Council Reference:
Your Reference: **Email of 26 August 2015**

TWEED SHIRE COUNCIL

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1 September 2015

Mr Steve Murray
General Manager, Northern Region
Department of Planning and Environment
Locked Bag 9022
GRAFTON NSW 2460

ATTENTION Mr Jon Stone

Dear Mr Murray

Proposed LEP Clause - Repeal of State Environmental Planning Policy 15 - Rural Landsharing Communities - Feedback

Thank you for the opportunity expressed in your email of 26 August 2015 to provide feedback on the incorporation of certain provisions of SEPP 15 Rural Landsharing Communities into the Tweed Local Environmental Plan 2014, ahead of its repeal.

Our first observation, which stems from the Department's delay in finalising the E-Zone review, is the proposed new clause would not take effect in the Tweed Local Environmental Plan 2000, if it were to occur. It would necessitate the Council undertaking a draft LEP, at its own expense, should it consider the consistency of planning instruments important.

Our second observation, notwithstanding any view of the correctness of the proposed clauses, is that it further adds to the complexity of the local instrument and further erodes the principle of standardisation upon which the 2006 NSW Government planning reforms, in particular the "standard instrument", were premised. We welcome the Department's advice regarding its current standing on standardisation and consistency, in particular whether it is taking a more liberal view toward local amendments.

Our third observation is, unless we have incorrectly interpreted proposed Clause 6A.6, is that development "to which this part applies", being a new Part 6A within the LEP, is designated development. Firstly, there is no apparent reason for this. Secondly, if it was to be so designated there would be absolutely no need for an exhaustive list of matters to be addressed; those matters of relevance would be ascertained through the EIS process, which itself is guided by Schedule 2 of the Regulations or other matters referred to in any relevant guidelines established for specific types of projects, or generally. Under that regime all that would be required, if at all, is a listing of those matters not mentioned and otherwise foreseeable or within the contemplation of the reasonable and competent practitioner.

The history of rural 'land-sharing' communities and legislative structures, which have operated at varying points in time and politics to either prohibit or permit RLC's, is highly vexed. The legitimisation of what was then a significant and increasing number of unlawful multiple occupancy developments, which were proliferating in the north

coast region from the mid 1970's as part of broader social movement culminating in this Region with the Aquarius Festival of 1973, was and has fundamentally remained an undertaking of the State Government. This started to occur soon after the "Hamlet Seminar"[1] in 1980 when Lismore City Council's Interim Development Order was amended to enable multiple occupancy for communal living, and followed by the introduction of SEPP 15 by the then NSW Labour Government in 1988[2].

During the 1970's and 80's for the most part communal living and the legal mechanism of co-ownership seemingly worked to the benefit and advantage of those communities. In more recent times there is seemingly a greater trend for greater recognition of legal property rights through attainment of their registrable interests in the land, and corresponding certificate of Title. With changes brought about by lending institutions and the tightening of access to finance the ability to obtain a certificate of Title, upon which the individual's interest can be mortgaged, transferred or inherited, will inevitably see an intensification of pressure on government to remedy or correct the inequity or inequality many rural landsharing community members feel they are subjected to. Their focus will be on relaxation of subdivision rules and or broader application of the Community Title legislation to address the rising inequity and property ownership challenges those communities have inherited from what is arguably now an outdated and regressive policy.

The repeal of SEPP 15 in favour of its substantive re-enactment within the LEP will further shift the burden of addressing those concerns to local government, and will not in any way streamline, or remove 'red-tape' from, the planning process. Shifting the rules between EPI's will not improve the situation for existing rural landsharing communities, it will not improve the long-term viability of this model of housing, but it will lead to greater variation of regulation between LGA's and broaden the inequalities inherent with this current housing model.

Whilst we agree the RLC legislation had its role when created to serve an emerging and widespread social movement, the attitudinal boundaries have noticeably shifted and its role is now largely defunct by the hardship and disunity it is seemingly perpetuating within many established RLCs. The major contributor, as we understand it from various RLC member representations, is the financial insecurity associated with this non registrable property interest based scheme, compounded by a declining access or attractiveness to new communal living home owners, and which is inextricably linked to the inability to legally subdivide the land by community or Torrens Title.

Council is currently preparing a Rural Land-use Strategy and it is our view that the requirements for communal based land-sharing, modelled on a registrable property interests based scheme, is the only genuinely sustainable model for servicing inter-generational needs and the long-term survival of communal living. We consider it will also provide a broader platform for managing land-use conflict within agriculturally productive and environmentally sensitive areas of the Tweed.

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[1] NSW Planning & Environment Commission, *Hamlet Development in NSW – Seminar Proceedings,* cited in; Warwick G. Fisher, *The future for rural landsharing communities in Far North Coast New South Wales* (2004), Southern Cross University Law Review, vol. 8, pp. 51-72

[2] Ibid. p56

Having regard to the above, and whilst noting the quite expansive planning and design criteria proposed, we are of the view that perpetuating this model of housing is not in the best interests of the Tweed community as a whole. Tweed's preference would be to include an appropriate legislative provision within the Tweed LEP(s) to give effect to the planning and design criteria in the Rural Land-use Strategy, once adopted.

This preferred approach would also provide the opportunity to redress the adverse nature of the previous planning schemes on RLCs and enable Council to bring relief to those suffering varying levels of stress, not least of a financial nature, within those existing communities.

Should you have any queries please contact Iain Lonsdale on (02) 6670 2457 or by email at ilonsdale@tweed.nsw.gov.au.

Yours faithfully

Vincent Connell

Vince Connell
Director Planning and Regulation