



MULTIPLE OCCUPANCY SEMINAR

19 April 1985 - Minutes Prepared by the R.R.T.F.

Introductory Session. Chairperson : Councillor Andrew Buchanan.

John Plummer (Chairman, Land Commission of N.S.W.). This seminar follows logically from the Land Commission's Feasibility Study on Multiple Occupancy, issued last year and widely distributed. This study has highlighted the complex issues facing m.o. settlers. It is estimated there are some 7-8000 of these now. M.O. is thus the most major innovation in land usage since white settlement. It is here to stay and the difficulties must be addressed. Many government bureaucracies and other parties must co-operate to resolve the issues, and never before have so many come together in one place to discuss this question.

Hon. Frank Walker (Minister for Youth & Community Services and for Housing & Co-Operative Societies) Landcom is now proposing to extend its normal activity of developing suburban blocks (at an infrastructural cost of at least \$23,000 each) into developing m.o. communities suited to those on low incomes. Because of the high cost and complexity of organizing housing, the government must take a vital role and has been doing so in other innovative schemes e.g. housing for singles, shared housing, community tenancy schemes etc. But m.o. is quite unique in its difference. It extends home ownership to those on low incomes, contributes to the economic development of rural regions and increases their population and provides a socially desirable lifestyle for the long-term unemployed. But there are many obstacles to be faced, including the unavailability of a strong, ideal legal structure. The present ad hoc development cannot continue and a pilot project is proposed. It will be important to lower service costs by clustering settlement, to preserve agricultural land and to be sensitive to terrain and topography. A site for the pilot scheme has been located but unfortunately the land price is artificially high due to the limited areas where local council permits m.o. The proposed SEPP should lower land price for m.o.'s by 10-20%. We look forward to this valuable development now so many prejudices have been overcome.

Dudley Leggett : (Chairman, RRTF) Thanks to the Minister and Landcom for enabling this seminar. The representation of nine government departments present here is welcome and rare. The RRTF is a think-tank whose membership is open to all and tends to come, along with its finance, from m.o. communities. It is concerned to synthesise and disseminate information central to the issue of rural resettlement. Such information commonly pertains to the legal structuring of communities, their internal decision-making, their economic and environmental viability and their relationship with local government. Our particular concern has been to interest government in promoting and assisting the growth of sustainable rural communities, especially by resettling the urban unemployed. A vast task confronts us all here today. Co-ordination and synchronicity between government departments (which at present can appear to be working at cross-purposes) is essential. The wide ramifications of such action should be kept before us : the alleviation of global concerns such as pollution, resource depletion, energy shortages, alienation and economic disorder. In planning and implementing these m.o. community developments, the people who will live there must be involved at every stage. The RRTF has located a core group constituting some 20% of the total population planned for the pilot scheme, and with the assistance of the Office of Youth Affairs & the Department of P.M. a training and information support project is now under way in this area to prepare them, and others, for the needed developments ahead.

Ald. Bob Scullin : (Mayor of Lismore) The Lismore City Council is attending this seminar out of support, not merely concern. But we must point out a very real need for controls and for clear understanding on the costs to the whole community involved. The council has a duty to plan for future demands.

No doubt m.o. is an entirely new concept of living, but we have every reason to expect future demands for road upgrading, schools and services. That is why we have to impose conditions when approving Development Applications. In doing so, it should be realized, a major reason for delay is that reports must be processed through at least three government departments. The council has never refused an m.o. application. Indeed, they have been pioneers and have faced resentment from both sides when m.o.s are proposed. It has fought a legal battle on their behalf, set up its own m.o. committee and held public meetings. We are also adopting a new policy which will legitimize temporary dwellings.

Planning session. Chairperson : Col James.

David Kanaley : (D.E.P. Grafton). The State Government, through the D.E.P., did in 1980 recognize m.o. is legitimate, here to stay and to be developed within a due process. Unfortunately, only a few councils have adopted Local Environmental Plans allowing it. Lack of widespread council adoption of formalizing procedures is forcing illegal development of m.o.s. Accordingly a SEPP has been drafted and soon will be publicly displayed for comment. Its contents cannot be now revealed but major issues dealt with are the need for m.o.; definition of the term; overhaul of the 1980 policy; staging larger developments; limiting s. 94 conditions on the D.A. imposed by local councils; the need to allow temporary dwellings; minimizing problems from bushfire, flood and visual impact; the need for local consent and the relevance of strata titling to m.o. The effect of the SEPP will be to overrule local planning instruments. Should a council disallow an application for m.o. made under it, or impose excessively onerous conditions, then an appeal will lie to the Land and Environment Court.

Pat Knight : (Planner, Kyogle S.C.) Kyogle shire is economically poor, with high unemployment, with the depression of rural industry following the run-down of cream dairies in the '60's and '70's, the beef depression and diminution in the timber industry following over-cutting and loss of reserves to National Parks. We are unable to afford proper administration of the whole shire. Most of our 300 timber bridges need attention. The burden on existing ratepayers is already high. The only way that the extra services m.o. developments entail can be raised is via the s. 94 EPA conditions. The result is illegal development and lobbying to restrict the s. 94 conditions. If government is to encourage m.o. development and migration to country shires, it should consider who is to pay the infrastructure cost, and should compare their donation to that they make in the suburban context.

Peter Reynders : (Chief Town Planner Lismore C.C.) Friction resulted from the 1980 retrospective gazettal by the then Minister Paul Landa of 23 unapproved developments as m.o.'s. But local government in Lismore determinedly developed codes and standards. Local Government is a third and independent tier and is not an agent for merely enforcing government policy. But the council has sought to act fairly for all concerned, fighting objectors to an m.o. proposal in court (paying fees exceeding rate-income from all m.o.'s for 2 years), establishing an m.o. committee, paying for counsel's opinion on the lease-back arrangement etc. Council officers spend a disproportionate amount of their time on m.o. matters. The council and its staff are open to co-operating, but it is best won over by ideas not bludgeoning.

Rob Doolan : (Sustainable Settlement Planners) In co-ordinating the pilot project certain enlightened procedures will be adopted. So as to minimize future social conflict individuals will exercise choice in selecting their own homesite, its size and even its neighbours. Three types of development work are envisaged : those carried on by Landcom (roadworks, carparks, bridges, dams), that infrastructure built by community labour and treated as sweat equity (e.g. drains, fire reduction) and that long-term development not included in the official costing but left to resident's labour (e.g. footpaths, wildlife corridors). Landcom's approach to this pilot project for a valuable settlement option has every chance of success.

Robyn Read : (Director, Land Co-Ordination Unit). The concept of m.o. has come a long way because people up here have clear ideas and stand by them. Jane Miknius and Tom Webster of Landcom have taken up the ball and run with it. Most m.o.

development is taking place in the north coast region. This has the fastest-growing population and the most unemployment in the State. Its economic infrastructure is run-down and communications are difficult. It is a physically beautiful region, requiring sensitive management. There is a maldistribution of health services (with no care for the chronically mentally ill); road costs are very expensive; there are only 2.6 places per 1000 for tertiary education (at NRCAE), compared to a state average of 11.5; but the new settlers can contribute to solution of these problems. However, who is to pay the infrastructure cost of re-establishing them here? Suburban infrastructure is expensive, at least \$10,000 per lot cost to the State, plus some \$1700 underwriting by the local government. Medium density development may cost only one-tenth of this. But any development does cost, and can only be paid by the purchaser (renter) or the public sector. M.O.'s do present councils with new costs of servicing the extra population. The amount of rates they contribute are a mixed blessing: in Lismore 22 legal m.o.'s contributed \$31,000 in rates. But looked at as 700 people in separate households of av. 3.2 each, they would (as rural residences) have contributed \$176,000. Had all the houses been on separate agricultural holdings the rate would have been \$56,000. But then, had these folk not been able to enter m.o. then they would probably have had no home at all. Had they not come to the North Coast the properties they represent would have contributed only \$10,000 in rates. In order to assess what costs m.o.s should pay e.g. in s. 94 conditions, then more needs to be known about the real impact they do have on council services (there is no doubt self-sufficiency minimizes this).

Dave Lambert : (Secretary, RRTF) It is ironic that s. 94 of the Environment Protection Act, for which folk of our persuasion lobbied so hard, is now the major obstacle to m.o. development. Thus for instance, ten households at the formative Nervi Banana community were required to pay \$85,000 for an access road. At Bundagen the Coffs Harbour S.C. required \$2m. in roadworks. Such charges amount to a levy to enter a local government area as a resident. Are refunds then available from the L.G. area one has left? Engineering statistics indicate one fully-laden truck does 14,000 times the road damage of a car. Is this proportion of increase in development consents therefore to be applied to dairies and timber ventures relying on such trucks? 60% of m.o. settlers are on low incomes (social security) Council may think it is being fair and even meeting m.o. settlers half-way, but for them the cost of imposed conditions remains as impossible as ever. Poor people should not be expected to seal the State's roads and to replace wooden bridges with concrete ones.

Financial / Legal session : Chairperson, Sue Barker.

Dick Gallimore : (Department of Housing and Construction -- FHOS). The new FHOS scheme has helped 142,000 people get their first home and has generated 55,000 jobs in the building industry. There have been teething problems in the scheme, including an 8-month backlog in appeals and a recent reduction of \$1000 in the amount granted. The problem in making grants to m.o. settlers is twofold: we dispute there is "effective legal tenure" within the terms of the FHOS Act unless the shares and rules themselves evidence a right to occupy, with secure tenure, the dwelling concerned; and we are reluctant to make grants where the settler might, under the rules of the community, be expelled. It is no use applying for the grant under s. 11 because m.o. land will not be deemed "rural" unless it is used wholly or substantially for primary production in a business sense. If legal structuring can be achieved so as to satisfy us, a dwelling will attract the grant if it is the principal place of residence of the recipient, is council-approved and in accord with building ordinances, and regardless of whether or not certain amenities normally part of each house (e.g. laundry) are shared with others.

Shann Turnbull: (Financial analyst) In considering formation models for m.o. it is important they be affordable by any person without job or assets, reputable (the involvement of Landcom helps here) and sustainable should welfare payments have to cease. The Mt. Lindesay model fitted the test: share price was \$6250, of which \$5000 was to come from FHOS and \$20 p.w. from the settlers for one year as a license to dwell there. Guarantees must be afforded in the legal structure protecting each settler's assets and thus encouraging them to labour.

Tony Pagotto : (Solicitor, Lismore) Many legal structures can be used for m.o. But by defining the legal position in the structure costly test-cases in the equity courts can be avoided. This course also satisfies the present FHOS administrators. In taking it, however, one may sail close to the wind of subdividing the land, within the definition of the Local Government Act and contrary the DEP's circular 44 which forbids subdivision in m.o. zoning. One must also be careful, if any sense of community is to be preserved, to require that any selling shareholder, or one who has defaulted on a secured loan and whose financier has foreclosed, must have his block, share and entitlement offered first to the community (or its nominee) for sale. Should such a sale prove impossible then the seller may be allowed to offer to the public market at the same (not a lower) price. In these circumstances I have developed a structure, detailed in the Landcom feasibility study, which satisfies FHOS, enables use of the asset as security for loans and protects the settler's assets in improving the site.

Vernon Wong-See : (Senior Research Officer, Dept. of Co-Operative Societies) The Department will do everything possible to expedite registration of co-operatives and to minimize the long delays which can occur. Applicants can help by submitting their draft formation statement using the standard set of rules (approved variants may be used). Introducing unprecedented variations at this time leads to much delay and complexity. The objects in particular must be precise: the more prolix, vague and varied they are the more difficult it is to gauge prospects of success. The Registrar is bound by statute to satisfy himself there is a good chance of success before registering. Applicants should therefore plan to present details of their funding.

Ray O'Rourke : (Commissioner of Land Tax) The Land Tax legislation is under review, but at present exemption is not granted merely because land is m.o. once it is above the threshold value of \$55,000. Only by becoming a Rural Co-Op can an m.o. avoid this tax.

David Spain : (Solicitor, RRTF) It is incongruous that whilst some government dept.s (e.g. Landcom, Dept. Co-Ops) are encouraging m.o., others are tripping it up. They should all be exempted from land tax (if anything must be) because if one looks beyond the legal technicality that an incorporated entity holds the title, they are in fact just aggregations of homes and primary production such as is normally exempt. That the FHOS grant does not flow to m.o. settlers, who need it more than anyone, under Labor as under the Liberals, (unless they effect a de facto subdivision of the land) is a bitter pill to swallow. The interpretations the FHOS administrators are putting on the Act are hollow and unfounded. There is nothing in the entire Act indicating the secure right to tenure must be enforceable at common law rather than at equity. Indeed, the rights which attract FHOS under s.11 (permission to build by a rural landowner) are only enforceable in equity. Where a respectable holding-corporation guarantees such security then it is bound by promissory estoppel to honour its word and that should be enough for FHOS administrators. Their second claim: that m.o. tenure is usually insecure because the community rules enable expulsion, is preposterous. When folk join a particular community it is because they want a lifestyle defined in those rules (e.g. no dogs or fire-arms). They are hardly likely to contravene them (as the absence of historical example proves). Folk presently being favoured by FHOS are more likely to have their home resumed by the DMR or army than an m.o. settler is to be expelled. It is grotesque that the effect of these FHOS constrictions is to force m.o. settlers to carve up the land formally, using devious legal constructions, paying survey fees and compromising that emphasis upon community values and freedom of access for all that they wish rather to treat as having priority. Nor are the bulk of such settlers in the least interested in mortgaging their interest and living under the shadow of the financiers. No doubt the new legal schemes (if they are not contravening the subdivision limitations) do suit a section of the market, but for the bulk the co-operative is best. It has a long and democratic history and all requisite guarantees can be written into its rules. There is an entire division of the Co-Op Act dealing with Community Settlement Societies which is entirely undeveloped. There is not a single one. Giving such exemption from land tax would be a prerequisite to reviving this division. But the government could go further and envisage an

entire socio-economic phenomenon like Mondragon, in the Basque region of Spain, developing in N-E NSW. Mondragon, a federation of co-operatives, has grown from nothing in 30 years, generating 20,000 jobs and an output worth \$400m. p.a. This ("Rainbow") Region and that of the Basque country have much in common: a tight, mountainous bioregion filled with people who feel oppressed and have a cohesive vision of a new world. The Mondragon federation have built an entire social structure including schools, hospitals and credit unions. With a pinch of the right catalyst the same thing could be done amongst all the potentials and talent of this area. The major obstacles are under-capitalization and that apathy which assured regular dole-payments can engender. Neither obstacle is insurmountable. If a bioregion of m.o.'s could add economic independence to their environmental and social merits, what a political clout that would be!

Final (general) Session : Chairperson: Alderman Mac Nicolson.

Vince Collins : (District Manager, Telecom) Telecom has a 3-year planning cycle. No capital development can happen in the third year without planning. Uncertainty about the future of m.o. has been a problem for us. Occurrence of illegal m.o.s particularly upsets our planning. We need a long lead-time because our policy is that 90% of materials we use come from local manufacture. This is not world-competitive and needs time and a secure contract to gear-up. When m.o.s are properly planned they allow us to minimize the route costs.

Alan Duke : (Customer Services Manager, Telecom) Telecom will provide a single phone to within 300 m. of any property's border. Reticulation beyond that point will, in the case of m.o.s, be borne by the consumer. This cost will normally be \$850 but will vary (especially upwards) depending on the terrain. This "customer pays" policy does not apply to rural subdivisions in general but rather only to m.o.s, because we class them with retirement villages which, under our legislation, are to be charged in this way. It makes no difference that m.o.s are non-profit-making or seek to provide homes for low income people. Our costs are high and there is no abuse of our discretion in deeming m.o. "cluster housing" within the 1967 Act.

Chris Aird : (Builder's Licensing Board) The BLB protects the consumer by requiring all builders doing work worth \$1000 + to be licensed; also any trade work worth \$200 +. Owner-Builders are exempted but should get an Owner-Builder's license. To prevent speculative builders avoiding their liabilities in this way, only one Owner-Builder's license is allowed per person each five years. There are several advantages in dealing with a licensed builder. Rectification orders and arbitration are available through us. So is an insurance policy, which is indeed compulsory, premiums being paid when plans are picked up following council approval. An Owner-Builder's permit is not required where the work is worth less than \$1000. But m.o. properties are not in themselves exempt.

Lyall Dix : (Chairman, Building Regulation Advisory Committee). BRAC is located within the Dept. of Local Government. Its task is to advise the Minister on the technicalities of building regulations. In 1980 at the Local Government Minister's conference a uniform code of such regulations was adopted. This makes changes to the O.70 standards slow, especially as the purpose of the regulations is to maintain a standard of health, safety and amenity. However, there is a trend towards "performance standards" which will assist in innovative building. The Low Cost Country Homes Book, put out by the DEP along those lines, does have some 14 anomalies from our point of view. There is no provision for retrospective approval of sub-standard buildings. This is a matter for local council either by s. 317A LGA Certificate of Compliance (to be called more accurately a Certificate of no action) so as to avoid council liability, or by a s. 317B order to upgrade. The final recourse is a demolition. If a builder wishes to avoid code standards, this can be organized with a structural engineer's certificate. BRAC will send a building advisory officer, finance permitting.

Karl McLaughlin (RRTF). Alternative technology is very competitive with traditional technology. In matters of water, housing, roads, power, the authorities must be wary of forcing m.o.'s to consume more than they want.

Dave Lambert : (Secretary, RRTF). Telecom should not be treating m.o. like a commercial cluster development, but rather like normal rural homeowners in a subdivision. There should be no alteration in present council rating methods. In particular any suggestion of a head tax upon settling should be avoided. Council rates are based on land value, not usage. Thus the Nimbin pub pays the same rates as the Rainbow Cafe, although its business turnover is far higher.

Peter Hamilton : (RRTF). The proliferation of rules, procedures, ordinances (especially 0.70) is bewildering. It is now beyond the average person's comprehension. Council is not exercising creative discretions. When they refused to allow Bodhi Farm to have "open wall" rooms or to use mezzanines, we had to take them to court for a favourable verdict -- that no useful purpose would be served by enforcing the demolition order. There are too great limitations on BRAC's technical and policy role. The status of the Low Cost Country Homes Handbook should be clarified. More discretion should be exercised to accept performance-based criteria in the building code.

Dick Persson (Head, Housing Policy Unit) The purpose of this seminar has been to crystallize debate within the bureaucracy over issues such as the content of SEPP, road funding, land tax, FHOS and co-operatives. Public servants do not have the power to change the system -- some do not have the will, and indeed those who do usually have it squashed out of them. Keep up the grass roots efforts. In six or twelve months you may see some results. Don't forget your folk are eligible for Co-Op Housing Society loans -- get them on the waiting list. Thanks to all the bureaucrats for coming at such short notice.

Conclusion :

Sonia Atkinson : At last everyone seems to be in agreement that m.o. is a good thing, and that the legislation must come to terms with what is already there. Ten years ago the New Settlers could not have imagined the multiplicity of authorities with which they would be involved. It is now up to those authorities to co-ordinate between themselves and to keep in touch with the grass-roots as it provides the facts and demolishes the myths. The authorities should take particular care not to remove some of the blockages whilst leaving others. It is basic to define what the term m.o. means. At present it conjures up a wide diversity of interpretations ranging from the mere holding and settling of land under common ownership to an entire range of social, economic and environmental requirements and expectations in the way this is done. Thus councils tend to shove m.o. in the "subdivision" pigeonhole whereas in fact it may be more concerned with the opposite : amalgamation of interests, holdings and satisfying needs. I suggest there are two criteria essential to being an m.o. : and both relate to the use of the land rather than to the incomes and further ideals of the settlers (these being difficult to discover or enforce). At least half the land must be held vacant for communal use, and the community must have control over who lives there. I advise the RRTF to research more deeply facts and figures on the demand m.o. folk have for services, since indications should be emphasised that, with self-management, they do and always will want far less. This seminar marks the end of ten years of striving on the part of the m.o. pioneers. Probably the next ten years will stabilizing and consolidating the vision they have achieved.

RRTF

papers to

Landcom Seminar

19 April 1985

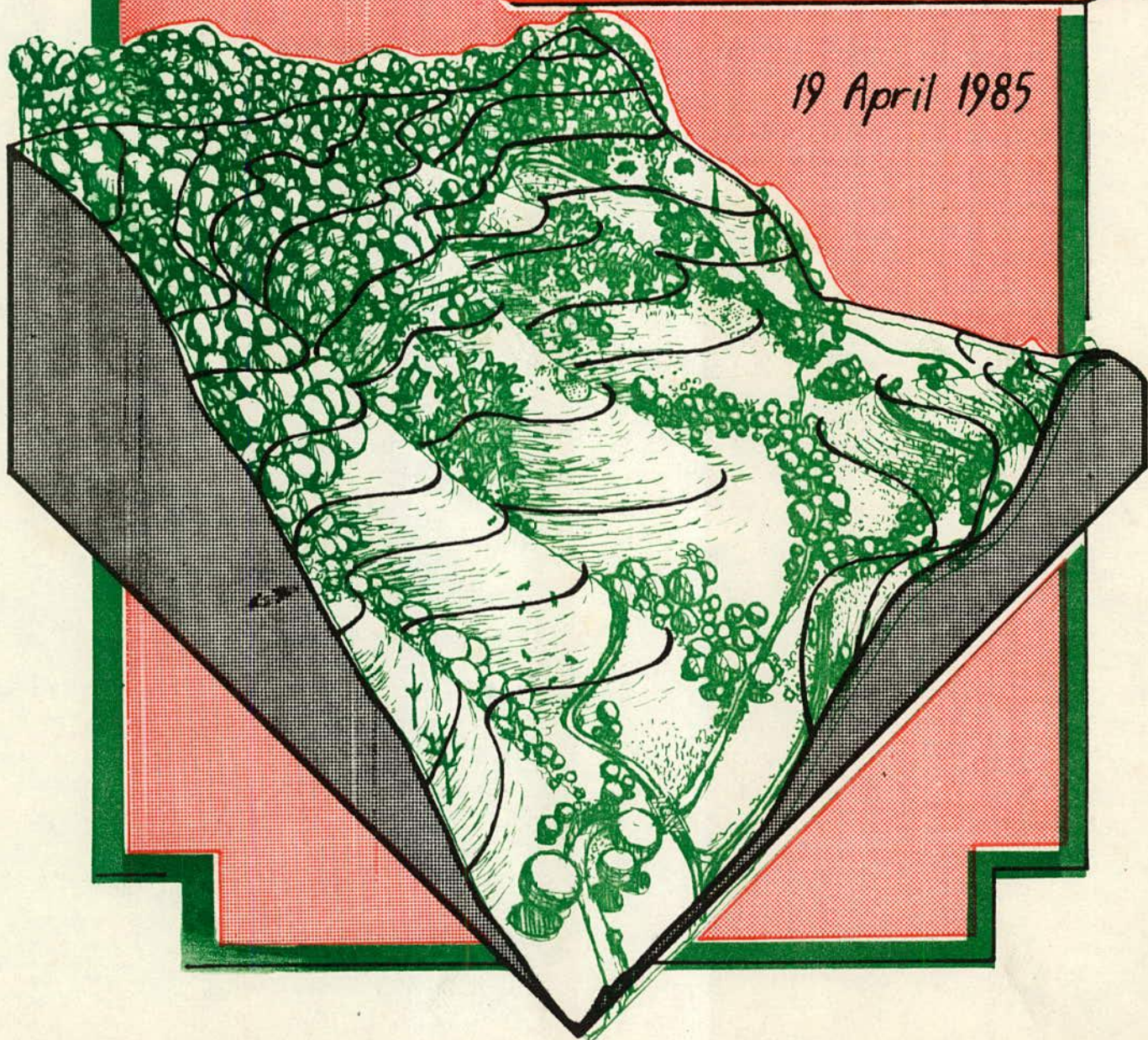


TABLE OF CONTENTS

Paper A1: R.R.T.F. Information Sheet

Paper A2: R.R.T.F. Constitution

Paper B: Environmental Planning and Assessment Act

Paper C: Land Tax Management Act

Paper D: First Home Ownership Assistance Scheme

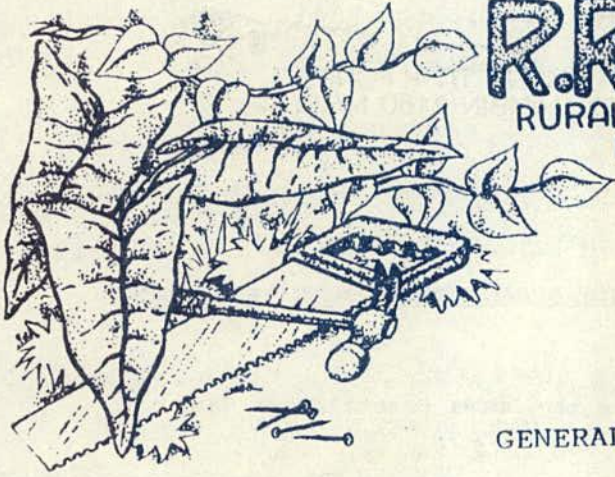
Paper E: Co-operatives as a Legal Structure

Paper F: Telecom Installation charges on Multiple Occupancies

Paper G: Local Government Act and Ordinance 70

Paper H: Council Rating of Multiple Occupancies

Paper I: Development Conditions Re 240 Volt Electricity Supply



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



GENERAL INFORMATION

The RRTF is a non-profit, community based association seeking to assist and promote rural resettlement. A copy of the RRTF Constitution is printed on side two of this sheet.

The RRTF is based at Nimbin Neighbourhood Center and is the regional branch of the Australian Association for Sustainable Communities (AASC). It has not precisely defined or limited the area of the bio-region it seeks to represent but in practice this area has included the Lismore and Kyogle Council local government areas.

It was first formed at a Rural Resettlement Seminar held in the Nimbin Rainbow Restaurant on 18 June 1983. Between 75 and 100 people attended this seminar including representatives of the Land Commission of N.S.W. and the N.S.W. Land Co-ordination Unit.

A Constitution was adopted on 18 June 1983 and amended once on 5 April 1985. It has received donations from 11 local Multiple Occupancy (M.O.) communities, the Nimbin Homebuilders Association and the Down to Earth-Rainbow Region Association. In addition it has undertaken paid work for the Land Commission of N.S.W.

The Association has worked with the Land Commission of N.S.W. to establish a M.O. Pilot Project in the Nimbin area which involves the government in this type of settlement and for the first time makes loan finance available to individual members.

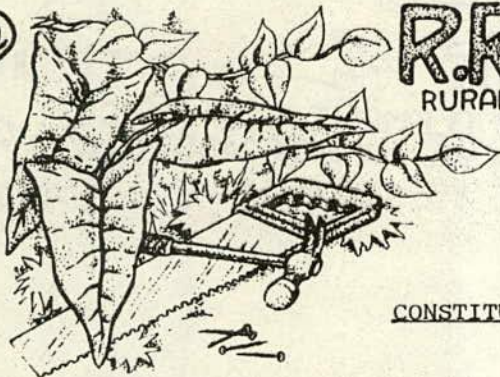
The Association has effectively lobbied many government Departments for legislative and administrative changes to existing impediments to rural resettlement. It has Information and Position Papers available on the following matters: First Home Ownership Grants; Local Government Act including Ordinance 70; Environmental Planning & Assessment Act including s.94 charges & conditions; Telecom Installation Charges; Land Tax; Co-operatives; Lismore Council M.O. Code and Rural Strategies; Kyogle Council M.O. Code and Local Environment Plan; Council Rating Policies; and the M.O. Feasibility Study published by the Land Commission of N.S.W. Copies of these papers may be sighted at Nimbin Neighbourhood Center or ordered from the Association enclosing a donation to cover costs of photocopying and postage.

The Association has additional files which may be sighted at Nimbin Neighbourhood Center on the following matters with respect to M.O.: Sample Legal Structures, eg. co-ops, trusts; Sample Council Development Applications; Legal Advice; Dept. of Environment and Planning Circulars; Land & Environment Court Reports & Judgements; Council & State Planning Instruments etc. A file of names and other relevant details of those seeking to join M.O. Communities is also kept and a full notice board of communities with available shares is on display. A member of the RRTF is currently employed by Nimbin Neighbourhood Center each Wednesday who may be able to answer any questions you might have. Telephone 066-891-492.

The Association also receives copies of the Environmental and Planning Law Journal by the Law Book Company and Environmental Planning Case Notes by the Dept. of Environment & Planning.

The RRTF meets at the Media Center at 1:00 pm on the first Saturday of every month. All are invited to attend and participate in the meeting.

(A2)



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



CONSTITUTION OF THE RURAL RESETTLEMENT TASK FORCE

NAME 1) The name of the Association shall be the Rural Resettlement Task Force (RRTF).

OBJECTIVES: 2) These shall include:

a) to assist in making land available for sustainable lifestyle rural communities,
b) to assist resettlers in establishing such communities

c) to provide an on-going and widely based information and policy group for study, evaluation, analysis and other work for government departments, agencies and other interested bodies.

d) to provide workshops, seminars, and the dissemination and exchange of information of value to potential resettlers,

e) to make representations on appropriate matters,

f) to recommend to government departments and agencies appropriate consultants and work groups for specific resettlement tasks, and

g) to stimulate the growth of similar affiliated bodies to assist rural resettlement in other areas.

MEMBERSHIP: 3) Membership shall be open to persons or groups interested in rural resettlement.

PRINCIPLES: 4) Any affiliated consultancies seeking R.R.T.F. endorsement must recognise their commitment to the on-going research and information exchange base of the R.R.T.F., and the overall aims, objectives and policies of the Association.

5) Where possible, the R.R.T.F. will seek to create employment for persons in the immediate local area in the development of projects.

GENERAL MEETINGS: 6) The business of the association shall be conducted at General Meetings.

STEERING COMMITTEE : 7) A steering Committee elected annually at a General Meeting shall co-ordinate activities between meetings. The Committee shall elect a Convenor, Secretary and Treasurer from their membership. Any payment of committee members shall be as determined by a General Meeting.

8) An R.R.T.F. member who has a monetary or other interest in any matter under consideration by a General or Steering Committee Meeting and who is present at that meeting shall declare his/her interest and shall refrain from voting on any motion with respect to the matter.

ALTERATIONS TO CONSTITUTION: 9) A 3/4 majority at a General meeting will be necessary to change, this constitution, with one month prior notification of the intended alterations having been given.

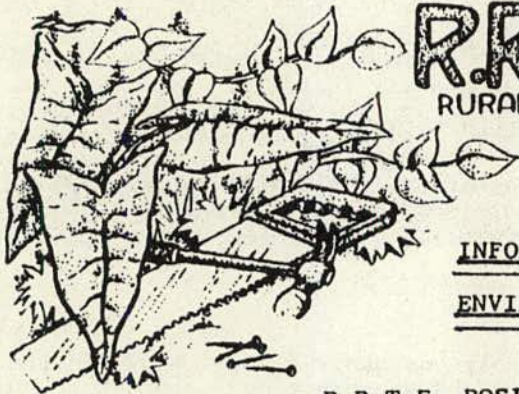
DISSOLUTION: 10) In the event of a dissolution of the association, any remaining funds and assets shall be given to a community based organization having a like minded objective.

Standing Orders

1) A quorum of the Steering Committee shall be 40% of those elected to the Committee.

2) That all decisions at all meetings of the R.R.T.F. shall be made by consensus; "consensus" here meaning the absence of dissent from proceeding with the decision if possible. If consensus is not achieved the matter shall be tabled to the next meeting or in the event of urgency, a 3/4 majority shall be considered sufficient.

3) A General Meeting shall take place in Nimbin on the first Saturday of every month.



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



(B1)

INFORMATION AND POSITION PAPER

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

R.R.T.F. POSITION Access Conditions and levies

The Act should be amended to require Councils to analyse and consider the effect of any proposed D.A. condition, charge or levy on the provision of housing for the poor as suggested in D.E.P. Circular 23 of 14 Oct 1981 and on the ability of pensioners and unemployed to pay such costs. Policy 10 of the Housing Policy of the Local Gov't and Shire Association of N.S.W. states in part:

"Councils should undertake the progressive development of an explicit housing policy which may be implemented through measures such as:
The consideration of social and economic effects of housing losses and gains when considering development applications;"

We are of the view that once a road is public and is constructed, there appears no doubt that the council is fully responsible for its maintenance. (D.E.P. Circulars no's 23 and 42; Keith Hardmann Henry -v- Parramatta City Council (1982) ELR 0085 at the acceptable standard, or a higher standard if initially constructed to a higher standard).

Where a M.O. community is located at the end of a No Thru Road, it might in some cases be appropriate for Council to offer to sell the road to the community for \$1., in which case Council would be relieved of the responsibility of maintaining it. In other cases a right of carriage way through a State Forest, Park or private property might be an appropriate and reasonable form of access.

In general terms, we would agree with the following statement from the 1982 Annual Report of the N.S.W. Land Commission:

"Lack of established guidelines to interpret and implement s.94 of the Act has resulted in widely varying interpretations among Councils as to what is a reasonable level of contribution by developers... in some cases excessive contributions are being sought by Councils... uncertainty about level of contribution... prevents the preparation of realistic feasibility studies... it is only by contesting extravagant and unjustified imposts that land prices can remain within the reach of first home buyers. It is for this reason that the Commission often finds itself at the forefront of disputes with other authorities".

We would also sympathize with similar problems being experienced by other Departments such as the Education Department. According to the Far North Coast Report 1984. by the N.S.W. Land Co-ordination Unit:

"Occasionally councils are unwilling to recognise the service obligations of the Department and tend to impose development criteria more appropriate to private development. For example, substantial contributions may be sought for the development of access roads, augmentation of water supply and, in some cases, cycleways and pedestrian pathways, etc. as conditions of development consent.

This poses major problems for the Department in fulfilling its obligation to provide educational facilities in appropriate locations and at appropriate times to service the growing population.

The Department feels that clear guidelines should be established by the Department of Environment and Planning to resolve such problems."

With such problems being experienced by Government Departments, what hope is there for the poor people of this State to have access to affordable housing?

The poor and other disadvantaged members of our society should not be held liable to seal the State's roads, replace wooden bridges with concrete ones or to set the development standards by recourse to the courts.

B2

DEVELOPMENT APPLICATION - REQUIREMENTS

We suggest that Council's obligations under s.90 re environmental assessment of a proposed M.O. development could be adequately fulfilled providing the area for future dwellings are designated clearly so as to include only suitable areas, as regards soil suitability, visibility etc. It may also be appropriate for Council to set design limits such as height of any future buildings. In this way repeated assessments would be minimized and determined at the onset, and applicants would not be required to make design and planning decisions unnecessarily prematurely.

INFORMATION - S.90,91 & 94

Councils are imposing onerous costs and conditions under s.90,91 & 94 of the Act. Many of the conditions are in dispute and are, in time, expected to go to appeal. The Court is in effect setting most of the standards, as the Act is drafted to allow for wide discretion in its interpretation. A number of established tests and conditions are outlined below:

1. The Council must form an opinion that the proposal "will or is likely to require the provision of or increase the demand for public amenities and public services within the area"; e.g., by virtue of population increase. The condition, also, must be fairly and reasonably related to the development. St. George Building Society -v Manly Municipal Council, (1981) ELR. 0228.

In Ligora v Leichhardt Municipal Council (1980), ELR, 0185, it was stated that councils with their experience and knowledge of land development can reach conclusions of a need for a reasonable dedication or contribution.

2. The contribution sought must be for the purpose of providing, extending or augmenting those public amenities and public services. Examples of public amenities and services for which contributions or the dedication of land have been required by the Court under s.94 include public car parking, drainage, open space, the upgrading of stormwater channels and traffic planning study and possible parking contributions consequent on the findings and adoption of that study.

M. Davies and Partners P/L v Sydney Council 16 June 1983

In John Mark Taplan & Anor v Hastings Municipal Council, No10229 of 1984, E.P.C.N.#10, it was held that a contribution of \$250. for bushfire fighting purposes (for a rural subdivision) was for a planning purpose.

3. The Court has held that there must be a causal nexus between the development and a decline in the amenity of the area and this decline must be substantiated e.g., the council will need to show that "the expected increase in population in the locality with the expectant resultant demand for increased facilities...(will) necessarily result in a decline or a depreciation of the amenities in that neighbourhood". It would seem that it is imperative to establish an amenity decline. Bartolo and Anor v Botany Municipal Council, 1981 ELR, 5.

In the Taplin case (see #2 above) it was held that there was no evidence to suggest that the development brought about a need for road works or the provision of open space. Nor did the evidence indicate that the contribution would be spent on a facility to service the development under consideration.

4. There must be a physical nexus between the condition sought and the development proposed. In addition, the contribution must be spent in the "immediate location". In one case it was held that a contribution for open space had to be "by development on it". In another case, where a parking contribution was sought the Court held that the parking sought was to be "... so situated and defined in such a fashion as to enable a decision to be reached that they are capable of being identified with the proposed development".

5. The contribution must be spent within a reasonable time. If not, the contribution would not be a valid levy under s.94. Long term projects would not appear to be appropriate subjects for a s.94 levy. In this connection it may be relevant to consider whether, in a slowly developing area, a trickle of s.94 contributions would be insufficient to do anything. Three to five years is suggested by the courts.

Meriton Apartments Pty Ltd v Willoughby Municipal Council (1980) ELR, 22. and Novati Design and Construction v Leichhardt Municipal Council (1981) ELR, 22.

6. Conditions must be reasonable. This is a complex matter of no easy solution; each case depending on the facts and circumstances relevant in the area. Certainly, a reasonable contribution cannot be an exaction or tax.

(a) In Keith Hardeman Henry v Parramatta City Council, (1982)

ELR, 0085. It was stated that a condition is unreasonable where works were only temporary and needing replacement when the general reconstruction of the road was carried out. In relation to this aspect, "temporary" must be related to a period and this might be accepted as the three to five year period. If council intends reconstructing a road within that period then temporary measures might be unreasonable. Each circumstance must be individually assessed as there may be other extenuating circumstances.

(b) In Henbury Pty.Ltd v Parramatta City Council (1981)ELR 0003,it was stated that in that instance the dedication of reserved lands as a usual policy suggests opportunism rather than planning principle is behind the policy. It was further noted that section 91 (sub-section 3(h) excepted) does not provide an alternative or ancillary power to impose the disputed condition as such a condition falls squarely within the ambit of Section 94.

(c) In Pulver, Cooper & Blackley v Greater Cessnock City Council (1975)3 LGATR.172 "The LGAT has required an access road to be sealed even although the subdivision was creating three lots only. It did so notwithstanding all subdivision roads (and many other) in the area were of gravel formation. What led the tribunal to its decision was that the un-made road as it existed was completely impassable by normal vehicles even after minimal rainfall". It held that "Topography and terrain are such that an all-weather gravel formation is most unlikely to be usable at all times without repeated maintenance... It is not right or proper or reasonable that the Council should be expected to become responsible for such a suspect road". (The Town Planning and Local Government Guide Vol.26). 305/306.

(d) In Building Owners & Ors -V- The Council of the City of Sydney,No. 40084 of 1983, E.P.C.N.#10, Justice Cripps made comment about a Council policy which "precluded it from considering an individual case on its merits. It was held that Council may not adopt a rule or policy "disabling itself from exercising its direction in individual cases and may not adopt a rule or policy inconsistent with its statutory obligations and duties without regard to individual circumstances".

(e) In the Carr case Councils request for a \$57.000 contribution was reduced to \$1000/additional living unit as Council's request was unacceptable because:

(i) it was based on a standard of open space much higher than existed in the Municipality or in the subject area;

ii) Council was trying to use new development to overcome a deficiency which had existed for a long time;

iii) Council had not made allowance for the population which could live on the site if houses were erected on it. (The site comprised 5 parcels of land, thus 5 houses could have occupied the site). No contribution would have been required for such development.

Carr Holdings Pty Ltd v Leichhardt Municipal Council
E.P.C.N.#2

(7) The courts will permit discounting in cases where, for example, the development may be "of an environmental planning advantage to the community". Daniel Callaghan Pty.Ltd. -v-Leichardt Municipal Council(1980) ELR,13. This case was an appeal against a contribution of \$387,000 for open space. The figure was arbitrary and not justified (but \$30,000 was justified). The Dept of Environment & Planning in its Circular 23, dated 14 Oct 1981 states:

"The implications of the Section for development costs and ultimate costs to the consumer need to be carefully evaluated. Any increase in development costs as a result of contributions under Section 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 the Section between the provision and establishment of services on the one hand and the cost to the ultimate consumer on the other".

(8) In Council of the City of Sydney - v - Ke-su Investments & OrsNo.40059 of 1983, E.P.C.N.#7 the court noted that the rules of natural justice were applicable to planning law. See also Twist -v- Randwick Municipal Council,High Court, A.L.R.390.

INFORMATION - COUNCIL DEVELOPMENT APPROVALS

In the Billen Cliffs M.O. case(George & Ors -v-The Council of The City of Lismore,No.40191 of 1982) the objecting neighbours took Council to court for approving the application. Justice McClelland found in favour of Council holding that:

"If it were necessary to decide (if)..... the orders sought by the applicant should be made, the balance of hardship would weigh heavily against them. The (M.O.) unit holders who are people of modest means have invested considerably both in money & hope.... and the evidence of one objector.... convinced me that the impact of the proposed development on the objectors would be minimal".

In S. Le Cornu -v- Maclean Shire Council,No.10412 of 1981, E.P.C.N. #10 the Court overturned Councils objection to the use of a farm property for a rehabilitation centre for drug addicts and parole. The assessor indicated that:

(B4)

(a) He doubted whether the fears of the residents even when "discounted by reason of the natural human tendency to exaggerate difficulties and problems that are in prospect and are not at present existing" (refer Hardie, J. In Foley -v- Waverley Municipal Council L.G.R.A. 26 at p.30) constituted a relevant "social effect" of the proposed development (section 90(1) (d). Rather, they appeared to be more accurately designated a reaction to the proposal.

(b) "in balancing the prospective social benefit of the project for the whole community against the asserted social detriment to the local community ... "locality" in S.90(1)(d) is not limited to the immediate environs of the appeal site", since such a narrow focus would artificially constrain or distort balancing the social effects".

(c) The Court did not "regard the social detriments as imposing a manifestly unreasonable or disproportionate burden on the few neighbours. Their perception of the social costs is understandably different. However their private interests have blurred their ability to make an overall assessment of the social effects of the proposal. In consequence they emphasise their own private rights. This they are entitled to do but it falls to the Court to make the final evaluation and this task is facilitated by the Court's ability to be objective".

(d) Flood liability/fire risk to cane crops
Although the Court accepted that in times of heavy flooding the island would be cut off from the mainland, it noted that such flooding did not present any intrinsic or special danger and that emergency services existed to transport people to the mainland. It had not been demonstrated that the proposal involved any special risk relating to fire hazard.

INFORMATION - D.A. REQUIREMENTS

One Council has been requiring a separate D.A. for each Building Application. In Quota Corporation -v- Leichhardt Municipal Council, D.E.P/ Legal Digest #4, 1982, Justice Cripps declared

"that Council's main objective in seeking to define the application as a development application was to impose conditions which could only be imposed at development application stage, notably contribution for open space. His Honour considered that Council had made no real attempt to justify the imposition of the condition relating to open space contribution".

In Land Lease Developments -v- Hornsby Shire Council No.10222 of 1983, E.P.C.N.#7 it was agreed that the D.A. did not comprise detailed plans but a "master plan" and the Court attached a condition requiring a further D.A. for each individual building application.

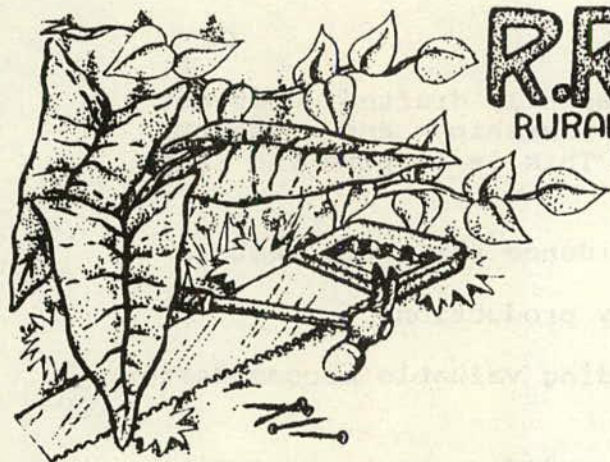
In a Bodhi M.O. Farm case (A.M.Nicholson-v- Lismore City Council, No. 10327 of 1983) the original D.A. designated general areas for future proposed dwellings "without the need for a further development application". This approach was supported by the Regional Office of the D.E.P. The Assessor commented:

"I prefer the submission of Council that such an approach lacks specificity and may avoid a proper environmental assessment of future development based on specific location, size and design of building and such matters. It is my opinion Council properly interpreted the application as specifically indicated on the land use plan by the legend and notation of proposed new structures. Anything beyond that would be speculative".

It would appear therefore, that M.O. applicants will either have to submit detailed D.A.'s (specifying location of future house sites) or be prepared to submit individual D.A.'s with Building Applications following approval of a master plan. The latter course leaves them open to costs and conditions being imposed at the prevailing rates.

ACKNOWLEDGEMENTS AND DISCLAIMER

Much of the information presented is derived from Court judgements and reports written by legal experts. In a couple of cases we have been unable to indicate the source of the advice. Nor can the RRTF guarantee that the information presented is without error of any kind. So it should only be used as a guide and not as a substitute for legal advice specific to one's personal situation.



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



INFORMATION AND POSITION PAPER: LAND TAX

INFORMATION

The Land Tax Management Act 1956 generally provides exemptions for properties valued at \$55,000 or less when used as one's principal place of residence or primary production (providing at least 90% of one's income). S.10(1) of the Act grants exemptions for many purposes including land used "solely" for an educational institution, school, fire brigade and sporting grounds. (The exemptions cited above are not exhaustive).

However, in the case of one Multiple Occupancy (M.O.) community, Advice of Counsel, Mr. R.D. Giles, concluded that

"....by far the majority of the land is not put to any use falling within any of the exemptions. As I have indicated, although it may be possible to argue that (small) fractions of the land are entitled to exemption, the effect of success in that argument would be insignificant...."

At the present time, it would appear that the only blanket exemption for a M.O. community would occur if they are registered as a Rural Society under the Co-operation Act 1923; Community Advancement Societies registered under this Act do not receive any exemption unless they qualify under some other provision of the Act.

In responding to representations from the R.R.T.F., the Minister for Finance, The Hon.R.J. Debus on 10 Oct 1984 gave the following reply:

"....the Government has decided to commence a major overhaul of the land tax system. As a first step, land values will be frozen for land tax purposes at the level applying as at 31 December, 1983. This means that valuations for the 1985 land tax year will remain the same as they were for 1984. A new formula is to be designed to tax purposes and details will be announced well before the commencement of the 1986 land tax year.

In addition, it has been decided to restructure the land tax scale. The current system whereby a threshold and tapered scale apply will be abolished from the 1985 land tax year and replaced by a new simplified tax scale. This scale will provide for large reductions in the tax rate at the lower end and a very slight adjustment to the upper end of the scale....

In regard to multiple occupancy of land, the Government is conscious of the need to examine this type of living in so far as land tax is concerned. The matter is currently under review and you may be assured that your comments have been noted and will be taken into consideration in conjunction with that review...."

We are of the view that the Act, as presently drafted, does not recognize the M.O. form of landownership and thereby discriminates against such communities. This is despite the fact that most:

- (a) provide the principal place of residence for their members
- (b) are engaged in some form of primary production
- (c) are of a non-profit nature providing valuable accommodation for low income people.

It is our view that the Act should be amended so as to recognize this form of home ownership and either grant a general exemption for it or an exemption based on the following formula:

Tax Payable = (L.V. - (H x E) x R

where L.V. = land valuation

H = number of constructed principal places of residence

E = threshold exemption granted to all principal places of residence

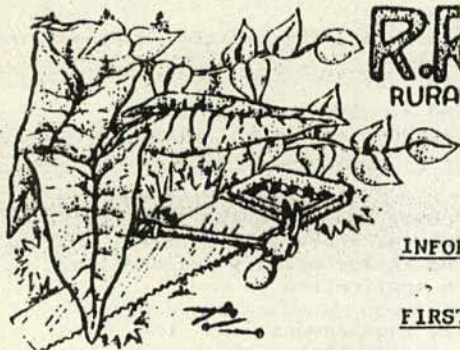
H = normal rate of tax payable on any balance

The effect of applying such a formula would be to treat M.O. homeowners on the same basis as all other homeowners. In practice, it would exempt from tax, all communities unless they were located on very valuable land and/or few homes were constructed on a large property.

Significant Court Case:

Gosford R.S.L. Club Co-op Ltd - v - N.S.W. Commissioner of Land Tax.

April 1985



R.R.T.F.
RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



INFORMATION AND POSITION PAPER

FIRST HOME OWNERSHIP SCHEME (F.H.O.S.) GRANTS

A number of difficulties and long delays have resulted when multiple occupancy (M.O.) community members have applied for these grants. Some of the issues are outlined below as quoted from Ministerial or Departmental correspondence.

Tenure in the land:

"By way of background I should explain that participants in many multiple occupancy developments we have examined to date have been ineligible for F.H.O.S. generally because the individual's tenure for the land is either non-existent or readily defeasible by the body corporate, trustee or owner as the case may be. In some cases, for example, a breach of even minor rules of the Co-operative or other governing body can result in expulsion of that member and forfeiture of interest in that body.

The security of tenure of the individual participant is paramount and provisions in the rules of a body corporate which enable expulsion and forfeiture of an interest in the body corporate often result in that person being ineligible for F.H.O.S.

The general criteria is that a "right of occupancy" should be a legal right; in other words enforceable by the individual in the Courts if necessary.

Further, the reference in section 11 (4) and (5) in the First Home Owners Act to "an exclusive right of occupancy" indicates that it is the individual's rights which are paramount for the purposes of the FHOS Act. The Department takes the view that it is not possible for an individual to hold an exclusive right of occupancy jointly with the other owners of the land. Therefore an individual must be able to lawfully evict a trespasser including an adjoining neighbour from the individual's dwelling".

Expanded House:

"Where 4 buildings each exclusively used by separate family groups as sleeping quarters are erected adjacent to a fifth building which incorporates kitchen, living and washing facilities used in common by the family groups, then such a communal structure and separate sleeping quarters would be a dwelling for the purposes of the F.H.O.S. Act, provided that the person seeking assistance has an exclusive right of occupancy of the sleeping quarters and a right in common with a limited number of other persons to use and occupy the communal facilities".

Costing of Project

"In the case of owner-builders, whether or not they are building on a multiple occupancy project, the Department needs some idea of the expected cost to the applicant in order to be able to judge whether adequate financial resources are or will be available. The value of any labour the applicant will contribute therefore is of no concern to the Department.

If the home is to be funded from Social Security and F.H.O.S. benefits, this should be stated and the application will be assessed on that basis.

There is no minimum cost or value for a qualifying home. As the Minister has explained previously, the legislation requires simply that the Department must be satisfied that the facilities it provides are such that it is reasonable to regard it as the principal place of residence of a person or persons; and that, if any building standards are applicable to it, it complies with those standards".

Completion of Project

"The legislation provides that assistance shall not be paid until the dwelling has been completed or the Secretary is satisfied that substantial progress on the construction has been made or is likely to be made within a reasonable time. The provision is administered flexibly, having regard to obvious building delays faced by owner builders financing construction from their own resources as funds become available. There must be some certainty that a project will proceed to completion before assistance can be paid, but it is recognised that with a modest owner built project, the F.H.O.S. payments may represent the major part of the finance required".

Grant as a Rural Property:

"Under section 11 of the Act, a person building a home on a rural property who does not own the land on which that home is to be built, may be eligible for assistance if the owner of the land gives permission for that person to occupy the home on completion.

D2 Section 4(1) defines "rural property" as,
(a) land used wholly or substantially for carrying on the business of primary production; or

(b) land that the Secretary is satisfied should, having regard to its extent, location, use or zoning be regarded as a rural property for the purposes of this Act.

This section would be relevant to M.O. situations provided the specific requirement as to "business" can be satisfied. Further, subsection (b) must be used, for example, where land is rural and an applicant has the intention of using it for primary production, but may not be doing so at the time an application is made".

".... the word "business" is a specific requirement and the land must be used wholly or substantially for that purpose. From the documents evidenced, there is no indication that the land will be used for generation of income through primary production, but rather for self-sufficiency. In my view self-sufficiency does not meet the requirements of the running of a business on the land".

Grants for Trusts:

Both a local unit trust and a non-discretionary type trust have been rejected for assistance on the following interpretation:

"Section 12 of the F.H.O.S. Act contains the provisions relevant to trust holdings. Where a person holds an interest in land in trust for another person or persons (referred to as the beneficiary or beneficiaries) and the Secretary is satisfied that the beneficiary or beneficiaries will become the owner or co-owner of the land, the beneficiary can be deemed to be the owner or co-owner for the purposes of the Act. Simply continuing to be a beneficiary of a trust is not sufficient for the purposes of the section. In Re D.R. and J.A. Jeans and the Secretary, Department of Housing and Construction 2 ALD 337, the Administrative Appeals Tribunal determined that certainty of the vesting in the applicants of legal title to the subject land is required, not a mere possibility that such a vesting may occur at some indeterminate future date".

R.R.T.F. VIEW

We believe that the Department is adopting a very rigid and conservative interpretation of the requirements of the legislation and has ignored one's rights under common law and the law of equity.

For example we would express doubt that the Courts would agree to permit an expulsion (without compensation) for a minor breach of the rules as this would be contrary to natural justice. See Ethell v Whalan (1971) 1 NSWLR 416.

Dean Letcher of Counsel advised solicitors for a local M.O. co-operative some years ago that he considered that:

"....each of your clients has, in my opinion, an equitable interest in the structures although by their erection on the land of another they may have no claim which would succeed at Common Law. I think there is little doubt that the Co-operative could not simply take the benefit of the structure unless it offered equitable compensation (Rand-v-Chris Building Co Pty Ltd (1957) V.R. 625) and because the occupiers of the structures had conducted their affairs on the basis that they were permitted the benefit of the occupation the Co-operative would not be permitted to withdraw it (W.J. Alan Limited - v - El Nasr co (1972) 2 All E.R. 127 at 140). There is something of a High Trees estoppel in this proposition in that the owner of the land would not be permitted to resile from a position which it itself has caused to exist and he will be prevented from so resiling permanently. This means that he is permanently estopped in equity rather than merely having his rights suspended with an expectation that a period of suspension will be terminated.

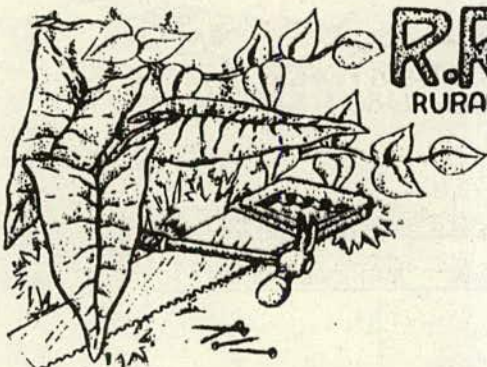
It will be apparent from the above that I consider that the persons who erected and occupy the various structures have a sufficient interest in the structure to obtain equitable relief whether by way of financial compensation or injunction to restrain interference with their enjoyment of the structures on the basis of their expenditure of time and effort and the agreement with the owner of the land".

Since the F.H.O.S. is aimed at assisting those in need to obtain housing and M.O. is assisting this aim we believe that the Secretary could comfortably come to the view that land zoned for M.O. could be regarded as "rural property pursuant to S.4(1) (b) and S.11 wherein applicants are not required to own land themselves, but have permission to occupy it.

In any event, the R.R.T.F. is of the view that if the current legislation does not permit payment of F.H.O.S. grants to most M.O. applicants, then the Act should be amended to be less restrictive.

Or alternatively an equivalent grant should be made available under some other programme, providing the trust or corporate body is of a non-profit nature. One such programme is the Local Government and Community Housing Program (LGACHP) which will provide grants to the States to distribute for low cost rental housing to community groups, voluntary organizations and rental housing co-operatives.

However, under present arrangements, the money for this programme is very limited and distribution of the grants at the discretion of the Minister on the recommendation of a committee.



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.

(E)

R.R.T.F. POSITION ON CO-OPERATIVES

The R.R.T.F. encourages multiple occupancy (M.O.) communities to incorporate so as to facilitate holding land title, clarify decision-making processes, structure business operations, minimize disputes and afford members the protection of limited liability. From the variety of incorporative structures available, the R.R.T.F. encourages the co-operative method for the following reasons:

- (a) Initial set-up and ongoing costs are minimal.
- (b) If established as a Rural Society then the co-operative is exempt from land tax.
- (c) The co-operative has perpetual succession and all normal benefits of incorporation.
- (d) Co-operatives have a long and democratic history.
- (e) They are not difficult to form provided applications are in order.
- (f) They are extended certain special financial advantages including deductability of dividends from taxable income, exemption from certain stamp duties, ability to call up extra funds by special resolution, limitations on individual share-holding and the ability to remain a vibrant member-run organization by being able to forfeit shares of members with whom they have had no dealings for three years.
- (g) There is some flexibility to achieve anything within the Rules of a co-operative which can be achieved by more complex, expensive and indirect means. This includes attaching defined land to shares and giving the share-holder express rights thereover.
- (h) There are federations of co-operatives within Australia and in a worldwide network. Extensive camaraderie exists within the movement which has, in Australia, formed banking, travel, training and lobbying services.

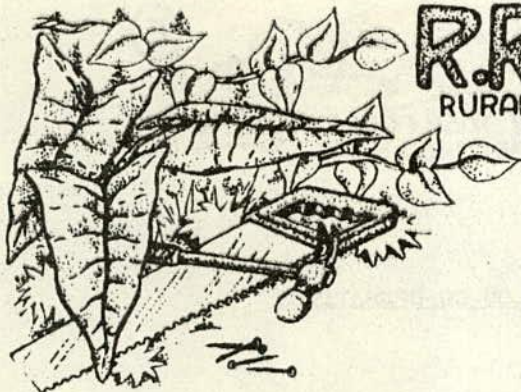
It should be pointed out that certain disadvantages and criticisms apply:

- (a) Registration can be slow if the applicant deviates from the standard rules. The R.R.T.F. has a list of options which have been approved. Once registered, a society can then at leisure debate and register novel or idiosyncratic rules.
- (b) The Registrar of Co-operatives must be satisfied the proposed venture has a good chance of success. A formative M.O. community can show this by having an option to purchase specific land, an indication from local council that an M.O. Development Application could be issued for that land, and some positive indication that the balance of funds and shareholders would be forthcoming.
- (c) The Co-operation Act requires the Registrar's consent before any Rule change can be registered. This is sometimes painted as "outside interference". However, in balance it should be more positively regarded, as a safeguard for co-operatives against themselves: against financial naivete, unscrupulous or misguided majorities, rules contravening legislation, or rules which are poorly drafted.

The R.R.T.F. specifically requests:

- (a) That the Registrar designate a staff member familiar with M.O. aims, aspirations and problems to handle M.O. enquiries.
- (b) That the Registrar continue liaison with R.R.T.F. so as to develop an official information sheet pertinent to M.O. and with a variety of rule options available at that time.
- (c) That groups having trouble achieving registration, or in convincing the Registrar they clearly have a good chance of success, contact R.R.T.F. for advice.

MARCH 1985



RR.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



(E1)

INFORMATION AND POSITION PAPER

LOCAL GOVERNMENT ACT AND ORDINANCE 70

R.R.T.F. RECOMMENDATIONS

Over the years members of Multiple Occupancies via the Task Force and the Home Builders Association (Rainbow Region) (H.B.A.) have actively sought a sensible application of building regulations in relation to owner built homes. (See for example, acknowledgement in the "Introduction" to the "Low Cost Country Home Building" (the Handbook) published by the Department of Environment and Planning, 1981.)

The H.B.A. have long held that if it was found that the application of Ordinance 70 positively prohibited sensible building practice, then it ought to be changed or not applied. The Association considered, however, that Ordinance 70 as it stood, gave Councils a deal of discretion and that if this was sensitively administered there would be no need to change the Ordinance unless there was a clear case (e.g., a Court decision) considered to be contrary to appropriate building practice. (The whole of the Handbook has been designed to be within the framework of the State's building regulations - see Foreword by Mr. Eric Bedford, Minister for Planning and Environment).

Further in this regard attention is drawn to the statement made by the late Mr. Paul Landa, the then Minister for Planning and Environment at the Hamlet Seminar in 1979:

"We're looking to, as a State Government, the local Councils to exercise that discretion in a flexible and humane and considerate way and if that's not forth coming then there may have to be changes to those ordinances to guarantee some greater flexibility" (Seminar Proceedings P.E.C. 1980 p.46)"

We ask the Department of Local Government to issue appropriate directives to Councils on the following

1. (a) The manner of applying Ordinance 70.

(b) That Councils automatically bring the provisions of 317M of the Local Government Act to the notice of those making a Building Application which does not comply with Ordinance 70 as recommended by Ms. J. Fitz-Henry in her judgment. (1)

(c) That demolition orders be issued only as a last resort, and that in the first instance Councils attempt to resolve differences by, for example, negotiation, use of the discretion provided in s.317A and s.317B(1a) or recommending the use of 317M.

2. That Mezzanines are a sensible and low cost building solution. Provided adequate air circulation is available they are not unhealthy and are energy efficient to heat due to the restricted space. Their use for domestic sleeping can hardly be considered to constitute an affront to public decency. In view of this, and the submission that they are not illegal anyhow, we urge that a clear directive be made permitting such use.

3. With respect to Movable Dwelling Licences we ask that a directive be issued to Councils advising that it is not necessary for part owners or owners to apply for this licence.

4. That Councils be encouraged to exclude the application of Ordinance 70 either on an area basis or on the basis of specific sites, or both.

Comment: This very simple process would immediately free Council staff to attend to other matters and hence would result in a cost benefit to Council. The application of Ordinance 70 could, for example, be omitted for those properties where a M.O. Development Application is approved.

5. Readily issue bulletins or directives to Council to assist owner builders, M.O. communities and other group housing projects when necessary.

6. Change building law, ordinances etc. promptly when necessary.

7. Locate at least one full time building inspector permanently in the North Coast Region to assist Councils and applicants alike in the appropriate delivery of the Government's policy on building matters and associated issues.

8. Change the composition of the Building Regulation Advisory Committee (BRAC).

Comment: We understand that BRAC advises the Minister on interpretation and proposed changes to the building regulations and beside containing representation from the Department we understand that the Committee consists of members from the Board of Fire Commissioners, Health Commission, Public Works Department, Housing Commission, Master Builders Association, Royal Australian Institute of Architects, Sydney City Council, Local Government and Shires Association, Institute of Engineers, Building Surveyors Institution, Australian Institute of Building. We trust that it is clear from this list that input to it from owner builders engaged in low cost experimental building techniques is hardly well represented! We request that consideration be given to either broadening the composition of the Advisory Committee to include specialists in the owner built low cost mode of construction, or otherwise create an avenue where pertinent issues such as we have raised may be brought to the attention of the Minister as a matter of course.

As the composition of the present Committee stands we do not consider that we are being represented by our peers.

That the Local Government Department implement as a matter of urgency the "performance standard" criteria as recommended in the Australian Uniform Building Code.

We draw attention to the reduction of minimum room sizes and other changes recently introduced in the counterpart of Ordinance 70 in Victoria. Ordinance 70 should be re-examined with a view to introducing parallel changes in this State.

INFORMATION

The application of Ordinance 70 to Multiple Occupancy (M.O.) communities by councils with unreasonable severity continues to be a source of friction in many areas. A number of the issues which have arisen are outlined below:

CL.47.1 (2): External walls:

"....External walls (including openings around windows and doors) shall be so constructed as to prevent the penetration of rain or other water to the inner parts of a building".

Mr. (now Justice) Murray Wilcox Q C, offered the following written advice to solicitors for a local M.O. Community:

"The Council apparently interprets clause 47.1 (2) as requiring, in relation at least to buildings not excepted under subclause (3), that there be a waterproof external wall of the building. It seems to me that this interpretation is incorrect. Subclause (2) does not, in terms, require the construction of an external wall. Rather, it specifies the nature if the construction of any external wall which is in fact provided. In other words, it assumes the existence of the relevant wall and then says that such wall shall be so constructed as to be waterproof. The subclause has nothing to say about a situation where, as here, there is no wall at all. Certainly, in my view, it does not require the provision of an external wall Upon the Council's construction one would always have to close in, by waterproof walling, an open verandah or terrace. I cannot think that this was intended...."

In the Bodhi (M.O.) farm case (1) the assessor did not find it necessary to determine the meaning of this clause, but set the demolition orders aside (further comment on this case appears on the following pages).

CL. 49.5 (1): Mezzanines

".... every habitable room shall be for at least 2/3 of the area of the floor not less than 2400mm in height and shall not in any portion be less than 1500mm in height"

If a mezzanine is a habitable room, then the 2400mm ceiling height requirement would apply; if it is merely a "space within" another room, then this requirement should not apply and is hence permissible and legal under common law.

S. 317 A Certificates

Mr. (now Justice) Murray Wilcox Q C has advised:

"The Council seems to have proceeded on the basis that if there is a breach of the Ordinance then automatically steps must be taken to remedy the breach or the building be demolished. The Council also seems to have taken the view that if there is a non-compliance then no s.317A certificate may be granted. If the Council has taken that view then it seems to me that it has fallen into error. Relevantly, it is a condition precedent to the exercise of power under s.317B that the building was erected without the prior approval of the Council. I understand that this condition is satisfied, however, Council is not obliged to issue a notice under the section for the demolition or alteration of an unapproved building; it has a discretion as to the course it shall take. The effect of the appeal provisions in s.317B (5) is to commit to the

Court the ultimate decision as to the proper exercise of discretion: see re Diecut Pty.Ltd. Ex Parte North Sydney Municipal Council (1963) 8 LGRA 343 at p. 348. There have in fact been numerous cases, some of which are reported, where the Court has upheld the appeal and set aside or varied the requirements of the notice notwithstanding the fact that it was satisfied that the building has been erected otherwise than in accordance with approved plans."

With respect to s.317A Certificates, Mr. Justice Cripps in the Seeto case (2) commented:

".... I do not think it is necessary for the Council to identify every possible departure before determining that it should issue a certificate that the building complies assuming, as I do, that no contraventions or departures were discernible by the exercise of reasonable care and skill. In my opinion, if after considering all the relevant material (including inspections etc) and there are no discernible contraventions of the Act and Ordinances or departures from the plans and specifications, the Council's duty would be to furnish a certificate to the effect that the building complies...."

According to Butterworth's Information Bulletin No 6:

".... another avenue sometimes used to give a semblance of legal sanction to building work carried out without prior Council approval is to apply for a Certificate of Compliance under s.317A of the Act. If the council sees fit it may then issues a certificate in one of the forms set out in that section, that is -

(a) that the building complies with -

- (i) the Local Government Act and ordinances;
- (ii) the plans and specifications, if any, approved by the council; and
- (iii) the Environmental Planning and Assessment Act 1979, and any environmental planning instrument; or

(b) that any contravention of the matters listed in (a) above is not such as need be rectified".

S.317B (1A): Demolitions

Some Councils are under the impression that section 317B(1A) requires a Council to order the demolition of buildings "erected or altered without the approval of the Council". It is our view that section 317B (1A) should be read as giving Councils a discretion. When an offending building is brought to Council's attention, the Council "may" order demolition or it "may" order the doing of "such work" as is necessary to make the buildings comply with the Act and ordinances". The Council may also decide to do nothing.

In the Bodhi Farm (1) case the court set aside 2 demolition orders (due to the lack of an external wall and the ceiling height in a mezzanine) because:

".... no useful public purpose would be achieved by confirming the demolition orders as issued by the respondent Council The way of life chosen by those on Bodhi Farm, and other such settlements, requires a certain remoteness for its success; it is only in these situations that one could, with some degree of safety from the dangers posed by other human beings, live so close to nature as to want to dispense with an external wall. Also, it is only certain people who would really want to live so close to nature that they choose to plan their/houses so as to facilitate the entry of wild life rather than otherwise. If these two houses were to pass into other ownership, it would not be a major task to enclose these rooms as the Council wants them to and indeed as others have already done on Bodhi Farm".

S.317 (M): Ordinance 70

In the Bodhi case (1) the assessor commented:

".... in future the provisions of 317M of the Local Government Act should be investigated at building application stage if it is considered unreasonable and unnecessary by the applicant that the full ceiling height as required by Ordinance 70 should be provided. By way of comment, it is regrettable that the "Low Cost Country Home Building" report at p.16 under the heading "Appeals and Objections" gives both misleading and inadequate advice on the simple 317M objection procedure available in this Court to all applicants under Part XI Building Regulation, of the Local Government Act, 1919. This procedure, however, is not available here as the structures in question were erected without building approval being obtained beforehand".

Note: The s.317M provision can be used with respect to any ordinance 70 clause.

E4

S.288A (7): Movable Dwelling Licence:

Attention is drawn to s.288A (7) of the Local Government Act and the situation where an owner, or part owner is not required to obtain a movable dwelling licence. It is our experience that Councils and applicants are confused about the application of this provision. Some part owners simply do not apply for a licence and other part owners do with attendant costs and sometimes onerous conditions. Sometimes Councils make renewal difficult. We know of no instance where the Council has advised such an applicant that a licence is not required!

S.312 and 306 (2) : Class X Outbuildings

A class X building is one not intended for permanent dwelling purposes. It requires Council approval under s.312 to construct and then an application would be lodged to occupy it for a specified period of time pursuant to s.306 (2).

CL. 6.1 (4) : Dwelling House Definition

In the Dempsey case (3) a number of unrelated persons wished to convert an old warehouse into a dwelling to live together sharing common facilities. Council contended that it was not a "dwelling house" but a "residential building". In this case, it was held that:

"(1) The word "design" in the definition of "Dwelling-house" refers not to intended use but to architectural design

(2) The relevant question, in considering an application to erect or alter a building claimed to be a dwellinghouse is whether, as a matter of fact, the layout is such as to be appropriate for a family unit to live in in the accepted way. It is irrelevant whether the actual occupants may properly be described as a single family.

(3) Consequently the making of the proposed alterations would be an "erection" for the purpose of the single dwelling.

(4) A building is used as a dwellinghouse within the meaning of the ordinance if it may fairly be said, as a matter of fact, that it is occupied in much the same way as it might be occupied by a family group in the ordinary way of life and that it is not a use and occupation more appropriately described in other categories of residential buildings. Hence it is unnecessary to consider whether the actual proposed occupants may be classified as a single family."

Demolition Orders and Natural Justice

In The High Court Twist case (4) the Chief Justice commented:

"The common law rule that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power is both fundamental and universal.... it appears to the court that the legislature has not addressed itself to the appropriate question, the court in the protection of the citizen and in the provision of natural justice may declare that statutory action affecting the person or property of the citizen without affording the citizen an opportunity to be heard before he or his property is affected is ineffective.... Where the legislation is silent on the matter, the court may presume that the legislature has left it to the courts to prescribe and enforce the appropriate procedure to ensure natural justice..... It is quite evident to my mind that, in enacting s.317B, the legislature has provided an opportunity for the owner of a property to be affected by the court's order to be heard before his rights are finally affected".

However such a denial of natural justice does not automatically void a demolition order and in the Twist case, the court held that the order was valid based on the other considerations in the case.

"Stop Work" Notices

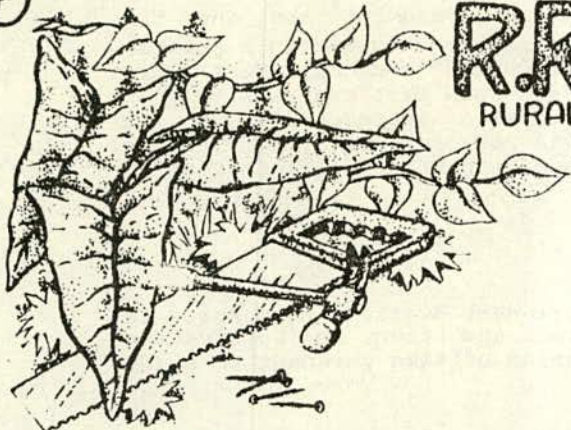
According to Butterworth Information Bulletin No.6, Dec.1980:

"There is no specific provision in the Act for the issue of "stop-work" notices and they are, in effect, administrative instruments issued by Councils which place the persons concerned on notice that they are in breach of the Act and liable to prosecution".

References:

1. A.M.NICOLSON - V - THE COUNCIL OF THE CITY OF LISMORE NO.20519 of 1983.
2. SEETO CONSTRUCTION PTY LTD - V - THE COUNCIL OF THE SHIRE OF SNOWY RIVER
3. SOUTH SYDNEY MUNICIPAL COUNCIL - V - JAMES AND ANOR, Court of Appeal 19 Sept 1977, 35 L.G.R.A.432.
4. TWIST - V - RANDWICK MUNICIPAL COUNCIL, High Court, August and November 1976. A.L.R. 390

(F)



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.



INFORMATION AND POSITION PAPER

TELECOM INSTALLATION CHARGES

POSITION

The R.R.T.F. is of the view that the new policy discriminates against M.O. homeowners in that they are now to be treated differently from other rural homeowners. We cannot see any logical reason why a home with freehold title should be treated differently from one constructed on a shared piece of land.

The subscriber usage rate of a phone on a M.O. community should not be any less than that of other rural subscribers, and indeed, may be greater in many cases as a number of households often share the one phone. While there are often a number of phones on a M.O. community, there is rarely one in each household, and hence a greater degree of sharing would occur.

This policy will also introduce a number of anomalies and inequities within individual M.O. communities:- eg. will the first subscriber pay for most of the work and cable required by future subscribers?

In general terms M.O. homeowners tend to be significantly poorer than those living on freehold title. A recent study, Rural Land Sharing Communities : A Partial Solution to Unemployment ? by Sommerlad et al. for the Bureau of Labour Market Research, concluded that social security benefits represented the primary source of income for 60% of income sharing units. Clearly, pensioners and other low income people would be unable to afford the "typical" proposed charge of \$830.

As the new policy is discriminatory against one form of home ownership often taken up by the poor sectors of the community, the present practice should be abandoned in favour of the former policy which treated all forms of rural home ownership on an equal basis.

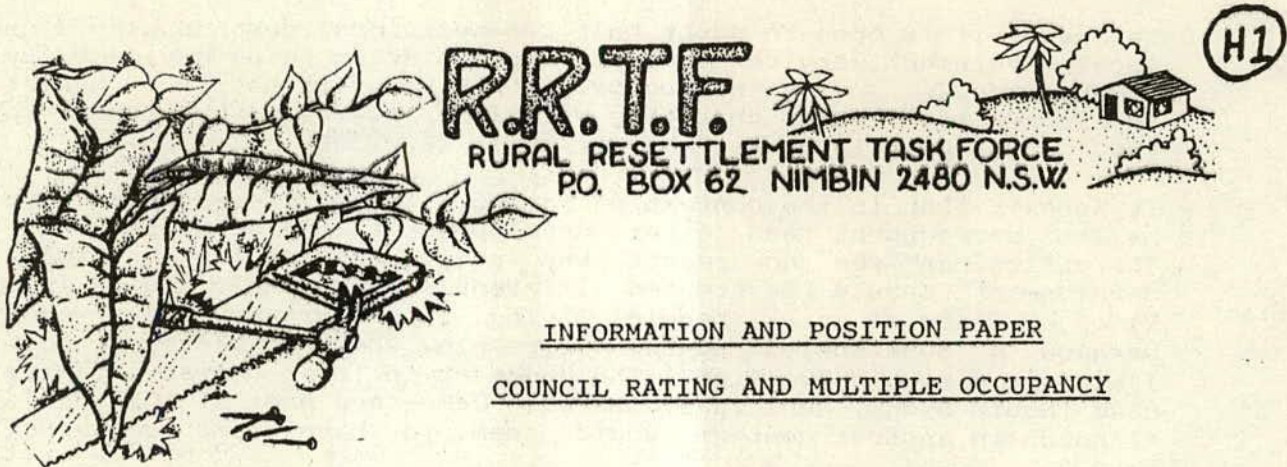
INFORMATION

Until recently Telecom installed telephones for Multiple Occupancy (M.O.) subscribers for the standard connection fee of \$150, which is applied to all rural subscribers within several kilometers of an existing Telecom line. The Lismore Regional Office of Telecom then started advising M.O. applicants that they would have to pay the full cost of installation for all work and materials needed to reticulate the service (after the first 300 meters) within the property. In response to R.R.T.F. submissions on this matter to the Minister, the Hon. Michael Duffy M.P., the Acting Secretary, Mr. B.W. Byrnes made the following reply on 12 November, 1984:

"The current policy on provision of telephone services on multiple occupancy properties is the same as that applied to cluster dwelling developments and retirement villages, where new services are provided to a single point on the property and actual costs are charged to extend these services to the buildings on the property.

A similar approach is adopted by other public utilities where the utilities pay the costs of providing services to the boundary and the owner is required to pay the cost of reticulation on private property.... Based on current estimates, the average cost to the owner of each dwelling on a typical multiple occupancy property will be \$830.00....

Telephone services have already been installed on some multiple occupancy properties for the standard connection fee in the belief that the dwellings had individual titles. However, Telecom does not intend to recover the costs of these installations".



INFORMATION AND POSITION PAPER
COUNCIL RATING AND MULTIPLE OCCUPANCY

RURAL RESETTLEMENT TASK FORCE POSITION

This association holds that the present options open to Councils for rating M.O. should not be changed.

We concur with the Valuer General's reply to the Tweed Shire Council of 11 January, 1984 in response to their request for a separate valuation on each M.O. dwelling.

"As you are aware, the Department's existing policy is not to regard this type of occupancy as a separate parcel of land in terms of the requirements of the Valuation of Land Act, 1916, and accordingly single land valuations of the whole of the property in one ownership are presently made and issued.

However, in view of your Council's request and other recent enquiries of a similar nature, the situation has been re-examined and the conclusions are as follows:-

It is clear that Multiple Occupancy of rural land is designed to provide an alternative life style based, in part, on agriculture.

These farm complexes, whilst somewhat different in character to "conventional" farms, are nevertheless owned by one body and, from the information available, are worked as one unit on a co-operative basis for agricultural or pastoral purposes.

The development intention in all cases examined is clearly one of communal sharing of the whole of the land and NOT one of cutting the land into parcels devoted to permanent or undefined separate use.-
- - - Council's request for separate valuations for the two cases nominated cannot be provided."

In response to a Council suggestion for special rating for M.O. properties on a "user pay" principle the Department of Local Government made the following reply on 6 April 1983:

"The Council appears to assume a direct connection between rates and demand on local government services. This connection, in a direct sense, does not exist and has never existed, except perhaps in the case of local rates. It also seems to infer some sort of concept of head tax, which has never existed in local government.

Local Government rating is primarily a tax, based on the value of land, to provide support for local government. Although this concept is modified both in relation to local rates and differential rating, there has never been any suggestion, in practice, that an individual ratepayer should receive, or indeed should be able to demand, local government services in proportion to his rates.

(H2)

Secondly, it is open to doubt that the additional demands placed on local government services would be high as seems to be envisaged by some councils. It is suggested that the very nature of hamlet developments indicates that they will look inwards rather than to the community at large for many of their services.

It appears that in the context of rating, the difference between hamlet development and other development is one of degree only. The office can see no reason why people living in a hamlet development should be treated differently from people living in a block of flats of units, people living in a granny flat, even perhaps a substantial number of people, whether related or not, living in a single dwelling. The judgment in the Dempsey family case (South Sydney Municipal Council James and Anor 35 LGRA 342), although in another context would seem to have some relevance here."

Our association supports the above statement. With respect to M.O. residents looking "inward" for services, it is our experience that not only is this happening but that such residents positively cherish the opportunity to become more self-reliant in this way and see such action as an important component in achieving a healthy lifestyle.

We oppose at this time any proposal to amend the existing legislation with a view to introducing either a head tax, dwelling tax or separate tax on improved valuations with respect to M.O. Not only do we oppose such in principle but we also view that the introduction of any such legislation would be fraught with problems of administration. If a dwelling tax was introduced, for example, would the Council issue separate rate notices? Would an "expanded" house with separate bedroom units or a communal house of several adults be rated as one unit or several? Would pension concessions apply? Would a dwelling or the occupation of it, attract the separate valuation? Would all sections of the community be rated on a user pay principle?

As mentioned, Councils may, as an option seek to apply a differential rating for M.O. In the case of the Lismore Council, the M.O. rate is nominally the same as the general rate. It is noted when introducing this differential rate, no criteria were recorded by the Council as the basis for making this decision. By inference the sole criterion appears to have been that the "user pay".

Councils often cite the extra road pavement damage they assume results from residents commuting to and from M.O. communities in their cars. However few if any M.O. communities would use a road 14,000 times a year, which they would need to do to equal the amount of damage done to road pavement by a single truck loaded to the permissible limit. This fact is stated by Ken Dobinson, deputy engineer-in-chief (planning and design) in the Department of Main Roads, N.S.W.: "The amount of damage that a truck loaded to the permissible limit will do to road pavement is about 14,000 times greater than the average car. And the damage increases in relation to the fourth power of the axle load." (Engineers Australia, February 22, 1985 pp. 24-28)

As an issue of principle we see no reason why, if a group of people choose to share an asset (as in the case of a property for M.O.), that they should be taxed at a higher rate. By analogy, if a number of people share an income they are not required to pay a higher rate of income tax, due to the act of sharing that income.

We are not clear as to what is considered by the Department of Local Government to be bona fide or acceptable criteria for fixing a differential rate and would appreciate comment to clarify this issue.

By way of comment, we understand from the Departmental letter quoted that the general rate is not related to a "user pay" principle, and, if this is the case, presume that the same principle ought to apply to any variation of that rate, in this situation a differential rate for M.O.

In citing above the Lismore Council action to set a differential rate for M.O. at nominally the same as the general rate, we do so only in the context of illustrating that the system of differential rating is one of the options open to Council. We wish to place on record that we do not necessarily endorse that Multiple Occupancy rates ought to be nominally the same as the general rate.

In response to Council claims that M.O. communities result in increased road use, we suggest that the only equitable and realistic method to make the user pay for road use is through petrol taxes. Short of this we approve of the present situation where the Grants Commission is making funds available to those Councils which have a population increase due in part to M.O. settlement. (It is our experience that deterioration of unsealed rural roads is disproportionately higher in this region than other regions, due to the higher rainfall, rather than to greater road usage).

INFORMATION

Councils in N.S.W. are using 3 forms of rating with respect to multiple occupancy (M.O.) - i.e.

- (a) charging the normal rural rate (which the R.R.T.F. supports)
- (b) charging a differential rate greater than the general rate pursuant to S.118(4)(a) of the Local Government Act (L.G.A.), or
- (c) charging a differential rate greater than the rural rate but less than the general rate pursuant to S.118(4)b of the L.G.A.

With respect to charging a differential rate greater than the general rate, a committee of Far North Coast Councils commented:

"Section 118(4)(a) of the Local Government Act provides inter alia-

The council may, in the resolution making the general rate, determine -

in respect of rateable land - - - in any town, village, centre of population or urban area within the council's area and which is specified in that resolution - - - that the general rate shall be such amount in the dollar - - - as may be specified in the resolution in relation to such town, village, centre of population or urban area so specified;

'Centre of population' is defined in Section 118(1) and "means a defined part of an area designated as a centre of population by the council".

At least one council in N.S.W. has used this section of the Act for M.O. development and levied a higher rate than the general rate. The ratepayer(s) have not appealed and therefore the rating method remains valid.

It is difficult to question a method which is actually used, but it does seem a very liberal interpretation of the legislation".

With respect to the charging of a differential rate less than the general rate, the Oct. 1983 edition of the Local Government Bulletin commented:

"Section 118(4) provides:

The council may, in the resolution making the general rate, determine:

- (b) in respect of rateable land being:
 - (i) all rural land in the area;
 - (ii) rural land within a defined portion or defined portions of the area; or

(H4)

(iii) all rural land in the area, except that within a defined portion or defined portions of the area;

that the general rate shall be such amount in the dollar being less than the amount defined to in subsection(3) as may be specified in the resolution in relation to any such rural land; and the rate so specified shall apply uniformly to all rateable land in respect of which it is so determined.

Looking at section 118(4)(b) it seems to us that the so called rural rate may be made in respect of:

- (i) all land in council's area coming within the definition of rural land; or
- (ii) land coming within the definition within a portion of several portions of council's area, such portions being defined as required; or
- (iii) all land in council's area coming within the definition except that within a defined portion or defined portions.

The rate is then determined in the resolution in respect of "any such rural land" and must be applied uniformly to all land in respect of which it is determined".

In order for a differential rural rate to be valid it is essential that:

- "....(2) The various rates must be applied to all rural land in the various portions of council's area as determined;
- (3) The amount of the rate in respect of the various portions must be specified in the resolution and must be less than the general rate under subsection 118 (3); and
- (4) The rates determined for the various portions of council's area must be applied uniformly to all rateable parcels of land in the various areas in respect of which it is determined. This requirement is mandatory and failure to comply will result in the whole rate for the particular area being invalid.

There is a further matter that is critical if the differential rates are to be valid. Section 118(1) refers to the word "defined" as meaning "defined in the manner prescribed" and section 118(4)(ii) refers to "defined portion or defined portions" of council's area

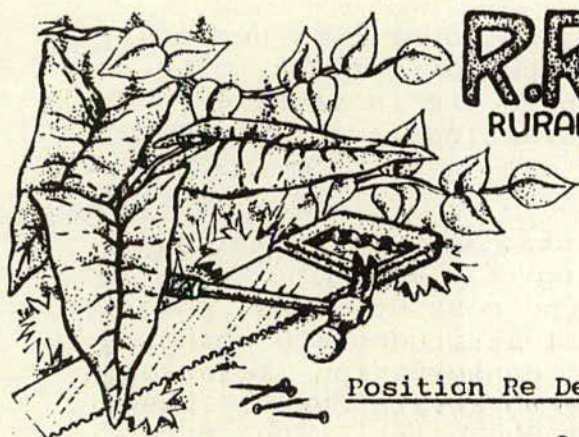
Accordingly, the "portion" or "portions" referred to in subsection 118(4)(b)(ii) must be defined in one of the methods set out above in the resolution determining the rate in respect of the various portions. Each portion must be defined in a separate resolution. Failure to comply precisely with the clause will result in the invalidity of the rate".

In response to an enquiry from Tweed Shire Council the Local Government Office replied 22 November, 1982, as follows -

".... it is open to the Council under the provisions of section 118(4)(b)(ii) of the Act to define individual properties as portions of the area for the purposes of the section. This would enable the Council to levy a different amount or amounts in the dollar of the general rate in respect of rural lands, as defined in the Act, within such defined portions and so differentiate between rural lands subject to M.O. and those which are not. This is the provision used by Lismore City Council to prevent the extension of a lower rural differential rate to M.O. land".

Despite the assurance of the Department of Local Government above, we would suggest that any M.O. community who is dissatisfied with a so called differential rural rate should seek legal advice.

March 1985



R.R.T.F.

RURAL RESETTLEMENT TASK FORCE
P.O. BOX 62 NIMBIN 2480 N.S.W.

(11)

Position Re Development Condition Requiring Provision of

240 Volt Cable to M.O. Properties

The RRTF believe that property owners should NOT be required to install or extend the County Councils high voltage power line to their properties if they do not want this service. In many cases with respect to Multiple Occupancy (M.O.) the installation of 240 volt power would cause a visual or other environmental hazzard as well as an unacceptable cost burden to those requiring low cost housing. Cheaper or more environmentally sensitive alternatives are often available and are surveyed in the last section of this paper.

Information

To date we know of no cases where Councils have imposed such a condition on a M.O. community. However a number of warning bells have been sounded!

The Energy Authority of N.S.W. made the following comment with respect to the Landcom Feasibility Study:

"..... For property connection distances of the order of a few kilometres, costs of \$6,000 per kilometre may be incurred. In many rural areas, notably those at the edges of the existing electrical distribution network, it is a condition of the shire council that the developer pay for the extension of electricity services to any new development. This condition would be an additional cost burden for multiple occupancy developments, the electricity usage for which may well be lower than average."

Recent rural strata title developments have been required to install 240 volt power to each site and Ulmarra Shire Council with the support of the Northern Rivers County Council placed this condition on 3 subdivisions even though the owners wished to use solar cells. Councils reasons for this condition included:

"..... reticulation of electricity is an accepted standard of consent subsequent owners of subdivided land demand the convenience of electricity supply of power, where available, is necessary for the orderly development of the rural areas."

It should be noted that such a condition may be appealed to the Land & Environment Court.

There are two separate reasons why 240 volt power provision should not be mandatory upon subdivision or rezoning. The most obvious is that in some areas it is simply more expensive than alternatives offering comparable performance. The second reason is that mains power comes in a minimum package which may offer more than the consumer will ever need but also cost more than the consumer can pay for. Non-mains power systems come in all sizes to accurately fit the consumers needs. Thus small independent systems can often offer better value per dollar even though the cost of each unit of power consumed might be ten times as high.

I2

There is a common attitude that mains power is a necessary step in the process of development and efficiency. It is considered better to borrow capital to have the inevitable power system sooner rather than later to avoid wasting time and money on expensive stop gap measures.

This view can be countered on two points. The "inevitability" argument is presumptive. New technology is bringing down the price of small power systems, while the cost of mains power & mains connections is going up. Also social attitudes are changing in the direction of tolerance of energy conservation measures, diversification of skills, sensitivity to environmental abuse, and fear of pre-emptive decisions by government. The second assumption is that interest payments are justified by the time and inconvenience saved and the economics of scale gained by doing servicing "up front". With interest rates and unemployment the way they are, this is highly questionable, even if the finance can be raised.

The graph below presents the cost versus performance of 65 randomly chosen non-mains electrical installations in the Nimbin area. The open circles are solar/wind/petrol systems and the crosses are microhydroelectric. Some of the people represented installed non-mains systems only out of necessity and would have preferred mains connection if it had been organised. The majority though are quite satisfied with what they have (c.f. the paper done in 1984 by the University of Queensland Solar Energy Research Centre).

The figures for mains connection of the sample were derived from quotes given often years back and naturally low. Where several neighbours could have co-operated this was taken into account and the cost correspondingly lowered.

The concept of "Standard of Supply" is complex. For small systems the energy available per day is the important criterion, whereas in big systems without water and space heating the peak Kw load is more important. A continuous 200w supply sounds laughably small but with an inverter and battery bank it can supply a house with the equivalent of mains power if hot water and space heating are omitted. Thus a 200w energy source can do most of what a 10,000w mains supply can do. Fifty times the energy is not necessarily fifty times as good! The difference can be made up at quite moderate cost by solar hot water and fuel stove.

Only initial capital is considered, as continuing costs of almost any electrical system will be small. All the systems graphed below would have running costs way below power bills, even with consumers who ruin batteries every year. Very few independent power setups would experience depreciation of \$200 p.a. while few mains power bills are under this. It is hard to be more precise about this issue as the depreciation is so much a function of the consumer's responsibility, and power bills for houses with small consumption so much dependent on the formula that NRCC adopt.

Beyond all these economic arguments lies the view that the Council is being plainly tyrannical. If people object on environmental grounds to being surrounded by 50 Hz electromagnetic fields they should be free to live in an environment of their choice.

April 1985

INSTALLATION COST

