

Draft 13
MASTER

PAN COMMUNITY COUNCIL

Proposed Pan Com amendments to the DUAP Draft SEPP-15 Policy

Edited by Peter Hamilton for discussion with a view to adoption at the Pan Com Meeting on 9th March 1997

Acknowledgments

This paper is the collectively considered efforts of a number of Pan Com members.

Introduction

What is presented here is:-

- (a) those clauses in the DUAP Draft to which it is proposed there be an amendment, deletion or addition. (Where a section is proposed be amended etc, the section is spelt out in full.)
- (b) Where it is proposed to omit text in whole or part, the wording is ~~struck through~~.
- (c) Insertion of new words or text, is made in bold typeface and "Comment" is made in [...] in Times Roman Italic typeface.

State Environmental Planning Policy No. - 15

~~Multiple Occupancy of Rural Land~~ **Rural Landsharing Communities -** (Insert next available Number)

1 Name of Policy

This Policy is the State Environmental Planning Policy No.-
~~15 Multiple Occupancy of Rural Land~~ **Rural Landsharing**
Communities - (Insert next available Number)

[Comment: (1) The name needs to be changed to better reflect the social aspects of this form of development and to remove it from being seen as having anything in common with "Dual Occupancy".

An even more explicit title may be "Rural Landsharing Intentional Communities" as this would highlight the "intentionality" of this form of land settlement and would distinguish it from "community" often used in a planning sense to refer to a "conurbation" or a random clustering of dwelling houses.

"Landsharing" as one word, is deliberately used in lieu of "Land Sharing" to avoid possible confusion with the concept of "Rural Land" used in other planning contexts.

(2) The SEPP number needs to be changed so as to remove potential confusion between the new and old Policy.]

2 Aims of Policy

This policy aims:

- (a) to encourage ~~a community based and environmentally sensitive approach to rural settlement, and~~ and facilitate the development of intentional Rural Landsharing Communities committed to environmentally sensitive and sustainable land use practices, and thus

[Comment: The existing wording does not require that sustainable land use be the sole or main purpose of the community, (thus allowing for communities with principally social or economic objectives), but simply that the goals of the community demonstrate a clear and strong commitment to these principles and that the proposed management plan demonstrates the achievability of this goal.]

Addition of the word "thus" between 2(a) and 2(b) serves to clarify that 2(b) does not consist of a list of separate aims but details ways of achieving the principle laid down in 2(a).]

(b) to enable:

- (i) people to collectively own a single allotment of land and use it as their principal place of residence, and
- (ii) the erection of multiple dwellings on the allotment and 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: **having due regard for the characteristics of the terrain and to the proposed management plan referred to in clause 10 of this Policy:**

- ~~(i) in a manner that 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, and~~

[Comment: Redundant as regarding environmental protection and services provisions as these are extensively described in clause 2(a), Schedule 2 and in s.90 of the E.P. & A Act.]

It also discriminates against Rural Landsharing Communities in comparison with other forms of rural residential development which are not similarly required to prove that they do "not create a demand for the unreasonable or economic provisions of public amenities or public services".]

(ii) in a manner that does not involve subdivision, strata title or any other form of separate land title, and in a manner that 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 that are suffering or are likely to suffer from a decline in services due to rural population loss, and~~

[Comment: Deleted as this is of peripheral relevance and because the issue is a factor to be considered under clause 9 of the Policy and under s.90 of the E.P.A & A Act and is discriminatory for the same reason as in clause 2(c)(1) above.]

(d) to repeal State Environmental planning Policy No 42- Multiple Occupancy of Rural Land (Repeal).

3 Land to which this Policy applies

This Policy applies to ~~all rural land within the areas specified in Schedule 1 except as provided by this clause.~~ **New South Wales except as provided in Schedule 1.**

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

[Comment: There seems to be no valid planning reason why the Policy should not apply to all rural land in NSW except those specified in Schedule 1.]

4 Definitions

(1) In this Policy -

council, in relation to the carrying out of development, means the council of the area in which the development is to be carried out.

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 of 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 5000 square metres, around a dwelling.

home industry has the meaning given in the Model Provisions 1980.

[Comment: In order to include an addition to clause 7(4) below, it is necessary to add the definition of the term used in that clause.]

community management body means a core group of persons who are shareholders/part owners of the property and each sign a Statuary Declaration that they plan to take up residence as founding members on the property.

[Comment: This term is defined in connection with its use in the new subclause 9(1)(r) below.]

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, or
- (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 of merit 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.

(2) For the purposes of this Policy, the council may, in respect of development proposed to be carried out pursuant to this Policy, treat two 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.

7 ~~Multiple Occupancy~~ Rural Landsharing Communities

(1) ~~Despite 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-rural zones, Rural Landsharing Community development shall be a permissible land use in any zone where this Policy applies and contained within an environmental planning instrument in which the erection of a dwelling is a permissible use and such development may, with the consent of the council or the Director, be carried out for the purposes of three or more dwellings on land to which this Policy applies within such a zone if:~~

[Comment: The original text is deleted because the issue of other environmental planning instruments is already covered by the overriding provisions of clause 5 and that where one dwelling is permissible in a selected area, then a Rural Landsharing Community ought to be permissible.]

- (a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Titles Act 1973, and
- (b) the land has an area of not less than 10 hectares, and
- (c) the height of any building on the land does not exceed 8 metres, and
- (d) not more than 25 per cent of the land consists of prime crop and pasture land, and
- (e) the part of the land on which any dwelling is situated is not prime crop and pasture land, and
- (f) the development is not carried out ~~of~~ for the purposes of a motel, hotel, caravan park or any other type of holiday, tourist or weekend residential accommodation, except where development for such purposes is permissible under the provisions of another environmental planning instrument in the zone, and
- ~~(g) slopes in excess of 18 degrees do not occur on more than 80 per cent of the land, and~~

[Comment: This subclause deleted as being unnecessarily prescriptive and also redundant, for example it is conceivable that a Rural Landsharing Community could be quiet appropriate on land where 80% of the land area has slopes of more than 18°, if the remaining 20% is large enough and otherwise suitable for such development.]

Moreover s.90(e), (f), (g) and (m1) of the E.P. & A Act and clause 9(k) of this Policy already provide safeguards in respect to development on steep land.]

- (h) (g) all the aims of this Policy are met.

[Comment: The word "all" is added to make it clear that every clause aim must be met in intentional Rural Landsharing Community DA's before council may give approval.]

- ~~(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.~~

[Comment: This is redundant as clause 5 already overrides the provision of other conflicting environmental planning instruments.]

- (3) Nothing in subclause (1)(b) or in **subclause 5** shall be construed as authorising the land for the purpose of carrying out development pursuant to this Policy.

[Comment: Addition made to reinforce the prohibition on subdivision and to make clear that a householder's right of exclusive occupation does not include any rights over the title of the land which could give rise to subdivision.]

(4) Home industry shall be a permissible land use.

[Comment: This provision is added to further the implementation of Clause 2(b)(iii) so that the Policy encourages rather than restricts this land use.]

(5) Subject to any legally binding agreement between members of a land sharing community, the occupants of a dwelling on such a community shall have the right of exclusive occupation of such dwelling and of the home improvement area surrounding it, without otherwise restricting the community's rights to the land.

[Comment: Inserted to safeguard the rights of community householders to exclusive occupation of their homes and the "home improvement area" on communities which do not already have their own legally binding rules on this matter.]

9 Matters for council to consider

(1) In addition to the matters prescribed under s.90(1) of the Environmental Planning and Assessment Act 1979 a council must not consent to an application made in pursuance of clause 7 unless it has taken into consideration such of the following matters as are of relevance to the development the subject of the application:

[Comment. Addition included to make clear that it is mandatory for councils to consider these matters in addition to those prescribed in clause 7.]

(a) the means proposed for establishing land ownership, dwelling occupancy rights, a community management body, an environmental and community management policy, to ensure the aims and objectives of this Policy are met,

[Comment: (1) To facilitate council in the implementation of the requirements in clause 9(1)(r) below, and (2) To be consistent with the deletion of the term "objectives" in clause 1 above.]

(b) ~~the area or areas proposed for erection of buildings, including~~ Any proposals for the clustering of buildings,

[Comment: Wording deleted as this is already covered in the Schedule 2 "Site Analysis".]

(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 need 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 reafforestation,~~

[Comment: Deleted as this matter is already covered in s.90 of the E.P. & A. Act, the Threatened Species Conservation Act and in Schedule 2 "Site Analysis" of this Policy.] [Insert the following new "j".]

- (j) Where applicable a home industry proposed to be operated on the land by any community member or members must be compatible with the other factors considered under this clause.**

[Comment: Included to ensure that any such home industry is consonant with other features of the community.]

- (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, services 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.
~~including the need for separation and buffers to avoid land use conflicts.~~

[Comment: The deleted words are redundant as they are covered in s.90 and because any council policy on Buffer Zones in rural areas applies equally to all rural development.]

- (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 Aborigines and the presence of any Aboriginal relics and sites,
- (q) whether the land has been identified by the council as being required for
~~any future urban use or rural residential expansion.~~

[Comment: M.O has been acknowledged along with other forms of rural settlement as a legitimate form of rural settlement and hence should not be excluded on this account.]

- ~~(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.~~

[Comment: The DUAP “Rural Settlement” Guideline caters for this in a comprehensive manner. See also comment in clause 2(c) above.] [Insert the following new “r”.]

(r) Where a Rural Landsharing Community is proposed by one or more speculative developers or their agent, or a government agency, the Development Application is to be by means of a Deferred Commencement. Preceding with the implementation of the consent shall be subject to the fulfilment of the requirement that there be a community management body.

[Comment: The desired outcome of this provision is that the founding group of resident members on the property have the determining say in the implementation of the approved D.A. under s.91AA of the Act.

This provision, along with clause 2(c) above, is aimed at being a disincentive for speculative developers who may attempt to subvert the aims of this policy for private gain. This practice is sometimes referred to as using the former Policy for the purpose of “defacto subdivision”.

Having said this we hasten to say that entrepreneurial developers, professionals and government agencies can play a valuable role in creating new Rural Landsharing Communities and we welcome such bona fide initiative./

- (2) A council must not consent to an application made in pursuance of clause 7 unless it has taken into consideration a site analysis that;
 - (a) contains information about the site and its surrounds as described in Schedule 2. ~~and~~
 - (b) ~~is accompanied by a written statement explaining how the design of the proposed development has regard to the site analysis.~~

[Comment: This is redundant as the general issue is already address in s.90(1) of the E.P.& A. Act and in clause 9(m) of this Policy.]

- (3) Nothing in subclause (1)(b) **or subclause 7(5)** is to be construed as authorising the subdivision of land for the purpose of carrying out development pursuant to this policy.

10 Management plan

A council must not consent to an application made in pursuance of clause 7 unless the applicant has submitted a management plan for the development that makes adequate provision, **where applicable** for:

- (a) bushfire management, and
- (b) control of noxious weeds, and
- (c) provision and maintenance of internal roads, water reticulation, service corridors for telephone and electricity cables and similar matters.

[Comment: To make clear that this is required only where applicable.]

12 Subdivision prohibited

- (1) If development is carried out on land pursuant to this policy, the issue of a certificate of the general manager of a council, under the *Local Government Act 1919*, or of a council's certificate under the *Strata Title 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 any one or more of the following:
 - (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) consolidation allotments; or
 - (f) excising from an allotment land which is, or is intended to be, used for public purposes, including drainage purposes, bush fire brigade or other rescue service purposes or public conveniences.
- (3) **Exclusive occupation of dwellings and home improvement areas under the provision of clause 7(5) shall not constitute subdivision for the purposes of this Policy.**

[Comment: This further strengthens the prohibition against subdivision and makes it clear that household occupancy rights cannot amount to subdivision.]

13 Monitoring of applications

- (1) If a council receives an application made in pursuance of clause 7, the council must, within 30 days of determining the application, forward a copy of the application to the Secretary together with a copy the notice of the determination of the application.
- (2) **The Secretary shall cause to be published a public annual report containing a summary of all returns covered by subclause (1).**
- (3) **All such applications shall be made available to any person on request to the Department or to a council.**

[Comment: To ensure public availability of information relating to the implementation of the Policy.]

Schedule 1 ~~Land to which this policy applies~~

(See clause 1.3)

Armidale	Kempsey
Ballina	Kyogle
Barraba	Lake Macquarie
Bathurst	Lismore
Bega Valley	Macleay
Bellingen	Manilla
Bingara	Merriwa
Blayney	Mudgee
Bombala	Mulwaree
Casino	Murrumbidgee
City of Greater Cessnock	Muswellbrook
City of Greater Lithgow	Nundle
City of Maitland	Nymboida
City of Shoalhaven	Oberon
Coffs Harbour	Orange
Cooma-Monaro	Parry
Copmanhurst	Port Stephens
Cowra	Quirindi
Dumaresq	Richmond River
Dungog	Rylstone
Eurobodalla	Scone
Evans	Singleton
Glen Innes	Tallaganda
Gloucester	Tamworth
Goulburn	Tenterfield
Grafton	Tweed
Great Lakes	Ulmarra
Greater Taree	Uralla
Guyra	Walcha
Inverell	Yallaree

[Comment: In view of the proposed changes to clause 3 above, this list is no longer necessary.]

Schedule 2 1 Specified land to which this Policy does not apply

(See clause 3)

Land that is a national park, historic site, State recreational area, nature reserve, State game reserve, karst conservation reserve, wilderness area, Aboriginal area, protected archaeological area, ~~wildlife refuge, wildlife management area, land to which a conservation agreement relates~~ or Aboriginal place, within the meaning of the *National Parks and wildlife Act 1974*.

[Comment: It is expected that at least some Rural Landsharing Communities will wish to seek "conservation agreements" or the like over part of their properties to further enhance nature conservation values.]

Land to which a wilderness protection agreement under the *Wilderness Act 1987* relates.

Land that is a reserve within the meaning of the *Crown Lands Act 1989*.

~~Land that is subject to the Western Lands Act 1901.~~

[Comment: See comment to clause 3 above.]

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

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

- ~~(a) Coastal lands acquisition, or~~
- ~~(b) Coastal lands protection, or~~
- ~~(c) Conservation, or~~
- ~~(d) Escarpment, or~~
- ~~(e) Environment protection, or~~
- ~~(f) Environmental protection, or~~
- ~~(g) Open space, or~~
- ~~(h) Rural environmental protection, or~~
- ~~(i) Scenic, or~~
- ~~(j) Scenic protection, or~~
- ~~(k) Water catchment, or~~
- ~~(l) 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.~~

Land to which *Eurobodalla Rural Local Environmental Plan 1987* applies.

[Comment: (1) The former Schedule 2 now becomes Schedule 1.

(2) The proposed amendment to clause 7 above allows for Rural Landsharing Communities to be permissible in any zone where a dwelling is permissible. The principle being that in any zone where a dwelling is permissible then a Rural Landsharing Community should be permissible.

Schedule 3 2 Site analysis

(See clause 9(2))

The following information, where appropriate, is to be shown in a site analysis:

With regard to the site:

- site dimensions and site area,
- spot levels, contours and north point,
- watercourses,
- natural drainage,
- orientation, micro climates, significant noise sources, prevailing winds,
- easements for drainage services,
- location of buildings and other structures,
- indicative footprint of the proposed buildings,
- location of ~~fences~~, boundaries and any other notable features (natural or historical),
- any areas of the land to be used for development other than for dwellings,
- heritage features, including archaeology,
- vegetated areas requiring environmental protection or areas where rehabilitation or reforestation will be carried out,
- any part of the land that 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,
- views to and from the site,
- identification of previous use and any contaminated soils or filled areas,
- any part of the land that is prime crop and pasture land,
- sources and capacity of any water supply , electricity, telephone and waste disposal systems for the dwellings,
- proposed access from a public road to the area or areas in which the dwellings are to be situated,
- **any road reserve areas that impinge on the property.**

[Comment: (1) The former Schedule now becomes Schedule 2.

(2) Fences other than boundary fences are not an issue of substance but if it is to be retained should specify "existing" fences for clarity.

(3) The last bullet point is included to indicate land that is a road reserve and that unless appropriate arrangements are made, will not be available as an area for buildings etc.]

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