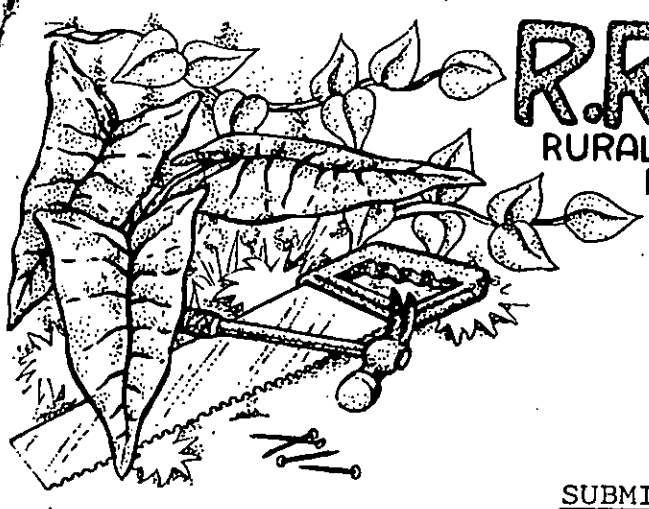
P. Hamilton (9)



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RURAL RESETTLEMENT TASK FORCE
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SEPP

SUBMISSION BY THE

RURAL RESETTLEMENT TASK FORCE

ON THE

Draft STATE ENVIRONMENTAL PLANNING POLICY -
Dwelling Houses in Rural Areas (Multiple Occupancy)

(27 Sept. 1985)

1.0 The Association welcomes the long awaited release of the Draft Policy and hopes that the final gazettal and implimentation of the Policy will occur as soon as possible.

1.1 In general terms we support the broad Policy Objectives of the Draft in that it should enable Multiple Occupancy (M.O.) to occur in many areas of the State subject to strict environmental assessment. A number of comments specific to certain clauses of the Draft Policy follow. Our submission on Lismore Council's Rural Strategies Study is appended as a response to some Council suggestions that M.O. should be restricted to a miniscule portion of their Shire.

2.0 Clause 2. Aims, objectives, etc.
In Clause 2(a) delete "to be occupied as their principal place of residence".

Comment
What is gained or achieved by insisting on it being the "prinicipal" place of residence? How would council monitor this? A member may wish to study overseas for say two years; should this act disqualify the member from still being a member of an M.O.? Parents for example, may wish to take up a share, but not wish to reside until retirement or death of a partner. Any notion that this might mitigate against an agent developing solely for profit is hardly likely to be water- tight.

2.1 Clause 2(b) to read: "to enable people, and in particular the socially and economically disadvantaged, to...."

Comment
The aims and objectives should be strengthened by giving recognition to the "social" and "communal" aspects, along with the economic aspect, motivating this Policy!

2.2 Clause 2(d) to read: "to facilitate development of self generating forms of livelihood, and, to create opportunities for an increase in rural population in areas which are suffering or are likely to suffer from a decline in services due to population loss , and, to create oppurtunities for cultural diversity.

Comment
The aspect of "self help" needs to be acknowledged and facilitated. M.O. we submit, is sought because it is a practical, rewarding and challenging alternative to urban life. The aims of this Policy would be better directed to "quality of life" than attempting to fill underutilised services!

3.0 Clause 3(b). Excluded Land
For clarity we here break up the excluded land schedule into two parts viz. Part A, being the first four items ie. land under the N.P.W.S. Act, Crown Lands Act and Forestry Act, and Part B, being the balance ie. various protection zones.

3.1 We support the exclusion of the lands in Schedule 1 Part A from the Policy on the understanding that the inclusion of this list is here required as a legal techinicality.

3.2 We submit that Schedule 1 Part B, be deleted.
Comment
Where settlement is permissable within these zones we see that councils have adequate discretion to control any such development on its merits. This being the case it would be discriminatory to single out M.O. citizens. We can envisage a situation where M.O. settlement may be a more appropiate way of conserving the integrity of a sensitive zone than allowing private development!

3.3 If this recommendation is not acceptable then we urge that close attention be given to the list of zones and reasons given for their inclusion. These we submit, must all be scrupuliousely defined. What for example, does "Conservation" and "Open space" in the present list mean? Failure to be specific in this regard would enable a "hostile" council to effectively exclude large portions of rural land from the benefit of this Policy. In the Lismore City Council area for example it appears that two existing (gazetted) M.O. fall within a proposed environmental protection zone. What would their future situation be in terms of planning legislation?

4.0 Clause 4. Interpretation
Add "'home industry' and 'home occupation' shall have the meanings given to these terms in the Environmental Planning and Assessment Model Provisions, 1980."
For comment see under Item 6.4 below.

4.1 Add "'economically disadvantaged person' means a person who is in receipt of a Health Care Card or otherwise, by choice or circumstance, does not have an eqivalently greater income".

Comment

To give definition to this term as used in the Aims and Objective, clause 2(b). We believe it is of value to recognise that there are those who "choose" to live in a simple manner.

Re the definition of 'dwelling'. Determination of what constitutes "separate" needs to be carefully and clearly addresed in the Manual. Would a kitchenette on an open verandah for example, be classed as a kitchen and thereby making the whole structure a separate "dwelling" for the purpose of this Policy? Such determination has important consequences for example, in establishing density under clause 8.

5.0 Clause 5. Relationship to other planning instruments

It is noted that clause 5(1) is designed in part, to ensure that S.E.P.P. No.1 will apply, and the example is given, that this could be used to vary the proposed 40 ha minimum land size. If the minimum of 40 ha is to be retained (note our proposal in clause 6(1)(b) below that the 40 ha minimum be deleted) then, it is our understanding that as a rule-of-thumb, S.E.P.P. No.1 could be used to permit say a 10% reduction. This would be insufficient to cater for those situations where for example, 20 ha is "the prevailing subdivision" size as allowed for in Circular 44.

5.1 Add at the end of Clause 5(2), "on the condition that such a plan provides more detailed and liberal controls than covered in this Policy."

Comment

If this is the intent of the Policy, then we submit with respect, that the Policy should state same to give it legal standing!

6.0 Clause 6(1)(a). Single Allotment

If a minimum area of 40 ha is to be retained (see clause 6(1)(b) below where we are in favour of dropping this requirement) then we are of the view that if a developer owns two or more parcels of land each with a separate title, and each comprising an area of 40 ha or more, we do not see the need to require the consolidation of the titles, provided it can be demonstrated that a subsequent separation of the parcels would not breach any other clause of this Policy eg. adequacy of water supply, density of development.

6.1 Clause 6(1)(b). Minimum area

We are of the view that there should be no minimum of 40 ha. Councils should be given the discretion to determine each application on its merits. This would permit greater flexibility and closer dovetailing between this Policy and the Dual Occupancy Policy. It will also accommodate the situation where the prevailing subdivision is for example, 20 ha.

6.2 6(1)(e). Prime crop land
The notion that "the council has determined" seems to imply that the council may accept, or reject, the advice of the Dept. of Agriculture. If this is what is intended, we submit that a "lash back" condition could arrise where the Dept. of Agriculture did not consider a particular proposal to be on prime crop land, but the council had other ideas about this! Rewording may remove any possible ambiguity on this account.

6.3 Clause 6(1)(f). Visitors Accommodation
We suggest that the statement in the glossy leaflet "schools, community facilities, workshops & visitors' accommodation are to be permitted" be included in the Policy.

6.4 Add a new clause 6(4), "'Home occupation' and 'home industry' shall be permissable land use."
Comment
This provision gives effect to Objective 2(d) in accordance with our proposed amendment. We understand that 'home industry' is not permissable use in Rural 1B zones. This provision would assist development of self-generating forms of livelihood not otherwise permissable. 'Home occupation' has been included here for the sake of clarity for the lay person not withstanding its availibility under s.35(c) of the Model Provisions.

6.5 Add a new clause 6(5) to the effect that nothing in this policy shall be construed as to restrict the State or Commonwealth Minister for Aboriginal affairs from implimenting any policy relating to aboriginal housing or resettlement.
Comment
This principle is proposed to acknowledge that special conditions may need to apply for example, in respect to traditional patterns of settlement in remote areas of the state.

7.0 Clause 7 Heads of Consideration
Re Clause 7(1)(j). What inference is to be drawn from a finding that the land is in a rural residential expansion area? Is it to be assumed that M.O. development is to be considered incompatable with rural residential development? If so, we would take exception to this concept.

7.1 Add a new clause 7(o), "The bona fides of the application in terms of, in particular, the Aims and Objectives of the Policy."
Comment
This clause relates to the bona fides of the application to ensure that it genuinely meets the spirit and letter of this Policy. It is suggested that where an application is made by an agent or a person who will not, or appears may not reside on the property in the long term then the council shall call for, examine, and take into account the following documentation and or statements as appear applicable in the particular circumstances:

* evidence that there is a communal organisation and that there is, or is to be, a communal decision making body,
* the aims and objectives of the orginasation,
* constitution, articles and memorandum,
* trust deeds and the like,
* statement of distribution of any profit,
* statement of proposed transmission of decision making authority to the share holders generally,
* statement on the disbursement of any assets etc. in the event of the winding up of the organisation,
* statement on the obligations and entitlements of a shareholder generally, and in particular the organisations rights in the event of a share holder wishing to leave or sell a share or a building.
* such other documentation or statements as the council may require.

7.2 It is submitted that the presentation of such data will not be onerous on a bona fide applicant and that it should readily reveal whether or not an application is in accord with the spirit of this Policy.

7.3 As a further safeguard the council should have the right to require, as a condition of approval, that the approval will lapse, if at the expiration of a stated period of time, specific conditions have not been fulfilled, or, development as applied for, has not occured. Such a practice would be analagous to a B.A. where corrective action can be insisted upon if construction is not in accordance with the approved application.

7.4 If a council comes to the view that an application is, or may be, of a "speculative" nature for personal profit then consideration could be given to having the land in question rezoned as a "rural residential" area. (To be approved this would then require the concurence of the D.E.P. If approved, strata titling would then be available to the developer).

7.5 Add a new Clause 7(p)(1) viz. "The effect of the proposed development on aboriginal relics and sites", and a further Clause 7(p)(2) viz. "comment on the proposed development by an aboriginal, if any, claiming to have traditional association with the land in question".

Comment

Clause 7(p)(1) provides for consideration of aboriginal relics and sites while Clause 7(p)(2) provides for comment by aborigines traditionally associated with the land in question.

7.6 There is widespread and strong support that this Policy recognise the existence of contemporary aborigines and respect for their attitudes towards the land. Not withstanding this it is not proposed that council's determining authority be diminished in any way. The principle is one of acknowledgement through consultation.

7.7 It is suggested that a request for comment by relevant aborigines be included in the advertisment placed pursuant to clause 10 of this Policy and consideration of this would surfice where the development is for four or more dwellings, and otherwise, comment sought from the local Aboriginal Land Council.

7.8 It is suggested that in the Manual that the list in clause 7(1) be consolidated with the other items in s.90 of the E.P.A. Act, so that applicants will hopefully be in a position to address, all the relevant heads of consideration in any D.A.

7.9 Re Clause 7(2). The inference appears to be from the wording that for three or less dwellings, a map is not required to accompany a D.A. Is this not at variance with s.77(3) of the L.G. Act where eg. the Lismore City Council requires that a map must accompany all applications? (See this council's D.A. form - not being a subdivision).

8.0 Clause 8. Density of Development

Re clause 8(1). Density should in our view, ideally be determined on the basis of the capacity of the land to carry the proposed development ie. taking into account eg. climate, topography, soil type, ground cover along with all the items listed in clause 7.

8.1 If the present basis of an arbitrary formula is to be retained then we are of the view that the first formula should be used for all properties, regardless of size. (This formula is considered to be satisfactory even where there is no minimum of 40 ha as we have proposed be the case, in 6(1)(b) above).

8.2 We do not see that there is a sound basis for reducing the density on larger holdings. Indeed some could exhibit an ability for a greater carrying capacity than a smaller holding! It seems reasonable to us to expect that development on large properties could sustain a retail shop etc. and as such rezoning as a "rural residential" area would appear to be appropiate. This process would then enable the density to be determined on the merits of the application. We further believe however, that the larger properties could get around the present formula by subdividing first and submitting seperate applications for each parcel!

8.3 In rounding off the number of dwelling it needs to be made clear that 0.5 is to be taken to the next whole number.

8.4 The present wording of Sub-clause (2) would require Council to consider the design of the individual dwellings before consenting to the Development Application (and Building Applications!). The intent of this clause however, could be preserved by allowing Councils to place a condition on a Development Approval to the effect that the dwellings subsequently approved shall not reasonably accommodate in total more people than the number calculated by multiplying that maximum number of dwellings by 4. We suggest that this clause be reworded accordingly to give effect to this concept.

9.0 Clause 9. Subdivision

We support Clause 6(1)(d) with its stipulation that at least 80% of the land be held in common ownership and Clause 9 with its provision to prohibit subdivision. Noel Hemmings, Q.C. however,in a Memorandum of Advice has expressed the view that principal legal structures in a Deed of Trust, or Articles of a Company, which specifically grant a member an exclusive right of occupancy to a portion of the land, do in fact constitute a subdivision within the meaning of the Local Government Act. The instructing solicitor, Mr. A. B. Pagotto has expressed the opinion that the Advice of Counsel would also cover "any community which granted a member exclusive right to occupy a dwelling (whether in writing, verbally or by way of a minute in the community records)".

9.1 If this interpertation is to pervail, then it follows that virtually all Multiple Occupancy communities may contain de facto subdivisions. If this is the case then it appears that either the Local Government Act should be amended or Clause 9(2) of the Draft Policy include a further Clause to the effect that sub-clause (1) of Clause 9 will not apply to a member of a community who is granted an exclusive right of occupation over his/her home site, provided the legal arrangments do not breach any provision of this policy including proposed new sub-clause 7(1)(o).

10.0 Clause 12. Contributions Under s.94

The wording of this clause we believe may be misconstrued to read that M.O. development will, under all circumstance, lead to an increased demand for services etc. We submit that it ought not be assumed that such development will result in an increased "cost" to council but that the situation be determined on its merits. The demand for example, may be minimal and not require the up-grading of the services, or, the service at the time, may be under-utilised. We recommend that the clause be reworded to be absolutely clear or, at least that the word "likely" is replaced with some other word such as "possible".

10.1 We consider that a contribution under s.94 should be limited in extent.

Comment

In Circular 23 to Councils on the application of s.94 (issued in 1981!) it is noted;

a. "the Court has been critical of the lack of research undertaken by Councils to justify their requirements." (Item 2).

b. "...that contributions be identified and justified ... particularly in terms of the nexus between the development and the services and amenities demanded by it." (Our emphasis) (Item 5).

c. "Any increase in development costs as a result of contributions under s.94 must be weighed against the wider community concern about access to housing. The Department's view is that there needs to be a compromise in the use of s.94 between the provision and establishment of services on the one hand and the cost to the ultimate consumer on the other." (Our emphasis) (Item 7).

d. "...the Department will be very concerned about the impact of the overall costs involved." (Our emphasis) (Item 8).

10.11 It appears in this regard that Councils have not heeded the contents in Circulars 23 and 42! We support the applicability of the following statements in the Discussion Paper and submit that they significantly bear on this issue.

a. "The results (of M.O. settletment) has been that the existing rural services and social infrastructure are again being utilised . Given the alternative that the new services would need to have been provided in the major urban areas, if the rural areas had not been resettled, then overall the community has benefited significantly ." (Our empahasis) (Discussion Paper p.2.)

b. "Applicants do not have the same ability to pay as more convential developers. This is largely because where there is subdivision of rural land, the market effect of the subdivision is that capital is generated, and this capital enables the developer to contribute to council's costs. M.O. does not of itself generate capital, and typical applicants have few resources that can be used to pay levies".(Discussion Paper p.32.)

10.12 We support in principle Clause 12 of the Draft Policy. In view of the history of councils tardy implimentation of Circulars 23 and 42 we urge that the necessary safeguards be taken to ensure that councis will in future, administer the application of s.94 in accordance with the spirit of the Policy.

10.13 We welcome the notion that "incentives should encourage the conservation of wildlife habitats within M.O. development and that this would for example, include omitting s.94 levies for open space." (Discussion Paper p.24).

10.14 We hence recommend that contributions under s.94 be limited in extent in accordance with the Guidelines set out in the Discussion Paper and as elaborated on pp.33-34 (-eg. a maximum of $1500. per dwelling for roads & bridges).

10.2 Councils should not impose road upgrading conditions under s.90 of the Act in addition to imposing a s.94 road contribution.

Comment

Our experience support that;

> "...contributions are too high. They reflect the actual cost to councils of upgrading existing facilities, rather than the additional wear and tear on those facilities caused by the proposed development itself." (Our emphasis) (Discussion Paper p.32.)

10.21 Direction is required to remove confusion (some say "mystification of the law"!) in respect to s.94 and the appropiate manner and extent of the requirement to upgrading roads. In a recent M.O. application for example, before the Coffs Harbour Shire Council road upgrading conditions were applied under s.90 but no s.94 contribution sought, while in the Kyogle Shire Council a s.94 contribution was sought (but no upgrading condition made under s.90), and in the Lismore City Council area it is the practice to make the normal s.94 charge and require a road upgrading condition under s.90. In each case the road upgrading condition under s.90 was to the value of hundreds of thousands of dollars! (Appeals to the court in some cases are pending).

10.22 (We also draw attention to the possible compensation claims that might be sought against a council if the Court should find that a council has acted improperly by overcharging for road upgrading under s.90!).

10.23 We support the D.E.P. Guideline for s.94 contributions in respect to roads and bridges;

> "Road improvement contribution (under s.94)...to apply instead of (and not in addition to) any specific requirement for local road upgrading which might be required under s.91(3)(a) and s.90(1)(j)".

and recommend that where a s.94 contribution is sought that no upgrading condition be sought under s.90 or s.91.

10.3 Since many M.O. communities develop slowly over a period of years, any contribution should be payable at the time a Building Application is submitted.

Comment

We support the statements in the Discussion Paper pp.33, 35 on the principle of "phased payments", and recommend its implimentation.

10.4 An alternative or "in kind" contribution should be provided to a financial contribution. We support the statements in both Circulars 23 and 42, "that contributions 'in kind'... could be an acceptable allternative" and draw attention to the fact that no council to date, appears to have heeded this advice! We therefor recommend implimentation of the proposal in the Discussion Paper;

> "The policy should include a provision claryfing that labour, or other contribution "in kind" should be acceptable, in lieu of land or monetary contributions." (Discussion Paper p.34.)

11. We support that there be guidelines for a uniform approach to determining Development Application fees as outlined in the Discussion Paper p.10 and recommend that provision be made in the S.E.P.P. or elsewhere, to achieve this.

12.0 Attention by ourselves and others, has over the years, been drawn to the fact that many communities have been waiting for six or more years for the introduction of Multiple Occupancy in their particular council area.

12.1 The policies under Circular 44 provided scope for legalisation of illegal development constructed prior to implimentation of M.O. legislation. (If anything, there are probably more illegal developments now than there were at the time when Circular 44 was introduced!). We hence strongly support that for "...those presently illegal developments which meet the criteria of the policy, legalisation should be possible", (Discussion Paper p.9.), and urge that recognition and appropiate provision for this be made in the S.E.P.P.

12.2 For the reasons identified in the Discussion Paper we do not seek retrospective approval for illegal structures as such, but rather that councils be obliged to consider the issuing of s.317(a)1 Certificates as a first option. Where a building does not comply with Ordinance 70 then it is suggested that councils be required to bring to the notice of home owners the provisions of s.317M of the L. G. Act. (Note in this regard that the Court, in Nicolson v. Lismore City Council recommended that more attention be paid to the use of s.317M for inovative design solutions. Demolition under s.317B should in our view, be an action of last resort).

12.3 A further option in this regard would be created by the speedy gazettal of amendment to s.317A to provide for the certification of structures built prior to D.A. approval. This amendment we understand is currently before the Minister for Local Government. We hence urge that the Minister for Planning and Environment seek of his colleague that the implimentation of this amendment be expidated as a matter of urgency.

12.4 With respect to tranisitional dwellings and the use of s.306(2) of the L.G. Act, it has been our experience that these where granted (and not all councils appear to be familiar with this provision) have usually been for a six month period with some option to extend to one year. This period is, in our view unrealistically brief and we consider has probably detered some owner-builders from bothering to apply at all.

12.51 We hence support the notion that "councils issue licenses for time periods sufficient to enable dwelling construction to take place for example two years, with option to renew up to a maximum of five years" (Discussion Paper p.11) as a more realistic proposal.

12.52 In respect to movable dwelling licenses under s.288A of the L.G. Act, as referred to in the Discussion Paper (p.11), it our view that an owner, or part owner of a property, when residing on the property, is not required to obtain a Movable Dwelling license by virtue of s.288A(7)ii read in conjunction with s.288A(9)(a).

13. We support the view that "councils should give development approval within a nominated dwelling area, without individual sites being specified in advance" (Discussion Paper p.12), but consider that this should apply to developments of any size.

14.0 Common ownership of the land

"Common ownership of the land" seems to us to be the corner stone of M.O. development and consider that clear acknowledgement of this principle ought to be expressed in the S.E.P.P.

14.1 The notions of "permanent group occupancy and management" (Discussion Paper p.6) and "principal place of residence" (Draft. Clause 2(a)), are not inappropiate of themselves, but we consider are not an adequate alternative to recognition of common ownership of the land in toto.

14.2 We note the arguements about ownership (Discussion Paper p.27) and the difficulty of "enforcing or monitoring" the existing policy. The practice of councils accepting a statutory declaration to the effect that at least 2/3 of the residents shall be shareholders seems to us not to have been onerous for new settlers or difficult for councils to administer.

14.3 It seems to us that stating this principle in the aims and objectives is important and worthwhile for its own sake and in addition will act at least as a psychological deterrent against inappropiate use of the policy by speculators. We hence recommend that such a provision be included in the S.E.P.P.

15. Due to the non strict applicability of existing land titles for M.O. we strongly support the view that a Cluster Titles Act be introduced. (Discussion Paper p.13). We ask that a draft be prepared by the D.E.P. and made available for public comment.

16. The Manual
We note and support the production of a Manual to accompany this policy. We ask however, that the Manual be given a status that is more than being just an advisory document. We are concerned for example, that the Guidelines for making a M.O. development application, prepared by the Grafton Office D.E.P. when presented as evidence in one court case were virtually dismissed by the court as having any credible force.

17. We would appreciate the opportunity of being able to comment on the revision of the draft policy and a draft of the Manual before these are published.

Reference

D.E.P. Multiple Occupancy In Rural New South Wales: A Duscussion Paper, D.E.P., Sydney, 1985.

Retainte 7/8/85

New South Wales Government

Department of Environment and Planning

NEW M.O. POLICY

TO: All City, Municipal and Shire Councils

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CIRCULAR No. 83

Our reference: 83/10203

Your reference:

12 August 1985

Draft State Environmental Planning Policy - Dwelling-Houses in Rural Areas (Multiple Occupancy)

The Minister for Planning and Environment, the Hon. R.J. Carr, M.P., has agreed to the exhibition of a draft State Environmental Planning Policy to permit the erection of several dwellings on a single rural holding in certain suitable circumstances.

2. This circular should be read in conjunction with the "Explanatory Notes on Multiple Occupancy Policy" and the draft policy itself. Copies of both documents are attached.

3. Council will receive multiple copies of a brochure publicising the draft policy. Further copies are available from the Department upon request.

4. The draft policy applies to all councils in the State except those around Sydney, Newcastle and Wollongong as shown on the map accompanying the draft instrument. However, this may be reviewed after the exhibition period of the draft policy which finishes on 27 September 1985. During this period, it would be appreciated if councils would give local publicity to the draft policy. Officers of the Department are happy to assist with locally convened seminars.

5. 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, reduces public confidence in the Government's policy and planning system as a whole. Federal Government support for the multiple occupancy concept is evident, but potential initiatives at both State and Federal level are hampered by the existing situation.

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6. Many councils have considered the introduction of multiple occupancy provisions in the past, but action has been slow due to lack of resources, more urgent local priorities and hesitancy over tackling the issue. It is hoped that the present moves to introduce a State policy will be welcomed in this context.

7. It is envisaged that when the draft policy is gazetted, the New South Wales Planning and Environment Commission Circular Nos. 35 and 44 will be withdrawn. In finalising the policy, the Department wishes to take full account of the views of councils, and the general public, and you are urged to make submissions on any aspects of the policy which concern your council.

R.L. PINCINI
Secretary

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

STATE ENVIRONMENTAL PLANNING POLICY No. 15 -
DWELLING-HOUSES IN RURAL AREAS (MULTIPLE OCCUPANCY).

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)

Minister for Planning
and Environment.

Sydney, , 1985.

Citation.

1. This Policy may be cited as "State Environmental Planning Policy No. 15 - Dwelling-houses in Rural Areas (Multiple Occupancy)".

Aims, objectives, etc.

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

(a) to enable people to erect multiple dwellings on a single allotment of land to be occupied as their principal place of residence and to develop the land for communal purposes;

(b) to enable people, particularly those on low incomes, to pool their resources to develop a wide range of communal rural living opportunities;

(c) to facilitate development 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 Federal governments, the council or other public authorities; and

(d) to facilitate development so as 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.

Application of Policy.

3. (1) Except as provided by subclause (2), this Policy applies to all land within the State which, under an environmental planning instrument, is within a "Rural" or "Non-urban" zone or area.

(2) This Policy does not apply to or in respect of -

(a) land in Sydney, Newcastle, Wollongong and adjoining areas, being the land shown edged heavy black on the map marked "State Environmental Planning Policy No. 15 - Dwelling-houses in Rural Areas (Multiple Occupancy)" deposited in the office of the Department; and

(b) the land specified in Schedule 1.

Interpretation.

4. (1) In this Policy, except in so far as the context or subject-matter otherwise indicates or requires -

"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", 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;

"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 environmental planning instruments.

5. (1) Anything in any other environmental planning instrument, not being a State environmental planning policy, (whether the instrument

was made before, on or after the day on which this Policy took effect) which would, but for this Policy, prohibit or restrict or enable a consent authority to prohibit or restrict the carrying out of development authorised by this Policy shall not apply to that development.

(2) A local environmental plan made after the day on which this Policy took effect may provide that this Policy, or any provision of this Policy specified in the plan, does not apply to or in respect of any land to which that plan applies.

Multiple occupancy.

6. (1) 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 where -

(a) the land comprises a single allotment not subdivided under the Local Government Act, 1919, or the Strata Titles Act, 1973;

(b) the land has an area of not less than 40 hectares;

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

(d) the area of the land available for common use (other than for residential accommodation) comprises not less than 80 per cent of the total area of the land;

(e) the council has determined, on the advice of the Director-General of the Department of Agriculture, that the land on which the dwellings are situated is not prime crop and pasture land; and

(f) the development is not carried out for the purposes of a motel, hotel, caravan park or any other type of holiday, tourist or weekend residential accommodation.

(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.

7. (1) A council shall not consent to an application made in pursuance of clause 6 for the carrying out of development on land unless it has made an assessment of -

(a) the availability and standard of public road access to the land;

(b) the availability of water supply to the land for domestic, agricultural and fire fighting purposes;

(c) whether the land is subject to bushfires, flooding or slip and, if so, the adequacy of any measures proposed to protect buildings from any such hazard;

(d) whether adequate provision has been made for waste disposal from the land;

(e) the availability of community facilities and services to meet the needs of the occupants of the land;

(f) the vegetation cover of the land and the need to conserve vegetation cover in order to minimise erosion;

(g) the visual impact of the proposed development on the landscape;

(h) the area or areas proposed for erection of buildings;

(i) the area or areas proposed for common use (other than for residential accommodation);

(j) whether the land has been identified by the council as being required for future urban or rural residential expansion;

(k) whether the development would benefit an existing village centre suffering from a declining population base and a decreasing use of the services provided in that centre;

(l) the need for any proposed development for common use that is ancillary to the use of the land;

(m) the effect of the proposed development on the quality of the water resources in the vicinity; and

(n) the effect of the proposed development on the present and potential agricultural use of the land and of lands in the vicinity.

(2) The council shall not consent to an application made in pursuance of clause 6 for the carrying out of development on land for the purposes of 4 or more dwellings unless the application is accompanied by a map which identifies -

(a) 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;

(b) any part of the land which the applicant considers, having regard to any advice of the Director-General of the Department of Agriculture, to be prime crop and pasture land;

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

(d) the source and capacity of the water supply for the dwellings; and

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

Density of development.

8. (1) A council shall not consent to an application made in pursuance of clause 6 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 (rounded off to the nearest whole 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.

TABLE.

Column 1.	Column 2.
Area of land.	Number of dwellings where A represents the area of the land the subject of the application when measured in hectares.
Not less than 40 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

(2) Notwithstanding that the number of proposed dwellings on land the subject of an application made in pursuance of clause 6 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.

9. (1) Where development is carried out on land pursuant to this Policy, the subdivision of the land under the Local Government Act, 1919, or the Strata Titles Act, 1973, is prohibited.

(2) Subclause (1) does not apply to 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; 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.

Advertised development.

10. (1) This clause applies to development carried out pursuant to a consent referred to in clause 6, being development for the purposes of more than 4 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.

(3) Section 84(4) of the Act does not apply as referred to in subclause (2) to the extent that it requires the notice referred to in section 84(4) of the Act to contain a statement to the effect that the application referred to in the notice and the documents accompanying that application may be inspected at the office of the Department.

Monitoring of applications.

11. Where a council receives an application made in pursuance of clause 6, 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.

Payment towards provision or improvement of public amenities and public services.

944

12. As a consequence of the carrying out of development in accordance with this Policy (as in force at the time the development is carried out), this Policy identifies a likely increased demand for public amenities and public services (as specified in Schedule 2) and stipulates that dedication or a contribution under section 94(1) of the Act, or both, may be required as a condition of any consent to that development.

Approval of Minister or the applicant.

13. A council shall not, in respect of a development application made to it by the Crown or a public authority for its consent to carry out development to which this Policy applies -

(a) refuse to grant its consent to the application except with the approval of the Minister; and

(b) attach any conditions to its consent except with the approval of either the applicant or the Minister.

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 -

(a) sections 307(c) and 314(1)(c) of, and Schedule 7 to, the Local Government Act, 1919;

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

(c) 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 -

(a) the Governor approved of subclause (1);

(b) the Minister for the time being administering the provisions of the Local Government Act, 1919, referred to in subclause (1) concurred in writing in the recommendation for approval of the Governor of that subclause; and

(c) 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.

(Cl.3(2).)

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

Land which is a State recreation area within the meaning of the Crown Lands Consolidation Act, 1913.

Land which is a reserve within the meaning of Part IIIB of the Crown Lands Consolidation Act, 1913.

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 one of the following zones or areas:-

(a) Coastal lands acquisition;

(b) Coastal lands protection;

(c) Conservation;

(d) Escarpment;

(e) Environment protection;

(f) Environmental protection;

(g) Open space;

(h) Rural environmental protection;

(i) Scenic;

(j) Scenic protection;

(k) Water catchment.

SCHEDULE 2.

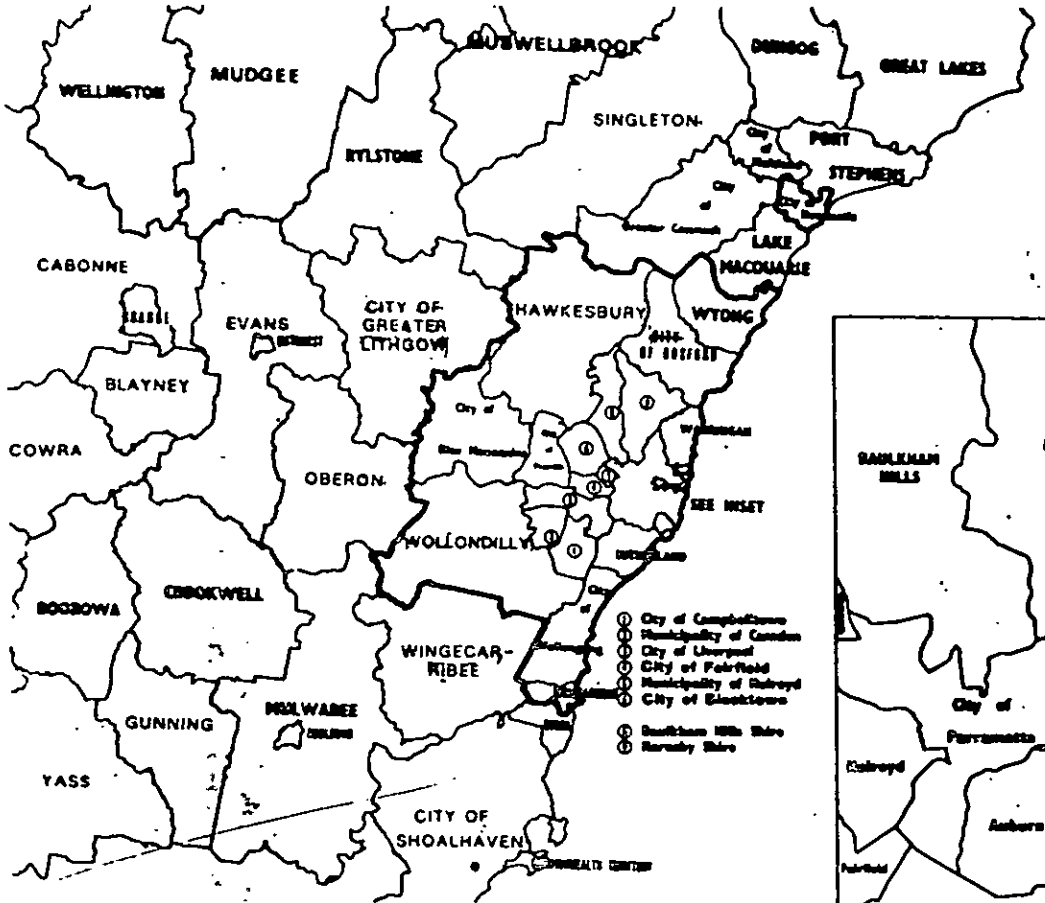
(Cl.12.)

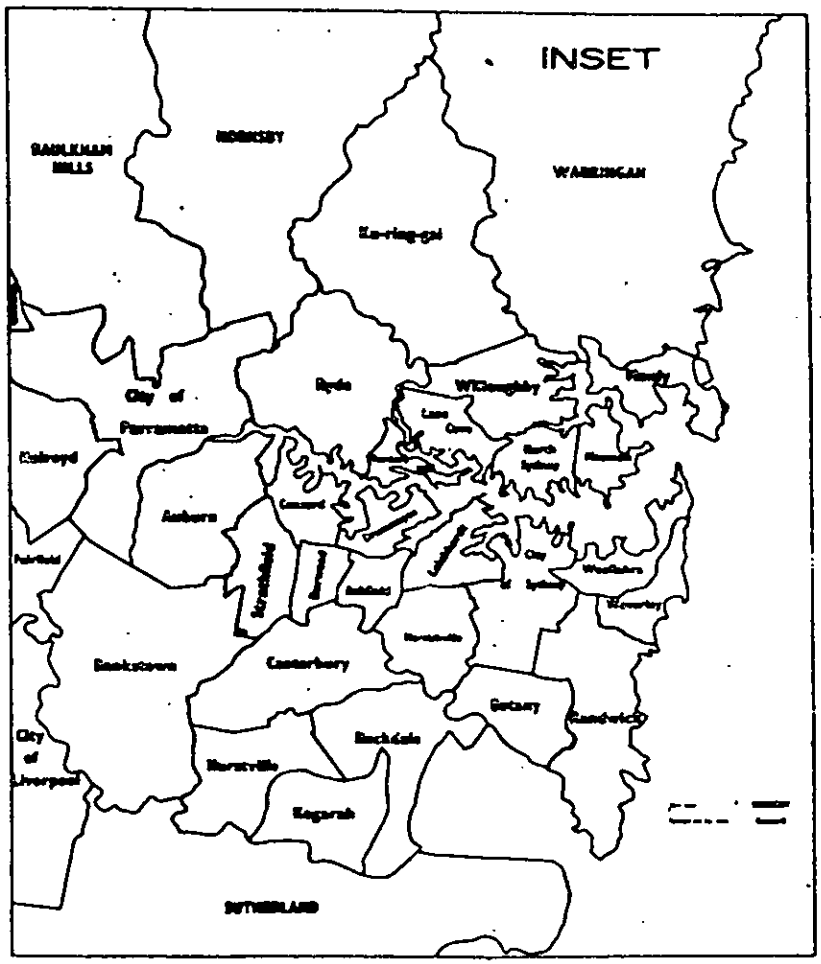
Bush fire fighting facilities.

Community facilities.

Open space.

Roads and bridges.





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SCALE 1:2000000

DRAFT

DEPARTMENT OF ENVIRONMENT AND PLANNING
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

STATE ENVIRONMENTAL PLANNING POLICY NO.

Dwelling Houses in Rural Areas (Multiple Occupancy)
Land to which this Policy does not apply

DRAWN BY RH	DATE 4.4.85	NOTATIONS
CHECKED BY	SUPERVISING DRAFTSMAN R Hayward	Land to which this Policy does not apply .....
	PLANNING OFFICER S.R. Rankin	Local Government Area name and boundary..... WYONG
DEPT FILE NO 83/10203		
GOVT GAZ OF		CATALOGUE NO

It also sets out the conditions which must be met before council can consider a development application of this nature. The land must:

i) comprise a single, unsubdivided allotment; and

ii) be 40 hectares or more in area.

The buildings proposed must:

i) not exceed 8 metres in height;

ii) not be on prime crop and pasture land;

iii) not be for the purpose of a motel, hotel, caravan park, holiday, tourist or weekend accommodation; and

at least 80 per cent of the total area of land the subject of the development application must be for common use.

Subclause (2) allows a person to choose whether a development application for multiple occupancy is considered under this Policy or a local environmental plan or other planning instrument where such plan or instrument contains provisions enabling the development.

Subclause (3) provides that the creation of an allotment of 40 hectares or more cannot be carried out under the Policy.

Clause 7 : Lists the matters or heads of consideration which a council must address before determining an application for multiple occupancy. Subclause (1) applies to all applications which will result in two or more dwellings, while subclause (2) lists additional matters which must be considered where an application will result in four or more dwellings.

The matters listed are additional to those stated in section 90(1) of the Environmental Planning and Assessment Act, 1979. They are required because of the possible particular impact of multiple occupancy development on the environment.

EXPLANATORY NOTES ON MULTIPLE OCCUPANCY POLICY

Clause 1 : This clause gives the name of the Policy.

Clause 2 : This clause states the aims and objectives of the Policy.

Clause 3 : This clause defines the lands to which the Policy applies. Apart from lands in and around Sydney, Newcastle and Wollongong and the conservation and protection zones described in Schedule 1, the Policy applies to all "Rural" and "Non-urban" zones.

Clause 4 : This clause defines the terms used in the Policy. These are largely self-explanatory except perhaps for "dwellings". Subclause (2) provides for the concept of "expanded" dwelling-houses. Expanded dwelling-houses are intended to help councils to meet the needs of people, not necessarily related, who desire to live as a single household but in two or more separate dwellings with shared facilities.

Clause 5 : This clause explains how the Policy relates to other planning instruments. This Policy prevails over local environmental plans which may prohibit or restrict the type of multiple occupancy development enabled by the Policy. However, subclause (2) provides for a local environmental plan to be prepared which over-rides the Policy. This situation is only envisaged where such a plan provides more detailed and liberal controls than covered by this Policy as may be justified having regard to the local conditions in an area.

Subclause (1) also says that State Environmental Planning Policy No. 1 - Development Standards still applies. This will enable consent to be granted, where justified, to a multiple occupancy development which does not comply with the standards contained in this Policy, e.g. where land the subject of a multiple occupancy application is less than 40 hectares.

Clause 6 : Subclause (1) provides that multiple occupancy is development requiring the consent of council for two or more dwellings on land to which the Policy applies.

Clause 8 : Deals with density of multiple occupancy development which may be permitted on an allotment. Subclause (1) gives formulae for calculating the number of dwellings including existing dwellings, based on the area of the allotment. To determine the density, i.e., the number of dwellings permissible, it is only necessary to substitute the area of the subject land for the letter "A" in the appropriate formula and then to calculate the answer.

The formulae are designed so that the density of development decreases as the area of the land the subject of the development application increases.

On more than 360 hectares of land the maximum number of dwellings permissible is 80 regardless of how much larger than 360 hectares the land area is.

If on land areas in excess of 360 hectares more than 80 dwellings are required, then either a separate local environmental plan will need to be prepared or an application made under State Environmental Planning Policy No. 1 - Development Standards.

Subclause (2) requires that the density is also limited by an assessment of the accommodation needs for the proposed number of people, with an average of four persons per dwelling. This requirement is to meet the situation caused by expanded dwellings.

Clause 9 : This clause prohibits the subdivision of land when carrying out multiple occupancy development pursuant to this Policy. Subclause (2) lists subdivisions for particular purposes such as public road widening which are permitted.

Clause 10 : This clause provides development with a total of more than four dwellings to be advertised. This recognises that the environmental impact of such development is likely to be greater and provides the opportunity for public comment. Such comment can then be taken into consideration by the council in reaching its decision.

Clause 11 : Enables the Department to monitor the Policy.

Clause 12 : Enables the council to levy a payment towards the provision or improvement of public amenities and services caused by the development when the provisions of section 94 of the Act are satisfied. Such services are bush fire fighting facilities, community facilities, open space and roads and bridges.

Clause 13 : This clause provides that a council cannot refuse a development by the Crown without the approval of the Minister. If a council wishes to attach conditions to its consent it can only do so with the approval of either the applicant or the Minister.

Clause 14 : This clause suspends the provisions of other Acts, and any agreement, covenant or instrument which would otherwise prevent multiple occupancy from being carried out.

19.8.85.

SEPP 15

Re "dwelling" definition. Allows expanded flats. Theoretically a community could be 1 such house (of Boarding). Hence min + max interpretations req'd.

Options

A. Br. only

I. (a) Communal Cooking, dining

(b) + Communal lounge

(c) + Communal laundry

B. Br + 'en suite' + shower + wc

C. Br + 'en suite' + open verandah kitchenette (below min space req)

D. Br + 'en suite' + internal kit-cupboard (above min. space req'd)

E. Br + 'en suite' + Rep kit room

Theoretical Combinations

1. Z + A + A + A = Class I, ie 4 rgld ("expanded") dwellings.

2. Z + B, Z + B + A = "

3. Z + C, Z + C + B + A = "

4. D = Class I

5. E = Class I

6. E + A, E + B, E + C = Class I where A, B, C are detached buildings (NB Note Class X)

7. D + D, Z + D are illegal options by the definition

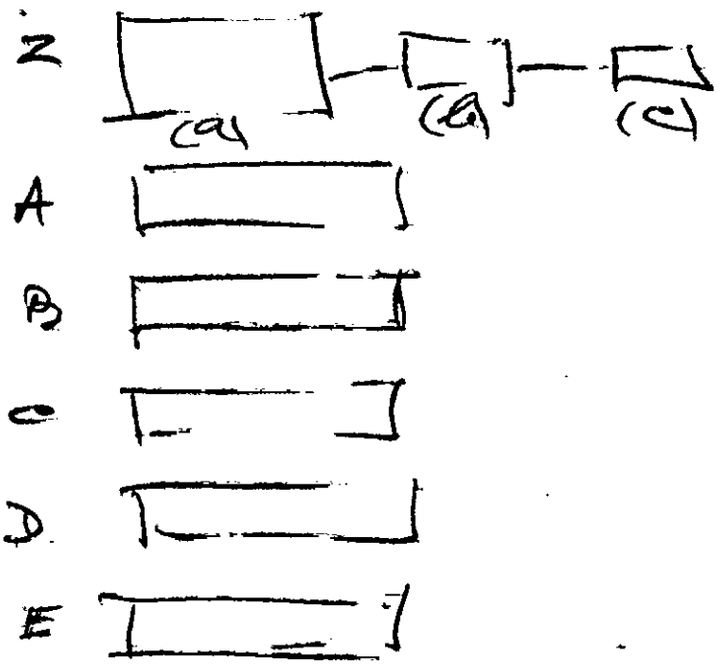
8. Boarding House see DTO 6.1 (4) determined by design or use. One reading of SEPP definition is that if it is capable of being used as a Rep dwelling then (for planning purposes) it is, ie must be treated as 2 dwellings (+ hence attracting levies applying to multiple occupancy.

This mitigates against a bona fide family who want 2 Br, 2 kit. It also determines (for planning purposes) the number of dwellings on the property cf Cl 8. Care needs to be taken that this, for planning purpose only - eg not applicable re V.G.

(A)

PTO

Improved Layout



(A). NB. Plans would have to be submitted at DA stage to determine the number of dwellings. If req'd number was in excess of the formula allowance, then care would need to be taken to group these into 'expanded' house clusters. (This of course would only be poss where individually they were not capable of standing alone).

Rob

15.985. Evidence of people/house is in Planning Workshops Report

Byrnan is making a sub to Inquiry also MOAG.

re Council rating more than general rate. He recalls the report but does not know where this is, suspects it is without foundation.

re Kyogle formula in Jolley (1985). He will address this to discount or suggest conditions, thresholds that might apply.

(Jane M. has asked him to make a sub for Landcom to the Inquiry & he has agreed. Re Wadeville Land is not happy with forest rearrangements in Lcom. A review of whole scheme has been commissioned to check viability. Sounds to me like a set up to knock off.)

19.8.85 Lyall.

Re Community Title.

This is Group Title in Qld, which is the same as Land Strata in NSW & Model Clusta Code in Vic.

In Qld each share holder has freehold title to their portion, with common land held by corporate body.

This may be unsatisfactory if a Corp or Co holds the whole land and place covenants on the individual titles.

There is some Ds of LGA which deals with the situation where there are 2 or more houses on a property

Re SEPP(no) Draft re "dwelling" definition re 0.70.

LYALL re "en suite"

'en suite' means addition of 'toilet & shower' to a class I building.

He sees that the term 'dwelling' is defined differently in almost every act, often different in different SEPPs.

Since 'dwelling' for planning purposes can not be taken to & apply to 'dwelling' from part of Dict of 070

What marks the diff. between Class I & III?
A cluster of separate bedrooms serviced by an amenity block would be Class III

A Class I must have, min floor area, kit, wc, show & laundry facilities. A separate bedroom to this could be viewed as being a satellite building ie = Class X (ie an out building)

070 says nothing about rooms being attached & ∴ may be detached. It appears that if a building meets the requirements for a Class I structure then this delimits it to just that.

R. Hamilton 10.21.

Multiple Occupancy In Rural New South Wales

A Discussion Paper

OK = transferred to author extracts.

This paper was prepared in the Department as part of the background work undertaken in developing the draft State environmental planning policy on multiple occupancy.

The paper examines the various issues requiring review and proposes planning policies on multiple occupancy.

Owing to the range of issues involved, and to the broad public interest, the paper has been published as a background document, to assist in discussion of the issues.

The draft policy which was placed on public exhibition in August 1985 will be reviewed in the light of submissions received.

Department of Environment and Planning
Sept. Sydney 1985

DISCLAIMER

This report is prepared for discussion purposes only.

While discussion and comments are welcome, no other person is invited to act on this report for any purpose and the report does not indicate what outcome will follow from its publication or what course public administration will take.

ERRATUM

(to page 31, paragraph 3)

It should be noted that Circular No. 42 only applies to new residential release areas. However, it gives an indication to councils of how to approach section 94 contributions.

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INTRODUCTION

The Government's policy on multiple occupancy was outlined in Circulars Nos. 35 and 44 issued by the Planning and Environment Commission (now the Department of Environment and Planning). The policy encouraged councils to introduce enabling provisions for multiple occupancy. Very few councils have done this, despite obvious demands for multiple occupancy, and a proliferation of illegal developments in many areas. Those councils that have permitted multiple occupancy, on a shire-wide or individual property basis, have placed conditions on development which are in some cases discriminatory and prohibitive.

At the same time as action is needed to more forcefully implement the Government's current policy, there is a need to revise the policy in several respects.

The following discussion paper examines the various issues requiring review and proposes planning policies on multiple occupancy. These planning policies formed the basis of the July 1985 draft State environmental planning policy on multiple occupancy. Issues identified are:

i) the need for enabling provisions in most rural areas;

ii) the need to avert discrimination and promote policy objectives;

iii) the need to revise the original policy to consider:

- policy objectives and definition of multiple occupancy,
- amendment of advice relating to existing illegal buildings,
- new size and density controls,
- deletion of ownership criteria,
- provisions for development other than agriculture and dwelling houses, e.g. Bakeries, Banks, Schools,
- staged development,
- limits on development application fee,

- advisory limits on s.94 contributions,

- provision for temporary dwellings,

- simplified environmental criteria, including criteria for access, water and drainage, bush fire risk, waste disposal, facilities and services, hazards, vegetation, flooding, siting of buildings and visual impact),

- public notification,

- limits on subdivision,

- strata title subdivision;

iv) the need for new legal title provisions.

C O N T E N T S

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1. POLICY OBJECTIVES

Current policy objectives

The current policy on multiple occupancy development as expressed in Planning and Environment Commission (P.E.C.) Circulars Nos. 35 and 44 does not set out specific objectives. However the policy is aimed at making provision for communal living in rural areas, and the advantages and objectives of such a policy are implicit.

Communal rural living opportunities, agricultural production and sustainability

Multiple occupancy is but another form of rural land use. As it involves the creation of residential settlements it has many features in common with small villages or rural residential estates. However, unlike these activities there is more potential for multiple occupancy communities to pool their resources to either farm land or to achieve a high degree of sustainability. The concept of numbers of people pooling resources to jointly purchase land and subsequently farm, perhaps also processing some of the produce, is an exciting one. So too is the concept of sustainability.

These concepts have been promoted at Federal level, notably by the Prime Minister, Mr. Hawke, in his references to "kibbutz" development. An objective of the proposed multiple occupancy policy would be:

> to enable people, particularly those on low incomes, to pool their resources in order to develop a wide range of communal rural living opportunities.

Such opportunities could lead to diversified agricultural productivity and/or to a high level of sustainability through co-operative or extended family enterprises.

Rural land development for housing and communal purposes

The Government's rural planning policy has concentrated on preventing the fragmentation of rural land and concentrating urban settlement on land suitable for this purpose in either villages or rural residential estates. It was also thought that the provision of public amenities and services would be less costly if this policy were followed. During the 1970s it became obvious that there was a significant demand for rural settlement on a communal basis. In many cases multiple

occupancy settlers have encountered considerable opposition from other members of society. The resulting community friction has mainly been centred on differing values or beliefs. However it has been exacerbated by the current planning controls which effectively prohibit multiple occupancy development. It is not the role of planning controls to discriminate against a particular lifestyle. To facilitate this type of settlement, amendments to these controls are needed. Major objectives in drafting the multiple occupancy policy were therefore:

> to facilitate development 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 Government, the council or other public authorities; and
>
> to enable people to erect multiple dwellings on a single allotment of land to be occupied as their principal place of residence and to develop the land for communal purposes.

To tie these objectives into the framework of current Government policy (P.E.C. Circulars Nos. 67 and 74, referred to in section 117 directions) as well as future policy (any future section 117 directions and intended rural State environmental planning policy (S.E.P.P.)) the following qualification should be added:

> consistent with section 117 directions and State policies relating to rural lands.

Social infrastructure and services

Increased mechanisation of agriculture has meant that less labour is required on the farm and farm sizes have increased to efficiently utilise the new machinery. The fluctuating fortunes of the dairy industry have also had a major impact in some areas. The effect on many areas on the north and south coasts of N.S.W. was that small farms and the townships that served them were progressively drained of population up to the early 1970s. It is the availability of these farms that initially attracted many multiple occupancy communities and the result has been that the existing rural services and social infrastructure are again being utilised. Given the alternative that new services would need to have been provided in the major urban areas, if the rural areas had not been resettled, then overall the community has benefited significantly.

The Government's aim should be:

> to facilitate development so as 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.

Swinton is a case in point

2. RANGE OF MULTIPLE OCCUPANCY DEVELOPMENT

CURRENT POLICY

POLICY ONE: THE NEW SOUTH WALES PLANNING AND ENVIRONMENT COMMISSION SUPPORTS THE MULTIPLE OCCUPANCY, ON A CLUSTERED OR DISPERSED BASIS, OF RURAL PROPERTIES IN COMMON OWNERSHIP AS AN APPROPRIATE LAND USE FOR RURAL AREAS SUBJECT TO A NUMBER OF ENVIRONMENTAL AND LOCATIONAL GUIDELINES.

POLICY SIX: ANY HOLDING SUBJECT TO AN APPLICATON FOR MULTIPLE OCCUPANCY STATUS MUST BE OWNED IN ITS ENTIRETY IN COMMON BY AT LEAST TWO-THIRDS OF ALL ADULTS RESIDING ON THE LAND, OR MUST BE OTHERWISE OWNED ON BEHALF OF THOSE PERSONS.

The policy contained in P.E.C. Circulars 35 and 44 does not contain any definition of multiple occupancy, beyond the fact that it involves common ownership of land and includes multiple dwellings on a clustered or dispersed basis.

Types of development

Several different development concepts are evident in the State, particularly the North Coast region, ~~which may or may not be considered as multiple occupancy.~~ These are:

i) Communes/Communities: Totally communal ownership of land, individual ownership of residential buildings; some communal buildings; some expanded houses (i.e. groups of individual living/sleeping structures around communal kitchen structures); and normally a grouping of residential structures into distinct areas. These communities range in size from a few households to several hundred residents. The few groups that involve totally group ownership are mainly religious (e.g. Hari Krishna community).

ii) Group parcels: Individually owned house blocks recognised through title or agreement, with the bulk of the property in common ownership. Some individually worked farming areas may also be allocated by title or agreement, but these normally constitute a minor part of the development. Dwellings and individual plots are normally clustered to some degree.

iii) Flexible groups: Typically this form of group has no prerequisites but evolves with individual aspirations. Some allow any member to adopt land for personal use according to communally approved projects, and any house site so long as other residents do not object. Normally these groups are small, but one large group (Tuntable Falls) has many flexible characteristics.

iv) Cluster farm management: This includes concepts supported by the Department of Agriculture, including strata titling. Individual house blocks are identified but the bulk of the land is in common ownership, managed by the body corporate or by agents.

v) Group farm management: Some proposals involve Torrens Title of individual farms on a plan that allows for communal management by the owners or their agents for a definite agricultural purpose. Strata titling would be a second choice. The market for this type of development appears to be with people who initially use houses as holiday homes, with possible later use for retirement; and with those seeking an injection of funds into an agricultural enterprise with some tax benefits.

vi) Purchasing groups: Mebbin Springs and Billin Cliffs are typical developments marketed to give relatively cheap access to rural land to people who might otherwise seek individual purchase. Purchasers have to work out their own management preferences, which will not be known by the developer. Strata titling is desirable but company ownership structures may be an acceptable second choice.

vii) "Workers" dwellings: The demand for two or three houses on blocks of any size arises from the form of household structure becoming more flexible, reflecting changes in society; it may become increasingly common for a functional household to spread over several structures or for a single household to split into several groups. Extended families, often involving middle aged or elderly parents, want co-operative land management. Many nuclear households find benefit in having one or two other households to share with, so that children benefit from company, and chores may be shared. Particularly on large holdings in isolated locations there may be added security through numbers, to cope with illness, accident, fighting bush fires, and minding the property. Although some of these needs are met through "worker's dwelling" provisions of planning instruments at present

(depending on the attitude of the particular council) it cannot be assumed that this will continue.

viii) Group renters: At least one proposal has been made for group occupancy to be rented, at nominal rates, to disadvantaged households on philanthropic grounds. In this case ownership would be retained by a single individual. The Land Commission of N.S.W.'s proposed involvement in multiple occupancy may initially fall into this category. Various groups through community tenancy schemes may be interested in this concept. It may also be of interest to Aborigines through Aboriginal Lands Council developments.

It is considered that multiple occupancy should be defined as any permanent group occupancy and management of a single rural property beyond a single household. It should include extended family farms, split households, small groups and large groups. It should include developments made initially by a party other than the occupants, but managed by the occupants. Ownership may be flexible in as much as occupiers of a development may or may not be owners. Either clustered or dispersed development may be involved, and either small or large groups accommodated. Second homes or development for tourism should be discouraged. The definition could encompass strata or company title subdivision so long as the major part of the property is in common ownership. However, it is proposed that subdivision of any kind should not be permitted by the State policy.

Multiple occupancy is defined as permanent group occupancy and management, with only a minor part of the land individually managed or occupied. Rural residential development would then be defined as development where any group occupancy/management formed only a minor part. Density characteristics of multiple occupancy may also differentiate it from rural residential development - see further discussion in Section 7.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY ONE: THE DEPARTMENT OF ENVIRONMENT AND PLANNING SUPPORTS THE USE OF RURAL LAND FOR MULTIPLE OCCUPANCY DEVELOPMENT. ENABLING PROVISIONS SHOULD BE INTRODUCED TO OVERRIDE EXISTING LOCAL PLANS, THOUGH FUTURE LOCAL PLANS MIGHT LATER AMEND THE STATE POLICY.

POLICY TWO: "MULTIPLE OCCUPANCY" MEANS THE DEVELOPMENT OF RURAL LAND FOR THE ERECTION OF MORE THAN ONE DWELLING HOUSE OR EXPANDED DWELLING HOUSE WHERE THE MAJOR PART OF THE PARCEL IS HELD IN COMMON OWNERSHIP AND MANAGEMENT, AND THE MAJORITY OF RESIDENTS PARTICIPATE EITHER IN OWNERSHIP OR MANAGEMENT.

2(a) 6(a) 8% 50% 0 nil.

At his Meeting, Karaka said the 2/3 had been dropped at request of Councils who said they could not administer/determine this.

3. CURRENT PLANNING AND BUILDING CONTROLS

CURRENT POLICY

POLICY TEN: MULTIPLE OCCUPANCY HOLDINGS IN EXISTENCE PRIOR TO GAZETTAL OF AN ENABLING CLAUSE THAT WERE DEVELOPED WITHOUT COUNCIL APPROVAL, SHOULD BE LEGALISED UNDER THE ENABLING CLAUSE IF THEY MEET THE REQUIREMENTS OF THE CLAUSE.

retrospective.

POLICY ELEVEN: RESIDENTS OF EXISTING BUILDINGS ON MULTIPLE OCCUPANCY HOLDINGS WHICH HAVE BEEN LEGALISED UNDER THE ENABLING CLAUSE MUST SUBMIT BUILDING APPLICATIONS TO THE COUNCIL. THE COUNCIL SHOULD ALLOW AT LEAST ONE YEAR SUBSEQUENT TO GAZETTAL FOR EXISTING BUILDINGS TO CONFORM WITH REQUIREMENTS.

update.

POLICY TWELVE: ALL BUILDING PROPOSED FOR MULTIPLE OCCUPANCY HOLDINGS APPROVED SUBSEQUENT TO, OR AT THE TIME OF, GAZETTAL OF THE ENABLING CLAUSE MUST BE SUBJECT TO THE BUILDING APPLICATION PROCESS AND CONFORM WITH BUILDING REQUIREMENTS.

"

Planning controls

P.E.C. Circulars Nos. 35 and 44 (cited in the Minister's Section 117 Directions to Councils) urged local councils to introduce provisions to make multiple occupancy a permissible development in rural areas. A demand for this development, in a situation where there were few opportunities for authorisation, has resulted in a proliferation of illegal developments in many areas.

Few councils have introduced such provisions. In the Northern Regions enabling provisions have been introduced in the City of Lismore, Tweed Shire, and part of Kyogle Shire; in the South East they have been introduced in Bombala Shire; and in the Central West they have been introduced in the City of Orange. In addition, some councils have introduced provisions relating to specific properties. A few councils have no planning controls - these include part of Taree in the Hunter Region, all of Tenterfield Shire in the New England Region, and part of Young Shire in the South East Region. Some other councils are in the course of preparing shire-wide plans which may introduce general enabling provisions, but the timing and outcome is uncertain. The limited areas where multiple occupancy is permissible is inevitably forcing land prices upwards.

Shire with no + No planning controls

Where enabling provisions have been introduced by way of a local environmental plan a council is able to consider a development application relating to multiple occupancy. It may approve the application unconditionally, approve it with conditions, or refuse it. The applicants can appeal to the Land and Environment Court against a refusal, or against any or all of a council's conditions. Conditions might relate to standards of access, bush fire risk, land ownership and land suitability, etc.

Where no enabling provisions exist, a council cannot approve a development application, and an applicant has no right of appeal. This is the case in most rural areas. In cases where a council would like to support an individual application, it must first go through the process of preparing a local environmental plan. The Department has discouraged such spot rezonings without a general approach to multiple occupancy development in the shire.

The current situation is similar to that when Circulars Nos. 35 and 44 were first issued, i.e. a proliferation of illegal developments in a situation where there are few possibilities for authorization. Some councils have sought to legalise small multiple occupancies through the "workers dwelling" provisions of their planning instruments, but these were designed for another purpose, and are limited in effect. Most councils are concerned that undesirable precedents should not be set. Dual occupancy provisions apply in some rural areas, but these are normally interpreted as relating only to attached dwellings.

Illegal development is a concern to multiple occupancy residents as it leaves them with insecurity (because of possible demolition) and creates difficulties in obtaining loan finance. It is also a concern to the wider community because it threatens the whole stability of the planning system (through reduced confidence). The present proposal is put forward in the context of the need to overcome this situation.

For those presently illegal developments which meet the criteria of the policy, legalisation should be possible. This should be achieved by councils processing development applications. It is intended that registration of existing illegal developments which may not meet the conditions and criteria laid down in the draft policy be invited during the exhibition of the draft policy, and that these then be discussed with councils. There may be a need for some flexibility in interpreting planning standards through the use of State Environmental Planning Policy No. 1: Development

Standards, so as to legitimise the existing situation and arrive at a reasonable starting point for future planning control.

Some ambiguity exists in the definition of a "dwelling house" in relation to some of the unconventional shared housing arrangements required for some multiple occupancy developments. The Department's Low Cost Country Home Building Guide clarifies that an "expanded dwelling house" consisting of several structures but sharing basic facilities should be treated as a single dwelling house for planning and building purposes. This should be made explicit in the new policy. Any density provisions should contain controls relating to accommodation for a specified number of people as an alternative to controls referring to numbers of dwellings.

Additional confusion surrounds the approval of large multiple occupancy developments. Councils should be advised, where appropriate, to approve of a maximum level of accommodation within designated dwelling areas, rather than a specified number of sites. Substantial commencement would then exist when any of the dwellings was substantially commenced. Site specific information would be appraised at the building application stage.

A maximum level of development application fee based on capital costs of $8,000 per dwelling (or $2,000 per person-accommodation) in an owner/builder situation is suggested.

Building controls

For most rural areas building applications are required for rural dwellings. This application is for approval that the proposed structure conforms with the requirements of Ordinance 70, pursuant to s.311 of the Local Government Act, 1919. An applicant can appeal to the Land and Environment Court against a council's decision relating to a building application.

A council cannot process a building application until a development application has been approved where such consent is required. In cases where buildings have been illegally erected during the rezoning process or before development consent is granted, they cannot be retrospectively given building approval. P.E.C. Circular 44 suggests that a local environmental plan to introduce multiple occupancy enabling provisions should give such retrospective approval. However this does not appear to be legally possible, because it would require the suspension of certain provisions of the Local Government Act, 1919. This policy should therefore be deleted.

A council is obliged, nonetheless, to seek to remedy a breach of the Local Government Act. This may be done either thrcugh demolition or through the issue of a s.317A Certificate of Compliance under the Local Government Act. Certification assures that any legal breach does not need to be rectified, either because:

(i) the provisions of Ordinance 70, i.e., building regulations, have been met; or

(ii) any departure is minor, not related to the structural soundness of the building, and does not worry the present occupants.

Obviously in presenting an application for a s.317A certificate, it may be useful to support it with an architect's or engineer's report. An applicant may appeal to the Land and Environment Court under section 317A(5) of the Local Government Act if a council refuses or fails to issue the certificate.

Transitional dwellings

Another controversial issue in relation to multiple occupancy developments (and other low-cost rural developments) is the inadequacy of provisions for transitional dwellings. Most residents wish to live on the land while they construct a house. This may take several years for people with limited capital, relying on their own labour.

Present provisions under the Local Government Act include those relating to movable dwelling licenses in proclaimed areas. Some councils appear prepared to issue such licenses, but there have been cases where renewal is not approved. Such a refusal is appellable to the Land and Environment Court, under section 288A of the Local Government Act, 1919, but given the temporary nature of the license, it may not be worthwhile presenting a case. There is also the view that unless real mobility is involved, a council may have no power to use these licensing provisions.

A preferable solution in some cases appears to be for councils to issue licenses to occupy a Class X structure (shed, etc. - a structure not necessarily meeting the requirements of Ordinance 70 for dwelling houses) under section 306(2) of the Local Government Act. It is recommended that councils issue licenses for time periods sufficient to enable dwelling construction to take place - for example two years, with an option to renew up to a maximum of five years.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY THREE: MULTIPLE OCCUPANCY HOLDINGS IN EXISTENCE PRIOR TO GAZETTAL OF THE STATE POLICY THAT WERE DEVELOPED WITHOUT COUNCIL APPROVAL SHOULD BE LEGALISED IF THEY MEET THE OBJECTIVES AND PLANNING CRITERIA CONTAINED IN THE POLICY. A REGISTER OF HOLDINGS WHICH MAY NOT MEET THE CONDITIONS AND CRITERIA OF THE DRAFT POLICY WILL BE COMPILED BY THE DEPARTMENT FOLLOWING EXHIBITION OF THE DRAFT POLICY, AND REFERRED TO COUNCILS FOR PROCESSING DEVELOPMENT APPLICATIONS. IN SOME CASES A VARIATION TO THE DEVELOPMENT STANDARDS MAY BE WARRANTED THROUGH THE USE OF STATE ENVIRONMENTAL PLANNING POLICY NO. 1: DEVELOPMENT STANDARDS.

POLICY FOUR: RESIDENTS OF EXISTING BUILDINGS ON MULTIPLE OCCUPANCY HOLDINGS WHICH HAVE BEEN LEGALISED BY A DEVELOPMENT CONSENT ISSUED UNDER THE ENABLING CLAUSE SHOULD BE ENCOURAGED TO APPLY TO THE COUNCIL FOR A SECTION 317A CERTIFICATE OF COMPLIANCE UNDER THE LOCAL GOVERNMENT ACT, 1919.

POLICY FIVE: FOR LARGE DEVELOPMENTS, COUNCILS SHOULD GIVE DEVELOPMENT APPROVAL FOR DWELLINGS WITHIN A NOMINATED DWELLING AREA, WITHOUT INDIVIDUAL SITES BEING SPECIFIED IN ADVANCE. FURTHER INFORMATION SHOULD THEN BE APPRAISED AT THE BUILDING APPLICATION STAGE. SUBSTANTIAL COMMENCEMENT FOR THE PURPOSES OF DEVELOPMENT APPROVAL SHOULD BE WHEN ANY OF THE DWELLINGS IS SUBSTANTIALLY COMMENCED.

POLICY SIX: A FORMULA FOR THE CALCULATION OF THE DEVELOPMENT APPLICATION FEE IS SUGGESTED, BASED ON A CAPITAL DEVELOPMENT COST OF $2,000 PER PERSON FOR OWNER BUILDERS.

POLICY SEVEN: TRANSITIONAL DWELLINGS FOR USE WHILE PERMANENT DWELLINGS ARE ERECTED SHOULD BE PERMISSIBLE, AND COUNCILS SHOULD CONSIDER LICENSING STRUCTURES FOR TRANSITIONAL USE FOR AN APPROPRIATE PERIOD.

4. TYPES OF LEGAL ARRANGEMENT

CURRENT POLICY

POLICY FOUR: FUTURE SUBDIVISION OF ANY HOLDING GRANTED MULTIPLE OCCUPANCY STATUS IS PROHIBITED AS LONG AS IT RETAINS THAT STATUS.

POLICY FIVE: ANY APPLICANT FOR MULTIPLE OCCUPANCY STATUS ON A HOLDING MADE UP OF MORE THAN ONE PARCEL, PORTION OR PART PORTION SHALL AT THE TIME OF APPLICATION ALSO MAKE APPLICATION FOR CONSOLIDATION OF TITLE.

Existing legal structures

Options available to multiple occupancy residents currently include:

(i) private company;
(ii) company limited by guarantee;
(iii) co-operative;
(iv) public company;
(v) trust (including unit trust shares);
(vi) charity or religious organisation;
(vii) partnership;
(viii) joint tenancy/tenants in common;
(ix) no specific legal structure;
(x) voluntary association;
(xi) single legal owner;
(xii) strata title (where permissible).

None of these legal structures adequately balances the interests of the group and the individual shareholder in a multiple occupancy situation. While most err in favour of group control (to the extent that home ownership grants may be difficult to obtain because of unspecified equity), strata titling of land probably errs in favour of the individual. The Strata Titles Act, 1973, provides a good framework for group management, through the body corporate, but places no limits on the individual's ability to dispose of his share as he wishes.

Possible new structures

An inter-departmental working group chaired by the Department of Environment and Planning has examined the need for a new legal structure, which could be tailored to multiple occupancy needs. It has concluded that a N.S.W. Cluster Titles Act would be appropriate to cater for multiple occupancy and other types of development. In the meantime it is apparent that company title will continue to be used for many multiple occupancy

developments, and some changes to the Local Government Act may be possible to provide more security to holders of company title shares (i.e. sections 4 and 327AA(2)).

One amendment not requiring legal change would be to introduce the concept of a proprietary lease, which would not be considered as subdivision in a multiple occupancy context. This presumably could be achieved via the S.E.P.P. process, with a clause suspending the operation of the relevant part of the Local Government Act, 1919 (s.4 contains the definition of "subdivision" which includes any lease beyond 5 years and the Act requires council consent for such subdivision) pursuant to s.28 of the Environmental Planning and Assessment Act, 1979.

The danger here is that a lease of that duration might actually constitute subdivision through established use, whatever the legal definition of subdivision. In the circumstances, it is recommended that the State Government continue to make representations to the Federal Government concerning eligibility of multiple occupancy residents for the First Home Owners Scheme assistance, and that no specific provisions for leasing be introduced at this time.

In devising any totally new legal structure, it is desirable to provide the following:

i) individual shares should be capable of separate sale or mortgage, but the group should have some control over the selection of new shareholders (perhaps a right to buy back the share at market value if a prospective shareholder is unsatisfactory);

ii) improvements, such as buildings, should be capable of being attributed either to the group equity or the individual equity, as appropriate;

iii) flexibility in voting rights of shareholders, for instance based on equality between shareholders, or on voting rights proportional to share value;

iv) exemption from land tax, and a reasonable tax liability in other respects;

v) ability to advertise shares freely bearing in mind that the number of shares will be limited by the density provisions in the State policy.

vi) secure tenure and occupation rights for all residents;

vii) prescribed courses of action for the group to resolve disputes and meet its liabilities;

viii) a stable structure, capable of being changed, or otherwise capable of continuing indefinitely.

No existing legal structure meets all of these requirements. There is a considerable difference between different groups and the structures they seek, so that some may be satisfied by only some of the requisites listed. The Land Commission, in its feasibility study, has chosen to investigate using a private company structure, with proprietary long-term leases if possible.

Company structure is in common use, but major problems are liability for land tax, and restrictions on the ability to advertise shares. The degree of individual equity is capable of being specified to the extent that home ownership grants may be given to company shareholders.

Short-term action would be to permit leases in multiple occupancy developments, for a period long enough to give security for housing loan finance. Longer term action would be either to make fairly drastic changes to the company structure, or to introduce a totally new form of legal structure, such as N.S.W. Cluster Titles Act. Both types of action are recommended.

Multiple occupancy, rural residential development and strata subdivision

Government policy to date has been to prohibit strata subdivision in multiple occupancy developments. This prohibition will be extended to any form of subdivision, including formal division of the land through company title.

Multiple occupancy has been defined in terms of occupancy and management rather than ownership (see Section 1). Using this definition, a strata subdivision in which a major part of the land was common property would not be excluded from multiple occupancy. However, it is considered that it would be premature at this stage for the policy to permit strata subdivisions. The reasons for this are as follows:

(i) Strata subdivision produces freely negotiable titles which are an attractive investment in the present land market. Rural property has particular attractions because of its relative price, and the existence of explicit and implicit rural subsidies (i.e. the wider community pays for many services, rather than the consumer). In particular, those

seeking a rural residential lifestyle (i.e. for individual living opportunities rather than for group pooling of resources) would be attracted to strata subdivision of multiple occupancy, and if prices were attractive the market could well be even broader than this. The situation resulting would not be consistent with the Government's aims as outlined in Section 1.

(ii) Strata subdivision protects individual interests at the expense of the group, to some extent. It provides a pattern of shareholding which is not open to change in the future (making subsequent amalgamation of land very difficult, for example). It also removes any possibility for control by the group in selection of new participants. In the early stages of the policy introduction it is important to encourage those forms of multiple occupancy most likely to achieve the Government's aims, and this necessitates encouraging structures which put emphasis on the benefits of group occupancy/management. Strata subdivision would make it more difficult for groups to achieve these benefits.

These comments would also apply to some forms of company title subdivision.

In the long term, if market conditions changed, and given greater experience by Government in the field of multiple occupancy, this position could be reviewed. It is important in these early stages to be cautious in introducing the concept of multiple occupancy. The need for a monitoring system dealing with the implementation and effects of the policy is apparent.

Consolidation of title

The earlier policy required any multiple occupancy development consisting of several holdings to be consolidated under a single legal title. Given the need to assess the developments as a whole when a development application is under consideration, the requirement for consolidation of title should be retained.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY EIGHT: REPRESENTATIONS BY THE MINISTER SHOULD BE CONTINUED WITH THE FEDERAL GOVERNMENT TO ENSURE THAT THE FIRST HOME OWNERS SCHEME CAN BE APPLIED TO MULTIPLE OCCUPANCY DWELLINGS.

POLICY NINE: NEW FORMS OF LEGAL TITLE FOR MULTIPLE OCCUPANCY SHOULD BE INTRODUCED.

POLICY TEN: FUTURE SUBDIVISION (INCLUDING STRATA TITLE SUBDIVISION) OF ANY HOLDING GRANTED MULTIPLE OCCUPANCY STATUS IS PROHIBITED AS LONG AS IT RETAINS THAT STATUS.

POLICY ELEVEN: IMPLEMENTATION OF THE POLICY SHOULD BE CLOSELY MONITORED WITH A VIEW TO AMENDING POLICY TEN IN RELATION TO COMPANY TITLE SUBDIVISION, STRATA SUBDIVISION, OR OTHER NEW FORMS OF TENURE, IF APPROPRIATE AT A LATER STAGE.

POLICY TWELVE: ANY APPLICANT FOR MULTIPLE OCCUPANCY STATUS ON A HOLDING MADE UP OF MORE THAN ONE PARCEL, PORTION OR PART PORTION SHALL AT THE TIME OF APPROVAL ALSO MAKE APPLICATION FOR CONSOLIDATION OF TITLE AND THIS SHOULD BE ACHIEVED BEFORE DEVELOPMENT COMMENCES.

5. AREAS OF APPLICATION

CURRENT POLICY

POLICY TWO: A COUNCIL MAY ADOPT, AS IS LOCALLY APPROPRIATE, ONE OF THE FOLLOWING ALTERNATIVES FOR THAT AREA WITHIN WHICH MULTIPLE OCCUPANCY ON FARMS CAN BE APPROVED:

A. AREA ZONED RURAL 1(A);

B. DEFINED PORTION OF AREA ZONED RURAL 1(A); OR

C. AREA ZONED RURAL (SMALL HOLDING) 1(C).

Areas to be excluded

Multiple occupancy should be excluded from areas where:

i) the physical nature of the land makes it unsuited for any intensity of human occupation;

ii) there are special objectives which make it desirable that an area not be used for occupation in spite of it being otherwise suitable;

iii) remoteness makes concentration undesirable in terms of the linkages between multiple occupants and the rest of the community. Here the problem is one of roads and access to necessary services.

Areas of physical unsuitability

In rural planning, certain areas have generally been recognised as physically unsuitable for works and occupation: steep slopes, unstable soils, creek banks, areas of extreme bush fire hazard and areas subject to flooding. These areas should also be excluded for actual occupation in a multiple occupancy, by consideration of the characteristics of particular sites.

Areas of special significance

Many of these areas are already zoned in recognition of special qualities: national parks, nature reserves, State forests, water catchments, future urban areas, coastal lands protection areas. Such areas are not suitable for multiple occupancy, and should be excluded from the enabling provisions. Where land is clearly

intended for such a purpose regardless of its zoning, it should be excluded, or else council should be given grounds for refusal of a development application.

Remote areas

Remoteness makes some areas attractive for some multiple occupants but directly conflicts with councils' responsibilities for roads. One solution would be to require multiple occupants to provide their own access to the nearest maintained road, but resources to do this would be a problem. It may be necessary to trade off remoteness from some facilities against other advantages of a particular site, and also take into consideration on-site services which may reduce road transport needs (such as schools).

Areas to be included

Multiple occupancy should be allowed in all areas that don't fall in the exclusion areas, specifically 1(a) and 1(b) rural zones and the respective subzones (1(a1) etc). Thus it would be possible to permit multiple occupancy in rural smallholding zones, provided density is no greater than that in the rest of the zone, but market considerations would probably not favour this.

Agricultural protection zones

The Department of Agriculture has in the past favoured the exclusion of multiple occupancy from prime crop and pasture lands.

It was put to the Department of Agriculture that for a multiple occupancy that might want to farm productive land, an input of shared labour and capital could be used to more effectively farm the land. That Department agreed that multiple occupancy would be appropriate provided that the residential component was outside the prime crop and pasture land.

Given the fact that prime crop and pasture land will tend to be at a price premium, any multiple occupancy that is allowed there will tend to make use of the agricultural potential. However, in most cases market considerations will probably not favour this form of development on such land.

Not necessarily. Farm Club are farming Possible grape area in Hunter!

PROPOSED NEW POLICY

It is recommended that the following new policies be adopted:

POLICY THIRTEEN: MULTIPLE OCCUPANCY SHOULD BE PERMISSIBLE WITH THE LOCAL COUNCIL'S CONSENT IN ALL GENERAL RURAL OR NON URBAN ZONES OUTSIDE THE MAJOR METROPOLITAN AREAS OF THE STATE. IT SHOULD BE PROHIBITED ON LAND RESERVED OR INTENDED FOR NATIONAL PARKS, STATE FORESTS, CROWN RESERVES, STATE RECREATION AREAS, ENVIRONMENTAL PROTECTION, WATER CATCHMENTS AND OTHER SIMILAR USES; OR PROTECTED UNDER THE COASTAL LANDS PROTECTION SCHEME.

POLICY FOURTEEN: MULTIPLE OCCUPANCY SHOULD BE PERMISSIBLE WITH THE LOCAL COUNCIL'S CONSENT ON LAND IDENTIFIED AS PRIME CROP AND PASTURE LAND BY THE DEPARTMENT OF AGRICULTURE PROVIDED THAT ANY DWELLINGS OR NON-AGRICULTURAL BUILDINGS ARE NOT LOCATED ON LAND SO CLASSIFIED.

6. ENVIRONMENTAL AND LOCATIONAL CRITERIA

CURRENT POLICY

POLICY EIGHT: IN CONSIDERING AN APPLICATION FOR MULTIPLE OCCUPANCY, THE COUNCIL SHOULD TAKE ACCOUNT OF ENVIRONMENTAL AND LOCATIONAL MATTERS, INCLUDING:

*ADEQUACY OF ACCESS
*ADEQUACY OF WATER SUPPLY AND DRAINAGE
*ADEQUACY OF WASTE DISPOSAL FACILITIES
*RELATIONSHIP TO NEIGHBOURING LAND USES
*RELATIONSHIP TO EXISTING FACILITIES AND SERVICES
*BUSH FIRE RISK
*POTENTIAL EROSION HAZARD
*SITE VEGETATION COVERAGE
*AGRICULTURAL SUITABILITY
*SITING OF PROPOSED BUILDINGS.

POLICY THIRTEEN: ALL APPLICANTS FOR MULTIPLE OCCUPANCY STATUS MUST PRESENT WITH THEIR DEVELOPMENT APPLICATION A SITE AND DEVELOPMENT PLAN OF EXISTING AND PROPOSED CONDITIONS ON THE HOLDING IN QUESTION.

Environmental constraints

The Rural Land Evaluation Manual identifies the environmental constraints which would apply to multiple occupancy and divides constraints into those which are "absolute" and those which are not. The Manual goes on to classify land according to its capability for development. Land capability classes are subsequently transformed into densities. The same approach is relevant in identifying areas appropriate for multiple occupancy developments, with individual applications being considered according to the matters listed for consideration under s.90 of the Act.

Any statutory list of environmental criteria incorporated into an S.E.P.P. on multiple occupancy can only spell out in more detail the heads of consideration covered in section 90. In addition, an advisory manual should be produced to assist councils and prospective developers. This manual would essentially complement the Rural Land Evaluation Manual and the Department's publication on Low Cost Rural Homes. The manual should contain detailed advice on how to prepare a development concept plan or map for a proposed multiple occupancy

which could be used as a guide by individual councils. Such a plan should be required for developments exceeding four dwellings.

The suggested manual should be developed in consultation with those councils having multiple occupancy provisions as well as existing multiple occupancy communities. It should be available by the time the State policy is finalised.

The following matters should be dealt with in a concept plan:

Access - access to multiple occupancy developments should be via public roads and not by rights-of-way. Different road standards should apply depending on the volume of total road use.

Water/Drainage - adequate water storage is necessary to provide for the household needs of the number of dwellings proposed as well as for fire fighting purposes and irrigation. This is likely to require a large elevated bulk storage tank, a dam or permanent river, creek or lagoon, in addition to domestic tank supply/storage.

Bush Fire Risk - areas of high to medium bush fire risk are listed as a constraint in the Rural Land Evaluation Manual and such areas should be reflected in the land's (density) capability. P.E.C. Circulars 16 and 23 give some guidance on this issue, as also does D.E.P. Circular 74. Not only is sufficient water storage essential for fighting bush fires but also associated infrastructure, e.g. pumps, pipes, etc.: fire-breaks and fire refuges may be needed. A bush fire management plan should be submitted with any development application.

Waste Disposal - sewage disposal is a major concern and traditional "wet" disposal systems (i.e. septic tanks) may not be suitable in certain soils and in high rainfall areas. In Victoria and Queensland (as well as other countries such as Sweden), "composting toilets" are permitted. This is a "dry" system, not depending on soil absorption characteristics. The N.S.W. Department of Health will need to approve the use of composting systems. With regard to other household wastes, houses should not be located near to any creek or watercourse to avoid pollution. The advice of the local health inspector should be sought.

Facilities/Services - multiple occupancy developments and rural residential subdivisions should be

located within reasonable travelling time/distance of needed facilities and services. Proximity to schools and bus routes may be an important factor. The scale of some multiple occupancy developments however, may warrant their own internal facilities, e.g. community halls and preschools. The particular facilities used may vary with the type of development.

Hazards - the "Rural Land Evaluation Manual" identifies slopes over 33% as an "absolute" constraint because of the danger of landslip. Lower gradients may be hazardous depending on climate and soil type. Advice from appropriate organisations, e.g. Soil Conservation Service of N.S.W., soil consultants, etc., should be obtained prior to submitting a development application. Flooding is also a constraint to development, and dwellings and other buildings should not be sited on flood liable land.

Vegetation - some balance has to be achieved between bush fire hazard, erosion control, agricultural use, site density and scenic/rural amenity. Council's consent to the clearing of significant vegetation is therefore desirable.

Siting of buildings - the development application should be detailed enough to allow councils to assess the appropriate siting of all proposed buildings. There may be an advantage in promoting a clustering of dwellings (rather than dispersal throughout the holding) to reduce visual impact, vegetation disturbance, and facilitate bush fire management. The concept of providing for discrete dwelling areas rather than specific building sites would be an incentive for clustered development.

conflicts with 12.1

Visual impact - while the aesthetics of a particular proposal are often a subjective matter, it is reasonable for a council to examine a proposal against explicit landscape goals, such as preserving natural ridgelines.

Advertised development

It is proposed that any multiple occupancy consisting of more than four dwellings should constitute advertised development, in recognition of the potential for impact on the surrounding area. This may justify councils charging a fee to cover advertising costs (to a maximum of $500).

Not included

Conservation

There is the potential for councils to give incentives for conservation of wildlife habitats, significant vegetation areas, etc., as part of multiple occupancy development. A reduction in section 94 levies, rates concessions, or reduction in development and building application fees are all possibilities.

PROPOSED NEW POLICY

It is recommended that the following new policies be adopted:

POLICY FIFTEEN: IN CONSIDERING AN APPLICATION FOR MULTIPLE OCCUPANCY, THE COUNCIL SHOULD TAKE ACCOUNT OF ENVIRONMENTAL AND LOCATIONAL MATTERS. THESE MATTERS INCLUDE ROAD ACCESS, WATER SUPPLY, BUSHFIRE PROTECTION, WASTE DISPOSAL, AVAILABILITY OF COMMUNITY SERVICES, EROSION, HAZARDS, VEGETATION, VISUAL IMPACT AND THE SITING OF BUILDINGS. THEY ALSO INCLUDE THE NEED FOR DEVELOPMENT OTHER THAN AGRICULTURE AND DWELLING HOUSES, WHETHER THE LAND WILL BE REQUIRED FOR URBAN OR RURAL RESIDENTIAL EXPANSION, AND WHETHER THE DEVELOPMENT WILL BENEFIT AN EXISTING VILLAGE.

POLICY SIXTEEN: ANY DEVELOPMENT APPLICATION FOR MULTIPLE OCCUPANCY INCLUDING MORE THAN FOUR DWELLINGS SHOULD BE ADVERTISED DEVELOPMENT, AND SHOULD INCLUDE A MAP THAT IDENTIFIES PHYSICAL CONSTRAINTS, PRIME CROP AND PASTURE LAND, AREAS FOR DEVELOPMENT OTHER THAN FOR RESIDENTIAL USE, WATER SUPPLY SOURCES AND CAPACITY, AND MEANS OF ACCESS TO DWELLING AREAS FROM A PUBLIC ROAD.

POLICY SEVENTEEN: A MULTIPLE OCCUPANCY MANUAL SHOULD BE PREPARED BY THE DEPARTMENT TO ASSIST IN THE PREPARATION AND CONSIDERATION OF DEVELOPMENT APPLICATIONS FOR MULTIPLE OCCUPANCY.

POLICY EIGHTEEN: INCENTIVES SHOULD ENCOURAGE THE CONSERVATION OF WILDLIFE HABITATS WITHIN MULTIPLE OCCUPANCY DEVELOPMENTS. THIS WOULD INCLUDE OMITTING SECTION 94 LEVIES FOR OPEN SPACE, FOR EXAMPLE.

7. SIZE AND DENSITY CONTROLS

CURRENT POLICY

POLICY THREE: HOLDINGS TO WHICH MULTIPLE OCCUPANCY STATUS IS GRANTED SHOULD GENERALLY HAVE A MINIMUM AREA OF FORTY HECTARES, WITH AN ABSOLUTE MINIMUM OF TWENTY HECTARES WHERE SUCH IS THE PREVAILING SUBDIVISION LOT SIZE IN THE LOCALITY.

POLICY SEVEN: APPROVAL FOR MULTIPLE OCCUPANCY STATUS SHALL ONLY BE GRANTED TO THOSE COMMUNITIES ON WHICH EXISTING OR PROPOSED BUILDING DENSITIES DO NOT EXCEED THAT REASONABLY REQUIRED TO HOUSE ONE PERSON FOR EACH HECTARE OF THE HOLDING IN QUESTION.

Minimum area

In the main, multiple occupancies are set up with the aim of economic sustainability. Consequently agriculture in some form or another is likely to be undertaken within the multiple occupancy property. The threat of land sterilisation or loss of rural land is unlikely. The fact that some existing multiple occupancy developments do not have a significant agricultural component may simply be symptomatic of the early stages of development (little spare capital, preoccupation with building houses etc.), or of the fact that the situation to date has pushed them into agriculturally poor land. The fact that many such developments are experimenting with new forms of agricultural productivity, rather than adding to oversupply of traditional products, is consistent with the Government's objectives.

It is proposed that the minimum size for multiple occupancy development be 40 hectares which is the same as the statutory minimum prevailing in most council areas relating to Rural 1(a) and 1(b) land. Concessional lots, and existing lots smaller than the statutory minimum, would not normally be appropriate for multiple occupancy. In exceptional cases, the minimum area requirements might be varied by the use of S.E.P.P. No. 1 (Development Standards). This may be necessary to legalise some existing developments which in other respects meet the objectives and performance standards of the policy.

Density

Existing policy specifies a maximum density of one person per hectare for multiple occupancy. In practice, most developments appear to result in a lower density than this. There are obvious problems in enforcing a standard relating to numbers of people. It seems preferable to give the option to translate any such standard into equivalent dwellings per hectare. The fact that some dwellings may be expanded houses is a complicating factor. Experience to date indicates that only relatively few expanded houses eventuate. These may not necessarily have higher occupancy than conventional homes (being preferred as group occupancy for singles). However, giving a density formula with accommodation for a number of persons deals with this situation.

A range of density controls is proposed, relating to the size of the multiple occupancy holding:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

How?

This would meet current demands, and would maintain a difference in character between multiple occupancy and rural residential development. It would also allow for reduced impact on larger properties, which often are more remote, with development constraints and reduced agricultural potential (given the price range affordable by most purchasers).

Multiple occupancy developments requiring more than 80 dwellings will need to be the subject of a separate rezoning through the local environmental plan making process.

See also p 7 - note re Karekare

Ownership

The current policy, requiring ownership to be vested in at least two-thirds of the multiple occupancy adult residents, was included as a safeguard against land speculation. It is not usual for ownership to be a planning criterion, and it is clearly not a condition that can easily be enforced or monitored. Given the possibility for token minority ownership, any such provisions could easily be overcome by speculators.

It is considered that land speculation is not likely to be a major aspect of any multiple occupancy development, so long as strata titles or subdivision through company title are not a possibility; therefore it is proposed that a new multiple occupancy policy have no stipulation on minimum ownership patterns for multiple occupancy developments.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY NINETEEN: THE MINIMUM LOT SIZE FOR MULTIPLE OCCUPANCY DEVELOPMENT SHOULD BE 40 HECTARES.

POLICY TWENTY: DENSITY FOR MULTIPLE OCCUPANCY SHOULD BE IN ACCORDANCE WITH THE FOLLOWING TABLE:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

AN ALTERNATIVE FORMULA FOR CALCULATING DENSITY SHOULD BE BASED ON ACCOMMODATION FOR A NUMBER OF PEOPLE, WITH AN AVERAGE OF 4 PERSONS PER DWELLING.

8. PERMISSIBLE USES

CURRENT POLICY

POLICY NINE: HOLDINGS GRANTED MULTIPLE OCCUPANCY STATUS SHOULD BE USED ONLY FOR PERMANENT RESIDENTIAL PURPOSES AND SHOULD NOT BE USED FOR HOTEL, MOTEL, CARAVAN PARK OR ANY OTHER TYPE OF HOLIDAY, TOURIST OR WEEKEND RESIDENTIAL ACCOMMODATION.

The current policy is designed to prevent exploitation of the multiple occupancy provisions by the introduction of commercial activities not associated with the lifestyles of the owners. It has been given expression in those planning instruments containing multiple occupancy provisions by specifically prohibiting councils from permitting such developments. These controls often sit side by side with the general rural zones which permit an extremely broad range of land uses. Village or township zones are similarly liberal in the range of permissible land uses.

Current land uses

The type of land uses that have been developed on multiple occupancy properties vary with the number of people who are shareholders or residents. In the case of a farm of three or four dwellings, residential development with perhaps a community building would be the extent of the development.

With a community of 80 dwellings, the whole range of normal community functions may have to be catered for if the property is not within easy travelling distance from an existing settlement. In the early development stages of these communities many shareholders do not live permanently on the land. As a result there is a need for accommodation covering short or medium term visits. A community of this size could need:

- school, pre-school and child care facilities
- a health centre
- a community administrative centre or public hall
- a general store
- a restaurant
- a workshop for arts, crafts or a small industry
- a camping area
- self-contained cabins for temporary accommodation
- a bakery
- a bank/post office agency
- a nursery
- home industries and home occupations.

Community facilities

In rural areas community facilities have normally been catered for in a village zone where all these land uses were permissible with council consent. The problem with using this technique is that the development proposed is unlikely to expand over the entire property, nor is it desirable that it do so. If however, development of community facilities was restricted to a single central location, then the plan would have the flexibility required by council and the community to cope with changing needs, and council would be able to use the development control plan process or a more informal concept plan to control the details of development. These community facilities would be provided as a central village area to be located as part of a development concept plan.

Short-term or visitor accommodation

The current policy attempts to restrict short-term shareholders' or visitor accommodation as it contends that it could lead to exploitation of the multiple occupancy provisions for commercial gain.

While there is no doubt that there is the potential for exploitation there is also a need for short-term accommodation and this type of development is now occurring illegally. Short-term accommodation is needed while people build their own houses (see section 3) and for part-time residents or visiting non-resident shareholders. The type of development that would fill this need could be included within a camping ground with some hostel or cabin development. It would seem essential that development of this nature be owned communally and also located in the development concept plan. Councils might be well advised to give consent to such ancillary development conditional on a substantial proportion of dwellings being commenced prior to the ancillary development being commenced, or otherwise conditional on the property being occupied by a specified minimum number of people. Conditions should be tailored to meet particular circumstances. There is no evidence to suggest that the current policy should be changed to permit motels, caravan parks or residential accommodation other than that already mentioned.

PROPOSED NEW POLICY

It is recommended that the following policy replace the current Policy No. 9:

POLICY TWENTY-ONE: HOLDINGS 40 HECTARES AND LARGER GRANTED MULTIPLE OCCUPANCY STATUS MAY PROVIDE FOR THE LOCATION OF COMMUNITY FACILITIES, A CAMPING PARK, AND CABIN AND HOSTEL DEVELOPMENT WITHIN THE LAND, PROVIDED THAT THE EXTENT OF THOSE FACILITIES IS IDENTIFIED PRIOR TO OCCUPATION OF THE LAND IN A DEVELOPMENT CONCEPT PLAN AND IS LIMITED IN AREA, BEING PRIMARILY FOR THE USE OF RESIDENTS. SUBDIVISION (TO GIVE SEPARATE TITLE) OF NON-RESIDENTIAL DEVELOPMENT WITHIN A MULTIPLE - OCCUPANCY PROPERTY SHOULD NOT BE PERMISSIBLE.

of Hay industry.

9. MONETARY CONTRIBUTIONS

CURRENT POLICY

POLICY FOURTEEN: THE ISSUE OF RATING MULTIPLE OCCUPANCY HOLDINGS IS A LOCAL MATTER AND SHOULD BE DEALT WITH AT THE LOCAL LEVEL.

Administrative provisions

Section 94 of the Environmental Planning and Assessment Act, 1979 allows local councils to seek contributions, either in terms of land dedication, or monetary amount towards the cost of providing public utilities and community facilities. Where contributions toward councils' costs of providing services are involved, they must be sought through section 94, which requires certain procedures to be followed.

Particular subsections of section 94 require that:

i) an environmental planning instrument include an enabling clause to the effect that the carrying out of development in accordance with the instrument may increase the demand for certain services, the services to be specified by means of a schedule;

ii) contributions be justified in the context that the proposed development does actually result in an increased demand for the specified services, and that the contributions obtained be held by the council in trust so that they can be directed within a reasonable time to the specific purpose for which they were collected; and

iii) the level of contribution be "reasonable".

Decisions in the Land and Environment Court have placed considerable importance on the justification by councils of amounts sought under the provisions described in (ii) and (iii) above. The Department of Environment and Planning has issued Circulars to Councils No. 23 (14th October, 1981) and No. 42 (5th November, 1982), suggesting appropriate guidelines and methods of calculating appropriate levels of contributions. Circular No. 42 is listed among the Minister's directions under section 117(2) of the Act, and councils are required to consider it in the preparation of local environmental plans. This circular recommends the preparation by councils of a "social plan", to indicate existing amenities and services and identify those which will be needed.

Attitude of multiple occupancy communities to section 94 contributions

Judging from correspondence received by the Department and by the Minister, section 94 contributions are a source of considerable concern to existing and prospective multiple occupancy residents. This concern is manifested on two fronts:

i) the contributions are too high. They reflect the actual costs to councils of upgrading existing facilities, rather than the additional wear and tear on those facilities caused by the proposed development itself. Most of the complaints in this regard concern charges for the construction and maintenance of roads and bridges;

ii) the applicants do not have the same ability to pay as more conventional developers. This is largely because where there is subdivision of rural land, the market effect of the subdivision is that capital is generated, and this capital enables the developer to contribute to council's costs. Multiple occupancy does not in itself generate capital, and typical applicants have few resources that can be used to pay levies;

iii) the contributions relate to community facilities, such as child care centres and sportsfields, for which multiple occupancies are likely to have less demand than conventional developments, being generally more self-sufficient in these areas as time goes on.

It is clear that some of these criticisms have some validity. It is not clear to what extent charges have been justified by the "social plan" technique mentioned earlier, and given the wide variation between councils' policies, it is also not clear whether the contributions are "reasonable". The ultimate test of the levels for contributions rests with the Court, but few, if any, multiple occupancy proposals have yet challenged councils' determinations.

While it is evident that many multiple occupancies do provide their own community facilities, those that do are large enterprises which have been established many years. Questions were sent by the Byron Shire to some existing multiple occupancy developments in that Shire to ascertain to what extent their residents used community facilities in Byron Shire. Preliminary results indicated that high usage may be expected for pre-schools, library facilities, community centres, and C.Y.S.S. centres. As not all of these facilities can be provided within multiple occupancies, particularly

new developments, councils are justified in seeking contributions for these facilities.

Most councils make no provision for section 94 contributions to be made "in kind". While the legislation mentions only contributions in the "dedication of land free of cost", or the "payment of a monetary contribution" (or both) (section 94(1)), Circulars Nos. 23 and 42 both mention that contributions "in kind" (in the form of labour directed to a specific project) could be an acceptable alternative. Council officers are perhaps reluctant to try to impose conditions that do not have a clear legal base.

While there is no obligation on councils to accept "in kind" payments, section 91(3)(f) of the Act may provide a legal basis for it (relating to works required to be carried out on land which is not the subject of the development application, where it relates to section 90 considerations, and as a condition of development consent). Particularly for road contributions, where costs may be high, and where sub-contracting of work is a well established practice (especially to those with access to machinery), councils should be encouraged to accept "in kind" contributions where possible. Conditions imposed under section 91(3)(f) should still stand the test of reasonableness, and should be sufficiently explicit for both the council and the applicant to appraise the likely costs of complying with the conditions.

There may also be the possibility for councils to accept phased payments over a period of time. This may be particularly important for large developments.

Guidelines for section 94 contributions

The suggestions below are not proposed to take the place of a "social plan" relating to multiple occupancy development, but to apply until such a plan can be developed by councils to justify different levels for section 94 contributions. Charges being made by councils in the North Coast region have been collated by the Local Government Planners Association and the suggestions below are based on this data. The suggested levels of contribution would apply to conditions under section 91(3)(f) where appropriate.

Roads and bridges: Road improvement contribution (in cash (or labour, to the satisfaction of the Shire Engineer) at a maximum level of $1,500 per dwelling, to apply instead of (and not in addition to) any specific requirement for local road upgrading which might be required under sections 91(3)(a) and 90(1)(j). It would be expected that

normally charges of considerably less than $1,500 per dwelling would be arrived at, and a figure of $500 per dwelling might be an appropriate maximum for most cases. The maximum of $1,500 might apply in areas with exceptionally poor access, which are otherwise suited to multiple occupancy.

Community facilities: Contribution in cash (or labour to the satisfaction of the council directed towards a specific project) at a maximum level $150 per dwelling. Contributions of land or buildings in lieu of payment may be appropriate in some circumstances.

Open space: Improvement contribution in cash (or labour to the satisfaction of the Shire Health and Building Surveyor, directed towards a specific project) at a maximum level of $150 per dwelling. Contributions of land in lieu of payment may be appropriate.

Bush fire fighting facilities: Contribution in cash to support local brigade (or labour to the satisfaction of the Shire Bush Fire Officer - labour component not to include attendance at volunteer training sessions, or actual fire fighting) at a maximum level of $150 per dwelling. To apply instead of, and not in addition to any specific requirement for on-site water tanks or fire fighting equipment which might be imposed under sections 91(3)(a) and 90(1)(g).

It is proposed that any State environmental planning policy for multiple occupancy include a "standard" section 94 clause enabling contributions to be sought for roads and bridgeworks, community facilities, open space and bush fire fighting facilities. The documentation accompanying the policy should include a provision clarifying that labour, or other contribution "in kind" should be acceptable, in lieu of land or monetary contributions, and should give the set of guidelines in paragraph 9 above.

Rates

As well as contributions for the capital costs of services, councils do of course raise revenue through rates. These have normally been based on unimproved land value rather than on intensity of use or number of inhabitants. Some councils have sought to impose rates on multiple occupancy developments which are well above the minimum rate for rural property. This issue should be taken up with the Minister for Local Government, so

that the principles to be used in determining the level of rating for multiple occupancy can be clarified in a circular to councils.

PROPOSED NEW POLICY

It is recommended that the new policies should be as follows:

POLICY TWENTY-TWO: THE ISSUE OF RATING MULTIPLE OCCUPANCY HOLDINGS SHOULD BE TAKEN UP WITH THE MINISTER FOR LOCAL GOVERNMENT FOR CLARIFICATION OF THE PRINCIPLES TO BE USED BY COUNCILS, BY CIRCULAR.

POLICY TWENTY-THREE: CONTRIBUTIONS RAISED BY COUNCILS UNDER SECTION 94 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 SHOULD BE LIMITED IN EXTENT AND AMOUNT AND COUNCILS SHOULD BE ENCOURAGED TO ACCEPT "IN KIND" CONTRIBUTIONS AND PHASED PAYMENTS.

10. REFERENCES

1. Department of Environment and Planning Circulars Nos. 23 (April 1978), 42 (November 1982) and 74 (October 1984).

2. Department of Environment and Planning (1984), Rural Land Evaluation Manual.

3. Land Commission of N.S.W. (June 1984), Multiple Occupancy Development Feasibility Study.

4. Lismore City Council (1984), Housing Study.

5. Nicolson v. Lismore City Council, Case No. 20519 of 1983

6. N.S.W. Environmental Planning and Assessment Act, 1979.

7. Planning and Environment Commission, Circulars Nos. 35 (November 1979) and 44 (July 1980).

8. Rural Adjustment Unit (May 1984), Sustainable Rural Resettlement, University of New England.

9. Rural Resettlement Task Force (August 1984), Council Rating Procedure in Relation to Multiple Occupancy.

10. Rural Resettlement Task Force (August 1984), Multiple Occupancy and Ordinance 70.

11. Technical Assistance Group (1982), Bega Report, Department of Environment and Planning.

12. Victorian Ministry of Housing (May 1984), Sustainable Community Settlement Society: Feasibility Study.

13. Working Group to investigate and recommend a suitable legal structure for Multiple Occupancy Developments, confidential draft report (1984).

11. SUMMARY OF POLICIES

POLICY ONE: The Department of Environment and Planning supports the use of rural land for multiple occupancy development. Enabling provisions should be introduced to override existing local plans, though future local plans might later amend the State policy.

POLICY TWO: "Multiple occupancy" means the development of rural land for the erection of more than one dwelling house or expanded dwelling house where the major part of the parcel is held in common ownership and management, and the majority of residents participate either in ownership or management (whether or not non-residents are also involved).

POLICY THREE: Multiple occupancy holdings in existence prior to gazettal of the state policy that were developed without council approval should be legalised if they meet the objectives and planning criteria contained in the policy. A register of holdings which may not meet the conditions and criteria of the draft policy will be compiled following exhibition of the draft policy, and referred to councils for processing development applications. In some cases a variation to the development standards may be warranted through the use of State Environmental Planning Policy No. 1: Development Standards.

POLICY FOUR: Residents of existing buildings on multiple occupancy holdings which have been legalised by a development consent issued under the enabling clause should be encouraged to apply to the council for a section 317A certificate of compliance under the Local Government Act, 1919.

POLICY FIVE: Transitional dwellings for use while permanent dwellings are erected should be permissible, and councils should consider licensing structures for transitional use for a period up to five years.

POLICY SIX: A formula for calculation of the development application fee is suggested, based on a capital development cost of $2,000 per person for owner builders, for example.

POLICY SEVEN: Transitional dwellings for use while permanent dwellings are erected should be permissible, and councils should consider licensing structures for transitional use for an appropriate period.

POLICY EIGHT: Representations should be continued with the Federal Government to ensure that the First Home Owners Scheme can be applied to multiple occupancy dwellings.

POLICY NINE: New forms of legal title for multiple occupancy should be introduced.

POLICY TEN: Future subdivision (including strata title subdivision) of any holding granted multiple occupancy status is prohibited as long as it retains that status.

POLICY ELEVEN: Implementation of the policy should be closely monitored with a view to amending policy ten in relation to strata subdivision, or other new forms of tenure, if appropriate at a later stage.

POLICY TWELVE: Any applicant for multiple occupancy status on a holding made up of more than one parcel, portion or part portion shall at the time of approval also make application for consolidation of title and this should be achieved before development commences.

POLICY THIRTEEN: Multiple occupancy should be permissible with the local council's consent in all general rural or non urban zones outside the major metropolitan areas of the State. It should be prohibited on land reserved or intended for national parks, state forests, crown reserves, state recreation areas, environmental protection, water catchment and other similar uses or protected under the coastal lands protection scheme.

POLICY FOURTEEN: Multiple Occupany should be permissible with the local council's consent on land identified as prime crop and pasture land by the Department of Agriculture provided that any dwelling or non-agricultural buildings are not located on land so classified.

POLICY FIFTEEN: In considering an application for multiple occupancy, the council should take account of environmental and locational matters. These matters include road access, water supply, bush fire protection, waste disposal, availability of community services, erosion, hazards, vegetation, visual impact and the siting of buildings. They also include the need for development other than agriculture and dwelling houses, whether the land will be required for urban or rural residential expansion, and whether the development will benefit an existing village.

POLICY SIXTEEN: Any development application for multiple occupancy including more than 4 dwellings should be advertised development, and should include a map that identifies physical constraints, prime crop and pasture land, areas for development other than for residential use, water supply sources and capacity, and means of access to dwelling areas from a public road.

POLICY SEVENTEEN: A multiple occupancy manual should be prepared by the Department to assist in the preparation and consideration of development applications for multiple occupancy.

POLICY EIGHTEEN: Incentives should encourage the conservation of wildlife habitats within multiple occupancy developments. This would include omitting section 94 levies for open space, for example.

POLICY NINETEEN: The minimum lot size for multiple occupancy development should be 40 hectares.

POLICY TWENTY: Density for multiple occupancy should be in accordance with the following table:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

An alternative formula for calculating density should be based on accommodation for a number of people with an average of 4 persons per dwelling.

POLICY TWENTY-ONE: Holdings 40 hectares and larger granted multiple occupancy status may provide for the location of community facilities, a camping park, and cabin and hostel development within the land, provided that the extent of those facilities is identified in a development concept plan and is limited in area, being primarily for the use of residents. Subdivision (to give separate title) of non-residential development within a multiple occupancy property should not be permissible.

POLICY TWENTY-TWO: The issue of rating multiple occupancy holdings should be taken up with the Minister for Local Government for clarification of the principles to be used by councils, by circular.

POLICY TWENTY-THREE: Contributions raised by councils under section 94 of the Environmental Planning and Assessment Act, 1979 should be limited in extent and amount and councils should be encouraged to accept "in kind" contributions, and phased payments.

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Add – Retrospective approval
why 40 ha – Do?
if below 40 ha
SEPP1 minor variation, 10%
<40 ha does not help – low income/capital

support/acknowledge policy.

we would like opp to ~~comment on~~ those
~~submissions which~~ DBP has chosen ~~to allow to~~
~~proposal to replace~~ for implementing.

Please return Peter

Multiple Occupancy In Rural New South Wales

A Discussion Paper

This paper was prepared in the Department as part of the background work undertaken in developing the draft State environmental planning policy on multiple occupancy.

The paper examines the various issues requiring review and proposes planning policies on multiple occupancy.

Owing to the range of issues involved, and to the broad public interest, the paper has been published as a background document, to assist in discussion of the issues.

The draft policy which was placed on public exhibition in August 1985 will be reviewed in the light of submissions received.

Department of Environment and Planning
Sydney 1985

DISCLAIMER

This report is prepared for discussion purposes only.

While discussion and comments are welcome, no other person is invited to act on this report for any purpose and the report does not indicate what outcome will follow from its publication or what course public administration will take.

ERRATUM

(to page 31, paragraph 3)

It should be noted that Circular No. 42 only applies to new residential release areas. However, it gives an indication to councils of how to approach section 94 contributions.

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INTRODUCTION

The Government's policy on multiple occupancy was outlined in Circulars Nos. 35 and 44 issued by the Planning and Environment Commission (now the Department of Environment and Planning). The policy encouraged councils to introduce enabling provisions for multiple occupancy. Very few councils have done this, despite obvious demands for multiple occupancy, and a proliferation of illegal developments in many areas. Those councils that have permitted multiple occupancy, on a shire-wide or individual property basis, have placed conditions on development which are in some cases discriminatory and prohibitive.

At the same time as action is needed to more forcefully implement the Government's current policy, there is a need to revise the policy in several respects.

The following discussion paper examines the various issues requiring review and proposes planning policies on multiple occupancy. These planning policies formed the basis of the July 1985 draft State environmental planning policy on multiple occupancy. Issues identified are:

i) the need for enabling provisions in most rural areas;

ii) the need to avert discrimination and promote policy objectives;

iii) the need to revise the original policy to consider:

- policy objectives and definition of multiple occupancy,
- amendment of advice relating to existing illegal buildings,
- new size and density controls,
- deletion of ownership criteria,
- provisions for development other than agriculture and dwelling houses, e.g. Bakeries, Banks, Schools,
- staged development,
- limits on development application fee,

- advisory limits on s.94 contributions,

- provision for temporary dwellings,

- simplified environmental criteria, including criteria for access, water and drainage, bush fire risk, waste disposal, facilities and services, hazards, vegetation, flooding, siting of buildings and visual impact),

- public notification,

- limits on subdivision,

- strata title subdivision;

iv) the need for new legal title provisions.

C O N T E N T S

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1. POLICY OBJECTIVES

Current policy objectives

The current policy on multiple occupancy development as expressed in Planning and Environment Commission (P.E.C.) Circulars Nos. 35 and 44 does not set out specific objectives. However the policy is aimed at making provision for communal living in rural areas, and the advantages and objectives of such a policy are implicit.

Communal rural living opportunities, agricultural production and sustainability

Multiple cccupancy is but another form of rural land use. As it involves the creation of residential settlements it has many features in common with small villages or rural residential estates. However, unlike these activities there is more potential for multiple occupancy communities to pool their resources to either farm land or to achieve a high degree of sustainability. The concept of numbers of people pooling resources to jointly purchase land and subsequently farm, perhaps also processing some of the produce, is an exciting one. So too is the concept of sustainability.

These concepts have been promoted at Federal level, notably by the Prime Minister, Mr. Hawke, in his references to "kibbutz" development. An objective of the proposed multiple occupancy policy would be:

> to enable people, particularly those on low incomes, to pool their resources in order to develop a wide range of communal rural living opportunities.

Such opportunities could lead to diversified agricultural productivity and/or to a high level of sustainability through co-operative or extended family enterprises.

Rural land development for housing and communal purposes

The Government's rural planning policy has concentrated on preventing the fragmentation of rural land and concentrating urban settlement on land suitable for this purpose in either villages or rural residential estates. It was also thought that the provision of public amenities and services would be less costly if this policy were followed. During the 1970s it became obvious that there was a significant demand for rural settlement on a communal basis. In many cases multiple

occupancy settlers have encountered considerable opposition from other members of society. The resulting community friction has mainly been centred on differing values or beliefs. However it has been exacerbated by the current planning controls which effectively prohibit multiple occupancy development. It is not the role of planning controls to discriminate against a particular lifestyle. To facilitate this type of settlement, amendments to these controls are needed. Major objectives in drafting the multiple occupancy policy were therefore:

> to facilitate development 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 Government, the council or other public authorities; and
>
> to enable people to erect multiple dwellings on a single allotment of land to be occupied as their principal place of residence and to develop the land for communal purposes.

To tie these objectives into the framework of current Government policy (P.E.C. Circulars Nos. 67 and 74, referred to in section 117 directions) as well as future policy (any future section 117 directions and intended rural State environmental planning policy (S.E.P.P.)) the following qualification should be added:

> consistent with section 117 directions and State policies relating to rural lands.

Social infrastructure and services

Increased mechanisation of agriculture has meant that less labour is required on the farm and farm sizes have increased to efficiently utilise the new machinery. The fluctuating fortunes of the dairy industry have also had a major impact in some areas. The effect on many areas on the north and south coasts of N.S.W. was that small farms and the townships that served them were progressively drained of population up to the early 1970s. It is the availability of these farms that initially attracted many multiple occupancy communities and the result has been that the existing rural services and social infrastructure are again being utilised. Given the alternative that new services would need to have been provided in the major urban areas, if the rural areas had not been resettled, then overall the community has benefited significantly.

The Government's aim should be:

> to facilitate development so as 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.

2.. RANGE OF MULTIPLE OCCUPANCY DEVELOPMENT

CURRENT POLICY

POLICY ONE: THE NEW SOUTH WALES PLANNING AND ENVIRONMENT COMMISSION SUPPORTS THE MULTIPLE OCCUPANCY, ON A CLUSTERED OR DISPERSED BASIS, OF RURAL PROPERTIES IN COMMON OWNERSHIP AS AN APPROPRIATE LAND USE FOR RURAL AREAS SUBJECT TO A NUMBER OF ENVIRONMENTAL AND LOCATIONAL GUIDELINES.

POLICY SIX: ANY HOLDING SUBJECT TO AN APPLICATON FOR MULTIPLE OCCUPANCY STATUS MUST BE OWNED IN ITS ENTIRETY IN COMMON BY AT LEAST TWO-THIRDS OF ALL ADULTS RESIDING ON THE LAND, OR MUST BE OTHERWISE OWNED ON BEHALF OF THOSE PERSONS.

The policy contained in P.E.C. Circulars 35 and 44 does not contain any definition of multiple occupancy, beyond the fact that it involves common ownership of land and includes multiple dwellings on a clustered or dispersed basis.

Types of development

Several different development concepts are evident in the State, particularly the North Coast region, which may or may not be considered as multiple occupancy. These are:

i) Communes/Communities: Totally communal ownership of land, individual ownership of residential buildings; some communal buildings; some expanded houses (i.e. groups of individual living/sleeping structures around communal kitchen structures); and normally a grouping of residential structures into distinct areas. These communities range in size from a few households to several hundred residents. The few groups that involve totally group ownership are mainly religious (e.g. Hari Krishna community).

ii) Group parcels: Individually owned house blocks recognised through title or agreement, with the bulk of the property in common ownership. Some individually worked farming areas may also be allocated by title or agreement, but these normally constitute a minor part of the development. Dwellings and individual plots are normally clustered to some degree.

iii) Flexible groups: Typically this form of group has no prerequisites but evolves with individual aspirations. Some allow any member to adopt land for personal use according to communally approved projects, and any house site so long as other residents do not object. Normally these groups are small, but one large group (Tuntable Falls) has many flexible characteristics.

iv) Cluster farm management: This includes concepts supported by the Department of Agriculture, including strata titling. Individual house blocks are identified but the bulk of the land is in common ownership, managed by the body corporate or by agents.

v) Group farm management: Some proposals involve Torrens Title of individual farms on a plan that allows for communal management by the owners or their agents for a definite agricultural purpose. Strata titling would be a second choice. The market for this type of development appears to be with people who initially use houses as holiday homes, with possible later use for retirement; and with those seeking an injection of funds into an agricultural enterprise with some tax benefits.

vi) Purchasing groups: Mebbin Springs and Billin Cliffs are typical developments marketed to give relatively cheap access to rural land to people who might otherwise seek individual purchase. Purchasers have to work out their own management preferences, which will not be known by the developer. Strata titling is desirable but company ownership structures may be an acceptable second choice.

vii) "Workers" dwellings: The demand for two or three houses on blocks of any size arises from the form of household structure becoming more flexible, reflecting changes in society; it may become increasingly common for a functional household to spread over several structures or for a single household to split into several groups. Extended families, often involving middle aged or elderly parents, want co-operative land management. Many nuclear households find benefit in having one or two other households to share with, so that children benefit from company, and chores may be shared. Particularly on large holdings in isolated locations there may be added security through numbers, to cope with illness, accident, fighting bush fires, and minding the property. Although some of these needs are met through "worker's dwelling" provisions of planning instruments at present

(depending on the attitude of the particular council) it cannot be assumed that this will continue.

viii) Group renters: At least one proposal has been made for group occupancy to be rented, at nominal rates, to disadvantaged households on philanthropic grounds. In this case ownership would be retained by a single individual. The Land Commission of N.S.W.'s proposed involvement in multiple occupancy may initially fall into this category. Various groups through community tenancy schemes may be interested in this concept. It may also be of interest to Aborigines through Aboriginal Lands Council developments.

It is considered that multiple occupancy should be defined as any permanent group occupancy and management of a single rural property beyond a single household. It should include extended family farms, split households, small groups and large groups. It should include developments made initially by a party other than the occupants, but managed by the occupants. Ownership may be flexible in as much as occupiers of a development may or may not be owners. Either clustered or dispersed development may be involved, and either small or large groups accommodated. Second homes or development for tourism should be discouraged. The definition could encompass strata or company title subdivision so long as the major part of the property is in common ownership. However, it is proposed that subdivision of any kind should not be permitted by the State policy.

Multiple occupancy is defined as permanent group occupancy and management, with only a minor part of the land individually managed or occupied. Rural residential development would then be defined as development where any group occupancy/management formed only a minor part. Density characteristics of multiple occupancy may also differentiate it from rural residential development - see further discussion in Section 7.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY ONE: THE DEPARTMENT OF ENVIRONMENT AND PLANNING SUPPORTS THE USE OF RURAL LAND FOR MULTIPLE OCCUPANCY DEVELOPMENT. ENABLING PROVISIONS SHOULD BE INTRODUCED TO OVERRIDE EXISTING LOCAL PLANS, THOUGH FUTURE LOCAL PLANS MIGHT LATER AMEND THE STATE POLICY.

POLICY TWO: "MULTIPLE OCCUPANCY" MEANS THE DEVELOPMENT OF RURAL LAND FOR THE ERECTION OF MORE THAN ONE DWELLING HOUSE OR EXPANDED DWELLING HOUSE WHERE THE MAJOR PART OF THE PARCEL IS HELD IN COMMON OWNERSHIP AND MANAGEMENT, AND THE MAJORITY OF RESIDENTS PARTICIPATE EITHER IN OWNERSHIP OR MANAGEMENT.

3. CURRENT PLANNING AND BUILDING CONTROLS

CURRENT POLICY

POLICY TEN: MULTIPLE OCCUPANCY HOLDINGS IN EXISTENCE PRIOR TO GAZETTAL OF AN ENABLING CLAUSE THAT WERE DEVELOPED WITHOUT COUNCIL APPROVAL, SHOULD BE LEGALISED UNDER THE ENABLING CLAUSE IF THEY MEET THE REQUIREMENTS OF THE CLAUSE.

POLICY ELEVEN: RESIDENTS OF EXISTING BUILDINGS ON MULTIPLE OCCUPANCY HOLDINGS WHICH HAVE BEEN LEGALISED UNDER THE ENABLING CLAUSE MUST SUBMIT BUILDING APPLICATIONS TO THE COUNCIL. THE COUNCIL SHOULD ALLOW AT LEAST ONE YEAR SUBSEQUENT TO GAZETTAL FOR EXISTING BUILDINGS TO CONFORM WITH REQUIREMENTS.

POLICY TWELVE: ALL BUILDING PROPOSED FOR MULTIPLE OCCUPANCY HOLDINGS APPROVED SUBSEQUENT TO, OR AT THE TIME OF, GAZETTAL OF THE ENABLING CLAUSE MUST BE SUBJECT TO THE BUILDING APPLICATION PROCESS AND CONFORM WITH BUILDING REQUIREMENTS.

Planning controls

P.E.C. Circulars Nos. 35 and 44 (cited in the Minister's Section 117 Directions to Councils) urged local councils to introduce provisions to make multiple occupancy a permissible development in rural areas. A demand for this development, in a situation where there were few opportunities for authorisation, has resulted in a proliferation of illegal developments in many areas.

Few councils have introduced such provisions. In the Northern Regions enabling provisions have been introduced in the City of Lismore, Tweed Shire, and part of Kyogle Shire; in the South East they have been introduced in Bombala Shire; and in the Central West they have been introduced in the City of Orange. In addition, some councils have introduced provisions relating to specific properties. A few councils have no planning controls - these include part of Taree in the Hunter Region, all of Tenterfield Shire in the New England Region, and part of Young Shire in the South East Region. Some other councils are in the course of preparing shire-wide plans which may introduce general enabling provisions, but the timing and outcome is uncertain. The limited areas where multiple occupancy is permissible is inevitably forcing land prices upwards.

Where enabling provisions have been introduced by way of a local environmental plan a council is able to consider a development application relating to multiple occupancy. It may approve the application unconditionally, approve it with conditions, or refuse it. The applicants can appeal to the Land and Environment Court against a refusal, or against any or all of a council's conditions. Conditions might relate to standards of access, bush fire risk, land ownership and land suitability, etc.

Where no enabling provisions exist, a council cannot approve a development application, and an applicant has no right of appeal. This is the case in most rural areas. In cases where a council would like to support an individual application, it must first go through the process of preparing a local environmental plan. The Department has discouraged such spot rezonings without a general approach to multiple occupancy development in the shire.

The current situation is similar to that when Circulars Nos. 35 and 44 were first issued, i.e. a proliferation of illegal developments in a situation where there are few possibilities for authorization. Some councils have sought to legalise small multiple occupancies through the "workers dwelling" provisions of their planning instruments, but these were designed for another purpose, and are limited in effect. Most councils are concerned that undesirable precedents should not be set. Dual occupancy provisions apply in some rural areas, but these are normally interpreted as relating only to attached dwellings.

Illegal development is a concern to multiple occupancy residents as it leaves them with insecurity (because of possible demolition) and creates difficulties in obtaining loan finance. It is also a concern to the wider community because it threatens the whole stability of the planning system (through reduced confidence). The present proposal is put forward in the context of the need to overcome this situation.

For those presently illegal developments which meet the criteria of the policy, legalisation should be possible. This should be achieved by councils processing development applications. It is intended that registration of existing illegal developments which may not meet the conditions and criteria laid down in the draft policy be invited during the exhibition of the draft policy, and that these then be discussed with councils. There may be a need for some flexibility in interpreting planning standards through the use of State Environmental Planning Policy No. 1: Development

Standards, so as to legitimise the existing situation and arrive at a reasonable starting point for future planning control.

Some ambiguity exists in the definition of a "dwelling house" in relation to some of the unconventional shared housing arrangements required for some multiple occupancy developments. The Department's Low Cost Country Home Building Guide clarifies that an "expanded dwelling house" consisting of several structures but sharing basic facilities should be treated as a single dwelling house for planning and building purposes. This should be made explicit in the new policy. Any density provisions should contain controls relating to accommodation for a specified number of people as an alternative to controls referring to numbers of dwellings.

Additional confusion surrounds the approval of large multiple occupancy developments. Councils should be advised, where appropriate, to approve of a maximum level of accommodation within designated dwelling areas, rather than a specified number of sites. Substantial commencement would then exist when any of the dwellings was substantially commenced. Site specific information would be appraised at the building application stage.

A maximum level of development application fee based on capital costs of $8,000 per dwelling (or $2,000 per person-accommodation) in an owner/builder situation is suggested.

Building controls

For most rural areas building applications are required for rural dwellings. This application is for approval that the proposed structure conforms with the requirements of Ordinance 70, pursuant to s.311 of the Local Government Act, 1919. An applicant can appeal to the Land and Environment Court against a council's decision relating to a building application.

A council cannot process a building application until a development application has been approved where such consent is required. In cases where buildings have been illegally erected during the rezoning process or before development consent is granted, they cannot be retrospectively given building approval. P.E.C. Circular 44 suggests that a local environmental plan to introduce multiple occupancy enabling provisions should give such retrospective approval. However this does not appear to be legally possible, because it would require the suspension of certain provisions of the Local Government Act, 1919. This policy should therefore be deleted.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY THREE: MULTIPLE OCCUPANCY HOLDINGS IN EXISTENCE PRIOR TO GAZETTAL OF THE STATE POLICY THAT WERE DEVELOPED WITHOUT COUNCIL APPROVAL SHOULD BE LEGALISED IF THEY MEET THE OBJECTIVES AND PLANNING CRITERIA CONTAINED IN THE POLICY. A REGISTER OF HOLDINGS WHICH MAY NOT MEET THE CONDITIONS AND CRITERIA OF THE DRAFT POLICY WILL BE COMPILED BY THE DEPARTMENT FOLLOWING EXHIBITION OF THE DRAFT POLICY, AND REFERRED TO COUNCILS FOR PROCESSING DEVELOPMENT APPLICATIONS. IN SOME CASES A VARIATION TO THE DEVELOPMENT STANDARDS MAY BE WARRANTED THROUGH THE USE OF STATE ENVIRONMENTAL PLANNING POLICY NO. 1: DEVELOPMENT STANDARDS.

POLICY FOUR: RESIDENTS OF EXISTING BUILDINGS ON MULTIPLE OCCUPANCY HOLDINGS WHICH HAVE BEEN LEGALISED BY A DEVELOPMENT CONSENT ISSUED UNDER THE ENABLING CLAUSE SHOULD BE ENCOURAGED TO APPLY TO THE COUNCIL FOR A SECTION 317A CERTIFICATE OF COMPLIANCE UNDER THE LOCAL GOVERNMENT ACT, 1919.

POLICY FIVE: FOR LARGE DEVELOPMENTS, COUNCILS SHOULD GIVE DEVELOPMENT APPROVAL FOR DWELLINGS WITHIN A NOMINATED DWELLING AREA, WITHOUT INDIVIDUAL SITES BEING SPECIFIED IN ADVANCE. FURTHER INFORMATION SHOULD THEN BE APPRAISED AT THE BUILDING APPLICATION STAGE. SUBSTANTIAL COMMENCEMENT FOR THE PURPOSES OF DEVELOPMENT APPROVAL SHOULD BE WHEN ANY OF THE DWELLINGS IS SUBSTANTIALLY COMMENCED.

POLICY SIX: A FORMULA FOR THE CALCULATION OF THE DEVELOPMENT APPLICATION FEE IS SUGGESTED, BASED ON A CAPITAL DEVELOPMENT COST OF $2,000 PER PERSON FOR OWNER BUILDERS.

POLICY SEVEN: TRANSITIONAL DWELLINGS FOR USE WHILE PERMANENT DWELLINGS ARE ERECTED SHOULD BE PERMISSIBLE, AND COUNCILS SHOULD CONSIDER LICENSING STRUCTURES FOR TRANSITIONAL USE FOR AN APPROPRIATE PERIOD.

A council is obliged, nonetheless, to seek to remedy a breach of the Local Government Act. This may be done either through demolition or through the issue of a s.317A Certificate of Compliance under the Local Government Act. Certification assures that any legal breach does not need to be rectified, either because:

(i) the provisions of Ordinance 70, i.e., building regulations, have been met; or

(ii) any departure is minor, not related to the structural soundness of the building, and does not worry the present occupants.

Obviously in presenting an application for a s.317A certificate, it may be useful to support it with an architect's or engineer's report. An applicant may appeal to the Land and Environment Court under section 317A(5) of the Local Government Act if a council refuses or fails to issue the certificate.

Transitional dwellings

Another controversial issue in relation to multiple occupancy developments (and other low-cost rural developments) is the inadequacy of provisions for transitional dwellings. Most residents wish to live on the land while they construct a house. This may take several years for people with limited capital, relying on their own labour.

Present provisions under the Local Government Act include those relating to movable dwelling licenses in proclaimed areas. Some councils appear prepared to issue such licenses, but there have been cases where renewal is not approved. Such a refusal is appellable to the Land and Environment Court, under section 288A of the Local Government Act, 1919, but given the temporary nature of the license, it may not be worthwhile presenting a case. There is also the view that unless real mobility is involved, a council may have no power to use these licensing provisions.

A preferable solution in some cases appears to be for councils to issue licenses to occupy a Class X structure (shed, etc. - a structure not necessarily meeting the requirements of Ordinance 70 for dwelling houses) under section 306(2) of the Local Government Act. It is recommended that councils issue licenses for time periods sufficient to enable dwelling construction to take place - for example two years, with an option to renew up to a maximum of five years.

4. TYPES OF LEGAL ARRANGEMENT

CURRENT POLICY

POLICY FOUR: FUTURE SUBDIVISION OF ANY HOLDING GRANTED MULTIPLE OCCUPANCY STATUS IS PROHIBITED AS LONG AS IT RETAINS THAT STATUS.

POLICY FIVE: ANY APPLICANT FOR MULTIPLE OCCUPANCY STATUS ON A HOLDING MADE UP OF MORE THAN ONE PARCEL, PORTION OR PART PORTION SHALL AT THE TIME OF APPLICATION ALSO MAKE APPLICATION FOR CONSOLIDATION OF TITLE.

Existing legal structures

Options available to multiple occupancy residents currently include:

(i) private company;
(ii) company limited by guarantee;
(iii) co-operative;
(iv) public company;
(v) trust (including unit trust shares);
(vi) charity or religious organisation;
(vii) partnership;
(viii) joint tenancy/tenants in common;
(ix) no specific legal structure;
(x) voluntary association;
(xi) single legal owner;
(xii) strata title (where permissible).

None of these legal structures adequately balances the interests of the group and the individual shareholder in a multiple occupancy situation. While most err in favour of group control (to the extent that home ownership grants may be difficult to obtain because of unspecified equity), strata titling of land probably errs in favour of the individual. The Strata Titles Act, 1973, provides a good framework for group management, through the body corporate, but places no limits on the individual's ability to dispose of his share as he wishes.

Possible new structures

An inter-departmental working group chaired by the Department of Environment and Planning has examined the need for a new legal structure, which could be tailored to multiple occupancy needs. It has concluded that a N.S.W. Cluster Titles Act would be appropriate to cater for multiple occupancy and other types of development. In the meantime it is apparent that company title will continue to be used for many multiple occupancy

developments, and some changes to the Local Government Act may be possible to provide more security to holders of company title shares (i.e. sections 4 and 327AA(2)).

One amendment not requiring legal change would be to introduce the concept of a proprietary lease, which would not be considered as subdivision in a multiple occupancy context. This presumably could be achieved via the S.E.P.P. process, with a clause suspending the operation of the relevant part of the Local Government Act, 1919 (s.4 contains the definition of "subdivision" which includes any lease beyond 5 years and the Act requires council consent for such subdivision) pursuant to s.28 of the Environmental Planning and Assessment Act, 1979.

The danger here is that a lease of that duration might actually constitute subdivision through established use, whatever the legal definition of subdivision. In the circumstances, it is recommended that the State Government continue to make representations to the Federal Government concerning eligibility of multiple occupancy residents for the First Home Owners Scheme assistance, and that no specific provisions for leasing be introduced at this time.

In devising any totally new legal structure, it is desirable to provide the following:

i) individual shares should be capable of separate sale or mortgage, but the group should have some control over the selection of new shareholders (perhaps a right to buy back the share at market value if a prospective shareholder is unsatisfactory);

ii) improvements, such as buildings, should be capable of being attributed either to the group equity or the individual equity, as appropriate;

iii) flexibility in voting rights of shareholders, for instance based on equality between shareholders, or on voting rights proportional to share value;

iv) exemption from land tax, and a reasonable tax liability in other respects;

v) ability to advertise shares freely bearing in mind that the number of shares will be limited by the density provisions in the State policy.

vi) secure tenure and occupation rights for all residents;

vii) prescribed courses of action for the group to resolve disputes and meet its liabilities;

viii) a stable structure, capable of being changed, or otherwise capable of continuing indefinitely.

No existing legal structure meets all of these requirements. There is a considerable difference between different groups and the structures they seek, so that some may be satisfied by only some of the requisites listed. The Land Commission, in its feasibility study, has chosen to investigate using a private company structure, with proprietary long-term leases if possible.

Company structure is in common use, but major problems are liability for land tax, and restrictions on the ability to advertise shares. The degree of individual equity is capable of being specified to the extent that home ownership grants may be given to company shareholders.

Short-term action would be to permit leases in multiple occupancy developments, for a period long enough to give security for housing loan finance. Longer term action would be either to make fairly drastic changes to the company structure, or to introduce a totally new form of legal structure, such as N.S.W. Cluster Titles Act. Both types of action are recommended.

Multiple occupancy, rural residential development and strata subdivision

Government policy to date has been to prohibit strata subdivision in multiple occupancy developments. This prohibition will be extended to any form of subdivision, including formal division of the land through company title.

Multiple occupancy has been defined in terms of occupancy and management rather than ownership (see Section 1). Using this definition, a strata subdivision in which a major part of the land was common property would not be excluded from multiple occupancy. However, it is considered that it would be premature at this stage for the policy to permit strata subdivisions. The reasons for this are as follows:

(i) Strata subdivision produces freely negotiable titles which are an attractive investment in the present land market. Rural property has particular attractions because of its relative price, and the existence of explicit and implicit rural subsidies (i.e. the wider community pays for many services, rather than the consumer). In particular, those

seeking a rural residential lifestyle (i.e. for individual living opportunities rather than for group pooling of resources) would be attracted to strata subdivision of multiple occupancy, and if prices were attractive the market could well be even broader than this. The situation resulting would not be consistent with the Government's aims as outlined in Section 1.

(ii) Strata subdivision protects individual interests at the expense of the group, to some extent. It provides a pattern of shareholding which is not open to change in the future (making subsequent amalgamation of land very difficult, for example). It also removes any possibility for control by the group in selection of new participants. In the early stages of the policy introduction it is important to encourage those forms of multiple occupancy most likely to achieve the Government's aims, and this necessitates encouraging structures which put emphasis on the benefits of group occupancy/management. Strata subdivision would make it more difficult for groups to achieve these benefits.

These comments would also apply to some forms of company title subdivision.

In the long term, if market conditions changed, and given greater experience by Government in the field of multiple occupancy, this position could be reviewed. It is important in these early stages to be cautious in introducing the concept of multiple occupancy. The need for a monitoring system dealing with the implementation and effects of the policy is apparent.

Consolidation of title

The earlier policy required any multiple occupancy development consisting of several holdings to be consolidated under a single legal title. Given the need to assess the developments as a whole when a development application is under consideration, the requirement for consolidation of title should be retained.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY EIGHT: REPRESENTATIONS BY THE MINISTER SHOULD BE CONTINUED WITH THE FEDERAL GOVERNMENT TO ENSURE THAT THE FIRST HOME OWNERS SCHEME CAN BE APPLIED TO MULTIPLE OCCUPANCY DWELLINGS.

POLICY NINE: NEW FORMS OF LEGAL TITLE FOR MULTIPLE OCCUPANCY SHOULD BE INTRODUCED.

POLICY TEN: FUTURE SUBDIVISION (INCLUDING STRATA TITLE SUBDIVISION) OF ANY HOLDING GRANTED MULTIPLE OCCUPANCY STATUS IS PROHIBITED AS LONG AS IT RETAINS THAT STATUS.

POLICY ELEVEN: IMPLEMENTATION OF THE POLICY SHOULD BE CLOSELY MONITORED WITH A VIEW TO AMENDING POLICY TEN IN RELATION TO COMPANY TITLE SUBDIVISION, STRATA SUBDIVISION, OR OTHER NEW FORMS OF TENURE, IF APPROPRIATE AT A LATER STAGE.

POLICY TWELVE: ANY APPLICANT FOR MULTIPLE OCCUPANCY STATUS ON A HOLDING MADE UP OF MORE THAN ONE PARCEL, PORTION OR PART PORTION SHALL AT THE TIME OF APPROVAL ALSO MAKE APPLICATION FOR CONSOLIDATION OF TITLE AND THIS SHOULD BE ACHIEVED BEFORE DEVELOPMENT COMMENCES.

5. AREAS OF APPLICATION

CURRENT POLICY

POLICY TWO: A COUNCIL MAY ADOPT, AS IS LOCALLY APPROPRIATE, ONE OF THE FOLLOWING ALTERNATIVES FOR THAT AREA WITHIN WHICH MULTIPLE OCCUPANCY ON FARMS CAN BE APPROVED:

A. AREA ZONED RURAL 1(A);

B. DEFINED PORTION OF AREA ZONED RURAL 1(A); OR

C. AREA ZONED RURAL (SMALL HOLDING) 1(C).

Areas to be excluded

Multiple occupancy should be excluded from areas where:

i) the physical nature of the land makes it unsuited for any intensity of human occupation;

ii) there are special objectives which make it desirable that an area not be used for occupation in spite of it being otherwise suitable;

iii) remoteness makes concentration undesirable in terms of the linkages between multiple occupants and the rest of the community. Here the problem is one of roads and access to necessary services.

Areas of physical unsuitability

In rural planning, certain areas have generally been recognised as physically unsuitable for works and occupation: steep slopes, unstable soils, creek banks, areas of extreme bush fire hazard and areas subject to flooding. These areas should also be excluded for actual occupation in a multiple occupancy, by consideration of the characteristics of particular sites.

Areas of special significance

Many of these areas are already zoned in recognition of special qualities: national parks, nature reserves, State forests, water catchments, future urban areas, coastal lands protection areas. Such areas are not suitable for multiple occupancy, and should be excluded from the enabling provisions. Where land is clearly

intended for such a purpose regardless of its zoning, it should be excluded, or else council should be given grounds for refusal of a development application.

Remote areas

Remoteness makes some areas attractive for some multiple occupants but directly conflicts with councils' responsibilities for roads. One solution would be to require multiple occupants to provide their own access to the nearest maintained road, but resources to do this would be a problem. It may be necessary to trade off remoteness from some facilities against other advantages of a particular site, and also take into consideration on-site services which may reduce road transport needs (such as schools).

Areas to be included

Multiple occupancy should be allowed in all areas that don't fall in the exclusion areas, specifically 1(a) and 1(b) rural zones and the respective subzones (1(a1) etc). Thus it would be possible to permit multiple occupancy in rural smallholding zones, provided density is no greater than that in the rest of the zone, but market considerations would probably not favour this.

Agricultural protection zones

The Department of Agriculture has in the past favoured the exclusion of multiple occupancy from prime crop and pasture lands.

It was put to the Department of Agriculture that for a multiple occupancy that might want to farm productive land, an input of shared labour and capital could be used to more effectively farm the land. That Department agreed that multiple occupancy would be appropriate provided that the residential component was outside the prime crop and pasture land.

Given the fact that prime crop and pasture land will tend to be at a price premium, any multiple occupancy that is allowed there will tend to make use of the agricultural potential. However, in most cases market considerations will probably not favour this form of development on such land.

PROPOSED NEW POLICY

It is recommended that the following new policies be adopted:

POLICY THIRTEEN: MULTIPLE OCCUPANCY SHOULD BE PERMISSIBLE WITH THE LOCAL COUNCIL'S CONSENT IN ALL GENERAL RURAL OR NON URBAN ZONES OUTSIDE THE MAJOR METROPOLITAN AREAS OF THE STATE. IT SHOULD BE PROHIBITED ON LAND RESERVED OR INTENDED FOR NATIONAL PARKS, STATE FORESTS, CROWN RESERVES, STATE RECREATION AREAS, ENVIRONMENTAL PROTECTION, WATER CATCHMENTS AND OTHER SIMILAR USES; OR PROTECTED UNDER THE COASTAL LANDS PROTECTION SCHEME.

POLICY FOURTEEN: MULTIPLE OCCUPANCY SHOULD BE PERMISSIBLE WITH THE LOCAL COUNCIL'S CONSENT ON LAND IDENTIFIED AS PRIME CROP AND PASTURE LAND BY THE DEPARTMENT OF AGRICULTURE PROVIDED THAT ANY DWELLINGS OR NON-AGRICULTURAL BUILDINGS ARE NOT LOCATED ON LAND SO CLASSIFIED.

6. ENVIRONMENTAL AND LOCATIONAL CRITERIA

CURRENT POLICY

POLICY EIGHT: IN CONSIDERING AN APPLICATION FOR MULTIPLE OCCUPANCY, THE COUNCIL SHOULD TAKE ACCOUNT OF ENVIRONMENTAL AND LOCATIONAL MATTERS, INCLUDING:

*ADEQUACY OF ACCESS
*ADEQUACY OF WATER SUPPLY AND DRAINAGE
*ADEQUACY OF WASTE DISPOSAL FACILITIES
*RELATIONSHIP TO NEIGHBOURING LAND USES
*RELATIONSHIP TO EXISTING FACILITIES AND SERVICES
*BUSH FIRE RISK
*POTENTIAL EROSION HAZARD
*SITE VEGETATION COVERAGE
*AGRICULTURAL SUITABILITY
*SITING OF PROPOSED BUILDINGS.

POLICY THIRTEEN: ALL APPLICANTS FOR MULTIPLE OCCUPANCY STATUS MUST PRESENT WITH THEIR DEVELOPMENT APPLICATION A SITE AND DEVELOPMENT PLAN OF EXISTING AND PROPOSED CONDITIONS ON THE HOLDING IN QUESTION.

Environmental constraints

The Rural Land Evaluation Manual identifies the environmental constraints which would apply to multiple occupancy and divides constraints into those which are "absolute" and those which are not. The Manual goes on to classify land according to its capability for development. Land capability classes are subsequently transformed into densities. The same approach is relevant in identifying areas appropriate for multiple occupancy developments, with individual applications being considered according to the matters listed for consideration under s.90 of the Act.

Any statutory list of environmental criteria incorporated into an S.E.P.P. on multiple occupancy can only spell out in more detail the heads of consideration covered in section 90. In addition, an advisory manual should be produced to assist councils and prospective developers. This manual would essentially complement the Rural Land Evaluation Manual and the Department's publication on Low Cost Rural Homes. The manual should contain detailed advice on how to prepare a development concept plan or map for a proposed multiple occupancy

which could be used as a guide by individual councils. Such a plan should be required for developments exceeding four dwellings.

The suggested manual should be developed in consultation with those councils having multiple occupancy provisions as well as existing multiple occupancy communities. It should be available by the time the State policy is finalised.

The following matters should be dealt with in a concept plan:

Access - access to multiple occupancy developments should be via public roads and not by rights-of-way. Different road standards should apply depending on the volume of total road use.

Water/Drainage - adequate water storage is necessary to provide for the household needs of the number of dwellings propcsed as well as for fire fighting purposes and irrigation. This is likely to require a large elevated bulk storage tank, a dam or permanent river, creek or lagoon, in addition to domestic tank supply/storage.

Bush Fire Risk - areas of high to medium bush fire risk are listed as a constraint in the Rural Land Evaluation Manual and such areas should be reflected in the land's (density) capability. P.E.C. Circulars 16 and 23 give some guidance on this issue, as also does D.E.P. Circular 74. Not only is sufficient water storage essential for fighting bush fires but also associated infrastructure, e.g. pumps, pipes, etc.: fire-breaks and fire refuges may be needed. A bush fire management plan should be submitted with any development application.

Waste Disposal - sewage disposal is a major concern and traditional "wet" disposal systems (i.e. septic tanks) may not be suitable in certain soils and in high rainfall areas. In Victoria and Queensland (as well as other countries such as Sweden), "composting toilets" are permitted. This is a "dry" system, not depending on soil absorption characteristics. The N.S.W. Department of Health will need to approve the use of composting systems. With regard to other household wastes, houses should not be located near to any creek or watercourse to avoid pollution. The advice of the local health inspector should be sought.

Facilities/Services - multiple occupancy developments and rural residential subdivisions should be

located within reasonable travelling time/distance of needed facilities and services. Proximity to schools and bus routes may be an important factor. The scale of some multiple occupancy developments however, may warrant their own internal facilities, e.g. community halls and preschools. The particular facilities used may vary with the type of development.

Hazards - the "Rural Land Evaluation Manual" identifies slopes over 33% as an "absolute" constraint because of the danger of landslip. Lower gradients may be hazardous depending on climate and soil type. Advice from appropriate organisations, e.g. Soil Conservation Service of N.S.W., soil consultants, etc., should be obtained prior to submitting a development application. Flooding is also a constraint to development, and dwellings and other buildings should not be sited on flood liable land.

Vegetation - some balance has to be achieved between bush fire hazard, erosion control, agricultural use, site density and scenic/rural amenity. Council's consent to the clearing of significant vegetation is therefore desirable.

Siting of buildings - the development application should be detailed enough to allow councils to assess the appropriate siting of all proposed buildings. There may be an advantage in promoting a clustering of dwellings (rather than dispersal throughout the holding) to reduce visual impact, vegetation disturbance, and facilitate bush fire management. The concept of providing for discrete dwelling areas rather than specific building sites would be an incentive for clustered development.

Visual impact - while the aesthetics of a particular proposal are often a subjective matter, it is reasonable for a council to examine a proposal against explicit landscape goals, such as preserving natural ridgelines.

Advertised development

It is proposed that any multiple occupancy consisting of more than four dwellings should constitute advertised development, in recognition of the potential for impact on the surrounding area. This may justify councils charging a fee to cover advertising costs (to a maximum of $500).

Conservation

There is the potential for councils to give incentives for conservation of wildlife habitats, significant vegetation areas, etc., as part of multiple occupancy development. A reduction in section 94 levies, rates concessions, or reduction in development and building application fees are all possibilities.

PROPOSED NEW POLICY

It is recommended that the following new policies be adopted:

POLICY FIFTEEN: IN CONSIDERING AN APPLICATION FOR MULTIPLE OCCUPANCY, THE COUNCIL SHOULD TAKE ACCOUNT OF ENVIRONMENTAL AND LOCATIONAL MATTERS. THESE MATTERS INCLUDE ROAD ACCESS, WATER SUPPLY, BUSHFIRE PROTECTION, WASTE DISPOSAL, AVAILABILITY OF COMMUNITY SERVICES, EROSION, HAZARDS, VEGETATION, VISUAL IMPACT AND THE SITING OF BUILDINGS. THEY ALSO INCLUDE THE NEED FOR DEVELOPMENT OTHER THAN AGRICULTURE AND DWELLING HOUSES, WHETHER THE LAND WILL BE REQUIRED FOR URBAN OR RURAL RESIDENTIAL EXPANSION, AND WHETHER THE DEVELOPMENT WILL BENEFIT AN EXISTING VILLAGE.

POLICY SIXTEEN: ANY DEVELOPMENT APPLICATION FOR MULTIPLE OCCUPANCY INCLUDING MORE THAN FOUR DWELLINGS SHOULD BE ADVERTISED DEVELOPMENT, AND SHOULD INCLUDE A MAP THAT IDENTIFIES PHYSICAL CONSTRAINTS, PRIME CROP AND PASTURE LAND, AREAS FOR DEVELOPMENT OTHER THAN FOR RESIDENTIAL USE, WATER SUPPLY SOURCES AND CAPACITY, AND MEANS OF ACCESS TO DWELLING AREAS FROM A PUBLIC ROAD.

POLICY SEVENTEEN: A MULTIPLE OCCUPANCY MANUAL SHOULD BE PREPARED BY THE DEPARTMENT TO ASSIST IN THE PREPARATION AND CONSIDERATION OF DEVELOPMENT APPLICATIONS FOR MULTIPLE OCCUPANCY.

POLICY EIGHTEEN: INCENTIVES SHOULD ENCOURAGE THE CONSERVATION OF WILDLIFE HABITATS WITHIN MULTIPLE OCCUPANCY DEVELOPMENTS. THIS WOULD INCLUDE OMITTING SECTION 94 LEVIES FOR OPEN SPACE, FOR EXAMPLE.

7. SIZE AND DENSITY CONTROLS

CURRENT POLICY

POLICY THREE: HOLDINGS TO WHICH MULTIPLE OCCUPANCY STATUS IS GRANTED SHOULD GENERALLY HAVE A MINIMUM AREA OF FORTY HECTARES, WITH AN ABSOLUTE MINIMUM OF TWENTY HECTARES WHERE SUCH IS THE PREVAILING SUBDIVISION LOT SIZE IN THE LOCALITY.

POLICY SEVEN: APPROVAL FOR MULTIPLE OCCUPANCY STATUS SHALL ONLY BE GRANTED TO THOSE COMMUNITIES ON WHICH EXISTING OR PROPOSED BUILDING DENSITIES DO NOT EXCEED THAT REASONABLY REQUIRED TO HOUSE ONE PERSON FOR EACH HECTARE OF THE HOLDING IN QUESTION.

Minimum area

In the main, multiple occupancies are set up with the aim of economic sustainability. Consequently agriculture in some form or another is likely to be undertaken within the multiple occupancy property. The threat of land sterilisation or loss of rural land is unlikely. The fact that some existing multiple occupancy developments do not have a significant agricultural component may simply be symptomatic of the early stages of development (little spare capital, preoccupation with building houses etc.), or of the fact that the situation to date has pushed them into agriculturally poor land. The fact that many such developments are experimenting with new forms of agricultural productivity, rather than adding to oversupply of traditional products, is consistent with the Government's objectives.

It is proposed that the minimum size for multiple occupancy development be 40 hectares which is the same as the statutory minimum prevailing in most council areas relating to Rural 1(a) and 1(b) land. Concessional lots, and existing lots smaller than the statutory minimum, would not normally be appropriate for multiple occupancy. In exceptional cases, the minimum area requirements might be varied by the use of S.E.P.P. No. 1 (Development Standards). This may be necessary to legalise some existing developments which in other respects meet the objectives and performance standards of the policy.

Density

Existing policy specifies a maximum density of one person per hectare for multiple occupancy. In practice, most developments appear to result in a lower density than this. There are obvious problems in enforcing a standard relating to numbers of people. It seems preferable to give the option to translate any such standard into equivalent dwellings per hectare. The fact that some dwellings may be expanded houses is a complicating factor. Experience to date indicates that only relatively few expanded houses eventuate. These may not necessarily have higher occupancy than conventional homes (being preferred as group occupancy for singles). However, giving a density formula with accommodation for a number of persons deals with this situation.

A range of density controls is proposed, relating to the size of the multiple occupancy holding:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

This would meet current demands, and would maintain a difference in character between multiple occupancy and rural residential development. It would also allow for reduced impact on larger properties, which often are more remote, with development constraints and reduced agricultural potential (given the price range affordable by most purchasers).

Multiple occupancy developments requiring more than 80 dwellings will need to be the subject of a separate rezoning through the local environmental plan making process.

Ownership

The current policy, requiring ownership to be vested in at least two-thirds of the multiple occupancy adult residents, was included as a safeguard against land speculation. It is not usual for ownership to be a planning criterion, and it is clearly not a condition that can easily be enforced or monitored. Given the possibility for token minority ownership, any such provisions could easily be overcome by speculators.

It is considered that land speculation is not likely to be a major aspect of any multiple occupancy development, so long as strata titles or subdivision through company title are not a possibility; therefore it is proposed that a new multiple occupancy policy have no stipulation on minimum ownership patterns for multiple occupancy developments.

PROPOSED NEW POLICY

It is recommended that the following policies be adopted:

POLICY NINETEEN: THE MINIMUM LOT SIZE FOR MULTIPLE OCCUPANCY DEVELOPMENT SHOULD BE 40 HECTARES.

POLICY TWENTY: DENSITY FOR MULTIPLE OCCUPANCY SHOULD BE IN ACCORDANCE WITH THE FOLLOWING TABLE:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

AN ALTERNATIVE FORMULA FOR CALCULATING DENSITY SHOULD BE BASED ON ACCOMMODATION FOR A NUMBER OF PEOPLE, WITH AN AVERAGE OF 4 PERSONS PER DWELLING.

8. PERMISSIBLE USES

CURRENT POLICY

POLICY NINE: HOLDINGS GRANTED MULTIPLE OCCUPANCY STATUS SHOULD BE USED ONLY FOR PERMANENT RESIDENTIAL PURPOSES AND SHOULD NOT BE USED FOR HOTEL, MOTEL, CARAVAN PARK OR ANY OTHER TYPE OF HOLIDAY, TOURIST OR WEEKEND RESIDENTIAL ACCOMMODATION.

The current policy is designed to prevent exploitation of the multiple occupancy provisions by the introduction of commercial activities not associated with the lifestyles of the owners. It has been given expression in those planning instruments containing multiple occupancy provisions by specifically prohibiting councils from permitting such developments. These controls often sit side by side with the general rural zones which permit an extremely broad range of land uses. Village or township zones are similarly liberal in the range of permissible land uses.

Current land uses

The type of land uses that have been developed on multiple occupancy properties vary with the number of people who are shareholders or residents. In the case of a farm of three or four dwellings, residential development with perhaps a community building would be the extent of the development.

With a community of 80 dwellings, the whole range of normal community functions may have to be catered for if the property is not within easy travelling distance from an existing settlement. In the early development stages of these communities many shareholders do not live permanently on the land. As a result there is a need for accommodation covering short or medium term visits. A community of this size could need:

- school, pre-school and child care facilities
- a health centre
- a community administrative centre or public hall
- a general store
- a restaurant
- a workshop for arts, crafts or a small industry
- a camping area
- self-contained cabins for temporary accommodation
- a bakery
- a bank/post office agency
- a nursery
- home industries and home occupations.

Community facilities

In rural areas community facilities have normally been catered for in a village zone where all these land uses were permissible with council consent. The problem with using this technique is that the development proposed is unlikely to expand over the entire property, nor is it desirable that it do so. If however, development of community facilities was restricted to a single central location, then the plan would have the flexibility required by council and the community to cope with changing needs, and council would be able to use the development control plan process or a more informal concept plan to control the details of development. These community facilities would be provided as a central village area to be located as part of a development concept plan.

Short-term or visitor accommodation

The current policy attempts to restrict short-term shareholders' or visitor accommodation as it contends that it could lead to exploitation of the multiple occupancy provisions for commercial gain.

While there is no doubt that there is the potential for exploitation there is also a need for short-term accommodation and this type of development is now occurring illegally. Short-term accommodation is needed while people build their own houses (see section 3) and for part-time residents or visiting non-resident shareholders. The type of development that would fill this need could be included within a camping ground with some hostel or cabin development. It would seem essential that development of this nature be owned communally and also located in the development concept plan. Councils might be well advised to give consent to such ancillary development conditional on a substantial proportion of dwellings being commenced prior to the ancillary development being commenced, or otherwise conditional on the property being occupied by a specified minimum number of people. Conditions should be tailored to meet particular circumstances. There is no evidence to suggest that the current policy should be changed to permit motels, caravan parks or residential accommodation other than that already mentioned.

PROPOSED NEW POLICY

It is recommended that the following policy replace the current Policy No. 9:

POLICY TWENTY-ONE: HOLDINGS 40 HECTARES AND LARGER GRANTED MULTIPLE OCCUPANCY STATUS MAY PROVIDE FOR THE LOCATION OF COMMUNITY FACILITIES, A CAMPING PARK, AND CABIN AND HOSTEL DEVELOPMENT WITHIN THE LAND, PROVIDED THAT THE EXTENT OF THOSE FACILITIES IS IDENTIFIED PRIOR TO OCCUPATION OF THE LAND IN A DEVELOPMENT CONCEPT PLAN AND IS LIMITED IN AREA, BEING PRIMARILY FOR THE USE OF RESIDENTS. SUBDIVISION (TO GIVE SEPARATE TITLE) OF NON-RESIDENTIAL DEVELOPMENT WITHIN A MULTIPLE OCCUPANCY PROPERTY SHOULD NOT BE PERMISSIBLE.

9. MONETARY CONTRIBUTIONS

CURRENT POLICY

POLICY FOURTEEN: THE ISSUE OF RATING MULTIPLE OCCUPANCY HOLDINGS IS A LOCAL MATTER AND SHOULD BE DEALT WITH AT THE LOCAL LEVEL.

Administrative provisions

Section 94 of the Environmental Planning and Assessment Act, 1979 allows local councils to seek contributions, either in terms of land dedication, or monetary amount towards the cost of providing public utilities and community facilities. Where contributions toward councils' costs of providing services are involved, they must be sought through section 94, which requires certain procedures to be followed.

Particular subsections of section 94 require that:

i) an environmental planning instrument include an enabling clause to the effect that the carrying out of development in accordance with the instrument may increase the demand for certain services, the services to be specified by means of a schedule;

ii) contributions be justified in the context that the proposed development does actually result in an increased demand for the specified services, and that the contributions obtained be held by the council in trust so that they can be directed within a reasonable time to the specific purpose for which they were collected; and

iii) the level of contribution be "reasonable".

Decisions in the Land and Environment Court have placed considerable importance on the justification by councils of amounts sought under the provisions described in (ii) and (iii) above. The Department of Environment and Planning has issued Circulars to Councils No. 23 (14th October, 1981) and No. 42 (5th November, 1982), suggesting appropriate guidelines and methods of calculating appropriate levels of contributions. Circular No. 42 is listed among the Minister's directions under section 117(2) of the Act, and councils are required to consider it in the preparation of local environmental plans. This circular recommends the preparation by councils of a "social plan", to indicate existing amenities and services and identify those which will be needed.

Attitude of multiple occupancy communities to section 94 contributions

Judging from correspondence received by the Department and by the Minister, section 94 contributions are a source of considerable concern to existing and prospective multiple occupancy residents. This concern is manifested on two fronts:

i) the contributions are too high. They reflect the actual costs to councils of upgrading existing facilities, rather than the additional wear and tear on those facilities caused by the proposed development itself. Most of the complaints in this regard concern charges for the construction and maintenance of roads and bridges;

ii) the applicants do not have the same ability to pay as more conventional developers. This is largely because where there is subdivision of rural land, the market effect of the subdivision is that capital is generated, and this capital enables the developer to contribute to council's costs. Multiple occupancy does not in itself generate capital, and typical applicants have few resources that can be used to pay levies;

iii) the contributions relate to community facilities, such as child care centres and sportsfields, for which multiple occupancies are likely to have less demand than conventional developments, being generally more self-sufficient in these areas as time goes on.

It is clear that some of these criticisms have some validity. It is not clear to what extent charges have been justified by the "social plan" technique mentioned earlier, and given the wide variation between councils' policies, it is also not clear whether the contributions are "reasonable". The ultimate test of the levels for contributions rests with the Court, but few, if any, multiple occupancy proposals have yet challenged councils' determinations.

While it is evident that many multiple occupancies do provide their own community facilities, those that do are large enterprises which have been established many years. Questions were sent by the Byron Shire to some existing multiple occupancy developments in that Shire to ascertain to what extent their residents used community facilities in Byron Shire. Preliminary results indicated that high usage may be expected for pre-schools, library facilities, community centres, and C.Y.S.S. centres. As not all of these facilities can be provided within multiple occupancies, particularly

new developments, councils are justified in seeking contributions for these facilities.

Most councils make no provision for section 94 contributions to be made "in kind". While the legislation mentions only contributions in the "dedication of land free of cost", or the "payment of a monetary contribution" (or both) (section 94(1)), Circulars Nos. 23 and 42 both mention that contributions "in kind" (in the form of labour directed to a specific project) could be an acceptable alternative. Council officers are perhaps reluctant to try to impose conditions that do not have a clear legal base.

While there is no obligation on councils to accept "in kind" payments, section 91(3)(f) of the Act may provide a legal basis for it (relating to works required to be carried out on land which is not the subject of the development application, where it relates to section 90 considerations, and as a condition of development consent). Particularly for road contributions, where costs may be high, and where sub-contracting of work is a well established practice (especially to those with access to machinery), councils should be encouraged to accept "in kind" contributions where possible. Conditions imposed under section 91(3)(f) should still stand the test of reasonableness, and should be sufficiently explicit for both the council and the applicant to appraise the likely costs of complying with the conditions.

There may also be the possibility for councils to accept phased payments over a period of time. This may be particularly important for large developments.

Guidelines for section 94 contributions

The suggestions below are not proposed to take the place of a "social plan" relating to multiple occupancy development, but to apply until such a plan can be developed by councils to justify different levels for section 94 contributions. Charges being made by councils in the North Coast region have been collated by the Local Government Planners Association and the suggestions below are based on this data. The suggested levels of contribution would apply to conditions under section 91(3)(f) where appropriate.

Roads and bridges: Road improvement contribution in cash (or labour, to the satisfaction of the Shire Engineer) at a maximum level of $1,500 per dwelling, To apply instead of (and not in addition to) any specific requirement for local road upgrading which might be required under sections 91(3)(a) and 90(1)(j). It would be expected that

normally charges of considerably less than $1,500 per dwelling would be arrived at, and a figure of $500 per dwelling might be an appropriate maximum for most cases. The maximum of $1,500 might apply in areas with exceptionally poor access, which are otherwise suited to multiple occupancy.

Community facilities: Contribution in cash (or labour to the satisfaction of the council directed towards a specific project) at a maximum level $150 per dwelling. Contributions of land or buildings in lieu of payment may be appropriate in some circumstances.

Open space: Improvement contribution in cash (or labour to the satisfaction of the Shire Health and Building Surveyor, directed towards a specific project) at a maximum level of $150 per dwelling. Contributions of land in lieu of payment may be appropriate.

Bush fire fighting facilities: Contribution in cash to support local brigade (or labour to the satisfaction of the Shire Bush Fire Officer - labour component not to include attendance at volunteer training sessions, or actual fire fighting) at a maximum level of $150 per dwelling. To apply instead of, and not in addition to any specific requirement for on-site water tanks or fire fighting equipment which might be imposed under sections 91(3)(a) and 90(1)(g).

It is proposed that any State environmental planning policy for multiple occupancy include a "standard" section 94 clause enabling contributions to be sought for roads and bridgeworks, community facilities, open space and bush fire fighting facilities. The documentation accompanying the policy should include a provision clarifying that labour, or other contribution "in kind" should be acceptable, in lieu of land or monetary contributions, and should give the set of guidelines in paragraph 9 above.

Rates

As well as contributions for the capital costs of services, councils do of course raise revenue through rates. These have normally been based on unimproved land value rather than on intensity of use or number of inhabitants. Some councils have sought to impose rates on multiple occupancy developments which are well above the minimum rate for rural property. This issue should be taken up with the Minister for Local Government, so

that the principles to be used in determining the level of rating for multiple occupancy can be clarified in a circular to councils.

PROPOSED NEW POLICY

It is recommended that the new policies should be as follows:

POLICY TWENTY-TWO: THE ISSUE OF RATING MULTIPLE OCCUPANCY HOLDINGS SHOULD BE TAKEN UP WITH THE MINISTER FOR LOCAL GOVERNMENT FOR CLARIFICATION OF THE PRINCIPLES TO BE USED BY COUNCILS, BY CIRCULAR.

POLICY TWENTY-THREE: CONTRIBUTIONS RAISED BY COUNCILS UNDER SECTION 94 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 SHOULD BE LIMITED IN EXTENT AND AMOUNT AND COUNCILS SHOULD BE ENCOURAGED TO ACCEPT "IN KIND" CONTRIBUTIONS AND PHASED PAYMENTS.

10. REFERENCES

1. Department of Environment and Planning Circulars Nos. 23 (April 1978), 42 (November 1982) and 74 (October 1984).

2. Department of Environment and Planning (1984), Rural Land Evaluation Manual.

3. Land Commission of N.S.W. (June 1984), Multiple Occupancy Development Feasibility Study.

4. Lismore City Council (1984), Housing Study.

5. Nicolson v. Lismore City Council, Case No. 20519 of 1983

6. N.S.W. Environmental Planning and Assessment Act, 1979.

7. Planning and Environment Commission, Circulars Nos. 35 (November 1979) and 44 (July 1980).

8. Rural Adjustment Unit (May 1984), Sustainable Rural Resettlement, University of New England.

9. Rural Resettlement Task Force (August 1984), Council Rating Procedure in Relation to Multiple Occupancy.

10. Rural Resettlement Task Force (August 1984), Multiple Occupancy and Ordinance 70.

11. Technical Assistance Group (1982), Bega Report, Department of Environment and Planning.

12. Victorian Ministry of Housing (May 1984), Sustainable Community Settlement Society: Feasibility Study.

13. Working Group to investigate and recommend a suitable legal structure for Multiple Occupancy Developments, confidential draft report (1984).

11. SUMMARY OF POLICIES

POLICY ONE:	The Department of Environment and Planning supports the use of rural land for multiple occupancy development. Enabling provisions should be introduced to override existing local plans, though future local plans might later amend the State policy.
POLICY TWO:	"Multiple occupancy" means the development of rural land for the erection of more than one dwelling house or expanded dwelling house where the major part of the parcel is held in common ownership and management, and the majority of residents participate either in ownership or management (whether or not non-residents are also involved).
POLICY THREE:	Multiple occupancy holdings in existence prior to gazettal of the state policy that were developed without council approval should be legalised if they meet the objectives and planning criteria contained in the policy. A register of holdings which may not meet the conditions and criteria of the draft policy will be compiled following exhibition of the draft policy, and referred to councils for processing development applications. In some cases a variation to the development standards may be warranted through the use of State Environmental Planning Policy No. 1: Development Standards.
POLICY FOUR:	Residents of existing buildings on multiple occupancy holdings which have been legalised by a development consent issued under the enabling clause should be encouraged to apply to the council for a section 317A certificate of compliance under the Local Government Act, 1919.
POLICY FIVE:	Transitional dwellings for use while permanent dwellings are erected should be permissible, and councils should consider licensing structures for transitional use for a period up to five years.

POLICY SIX: A formula for calculation of the development application fee is suggested, based on a capital development cost of $2,000 per person for owner builders, for example.

POLICY SEVEN: Transitional dwellings for use while permanent dwellings are erected should be permissible, and councils should consider licensing structures for transitional use for an appropriate period.

POLICY EIGHT: Representations should be continued with the Federal Government to ensure that the First Home Owners Scheme can be applied to multiple occupancy dwellings.

POLICY NINE: New forms of legal title for multiple occupancy should be introduced.

POLICY TEN: Future subdivision (including strata title subdivision) of any holding granted multiple occupancy status is prohibited as long as it retains that status.

POLICY ELEVEN: Implementation of the policy should be closely monitored with a view to amending policy ten in relation to strata subdivision, or other new forms of tenure, if appropriate at a later stage.

POLICY TWELVE: Any applicant for multiple occupancy status on a holding made up of more than one parcel, portion or part portion shall at the time of approval also make application for consolidation of title and this should be achieved before development commences.

POLICY THIRTEEN: Multiple occupancy should be permissible with the local council's consent in all general rural or non urban zones outside the major metropolitan areas of the State. It should be prohibited on land reserved or intended for national parks, state forests, crown reserves, state recreation areas, environmental protection, water catchment and other similar uses or protected under the coastal lands protection scheme.

POLICY FOURTEEN: Multiple Occupany should be permissible with the local council's consent on land identified as prime crop and pasture land by the Department of Agriculture provided that any dwelling or non-agricultural buildings are not located on land so classified.

POLICY FIFTEEN: In considering an application for multiple occupancy, the council should take account of environmental and locational matters. These matters include road access, water supply, bush fire protection, waste disposal, availability of community services, erosion, hazards, vegetation, visual impact and the siting of buildings. They also include the need for development other than agriculture and dwelling houses, whether the land will be required for urban or rural residential expansion, and whether the development will benefit an existing village.

POLICY SIXTEEN: Any development application for multiple occupancy including more than 4 dwellings should be advertised development, and should include a map that identifies physical constraints, prime crop and pasture land, areas for development other than for residential use, water supply sources and capacity, and means of access to dwelling areas from a public road.

POLICY SEVENTEEN: A multiple occupancy manual should be prepared by the Department to assist in the preparation and consideration of development applications for multiple occupancy.

POLICY EIGHTEEN: Incentives should encourage the conservation of wildlife habitats within multiple occupancy developments. This would include omitting section 94 levies for open space, for example.

POLICY NINETEEN: The minimum lot size for multiple occupancy development should be 40 hectares.

POLICY TWENTY: Density for multiple occupancy should be in accordance with the following table:

Area of land	Number of dwellings where A represents the area of the land, the subject of the application, when measured in hectares.
Not less than 40 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

An alternative formula for calculating density should be based on accommodation for a number of people with an average of 4 persons per dwelling.

POLICY TWENTY-ONE: Holdings 40 hectares and larger granted multiple occupancy status may provide for the location of community facilities, a camping park, and cabin and hostel development within the land, provided that the extent of those facilities is identified in a development concept plan and is limited in area, being primarily for the use of residents. Subdivision (to give separate title) of non-residential development within a multiple occupancy property should not be permissible.

POLICY TWENTY-TWO: The issue of rating multiple occupancy holdings should be taken up with the Minister for Local Government for clarification of the principles to be used by councils, by circular.

POLICY TWENTY-THREE: Contributions raised by councils under section 94 of the Environmental Planning and Assessment Act, 1979 should be limited in extent and amount and councils should be encouraged to accept "in kind" contributions, and phased payments.

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DEP Discussion Note — Extracts.

S94, S90

p7 "The result (of MO settlement) has been that the existing rural services and social infrastructure are again being utilised. Even the alternative that new services would need to have been provided in the major urban areas, if the rural areas had not been settled, the overall the community has benefitted significantly" (Our emphasis). (Discussion Paper, p2)

p24 "There is the potential for Councils to give incentives for conservation of wildlife habitats, significant vegetation areas, etc.), as part of M.O. development. A reduction in S.94 levies, rate concessions, or reduction in development and building application fees are all possibilities." (Discussion Paper, p 24). (This ~~is a~~ concept is embodied in Proposed Policy 18 of the Discussion Paper)

p32 We ~~support the summary~~
"The S94 contributions are too high. They reflect the actual costs to Councils of upgrading existing facilities, rather than the additional new and later or those facilities caused by the proposed development itself." ~~The aim of the exemptions is to~~ (Discussion Paper, p 32)

"Applicants do not have the same ability to pay as more conventional developers. This is largely because where there is a subdivision of rural land, the market effect of the subdivision is that capital is generated, and this capital enables the developer to contribute to Council's costs. M.O ~~staff~~ does not of itself generate capital, and typical applicants have few resources that can be used to pay levies" (Discussion Paper, p 32)

SUBMISSION BY THE

RURAL RESETTLEMENT TASK FORCE

ON THE

Draft STATE ENVIRONMENTAL PLANNING POLICY -
Dwelling Houses in Rural Areas (Multiple Occupancy)

(27 Sept. 1985)

1.0 The Association welcomes the long awaited release of the Draft Policy and hopes that the final gazettal and implimentation of the Policy will occur as soon as possible.

1.1 In general terms we support the broad Policy Objectives of the Draft in that it should enable Multiple Occupancy (M.O.) to occur in many areas of the State subject to strict environmental assessment. A number of comments specific to certain clauses of the Draft Policy follow. Our submission on Lismore Council's Rural Strategies Study is appended as a response to some Council suggestions that M.O. should be restricted to a miniscule portion of their Shire.

2.0 Clause 2. Aims, objectives, etc.
In Clause 2(a) delete "to be occupied as their principal place of residence".
Comment
What is gained or achieved by insisting on it being the "prinicipal" place of residence? How would council monitor this? A member may wish to study overseas for say two years; should this act disqualify the member from still being a member of an M.O.? Parents for example, may wish to take up a share, but not wish to reside until retirement or death of a partner. Any notion that this might mitigate against an agent developing solely for profit is hardly likely to be water- tight.

2.1 Clause 2(b) to read: "to enable people, and in particular the socially and economically disadvantaged, to...."
Comment
The aims and objectives should be strengthened by giving recognition to the "social" and "communal" aspects, along with the economic aspect, motivating this Policy!

2.2 Clause 2(d) to read: "to facilitate development of self generating forms of livelihood, and, to create opportunities for an increase in rural population in areas which are suffering or are likely to suffer from a decline in services due to population loss , and, to create oppurtunities for cultural diversity.

Comment
The aspect of "self help" needs to be acknowledged and facilitated. M.O. we submit, is sought because it is a practical, rewarding and challenging alternative to urban life. The aims of this Policy would be better directed to "quality of life" than attempting to fill underutilised services!

3.0 Clause 3(b). Excluded Land
For clarity we here break up the excluded land schedule into two parts viz. Part A, being the first four items ie. land under the N.P.W.S. Act, Crown Lands Act and Forestry Act, and Part B, being the balance ie. various protection zones.

3.1 We support the exclusion of the lands in Schedule 1 Part A from the Policy on the understanding that the inclusion of this list is here required as a legal techinicality.

3.2 We submit that Schedule 1 Part B, be deleted.
Comment
Where settlement is permissable within these zones we see that councils have adequate discretion to control any such development on its merits. This being the case it would be discriminatory to single out M.O. citizens. We can envisage a situation where M.O. settlement may be a more appropiate way of conserving the integrity of a sensitive zone than allowing private development!

3.3 If this recommendation is not acceptable then we urge that close attention be given to the list of zones and reasons given for their inclusion. These we submit, must all be scrupuliously defined. What for example, does "Conservation" and "Open space" in the present list mean? Failure to be specific in this regard would enable a "hostile" council to effectively exclude large portions of rural land from the benefit of this Policy. In the Lismore City Council area for example it appears that two existing (gazetted) M.O. fall within a proposed environmental protection zone. What would their future situation be in terms of planning legislation?

4.0 Clause 4. Interpretation
Add "'home industry' and 'home occupation' shall have the meanings given to these terms in the Environmental Planning and Assessment Model Provisions, 1980."
For comment see under Item 6.4 below.

4.1 Add "'economically disadvantaged person' means a person who is in receipt of a Health Care Card or otherwise, by choice or circumstance, does not have an eqivalently greater income".

Comment

To give definition to this term as used in the Aims and Objective, clause 2(b). We believe it is of value to recognise that there are those who "choose" to live in a simple manner.

Re the definition of 'dwelling'. Determination of what constitutes "separate" needs to be carefully and clearly addresed in the Manual. Would a kitchenette on an open verandah for example, be classed as a kitchen and thereby making the whole structure a separate "dwelling" for the purpose of this Policy? Such determination has important consequences for example, in establishing density under clause 8.

5.0 Clause 5. Relationship to other planning instruments

It is noted that clause 5(1) is designed in part, to ensure that S.E.P.P. No.1 will apply, and the example is given, that this could be used to vary the proposed 40 ha minimum land size. If the minimum of 40 ha is to be retained (note our proposal in clause 6(1)(b) below that the 40 ha minimum be deleted) then, it is our understanding that as a rule-of-thumb, S.E.P.P. No.1 could be used to permit say a 10% reduction. This would be insufficient to cater for those situations where for example, 20 ha is "the prevailing subdivision" size as allowed for in Circular 44.

5.1 Add at the end of Clause 5(2), "on the condition that such a plan provides more detailed and liberal controls than covered in this Policy."

Comment

If this is the intent of the Policy, then we submit with respect, that the Policy should state same to give it legal standing!

6.0 Clause 6(1)(a). Single Allotment

If a minimum area of 40 ha is to be retained (see clause 6(1)(b) below where we are in favour of dropping this requirement) then we are of the view that if a developer owns two or more parcels of land each with a separate title, and each comprising an area of 40 ha or more, we do not see the need to require the consolidation of the titles, provided it can be demonstrted that a subsequent separation of the parcels would not breach any other clause of this Policy eg. adequacy of water supply, density of development.

6.1 Clause 6(1)(b). Minimum area

We are of the view that there should be no minimum of 40 ha. Councils should be given the discretion to determine each application on its merits. This would permit greater flexibility and closer dovetailing between this Policy and the Dual Occupancy Policy. It will also accommodate the situation where the prevailing subdivision is for example, 20 ha.

6.2 6(1)(e). Prime crop land

The notion that "the council has determined" seems to imply that the council may accept, or reject, the advice of the Dept. of Agriculture. If this is what is intended, we submit that a "lash back" condition could arrise where the Dept. of Agriculture did not consider a particular proposal to be on prime crop land, but the council had other ideas about this! Rewording may remove any possible ambiguity on this account.

6.3 Clause 6(1)(f). Visitors Accommodation

We suggest that the statement in the glossy leaflet "schools, community facilities, workshops & visitors' accommodation are to be permitted" be included in the Policy.

6.4 Add a new clause 6(4), "'Home occupation' and 'home industry' shall be permissable land use."

Comment

This provision gives effect to Objective 2(d) in accordance with our proposed amendment. We understand that 'home industry' is not permissable use in Rural 1B zones. This provision would assist development of self-generating forms of livelihood not otherwise permissable. 'Home occupation' has been included here for the sake of clarity for the lay person not withstanding its availibility under s.35(c) of the Model Provisions.

6.5 Add a new clause 6(5) to the effect that nothing in this policy shall be construed as to restrict the State or Commonwealth Minister for Aboriginal affairs from implimenting any policy relating to aboriginal housing or resettlement.

Comment

This principle is proposed to acknowledge that special conditions may need to apply for example, in respect to traditional patterns of settlement in remote areas of the state.

7.0 Clause 7 Heads of Consideration

Re Clause 7(1)(j): What inference is to be drawn from a finding that the land is in a rural residential expansion area? Is it to be assumed that M.O. development is to be considered incompatable with rural residential development? If so, we would take exception to this concept.

7.1 Add a new clause 7(o), "The bona fides of the application in terms of, in particular, the Aims and Objectives of the Policy."

Comment

This clause relates to the bona fides of the application to ensure that it genuinely meets the spirit and letter of this Policy. It is suggested that where an application is made by an agent or a person who will not, or appears may not reside on the property in the long term then the council shall call for, examine, and take into account the following documentation and or statements as appear applicable in the particular circumstances:

* evidence that there is a communal organisation and that there is, or is to be, a communal decision making body,
* the aims and objectives of the orginasation,
* constitution, articles and memorandum,
* trust deeds and the like,
* statement of distribution of any profit,
* statement of proposed transmission of decision making authority to the share holders generally,
* statement on the disbursement of any assets etc. in the event of the winding up of the organisation,
* statement on the obligations and entitlements of a shareholder generally, and in particular the organisations rights in the event of a share holder wishing to leave or sell a share or a building.
* such other documentation or statements as the council may require.

7.2 It is submitted that the presentation of such data will not be onerous on a bona fide applicant and that it should readily reveal whether or not an application is in accord with the spirit of this Policy.

7.3 As a further safeguard the council should have the right to require, as a condition of approval, that the approval will lapse, if at the expiration of a stated period of time, specific conditions have not been fulfilled, or, development as applied for, has not occured. Such a practice would be analagous to a B.A. where corrective action can be insisted upon if construction is not in accordance with the approved application.

7.4 If a council comes to the view that an application is, or may be, of a "speculative" nature for personal profit then consideration could be given to having the land in question rezoned as a "rural residential" area. (To be approved this would then require the concurence of the D.E.P. If approved, strata titling would then be available to the developer).

7.5 Add a new Clause 7(p)(1) viz. "The effect of the proposed development on aboriginal relics and sites", and a further Clause 7(p)(2) viz. "comment on the proposed development by an aboriginal, if any, claiming to have traditional association with the land in question".

Comment

Clause 7(p)(1) provides for consideration of aboriginal relics and sites while Clause 7(p)(2) provides for comment by aborigines traditionally associated with the land in question.

7.6 There is widespread and strong support that this Policy recognise the existence of contemporary aborigines and respect for their attitudes towards the land. Not withstanding this it is not proposed that council's determining authority be diminished in any way. The principle is one of acknowledgement through consultation.

7.7 It is suggested that a request for comment by relevant aborigines be included in the advertisment placed pursuant to clause 10 of this Policy and consideration of this would surfice where the development is for four or more dwellings, and otherwise, comment sought from the local Aboriginal Land Council.

7.8 It is suggested that in the Manual that the list in clause 7(1) be consolidated with the other items in s.90 of the E.P.A. Act, so that applicants will hopefully be in a position to address, all the relevant heads of consideration in any D.A.

7.9 Re Clause 7(2). The inference appears to be from the wording that for three or less dwellings, a map is not required to accompany a D.A. Is this not at variance with s.77(3) of the L.G. Act where eg. the Lismore City Council requires that a map must accompany all applications? (See this council's D.A. form - not being a subdivision).

8.0 Clause 8. Density of Development

Re clause 8(1). Density should in our view, ideally be determined on the basis of the capacity of the land to carry the proposed development ie. taking into account eg. climate, topography, soil type, ground cover along with all the items listed in clause 7.

8.1 If the present basis of an arbitrary formula is to be retained then we are of the view that the first formula should be used for all properties, regardless of size. (This formula is considered to be satisfactory even where there is no minimum of 40 ha as we have proposed be the case, in 6(1)(b) above).

8.2 We do not see that there is a sound basis for reducing the density on larger holdings. Indeed some could exhibit an ability for a greater carrying capacity than a smaller holding! It seems reasonable to us to expect that development on large properties could sustain a retail shop etc. and as such rezoning as a "rural residential" area would appear to be appropiate. This process would then enable the density to be determined on the merits of the application. We further believe however, that the larger properties could get around the present formula by subdividing first and submitting seperate applications for each parcel!

8.3 In rounding off the number of dwelling it needs to be made clear that 0.5 is to be taken to the next whole number.

8.4 The present wording of Sub-clause (2) would require Council to consider the design of the individual dwellings before consenting to the Development Application (and Building Applications!). The intent of this clause however, could be preserved by allowing Councils to place a condition on a Development Approval to the effect that the dwellings subsequently approved shall not reasonably accommodate in total more people than the number calculated by multiplying that maximum number of dwellings by 4. We suggest that this clause be reworded accordingly to give effect to this concept.

9.0 Clause 9. Subdivision

We support Clause 6(1)(d) with its stipulation that at least 80% of the land be held in common ownership and Clause 9 with its provision to prohibit subdivision. Noel Hemmings, Q.C. however, in a Memorandum of Advice has expressed the view that principal legal structures in a Deed of Trust, or Articles of a Company, which specifically grant a member an exclusive right of occupancy to a portion of the land, do in fact constitute a subdivision within the meaning of the Local Government Act. The instructing solicitor, Mr. A. B. Pagotto has expressed the opinion that the Advice of Counsel would also cover "any community which granted a member exclusive right to occupy a dwelling (whether in writing, verbally or by way of a minute in the community records)".

9.1 If this interpertation is to pervail, then it follows that virtually all Multiple Occupancy communities may contain de facto subdivisions. If this is the case then it appears that either the Local Government Act should be amended or Clause 9(2) of the Draft Policy include a further Clause to the effect that sub-clause (1) of Clause 9 will not apply to a member of a community who is granted an exclusive right of occupation over his/her home site, provided the legal arrangments do not breach any provision of this policy including proposed new sub-clause 7(1)(o).

10.0 Clause 12. Contributions Under s.94

The wording of this clause we believe may be misconstrued to read that M.O. development will, under all circumstance, lead to an increased demand for services etc. We submit that it ought not be assumed that such development will result in an increased "cost" to council but that the situation be determined on its merits. The demand for example, may be minimal and not require the up-grading of the services, or, the service at the time, may be under-utilised. We recommend that the clause be reworded to be absolutely clear or, at least that the word "likely" is replaced with some other word such as "possible".

10.1 We consider that a contribution under s.94 should be limited in extent.

Comment

In Circular 23 to Councils on the application of s.94 (issued in 1981!) it is noted;

a. "the Court has been critical of the lack of research undertaken by Councils to justify their requirements." (Item 2).

b. "...that contributions be identified and justified ... particularly in terms of the nexus between the development and the services and amenities demanded by it." (Our emphasis) (Item 5).

c. "Any increase in development costs as a result of contributions under s.94 must be weighed against the wider community concern about access to housing. The Department's view is that there needs to be a compromise in the use of s.94 between the provision and establishment of services on the one hand and the cost to the ultimate consumer on the other." (Our emphasis) (Item 7).

d. "...the Department will be very concerned about the impact of the overall costs involved." (Our emphasis) (Item 8).

10.11 It appears in this regard that Councils have not heeded the contents in Circulars 23 and 42! We support the applicability of the following statements in the Discussion Paper and submit that they significantly bear on this issue.

a. "The results (of M.O. settletment) has been that the existing rural services and social infrastructure are again being utilised . Given the alternative that the new services would need to have been provided in the major urban areas, if the rural areas had not been resettled, then overall the community has benefited significantly ." (Our empahasis) (Discussion Paper p.2.)

b. "Applicants do not have the same ability to pay as more convential developers. This is largely because where there is subdivision of rural land, the market effect of the subdivision is that capital is generated, and this capital enables the developer to contribute to council's costs. M.O. does not of itself generate capital, and typical applicants have few resources that can be used to pay levies".(Discussion Paper p.32.)

10.12 We support in principle Clause 12 of the Draft Policy. In view of the history of councils tardy implimentation of Circulars 23 and 42 we urge that the necessary safeguards be taken to ensure that councis will in future, administer the application of s.94 in accordance with the spirit of the Policy.

10.13 We welcome the notion that "incentives should encourage the conservation of wildlife habitats within M.O. development and that this would for example, include omitting s.94 levies for open space." (Discussion Paper p.24).

10.14 We hence recommend that contributions under s.94 be limited in extent in accordance with the Guidelines set out in the Discussion Paper and as elaborated on pp.33-34 (-eg. a maximum of $1500. per dwelling for roads & bridges).

10.2 Councils should not impose road upgrading conditions under s.90 of the Act in addition to imposing a s.94 road contribution.

Comment

Our experience support that;

> "...contributions are too high. They reflect the actual cost to councils of upgrading existing facilities, rather than the additional wear and tear on those facilities caused by the proposed development itself." (Our emphasis) (Discussion Paper p.32.)

10.21 Direction is required to remove confusion (some say "mystification of the law"!) in respect to s.94 and the appropiate manner and extent of the requirement to upgrading roads. In a recent M.O. application for example, before the Coffs Harbour Shire Council road upgrading conditions were applied under s.90 but no s.94 contribution sought, while in the Kyogle Shire Council a s.94 contribution was sought (but no upgrading condition made under s.90), and in the Lismore City Council area it is the practice to make the normal s.94 charge and require a road upgrading condition under s.90. In each case the road upgrading condition under s.90 was to the value of hundreds of thousands of dollars! (Appeals to the court in some cases are pending).

10.22 (We also draw attention to the possible compensation claims that might be sought against a council if the Court should find that a council has acted improperly by overcharging for road upgrading under s.90!).

10.23 We support the D.E.P. Guideline for s.94 contributions in respect to roads and bridges;

> "Road improvement contribution (under s.94)...to apply instead of (and not in addition to) any specific requirement for local road upgrading which might be required under s.91(3)(a) and s.90(1)(j)".

and recommend that where a s.94 contribution is sought that no upgrading condition be sought under s.90 or s.91.

10.3 Since many M.O. communities develop slowly over a period of years, any contribution should be payable at the time a Building Application is submitted.

Comment

We support the statements in the Discussion Paper pp.33, 35 on the principle of "phased payments", and recommend its implimentation.

10.4 An alternative or "in kind" contribution should be provided to a financial contribution. We support the statements in both Circulars 23 and 42, "that contributions 'in kind'... could be an acceptable allternative" and draw attention to the fact that no council to date, appears to have heeded this advice! We therefor recommend implimentation of the proposal in the Discussion Paper;

> "The policy should include a provision claryfing that labour, or other contribution "in kind" should be acceptable, in lieu of land or monetary contributions." (Discussion Paper p.34.)

11. We support that there be guidelines for a uniform approach to determining Development Application fees as outlined in the Discussion Paper p.10 and recommend that provision be made in the S.E.P.P. or elsewhere, to achieve this.

12.0 Attention by ourselves and others, has over the years, been drawn to the fact that many communities have been waiting for six or more years for the introduction of Multiple Occupancy in their particular council area.

12.1 The policies under Circular 44 provided scope for legalisation of illegal development constructed prior to implimentation of M.O. legislation. (If anything, there are probably more illegal developments now than there were at the time when Circular 44 was introduced!). We hence strongly support that for "...those presently illegal developments which meet the criteria of the policy, legalisation should be possible", (Discussion Paper p.9.), and urge that recognition and appropiate provision for this be made in the S.E.P.P.

12.2 For the reasons identified in the Discussion Paper we do not seek retrospective approval for illegal structures as such, but rather that councils be obliged to consider the issuing of s.317(a)1 Certificates as a first option. Where a building does not comply with Ordinance 70 then it is suggested that councils be required to bring to the notice of home owners the provisions of s.317M of the L. G. Act. (Note in this regard that the Court, in Nicolson v. Lismore City Council recommended that more attention be paid to the use of s.317M for inovative design solutions. Demolition under s.317B should in our view, be an action of last resort).

12.3 A further option in this regard would be created by the speedy gazettal of amendment to s.317A to provide for the certification of structures built prior to D.A. approval. This amendment we understand is currently before the Minister for Local Government. We hence urge that the Minister for Planning and Environment seek of his colleague that the implimentation of this amendment be expidated as a matter of urgency.

12.4 With respect to tranisitional dwellings and the use of s.306(2) of the L.G. Act, it has been our experience that these where granted (and not all councils appear to be familiar with this provision) have usually been for a six month period with some option to extend to one year. This period is, in our view unrealistically brief and we consider has probably detered some owner-builders from bothering to apply at all.

12.51 We hence support the notion that "councils issue licenses for time periods sufficient to enable dwelling construction to take place for example two years, with option to renew up to a maximum of five years" (Discussion Paper p.11) as a more realistic proposal.

12.52 In respect to movable dwelling licenses under s.288A of the L.G. Act, as referred to in the Discussion Paper (p.11), it our view that an owner, or part owner of a property, when residing on the property, is not required to obtain a Movable Dwelling license by virtue of s.288A(7)ii read in conjunction with s.288A(9)(a).

13. We support the view that "councils should give development approval within a nominated dwelling area, without individual sites being specified in advance" (Discussion Paper p.12), but consider that this should apply to developments of any size.

14.0 Common ownership of the land

"Common ownership of the land" seems to us to be the corner stone of M.O. development and consider that clear acknowledgement of this principle ought to be expressed in the S.E.P.P.

14.1 The notions of "permanent group occupancy and management" (Discussion Paper p.6) and "principal place of residence" (Draft. Clause 2(a)), are not inappropiate of themselves, but we consider are not an adequate alternative to recognition of common ownership of the land in toto.

14.2 We note the arguements about ownership (Discussion Paper p.27) and the difficulty of "enforcing or monitoring" the existing policy. The practice of councils accepting a statutory declaration to the effect that at least 2/3 of the residents shall be shareholders seems to us not to have been onerous for new settlers or difficult for councils to administer.

14.3 It seems to us that stating this principle in the aims and objectives is important and worthwhile for its own sake and in addition will act at least as a psychological deterrent against inappropiate use of the policy by speculators. We hence recommend that such a provision be included in the S.E.P.P.

15. Due to the non strict applicability of existing land titles for M.O. we strongly support the view that a Cluster Titles Act be introduced. (Discussion Paper p.13). We ask that a draft be prepared by the D.E.P. and made available for public comment.

16. The Manual

We note and support the production of a Manual to accompany this policy. We ask however, that the Manual be given a status that is more than being just an advisory document. We are concerned for example, that the Guidelines for making a M.O. development application, prepared by the Grafton Office D.E.P. when presented as evidence in one court case were virtually dismissed by the court as having any credible force.

17. We would appreciate the opportunity of being able to comment on the revision of the draft policy and a draft of the Manual before these are published.

Reference

D.E.P. Multiple Occupancy In Rural New South Wales: A Duscussion Paper, D.E.P., Sydney, 1985.