Northern Star" 17/10/79.*

*"What right has Big Brother [LCC] to require this [work on MO buildings] to be done?". M. Wilcox QC, Nicholson v Lismore City Council, reported in "Northern Star", 7/4/84*

With the advent of the Terania Creek logging protests in August 1979, largely organised by local MO members and other local alternative lifestylers, Lismore City Council lifted their reprieve on fifteen demolition notices on alleged illegal dwellings on a community in the Tuntable Creek valley[9].

This connection between local political action on environmental and social justice issues and IC's has been and remains a feature of the Rainbow Region's IC's.[10]

On 1 December 1979 the then Minister for Environment and Planning, the late Paul Landa, at a DEP seminar in Lismore on hamlet development, threatened Lismore Council with dismissal if they went ahead with demolitions[11], expressing his concern at the use of Council's powers "for social

coercion" and announced that he would legislate to allow multiple occupancy of land, inviting the Council and Bellingen Shire Council to set up Experimental Building Areas, allowing more flexibility in compliance with the Ordinance 70 building code. [12]

In November 1979 the NSW Dept. of Environment and Planning circulated Circular 35 (Interim Policy - Multiple Occupancy on Farms) to councils outside the Sydney area. This was followed by Circular 44 in July 1980 which set out guidelines for councils' administration of MO's, after input had been received from councils, alternative lifestyle developments and the Local Government and Shires Association. It spelled out fourteen suggested policies on MO development, the most important of which were the Department's support for multiple occupancy, the preference for clustered development, the minimum allotment size, the prohibition of subdivision and the need for MO's to be owned by 2/3 of their adult residents.

In February 1980, Minister Landa introduced regulations which gazetted several de facto but illegal MO's as approved, thus obliging LCC to recognise them in a special clause in its Interim Development Order (IDO 40) and in the North Coast Regional Environmental Plan (REP); in August 1980 Bellingen Shire Council adopted a Development Control Plan (DCP) for MO's and gradually other councils introduced enabling clauses into their planning regimes based on sample clauses issued by the State Planning and Development Commission in November 1981 - Tweed (25/9/81); Severn (6/5/83); Kyogle (9/2/84); Coffs Harbour (25/6/84) and Bombala (23/9/84), though all but Tweed, Kyogle and Bombala related only to specific areas within the councils' Jurisdiction. [13]In January 1985, Ministerial Direction No: 16 "Planning in Rural Areas" again directed relevant councils to take MO developments into account when preparing Local Environmental Plans (LEP's) for rural lands within their areas[14]

However MO's still faced opposition from Councils, exemplified by the demolition of a bamboo dwelling on a MO by the Kyogle Shire Council and by a case brought in the Land & Environment Court by residents of Bodhi Farm community against LCC.[15] LCC argued that the lack of an external wall and sleeping in a mezzanine area in two houses on the community breached building regulations, whilst the residents argued that they were entitled to decide whether a wall was necessary and it was beyond Council's powers to order the wall to be built.[16] The Bodhi Farmers had a qualified win in this case, creating a precedent for other IC's + use Dwellings for purpose of sleeping

**The State Government's Own MO**

*"This proposal is potentially one of the most constructive initiatives that any government could undertake with current changing trends in employment and household formation patterns." Rob Doolan Planning Advisor, Sustainable Settlement Planners.*

The high point in State Government interest in MO's came after the release of research showing widespread support for changes in law and administration of MO's and government funding for MO-type settlement. [17] This report, combined with intensive lobbying by the then current MO peak group, the Rural Resettlement Task Force, persuaded the government to commission a feasibility study by the Land Commission of NSW which recommended government involvement in the "implementation of Multiple Occupancy (MO) development for low income earners in NSW"[18]. This study found that there were 96 MO's in the area between Tweed Heads, Ballina and Kyogle, comprising 1500 people, 62 of these MO's being illegal for want of council planning guidelines.

In his preface to the study Housing Minister Walker announced that he had "asked the Land Commission to identify a potential pilot project as a form of low cost land and home ownership that may be facilitated by the Government."[19]

This initiative led to the ill-fated 1987 Mt. Lindesay and Wadeville Projects in which the State Government proposed to provide seed capital and home loans to 28 low income families to establish an MO cooperative. The scheme collapsed due to eighteen months of acrimonious disagreement between warring factions of residents and, with the accession to power of the Liberal and National parties in 1988, the project was terminated by the new Government.

Dudley pers. comm.

**New MO Policy Initiatives**

*" ... in excess of 60,000 people [are] presently living what has been known as an alternative lifestyle. A substantial proportion of these people are living illegally and the reason for this lies squarely at the doorstep of the three tiers of government ... " Scott Williams, "Sustainable Rural Resettlement: The Report". Univ. of New England, Armidale, 1984*

In August 1985, the DEP released a discussion paper and a draft policy on MO's. The 23 policies recommended included many from the Department's previous Circulars 35 and 44, plus new policies concerning the permitting of MO's with council consent in all "general rural" or "non-urban" zones; close monitoring of the operation in relation to new forms of tenure and the prohibition of strata subdivision and the limitation of section 94 contributions under the Environmental Planning and Assessment Act 1979[20].

In Circular No: 83, which accompanied the Draft Policy, the Department's Secretary explained that, "The Draft Policy has been introduced in response to a situation where very few Councils have introduced enabling provisions for multiple occupancy, as previously recommended by the State Government. Increasing demands for multiple occupancy, and the lack of any planning framework to meet these demands, reduced public confidence in the Government....Support for the multiple occupancy concept is evident but potential initiatives at both State and Federal level are hampered by the existing situation."[21]

A number of other research papers on MO's were completed around this time, including a study of MO's in the Clarence Valley which found that, "Despite the problems caused by the presently illegal nature of MO development...many developments are flourishing...Local Councils, existing local communities and MO participants have combined to revitalise a number of rural locations that were in decline and therefore under-utilising existing infrastructure and services.....That such opportunities to experiment and co-exist with other [MO] participants are available is vital"[22]

Another study which surveyed small numbers of MO's on the NSW far and mid north coast and the south coast, found that, "Only a few shires have permitted multiple occupancy and only then in quite restrictive circumstances: on marginal and unproductive land; with settlement densities that are quite inappropriate to the needs of settlers; and with stringent registration, servicing and road access requirements that are often beyond the financial resources available. It is suggested that multiple occupancy be removed from the control of local councils and given over to State control...and that the high registration fees and rates be reduced."[23] Other findings were that 82% of households on MO's were below the poverty line[24] and that land use and management were environmentally sensitive[25]. The study concluded that, "land sharing communities have a great deal to offer....new ways of organising work and integrating it with other aspects of living; and new ways of contributing to economic and social well being through the expansion of household production of goods and services [and]...sustainable patterns of living."[26]

**The Woodward Inquiry**

*Some instances ... occur where an entrepreneur, developer or individual is the initiator of the development rather than a community already formed ... [which] are well outside the generally acceptable but vague notion of bona fide multiple occupancies." Justice Woodward, Woodward, J., "Multiple Occupancy in the Shire of Tweed," Report to the Minister for Planning and Environment, Sydney, March 1986, p.91-2*

A significant event in the development of State Government policy on MO's was the 1985/86 Woodward Commission of Inquiry into Multiple Occupancy in the Shire of Tweed. This was set up after the Council applied to the Minister for Planning for an inquiry under section 119 of the Environmental Planning and Assessment Act (EP&AA) into seven problem areas specified by the Council. The problems related to applying the Shire's Local Environmental Plan (LEP) MO provisions; determination of an equitable formula for EP&AA section 94 contributions for infrastructure development and rates; de facto MO subdivisions; adverse impacts of MO's on neighbours; the implications of MO development for provision of Council services and actions anticipating development approval[27].

Woodward found that "other forms of rural development involving some degree of common property and/or common management have not been adequately distinguished from multiple occupancy development....Council has not been particularly adept at making distinction between bona fide multiple occupancies and other forms of development.....there appears to be some inconsistency between the types of controls placed on multiple occupancies and the relative lack of control of rural activities which in most instances will be on land adjoining multiple occupancies."[28]

He concluded that none of the existing legal title options provided a suitable legal structure and a method of dealing with trends in multiple occupancies with regard to the individual transfer of rights in part of the land and a degree of community control over the transfer[29].

The Commissioner called for "a form of land tenure which combines individual ownership with a group settlement; common responsibilities with private rights of exclusive occupation and security of tenure in harmony with joint occupation and control; transferability of equity by individual members; distinction between liabilities of the community and liabilities of the individual...and a suitable mechanism for enforcing the community's decisions."[30] This has now arguably been achieved by the 1989 community titles statutes but with dubious results.[31]

He suggested long term leases for MO residents with provisions covering transfer with the consent of the common owners, such consent not to be unreasonably withheld. As to use and management of common land he recommended that model provisions be drawn up for use by MO's and administered by a deed between the common owners and instruments under section 88B of the Conveyancing Act so that direct breaches of such rules could be legally enforceable[32].

On the controversial question of section 94 and section 90 requirements, Woodward reasoned that the contributions demanded by councils were too high and reflected the actual cost of upgrading existing facilities rather than the additional wear and tear on them caused by the MO. Because MO land is not subdivided there is no capital generated, unlike other forms of rural development, with which to pay such contributions and hence MO's do not have the same ability to pay. Further, some of the community facilities for which councils seek contributions are either not used by MO residents, not accessible to them or are provided by the MO's themselves[33].

He therefore suggested that section 94 contributions by MO's could be kept low by councils applying to the Local Government Grants Commission for supplementation of funds where MO's

exist in a particular council area[34]. He found that, "there appeared to be little demand from the existing multiple occupancy developments in the Tweed Shire on community facilities."[35] and that, "Inspection of multiple occupancies and consideration of the submissions to the Inquiry indicates that these [section 94] charges are likely to be excessive in terms of the actual demand placed on roads by multiple occupancy dwellers."[36] The Commissioner recommended arbitration of contribution disputes[37]; section 94 instalment payments[38] and pointed out the tendency for Council to "double dip" - collecting separate amounts of money for the section 90 (1) road access provision and again for the same piece of road, under section 94[39]

On the issue of council rates the Commissioner advocated a rating system based on the number of dwellings which could apply to all rural forms of development, including MO's but felt that a special MO rate may need to be struck to balance the number of houses against the social objectives of providing low cost housing. Councils could apply to the Local Governments Grants Commission for supplementation of funds to offset revenue loss[40].

One of Commissioner Woodward's conclusions bears repetition today - "The only basis for treating multiple occupancy as a special or exceptional case are the social objectives of the policies. Remove these social objectives and there appears to be no reason why multiple occupancy should not be treated on the same basis as any other form of development. For these reasons it is recommended that the objectives be more explicit in setting out the basis of multiple occupancy, for example, common ownership of the whole land, an ownership-residency requirement, low income communities and low cost housing."[41]

## The Introduction, Review and Repeal of SEPP 15

*"We've come away [from a meeting on multiple occupancy] with a sense of the urgency of bringing down the policy on multiple occupancy and also a very strong impression that MO's contribute to environmentally sound practices. I'd like to think they are the wave of the future for much of NSW and that what's happening now will be in the history books in 100 years, 200 years' time as examples of people coming together and pioneering a much more responsible land use of our continent." Bob Carr, then Environment Minister, Speech at Bodhi Farm 1988*

This period of development of State government policy on MO's culminated in the promulgation of State Environmental Planning Policy (SEPP) 15 in January 1988.

The Policy's stated aims were, " (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 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."

The main features of the Policy were to permit multiple dwellings on rural properties of ten hectares or more according to a set density formula. Subdivision was prohibited and councils were

directed to consider a list of planning and environmental matters in their determination of applications to set up MO's.

Adoption of the Policy saw a dramatic reduction in the number of MO-council disputes reaching court and the Policy functioned well following some minor amendments in 1988, '89, '90, '91 and '92.

Nevertheless, on 17/1/94 the Liberal/National Party NSW Government announced a review of SEPP 15's "extent and impact of use" and its "current adequacy and relevance,"[42].

Although no reason was given for the need for a review, enquiries to the Minister's office and to the Departmental Regional office elicited vague responses about problems with the Policy which had been communicated to the Minister and Department. However, the Grafton-based Regional Manager repeatedly assured the Pan Community Council (PCC), the now current peak representative organization for MO's formed in 1987, that inclusion in the brief to consider SEPP 15's repeal was purely routine and that there was no suggestion that repeal was a serious option.

Two local Coalition politicians, Doug Page and Bill Rixon, claimed that they were responding to constituents' concerns about inequitable rating of multiple occupancies, while the estate agents and developers complained that MO houses and sites were hard to sell, would be easier to sell if they had individual title, and that they constrained nearby development.

Other than these few complainants there was nothing in the way of public opinion which suggested a need for such review as the Policy had been working satisfactorily, in the opinions of the major stakeholders, since its inception in 1988. When questioned on the need for a review, the DEP Regional Manager, Grafton claimed that a periodic review was normal practice, routine and contained no hidden agenda.

Two Canberra-based town planning consultancies, Purdon and Associates P/L, and Christopher M. Murray and Associates P/L, were engaged to conduct the review after Minister Webster had directed his Dept. to send a project brief to five consultants. There was no public tender process and Purdons had no experience of MO's.

The DEP's Project Brief for the Review required the consultants to consult with "Councils, relevant local community organizations, eg. Pan Community Council, Lismore MO resident representatives, relevant state government agencies and relevant affected land owners,"[43]

The introduction to the Brief arguably set an anti-MO tone for Purdons' report by exclusively raising negative issues in relation to MO's, viz, "provisions of SEPP 15 are too specific"; "objective 2(e)(iii) of the policy seems inappropriate"; "Development of MO's for speculative purposes and attempts to subdivide existing or approved developments,"[44].

Initially Purdons' had intended to send their MO residents' questionnaire to all MO's appearing on Council lists, but subsequently discovered that these lists were incomplete, in some cases non-existent. Consequently the DEP advertised in local papers on 29/1/94, inviting MO's to register with them to receive the questionnaire and inviting neighbouring land holders to MO's to make submissions. Understandably, few responded, as there was little or no publicity about the DEP seeking this information, the advertisements were only seen by a small number of interested people and the closing date for expression of interest allowed less than a fortnight for replies to be received by the Dept. This then was the Dept's. and consultants' notion of adequate public consultation and, it is submitted, a substantial ground for discounting the subsequent findings of the review.
Although both the Dept. and the politicians had promised that the Purdon Report would go on public exhibition for comment and submission from the public this did not occur.

Instead on 13/10/94 Planning Minister Webster announced the impending repeal of SEPP 15, on the grounds that it was "not now serving a State need,"[45] that repeal would not affect existing MO's and that new MO's could be accommodated by Councils making provision for MO's in their LEP's. SEPP 15 was repealed on 19th October 1994 and replaced with a transitional instrument, SEPP 42 whose provisions expired on Feb 1st 1995. SEPP 42 allowed a 2 month "sunset period" during which councils were permitted to determine MO Development Applications.

**Reinstatement of SEPP 15 and Subsequent Developments**

*" ... the SEPP emphasizes environmentally sensitive development and sustainable land management. It demonstrates the Government's commitment not only to social justice and affordable and equitable lifestyle options, but also to sustainmable environments." Richard Jones MLC, Press Release of Janelle Saffin MLC, 3rd April 1998*

PCC understandably opposed the repeal of SEPP 15 and after persistent lobbying was eventually largely instrumental in having it reinstated and gazetted on 9 April 1998 with a few relatively minor amendments.

Since then, LCC, having the largest number (60+) of RLC's of any council, has continud to restrict RLC development, as have Kyogle, (KSC), Byron, (BSC) and, to a lesser extent, Tweed Shire Councils, by choosing to opt out of the provisions of SEPP 15, thus enabling them to impose stricter conditions.

A number of court cases in the 1980's and '90's determined that councils had been imposing illegal levies on IC's with no consideration of particular circumstances, no assurance that moneys collected from them would be spent on adjacent roads and levies of unreasonable amounts[46] Other cases concerned what the IC applicants considered unreasonable approval conditions imposed by councils, e.g. *Anson* v Lismore City Council*, 10239/94.

After several years of accepting the status quo established by SEPP 15, LCC began in the 1990's to again seek further ways of regulating IC's. In 1994 it voted to limit the areas within which RLC's would be permissible. Then it undertook inspections of all 60 RLC's in the council area to gauge the extent of compliance with development approvals. This found that 82% of RLC's had LCC building approval for their residents' houses. The conclusion was that, "generally things appear OK in terms of compliance with approvals".[47]

Nevertheless LCC opposed the reintroduction of SEPP 15 and applied to the state government for exemption from it on the ground that they had already made provision for RLSC's in their LEP. To this end it commissioned two reports.[48] Both sought to justify the prevailing view of Councillors that RLSC's should be restricted to a few discrete areas and should only be approved if the immediate infrastructure was deemed capable of supporting them.

In June 2002 these policies were enshrined in Draft DCP 44 (which supplemented the provisions of the 2000 LEP. If adopted, this DCP will have the effect , (which was arguably intended by LCC), of choking off IC development due to the mounting costs of land in the permitted areas and the expenses of compliance with the many obligations the DCP imposes on would be IC's.

In 1999 KSC adopted their "Strategic Plan for Multiple Occupancy" which restricts RLC"s from most areas of the Shire. Similarly, since 2000 BSC has restricted the areas in which RLC's are permitted and sought to persuade existing RLC's to convert to Community Title, (which grants