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**Urban Consolidation and Dual
Occupancy Development**

by

Marie Swain

Briefing Paper No 12/95

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INTRODUCTION

This Briefing Note concentrates on one aspect of the urban consolidation strategy, namely dual occupancy development.

The first section of the paper deals with a number of key planning concepts and sets out the legislative scheme under which dual occupancy development is possible. The background to the current position on dual occupancy development and urban consolidation is contained in the second section. The third section outlines arguments for and against dual occupancy development and the final section presents various points of view on the topic.

KEY CONCEPTS

It is useful to explain a number of key planning and control concepts prior to discussing the debate surrounding dual occupancy development.¹ (All Section references are from the *Environmental Planning and Assessment Act 1973* (EPAA) unless stated otherwise).

What is urban consolidation ?

Urban consolidation is a means by which more people can be brought into existing residential areas where the necessary infrastructure such as public transport, schools, utilities are already in place. For social as well as economic reasons, it is seen by many as preferable to creating new residential developments on our metropolitan outskirts.

Two definitions are:

Urban consolidation is ... a planning policy directed to bringing about the more efficient use of a finite resource namely existing or likely future urban land and involves increased density.²

and

Urban consolidation is the process of increasing and/or maintaining the density of housing in established residential areas in order to

¹ The material presented in this section of the Briefing Note relies heavily on information contained in David Farrier's book, *The Environmental Law Handbook: Planning and Land Use in NSW*, Redfern Legal Centre Publishing, 2nd edition, 1993.

² William Simpson, *Report to the Minister for Local Government and Minister for Planning on an inquiry pursuant to Section 119 of the EPAA with respect to REP 12, SEPP 5 and SEPP 25*, January 1989, p50.

increase or maintain the population densities of those areas.³

What is dual occupancy ?

In essence a dual occupancy development is one where there are two independent dwellings on a single block of land. Depending on its size, the block may be subdivided. Clause 8 of Sydney Regional Environmental Plan (REP) 12 provides for these dwellings to be in the form of an extended house under one roof, two detached buildings, two new attached dwellings or one dwelling above another.⁴

Dual occupancy is generally seen by governments and town planners as a way of making increased housing in a variety of forms available while at the same time reducing the need for new development on the fringe of metropolitan areas. This view was reflected in a foreword by the Minister for Planning in a recent Department of Planning publication:

Dual occupancy is but one strand of the broader initiative of urban consolidation which aims to limit the outward sprawl of Sydney by boosting populations in established suburbs. At the same time it is vital to preserve the character and amenity of suburban areas which made them desirable in the first place.⁵

What are environmental planning instruments (EPIs) ?

What can or cannot be done on any particular block of land will depend on the planning controls which apply to it. To find these out it may be necessary to consult a number of environmental planning instruments (EPIs). An EPI is defined in Section 4 as:

a state environmental planning policy (SEPP), a regional environmental plan (REP), or a local environmental plan (LEP), and ... includes a deemed environmental planning instrument.

As EPIs have their basis in legislation, they are legally binding on both councils and developers. They apply to councils not only in a day to day sense when development approval is being sought, but also when new LEPs are being drafted. When these draft LEPs come before the Minister for approval, alterations can be made, if necessary, to ensure that consistency between existing SEPPs and REPs is maintained. Section 125 provides for criminal proceedings to be brought for

³ This definition appears in a publication by the Western Sydney Regional Organisation of Councils entitled *Study of the implications of Urban Consolidation for the planning and provision of human services*, 1990 and was cited by Carol Mills in 'Urban Consolidation', *Western Sydney Quarterly Bulletin*, Vol 1 No 3, July 1990, p26.

⁴ Department of Planning publication, *Dual Occupancy Design Solutions Manual*, 1994, p1.

⁵ Department of Planning publication, *Dual Occupancy - Development Guidelines*, 1994.

breaches of the Act and would apply to developers who do not comply with provisions set out in the various EPIs.

Although EPIs are statutory documents and a form of delegated legislation, they are not required to be tabled in Parliament.⁶

Contents of an EPI

The scope of what can be dealt with in an EPI is very broad, as it can be made to achieve any of the objects of the Act - Section 24. These objects are defined in Section 5 as being:

- (a) to encourage -
 - (i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land;
 - (iii) the protection, provision and co-ordination of communication and utility services;
 - (iv) the provision of land for public purposes;
 - (v) the provision and co-ordination of community services and facilities; and
 - (vi) the protection of the environment;
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Section 26 provides even more detail on what can be contained in EPIs. Amongst other provisions it states that an EPI can be made "to protect, improve or utilise, to the best advantage, the environment" - Section 26(a). The "environment" in turn is defined in Section 4(1) as including "all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings".

⁶ Butterworths Looseleaf Service on Local Government Planning and Environment NSW, Chapter on Land Use Planning, Development and Building Control, pC60,104.

What are state environmental planning policies (SEPPs) ?⁷

SEPPs are drafted to take into account matters which are thought to be of significance for environmental planning of the state. A SEPP can apply to the whole of the state or to specified areas only - Section 39(5). The Director of the Department of Planning prepares a draft, submits it to the Minister administering the EPAA ("the Minister"), who may, if he or she concurs, recommend to the Governor that the SEPP be made - Section 39(1). The Minister can also direct the Director to prepare a draft SEPP - Section 37(2). Whether the general public has input into the draft is determined by the Minister, who has a discretion under Section 39(2) as to whether the draft should be publicised and whether or not submissions should be received.

SEPP 25 - Residential Allotment Sizes and Dual Occupancy Subdivision

Some SEPPs, such as SEPP 1 - Development Standards, aim to bring greater flexibility to the planning controls, others deal with specific issues such as urban consolidation. SEPP 25 is an example of the latter. Its aims and objectives as set out in Clause 3 are:

- (a) to reduce the consumption of land for residential purposes;
- (b) to reduce housing costs by reducing in certain cases, the minimum area of land on which residential development may be carried out;
- (c) to encourage innovation and diversification in subdivision patterns, site plans and building designs; and
- (d) to facilitate development for the purposes of residential flat buildings containing 3 or more dwellings.

In selected areas, it reduces the minimum allotment size for single dwellings to 450 square metres. In addition, it allows integrated housing (involving residential subdivisions of at least five allotments) where the size of individual allotments is considerably less than this.

Most environmentally sensitive areas are excluded. SEPP 25 aims to reduce the cost of new development occurring on the fringes of urban areas. Amendments introduced in 1991 and 1992, which permitted subdivision of a dual occupancy development and a separate title to be created, were aimed at encouraging urban consolidation, by making it easier to finance the second dwelling and making a greater variety of housing types available.

⁷ Farrier says that in the majority of cases the use of the term "policy" is a misnomer. Although a number of SEPPs have been made, he argues that only one could be said to be a true policy document, which lays down a broad framework, but leaves the detail and application to other EPAs. Ibid, p72.

SEPP 25 applies to most urban zones where dual occupancy development is already permitted under an EPI (eg Sydney REP 12). It sets out minimum allotment sizes and suspends a number of provisions contained in other EPIs which would prevent the achievement of its objectives.

Other SEPPs dealing with issues related to urban consolidation are: SEPP 28 which permits town house and villa development and SEPP 32 which details urban consolidation aims and objectives to be implemented through LEPs and REPs on urban land. Urban consolidation initiatives can also be found in existing REPs such as - Sydney REP 7 - Multi-Unit Housing (Surplus Government Sites) and Sydney REP 12 - Dual Occupancy.

What are regional environmental plans (REPs) ?

REPs are drafted to take into account matters which are thought to be of significance for environmental planning of the region. Section 4(6) gives the Minister the power to declare "any land, whether or not consisting of areas or parts of areas, to be a region for the purposes of the Act" and Section 51(3) makes it clear that a REP can apply to a particular region or to part of a region only. The Director of the Department of Planning prepares a draft, submits it to the Minister, who may, if he or she concurs, make the REP - Section 51(1). The Minister can also direct the Director to prepare a draft REP - Section 40.

Although greater provision is made for consultation in relation to REPs, many elements are still discretionary. Section 41(1) requires an environmental study to be done before a draft REP is commenced. However the matters which need to be examined in this study are left to the Director of Planning to determine - Section 41(2). The Director is to consult with councils, the Local Government Liaison Committee, and public authorities (Section 45) and these bodies are to be provided with information relevant to the proposed REP. The draft REP is to be exhibited and submissions called for - Section 47. The submissions are then considered and if amendments are to be made, the Director may decide to re-exhibit the draft REP. The Director may also decide to order an inquiry under Section 119 to examine the proposed REP and any submissions received. Such an inquiry was held in 1988 with respect to a number of EPIs concerning urban consolidation. The report which followed, the Simpson report, is discussed in further detail below at page 17.

According to Farrier, the REPs made to date fall into three main categories.⁸ The first covers areas in which the Department of Planning wants greater planning input than it would otherwise have to facilitate development/re-development and/or to protect a sensitive environment from development eg REP 14 - Eastern Beaches.

The second category contains REPs where the State adopts a more low key approach by setting parameters within which councils must exercise their discretion, rather than specifying detailed development controls eg REP 19 - Rouse Hill Development

⁸ Farrier, *ibid*, pp70-72.

Area.

The last category is where the REP focuses on a specific issue within a broadly defined region, either by loosening up existing controls contained in applicable EPIs, or alternatively imposing tighter ones.

Sydney REP 12 - Dual Occupancy

An example of this last category is Sydney REP 12 - Dual Occupancy, which amends a broad range of LEPs and deemed EPIs in the Sydney Metropolitan area to deal specifically with the perceived problem of urban sprawl. Its aims and objectives as set out in Clause 2 are:

- (a) to encourage fuller use of existing services and community facilities;
- (b) to reduce the trend towards declining population in established areas;
- (c) to widen the range of housing options available to residents in the Sydney region; and
- (d) to increase the supply of accommodation on land to which this plan applies -
 - (i) by providing uniform controls for the provision of dual occupancy in the Sydney region;
 - (ii) by permitting the conversion of a dwelling house into 2 dwellings;
 - (iii) by permitting the erection of a building containing 2 dwellings;
 - (iv) by permitting the erection of a second dwelling house on an allotment of land, other than land zoned rural or non-urban upon which a dwelling house is already situated;
 - (v) by permitting the erection of 2 separate dwelling houses on an allotment of land other than land zoned rural or non-urban subject to certain conditions; and
 - (vi) by permitting any person to occupy a dwelling erected or created in accordance with this plan.

By allowing dual occupancy in residential zones of already developed areas of Sydney, REP 12 aims to achieve maximum use of existing facilities. Under REP 12 development consent for dual occupancy development is **always** required and there are **development standards** covering minimum site areas, height, floor space ratio and car parking set down. REP 12 permits the second dwelling in urban areas to be free standing and it removes the requirement that one of the dwellings be occupied by the owner.

What are local environmental plans (LEPs) ?

Although LEPs are ultimately approved by the Minister (Section 70) they are drafted by the local council, after an environmental study has been carried out according to the Director of Planning's specifications and consultation with public authorities. Eventually the council exhibits the draft LEP and calls for public submissions. After the submissions have been considered, the council may decide to hold a public hearing - Section 68. LEPs tend therefore to reflect local planning, control and environmental issues. When drafting a LEP councils need to be mindful of the provisions of other EPIs as the Minister may simply not approve the plan if it is incompatible or may indeed direct a council on what provisions the plan should contain - Section 117.

LEPs generally contain zoning details which spell out the purposes for which development can be carried out without development consent, or subject to conditions, or only with development consent or those for which development is prohibited. LEPs are usually the first EPI to be consulted when determining what development can or cannot be undertaken on a particular block of land.

Amendments made in 1985, which enabled the State government to bring about changes to LEPs where inconsistency with other EPIs was perceived, gave the State government a larger say in the content of LEPs. Prior to these amendments, responsibility for the different levels of plans was more clearly defined, with local government determining matters of purely local significance (LEPs) and the State government concerning itself mainly with state and regional matters. It is this ability of the State government to intervene in the area of local government planning which has led to one of the strongest objections to dual occupancy development.

What are development standards ?

These are provisions in an EPI which set out the requirements or fix the standards that need to be complied with in relation to the carrying out of particular types of development - Section 4(1). Items covered include: minimum site areas for particular kinds of development, height restrictions, parking requirements, and the provision of services, facilities and amenities demanded by the development. This level of detail is usually found in LEPs but may also be found in SEPPs and REPs.

What are deemed environmental planning instruments ?

This term covers planning instruments made under the previous planning legislation such as planning scheme ordinances and interim development orders, which continue to be of relevance. They are equivalent to local environment plans in practice.

What happens where there is an inconsistency between EPIs ?

Although SEPPs and REPs come within State government responsibility and LEPs are mainly the responsibility of local government, there is not an automatic

hierarchy if inconsistencies between the various EPIs occur. There is no general presumption that SEPPs and REPs will take precedence over LEPs - Section 36(a). Indeed Section 36(b) makes it clear that the most recent planning instrument prevails over earlier ones **unless** one of the instruments states that this is not the intention.

For example, Clause 5 of SEPP 25, which deals with residential allotment size and dual occupancy, makes it clear that in the event of an inconsistency between the provisions of SEPP 25 and any other EPI, SEPP 25 will prevail. Likewise Clause 6 of REP 12, indicates that the provisions of REP 12 will prevail in regards to dual occupancy development. Most, if not all, SEPPs made to date have contained such a clause, enabling them to prevail over earlier and often subsequent EPIs.

What other sources may need to be consulted regarding development ?⁹

After having consulted the various EPIs listed above, it may also be necessary to examine the following:

(A)

- Development Control Plans (DCPs) - DCPs are a means by which a council can provide more detail on provisions contained within a LEP (Section 72), or the Director of Planning can provide more details on a REP (Section 51A). There is no State government involvement in the making of DCPs by the local council, however they are not legally binding.
- Model provisions - were gazetted on 26 September 1980 to ensure uniformity/consistency in the State. Most LEPs make reference to them.
- Section 71 determinations - under this section the Minister can make a determination not on the detailed contents of LEPs, but on their "format, structure and subject matter".
- Section 117 directions - under this section the Minister has the power to require a council to prepare a draft LEP in accordance with broad principles contained in the direction and to include provisions in its LEP, consistent with the aims, objectives and policies of the EPAA.
- Contribution plans - where a consent authority is satisfied that a development may create an increased demand for public amenities or services, it can require the developer to make a contribution to assist in meeting this demand -Section 94. This can be either in the form of making land available or a monetary contribution. The ability to require this contribution in relation to dual occupancy development has varied over time. However the present situation is that councils are able to levy these contributions for dual occupancy providing they have justification and a contributions plan is in

⁹ Butterworths Looseleaf Service, *ibid*, pC60,101.

place.

- Department of Planning circulars - these are regularly issued and offer guidance to councils as to how they should interpret and implement the legislation. However they have no legal status.

(B)

- Council codes and guidelines
- Management or conservation plans referred to in any relevant EPI
- Local policies adopted under the *Local Government Act 1993*
- Policy documents prepared at State level
- Management plans developed under other legislation.

What is a consent authority ?

The consent authority is the person or body authorized by an EPI to give consent to a development going ahead. In most cases it will be the local council. However it is possible for the Minister or the Director of Planning or a public authority to be given this power.

What consent is necessary for a subdivision ?

At present subdivision of land is still governed generally by Part XII of the *Local Government Act 1919* (LGA 1919). Although the *Local Government Act 1993* (LGA 1993) has replaced the majority of provisions contained in the older Act, Part XII has remained in place until the approval of subdivisions is transferred to the planning system under the EPAA. This was one of the objectives of the *Statute Law Revision (Local Government) Bill 1994* which was introduced in the Legislative Council in October last year. Although it was passed by the Legislative Council, it did not get past the introduction stage in the Legislative Assembly.

Under the LGA 1919, before land can be subdivided, approval from the local council is necessary - Section 327. If the council refuses approval or attaches unsatisfactory conditions, an appeal can be made to the Land and Environment Court - s341 LGA 1919. Under this system, the State government has no supervisory role and members of the public have no right to make objections or to appeal against decisions approving subdivision.

However "subdivision of land" is also included in the definition of "development" in the EPAA - Section 4(1). Section 4(2)(d) makes it clear that this extends to subdivisions covered by the LGA 1919. The effect of this is that it may be necessary to obtain subdivision approval under the LGA 1919 as well as

development consent for the subdivision under the EPAA. The transfer of subdivision approval to the EPAA would eliminate this problem. ¹⁰

How is a development application assessed ?

When a consent authority (whether it is a local council, the Minister, the Director of Planning or any other body) is determining a development application it has to take into account a number of matters set out in Section 90 of the EPAA which are relevant in the circumstances. These range from provisions contained in any EPI to conservation issues and the existing and likely future amenity of the neighbourhood.

No one factor is inherently more significant than another; compliance with all factors is not necessary for an approval to be given, and the possibility of one negative effect flowing from the proposal may not be sufficient to justify its refusal. Which factors are relevant and the relative weight to be ascribed to each one will vary from application to application and is a matter for the consent authority to determine.

After considering these factors a consent authority will determine whether or not to approve an application - Section 91. However if due consideration is **not** given to all factors which may be relevant, a breach of the Act will result - Section 122 - and an applicant would have grounds to seek judicial review of the decision - Section 123. The result may be that the decision is declared to be invalid.

Although the provisions of SEPP 25 and REP 12 create a presumption in favour of allowing dual occupancy developments, it does not mean that approval for a dual occupancy is guaranteed. The consent authority is still required to consider on a case by case basis whether approval should be given. That is, does the proposed development meet the requirements contained in SEPP 25 and REP 12 (floor space ration, car parking requirements, setbacks, height of second dwelling house, privacy etc) **as well as** the more general requirements contained in Section 90 ? If the proposed development does **not** meet these requirements, consent can be legitimately refused. If consent to a dual occupancy development is given, the applicant then submits the plan along with proof of the consent to the Land Titles Office, which investigates that all the correct procedures have been followed and where this is the case upon payment of a fee (approximately \$550) the original title will be converted into two.

What avenues of appeal exist ? ¹¹

If the consent authority refuses consent or attaches conditions which the applicant finds objectionable, the applicant can appeal to the Land and Environment Court within 12 months of receiving the notice of the decision - Section 97(1).

¹⁰ Farrier, op.cit, p163.

¹¹ Farrier, op.cit, pp36-45.

Appeals

In our legal system there are two main forms of appeal available - on points of law or on the merits of the case. The type of appeal proceedings instituted will depend on the particular circumstances of the case and any relevant legislative provisions. While Courts are the usual appellate bodies, provision can be made for appeals to be determined by others such as a Minister or a public authority such as the Director of Planning.

The powers of the appellate body will vary according to whether it can hear appeals on points of law or whether it can hear "merit appeals". If the issue is, for example, whether a particular policy is an environmental planning instrument within the meaning of the EPAA then a point of law appeal would be brought. On the other hand if there is dissatisfaction with the original decision made by a local council regarding a development application, a merit appeal would be lodged.

When points of law are in dispute, the appellate body hearing the matter can **only** make findings in relation to legal interpretations and effects. If however the appeal is brought on the merits, the appellate body stands in the shoes of the original decision maker. It can re-consider the matter and if it comes to a different conclusion, substitute its decision for the original one. Original decision makers such as councils see the availability of "merit appeals" as fettering their decision making power. However this ability of the Land and Environment Court to substitute its views for that of the council can work both ways as Farrier points out:

Many local councillors argue that the Court should not be able to override decisions made by popularly elected representatives. Yet in other situations, councils may use the legislation to avoid having to make politically unpopular decisions. They may deliberately defer making politically controversial decisions. ... if a council does not make a decision on a development application within a certain period, the matter can be taken by the developer directly to the Court for a determination.¹²

In environmental law initial appeals tend to be "merit appeals" and subsequent appeals tend to be restricted to points of law. The initial appeal goes to the Land and Environment Court which has the power to completely re-hear the case, and to substitute its view for that of the local council - Section 39(2) and (3) of the *Land and Environment Court Act 1979*.

Who can appeal ?

A right of appeal exists **only** where it is specifically provided for by legislation. It is common for those applying for a permission to be provided with a right of appeal if the permission is not granted or only granted conditionally. For instance Section

¹² Farrier, op.cit, p38.

97 of the EPAA gives an applicant who is dissatisfied with the determination of the consent authority a right to appeal to the Land and Environment Court.

On occasion provision will be made in legislation for "third-party appeal" rights. This would allow those who may be aggrieved by a decision to grant a permission, such as neighbours or members of conservation groups, to challenge the decision. However "third-party appeal" rights are not common and if no such provision is made, then there is no scope to have the decision re-examined **except** by means of judicial review. No "third-party appeal" rights of this nature are provided for under the EPAA.

Although there is reference in Section 98 of the EPAA to an "objector" having a right of appeal, the section is narrow in meaning and does not extend to general aggrieved third parties. "Objector" here refers only to a person who has made a submission objecting to a proposed "designated development" application. What constitutes "designated development" is listed in Schedule 3 to the Environmental Planning and Assessment Regulation 1980 and covers mostly heavy industry with high pollution potential such as chemical factories, abattoirs, grain export handling facilities etc. It does not apply to dual occupancy development. If a council rejects a development application and the developer appeals, neighbouring landowners may be invited to Court by the council as witnesses, to give their views on matters such as the amenity of the neighbourhood.

In the main, neighbouring landowners do not have any legal right to have their views on a development application considered by the local council either under the EPAA or under general principles of natural justice. However a number of councils have adopted the policy of notifying neighbouring landowners about development applications and in this context the Courts have held that the practice obliges a council under the rules of natural justice to consider any representations made.¹³

Under the *Local Government Act 1993* (LGA 1993), owners of adjoining land are given notice of a building application if the council is of the opinion that enjoyment of their land may be detrimentally affected by the proposed building, once built - Section 114(1). In deciding whether a building may have a detrimental effect a number of factors are considered. These include amongst others views, overshadowing, privacy, noise, and the streetscape - Section 114 (2). Plans of the building are available for inspection and submissions can be made - Sections 115 and 118. However this right to inspect and comment on proposed building does not create a "third-party appeal" right if building approval is given.

It has been said that in the past local councils were reticent about refusing consent for dual occupancy applications as they were concerned about the costs which would be incurred if they had to contest the matter in the Land and Environment Court.¹⁴

¹³ Farrier, *op.cit*, p130.

¹⁴ Simpson Report, *op.cit*, p55.

This no longer seems to be the case. Some councils now appear to be of the view that it is money well spent if it prevents dual occupancy from going ahead.

In mid-1994 when discussing the \$117,000 legal bill which Ku-ring-gai Council paid in relation to 43 appeals it had fought, (the majority of which it had won) in the Land and Environment Court, Mayor Peter Derwent, said that it was "the price you pay".¹⁵ More recently Peter Woods, Mayor of Concord and President of the Local Government and Shires Association of NSW, has threatened to call on all local councils to refuse dual occupancy applications. If this were to go ahead many applicants could challenge the decision in the Land and Environment Court. And although defending their decisions could cost the councils thousands of dollars, Mayor Woods is quoted as saying he is "quite happy to choke the court system".¹⁶

Judicial Review

Judicial review is different from appeal proceedings. It is not concerned with whether a decision is good or bad but rather whether the decision was validly made. The questions to be answered are: whether the decision maker had the power to make the original decision and whether the correct procedures were followed. If these questions cannot be answered in the affirmative the decision will be declared invalid.

Judicial review does **not** allow the Court to substitute its view for that of the original decision maker. It can merely find that the original decision maker did not have the power to make the decision which will make the decision invalid. If however the Court finds that incorrect procedures were followed, the matter may be re-determined by the original decision maker following correct procedures.

Section 123(1) of the EPAA is expressed in broad terms which would allow aggrieved third-parties such as neighbours or conservationists to make an application for judicial review. Farrier notes that lodging applications for judicial review is a tactic often used in the environmental law area as delay may have an influence on whether a development goes ahead or not - especially from a developer's point of view where it could make the difference between a viable and an unprofitable venture.¹⁷

¹⁵ Deirdre Macken and Malcolm Knox, 'Dual to the death - Saying goodbye to the Aussie backyard', *Sydney Morning Herald*, 16 July 1994.

¹⁶ Mark Skelsey, 'Councils to block dual occupancies', *Telegraph Mirror*, 22 February 1995.

¹⁷ Farrier, *op.cit*, p38.

BACKGROUND TO DUAL OCCUPANCY DEVELOPMENT ¹⁸

When councils were originally encouraged to introduce dual occupancy provisions into their local planning instruments in the late 70s and early 80s, the provisions were intended primarily to permit "granny flat" type development - simple dwellings built in the backyard to house relatives. And certain restrictions applied: the owner of the block of land had to live in one of the dwellings and no second title was created for the second dwelling which meant it was often difficult to raise finance to build and that it could not be sold separately.

At this time there were no overall State planning policies relating to dual occupancy or urban consolidation. However the newly introduced EPAA set out a statutory framework for EPIs and the gazettal of Sydney REP 12 - Dual Occupancy and SEPP 25 - Residential Allotment Sizes and Dual Occupancy Subdivision took place on 19 June 1987 and 28 August 1987 respectively.

The introduction of these EPIs meant councils could no longer restrict dual occupancy development by means of provisions in their LEPs. For example, REP 12 set down the minimum site area for an attached dual occupancy development as 400 square metres and 600 square metres for a detached dual occupancy development. A council could no longer refuse to allow a dual occupancy development merely because it did not comply with the size the council had stipulated in its LEP.

In late 1988 the Minister directed that a public inquiry pursuant to Section 119 of the EPAA be held to examine three EPIs dealing with urban consolidation: SEPP 25 - Residential Allotment Sizes and Dual Occupancy, SEPP 5 - Housing for Aged or Disabled Persons and REP 12 - Dual Occupancy. The Commission of Inquiry was to examine: what these EPIs were intended to achieve; their effect in practical terms; their administrative impact on councils and more generally their impact on local communities; the attitudes that were held by groups such as local councils, developers and the community to them; and whether the EPIs should continue in their current form or whether they should be repealed or amended.

The Simpson Report

Commissioner Simpson handed down his report in January 1989. His general findings in relation to SEPP 25 and REP 12 were as follows:

- little or no detailed studies were carried out by the Department of Planning prior to introduction of the three EPIs and little or no monitoring had occurred since they had been in place. It was difficult therefore to assess their effect and impact, but overall there appeared to be a need for such planning instruments (p53).

¹⁸ Some of the information in this section is based on a Department of Planning document entitled *Dual occupancy - a chronology of events*.

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- based on a sample of statistical returns provided by councils on the extent and form of dual occupancy development in their area for the period 1982-1988, the Commission made the following observations. On average 4.9% of all dwelling house approvals were for dual occupancy. (Dual occupancy development in Melbourne at the same time was about 10% of all dwelling house approvals.) Dual occupancy development in the older established areas such as Marrickville and Willoughby, made up a significant proportion of all dwelling house approvals. However in large growth areas such as Sutherland and Baulkham Hills, dual occupancy development accounted for a very small proportion of all dwelling house approvals (pp82-83).
 - in many cases council's opposition to dual occupancy was directly related to local resident opposition to such development (p85).
 - the issues of greatest concern to local communities were privacy, overshadowing, noise, loss of trees, visual bulk and streetscape. All of these could be addressed by design guidelines. Other objections such as traffic generation, parking problems and undesirable tenancy were considered to be unfounded or unreasonable (p73).
 - dual occupancy was a housing form that was gaining popularity amongst all sectors of the development industry. However the inability to create a second title for dual occupancy development was a disincentive (p84).
 - REP 12 had not reduced environmental quality or seriously affected residential amenity (p75) and
 - councils should complement the controls in REP 12 by developing design guidelines for dual occupancy having regard to the character of a locality and its streetscape (p88).

Some of the main recommendations were:¹⁹

- a SEPP on urban consolidation should be made.
- the effect and impact of dual occupancy development should be monitored by the Department of Planning in consultation with local government.
- the continuing public and local government opposition should be addressed by making the process more flexible with amendments to the EPIs to enable recognition of relevant local environmental factors. For instance, it may be that dual occupancy is unsuitable in some locations due to special environmental factors or that in certain areas more off-street parking is required than that currently stipulated. It would be up to the council to satisfy the Director of Planning that this were the case.

¹⁹ Simpson Report, op.cit, pp210-220.

- appropriate streetscape, building design and landscape guidelines for dual occupancy development should be put in place.
- creation of a second title for dual occupancy development should be permitted.
- the restriction to owner-occupied dual occupancy should cease and
- a council, where justified, should be able to seek a Section 94 contribution.

Post-Simpson

Since the release of the Simpson report these recommendations have been implemented to a greater or lesser extent:

- SEPP 32 dealing with urban consolidation was gazetted on 15 November 1991.
- Amendments were introduced in 1991 to permit the creation of a second title. This can take the form of a conventional Torrens title, a strata title or a community title depending on the sort of dual occupancy undertaken. In 1992 SEPP 25 was amended to permit subdivision of dual occupancy developments.
- The restriction on owner-occupied dual occupancy development was lifted.
- Section 94 contributions can be sought in certain circumstances.
- Councils have been granted a degree of flexibility in that a mechanism now exists for exemption from SEPP 25 and REP 12 to be granted. If a council can show that its LEP and DCP contain provisions consistent with the Government's urban consolidation strategy then an exemption may be granted by the Minister. Provision was made for newer residential areas in country towns to be exempted from SEPP 25. And for councils in metropolitan areas to obtain an exemption they need to demonstrate that:

... their LEPs and DCPs ensure a gross residential density of 15 dwellings per hectare ... and that a genuine and adequate housing strategy which significantly increases both the choice and stock of housing in existing urban areas is in place.²⁰

A Schedule to both SEPP 25 and REP 12 lists land to which the policy does not apply. Once a council is granted an exemption, their name is added to this list.

²⁰ Media Release, Minister for Planning, 'Dual Occupancy Exemptions', 31 March 1993.

- A design guidelines manual was introduced in late 1994; and
- The effect and impact of dual occupancy and urban consolidation more generally are monitored and assessed by the Department of Planning in strategy documents such as *Sydney's Future*²¹ and *Cities for the 21st Century*²².

With the removal of the restrictions, dual occupancy developments became more popular with developers and ceased to be solely of the 'granny flat' variety. This fact is cited frequently by those councils not in favour of dual occupancy development as being one of their major reasons for opposition.²³ Moreover dual occupancy development is seen by some as "a form of de facto medium density housing." (This statement was made by Stephen Driscoll, a planner with a western Sydney Council, in a paper he presented to a seminar on dual occupancy organised by the Young Planners, a sub-committee of the Royal Australian Planning Institute (NSW Chapter) on 12 October 1994.)²⁴

Dual occupancy trends

In his paper, Driscoll referred to dual occupancy development trends.²⁵ These showed:

- a trend towards a rise in dual occupancy approvals over the 80s;

²¹ This was a discussion paper put out by the Department of Planning in October 1993 which aimed at updating the metropolitan planning strategy for Sydney that had been set down in the 1988 report, *Sydney into its Third Century*.

²² *Cities for the 21st Century* was released by the Department of Planning in January 1995. This report was the final product resulting from the earlier discussion papers, *Sydney's Future* and the *Integrated Transport Strategy*. These reports were discussed in the Library's *Briefing Note Sydney's Future and The Integrated Transport Strategy: A Summary*, by Sharon Rose, No 001/93.

²³ Mayor Rankin of Sutherland Council was attributed as saying that council did not oppose dual occupancy in its original form, that is for construction of a second dwelling to house grandparents or extended families, but it wanted to stop the "outrageous existing situation" where developers were making money at the expense of adjoining property owners, Paola Totaro, 'State poised to end shire land dispute', *Sydney Morning Herald*, 8 February 1995.

²⁴ Paper by Stephen Driscoll presented to a seminar on dual occupancy organised by the Young Planners, a subcommittee of the Royal Australian Planning Institute (NSW Chapter) on 12 October 1994, p3.

²⁵ According to Driscoll no current official figures regarding trends in dual occupancy development throughout the Sydney Region during the 80s and 90s were available from the Department of Planning. The figures he used were taken from a university dissertation done in 1992, p4.

- a substantial rise in approvals in 1987-1988, which were the boom years in property development which also coincided with the introduction of REP 12;
- at no time since 1987-1988 have dual occupancy approvals fallen below pre-REP 12 levels; and
- most of the post 1987-1988 increase has occurred in the outer Sydney local government areas.²⁶

Driscoll suggested that this increase in dual occupancy development and the decrease in the more traditional forms of medium density housing such as villas, townhouses, in areas such as Blacktown, reflect the ease with which builders can develop dual occupancies - both in terms of council approval and construction times - as opposed to traditional medium density housing, as well as a growing community acceptance or preference for this form of housing.²⁷

A similar view has been expressed by other town planners. One town planner from the Bankstown area said in relation to dual occupancy development:

... its appeal to developers is obvious. They get a quick return with a small exposure, much less stringent council guidelines, no public outcry, none of the extra charges associated with townhouse development and the Torrens title, which is what the buyers want.²⁸

Recent Government approach

It would appear from documents such as *Cities for the 21st Century*, that dual occupancy is no longer seen as a stand alone policy, but part of the larger urban consolidation strategy. This is clear from a number of key principles included in the Report such as:

- more compact cities - less new land will be taken up and better use made of existing urban land and infrastructure;
- containing Sydney's urban expansion within linear corridors along major efficient public transport routes, principally railways;
- using redevelopment opportunities to improve public transport;

²⁶ An illustration of this point was the dual occupancy development in the Blacktown area. In 1987, there was a ratio of 1 dual occupancy development created for every 32 detached dwellings. In 1993, the ratio was up to 1 dual occupancy development for every 2.7 detached single dwellings.

²⁷ Ibid, p5.

²⁸ Deirdre Macken and Malcolm Knox, op.cit.

- encouraging a wide diversity of housing in all areas; and
- controlling urban encroachment into rural areas to protect agriculture, recreation, tourism and heritage resources.²⁹

From the above, a shift in the reasoning behind the need for dual occupancy development can be discerned. Put simplistically, in the beginning it was intended primarily as in-law accommodation and rental property, the emphasis changed however when requirements were freed up. These changes were made to encourage more dual occupancy development following on from findings of the Simpson Report. Once it was possible to create a second title and owner-occupiers were no longer obliged to reside in one of the dwellings, dual occupancy development did indeed increase.

However it became the subject of "development", some of poor quality, (by both commercial developers and "mums and dads"),³⁰ which gave rise to concern in some quarters, that suburban life would be changed for the worse. While these concerns have been acknowledged and measures taken, such as the Design Solutions Manual, to facilitate appropriate development, it is still felt that dual occupancy is a suitable form of housing development. It is now seen however as a way of stemming urban sprawl, achieving higher densities in urban areas, utilising existing facilities more efficiently, and providing established areas with a greater housing choice including improved housing affordability.

ARGUMENTS FOR AND AGAINST

For

At the time SEPP 25 and REP 12 were introduced dual occupancy was seen as offering the following advantages:

- it would allow relatives to live with families in self-contained accommodation;
- it could provide home owners with rental income;
- it would help reduce the scarcity in rental properties by introducing new property into the rental market,

²⁹ Media Release, Minister for Planning, 'Dynamic new metro strategy prepares for next century', undated.

³⁰ 53% of developers are existing property owners but only 15% of those owners were proposing to live in one of the resulting dwellings according to Tanya Coleman, a representative from AV Jennings, a company which builds dual occupancy developments. This remark was made at the seminar on dual occupancy held last year referred to above.

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- it would encourage the fuller use of existing services and community facilities; and
 - it would achieve the above while maintaining the character of a detached housing area.³¹

Further advantages were offered once the amendments were introduced which permitted the creation of a second title and removed the requirement that an owner live in one of the dwellings. They:

- gave owners the opportunity of converting their single detached dwelling on the quarter acre block where this was no longer appropriate to their circumstances (such as the children growing up and moving away, reduction in income or after separation, divorce or change in lifestyle);
- meant older people could remain in a familiar environment but live in the smaller dwelling with a smaller garden and derive a safe income for retirement from selling or renting the second property;
- made entry into the housing market easier by making housing more affordable;³²

In more recent times the arguments put in support of dual occupancy have been linked to larger issues such as infrastructure costs, the changing nature of Australian society, urban consolidation, and the environment.

- economic grounds

One of the most common arguments for increasing development in the established residential areas and limiting development on the urban fringes is the cost of providing infrastructure and services to the outskirts, when existing infrastructure and services could be further utilised. (Given that this proposition is widely accepted, the findings of the Industry Commission discussed below at page 26 are interesting).

- changing nature of Australian society

The demographics of Australia have changed dramatically in the last 25 years. The National Housing Strategy (1992) has highlighted the following:

- the traditional household of 2 parents and dependent children is now in the minority and accounts for only 25% of all households;

³¹ Publication by the Department of Planning, *Dual Occupancy*, May 1987.

³² John Roseth, 'Doubling up: an answer to sprawl?', *The Royal Australian Planning Institute Journal*, November 78, pp121-123.

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- by early next century almost 50% of income units will consist of single persons or childless couples over 35;
 - more than 50% of all households comprise only 1 or 2 people. The average household size has fallen by 20% over the last 30 years and this trend is continuing;
 - 40% of women over 16 were in the workforce in 1986 and in the next 15 years that percentage will increase to 60% ,
 - our population is ageing - the number of elderly people will increase by over 50% in the next 20 years.

Notwithstanding these dramatic changes in demographics, more than 66% of dwellings in Sydney comprise the traditional detached family house.³³ It is therefore considered appropriate that more varied housing options are made available to cater for our changing social needs.

- environmental grounds

Concern from a number of quarters has been expressed regarding the cumulative effect on the environment, especially air and water quality, of further expansion on the outskirts of Sydney. The Department of Planning has stated that:

The majority of the area suitable for further urban expansion drains into the Hawkesbury-Nepean basin. The cumulative impact of urban runoff and effluent disposal is of particular concern and will require costly pollution control techniques if water quality in the Hawkesbury Nepean system is to be maintained and improved. ... Air quality studies have indicated that some fringe areas of Sydney are particularly sensitive to air pollution. ... long journeys to work by car are a major contributor to the air pollution problem.³⁴

Against

A number of objections have been raised in relation to dual occupancy development.

Community objections

In the early stage of dual occupancy development some of the common objections were:

³³ Department of Planning publication, *Housing Choice - a new direction for UC policy*, November 1993.

³⁴ Ibid.

- it leads to overcrowding, brings too much traffic into residential streets and overloads the existing services;
- it destroys the character of residential areas;
- it brings transient people into stable areas;
- it sets a dangerous precedent in the sense of being the 'thin edge of the wedge', paving the way for a gradual conversion of all areas to flats.³⁵

It would appear from Driscoll's paper that community concerns today are not much different.³⁶ He says that most councils today advertise dual occupancy developments for public comment and the following objections are those most commonly received:

- loss of privacy;
- overshadowing to adjoining properties;
- development is out of character with locality;
- poor address to street; poor appearance;
- undesirable tenancy;
- area not appropriately zoned; covenants do not permit particular development;
- increased traffic generation including pedestrian traffic;
- loss of property values.

He says that while the fifth, sixth and seventh objections are generally unsubstantiated, objection eight is linked to objections one to four, and may have some validity. An empirical study conducted in South Australia in 1992 on the impact of medium density housing on adjoining property values found that values are diminished **not** by the type of development per se but by loss of aural and visual privacy, detraction to street character, loss of sunlight intensity and a feeling of a loss of privacy. Therefore although dual occupancies per se may not cause a drop in property values, this could occur if they are poorly designed and poorly integrated with the natural and built environment.

³⁵ Roseth, *op.cit*, p121.

³⁶ Driscoll, *op.cit*, p5.

Another factor which has been identified is the question of housing preference. According to a number of housing studies conducted since the 70s the majority of Australians prefer to live in a detached dwelling with a garden.³⁷ The Industry Commission inquiry into the impacts of government taxation and financial policies on urban settlement patterns found that this was still the case.³⁸ This could affect the popularity of dual occupancy development. Surveys have also shown that people place much store in having a garden³⁹ and as one commentator has pointed out, this reduction in private space could mean "the responsibility for maintenance of an urban landscape would shift from the private sphere to the public".⁴⁰

Local government objections

Apart from community objections to individual dual occupancy development, many local councils have been vocal in their opposition. The main concern of the councils is that the State government has usurped the rights of local government by imposing blanket development policies on them. They argue that planning at a local level should be left to them as they are best placed to determine what is in the interests of their local government areas. Another major concern of councils is that dual occupancy has become developer driven. The implication being that as the concern of the developer will be to maximize profit,⁴¹ insufficient consideration will be given to putting in place appropriate and sympathetic developments.

³⁷ An article by Maryann Wulff, 'An overview of Australian Housing and Locational Preference Studies: Choice and Constraints on the housing market', *Urban Policy and Research*, Vol 11 No 4, 1993, pp230-237 presents a summary of previous research into the question of housing preferences, particularly the preference for home ownership and detached dwellings.

³⁸ Reference was made by Stephen Ellis in his article 'Report challenges negative view of the urban sprawl', *Sydney Morning Herald*, 2 January 1993 to the Industry Commission, Draft Report on *Taxation and Financial Policy Impacts on Urban Settlement*.

³⁹ In a study carried out in Adelaide in 1991, approximately 3,300 households were interviewed. Over 75% of respondents agreed that 'every home should have its own garden' and 91% of intending movers planned to have access to private open space in their new home. This figure dropped to 66% among those aged over 65 years. C Stevens, S Baum and R Hassan 1992 'The Housing and Location Preferences of Adelaide Residents', *Urban Policy and Research*, Vol 10 No 3, cited in Wulff's article, *ibid*, p235.

⁴⁰ I Halkett, 'The quarter acre block: the use of suburban gardens', *Australian Institute of Urban Studies Publication*, No 59, 1976, cited in Wulff, *ibid*, p234.

⁴¹ In the article by Macken and Knox, *op. cit*, a spokesperson from the Sydney Housing Company, which specialises in dual occupancies, said that the average developer makes \$50,000 profit on an established site although profits have been as high as \$200,000 in more affluent suburbs.

Economic grounds

While it is accepted that the economic argument is one of the major reasons behind the urban consolidation strategies being pursued by governments at both state and federal level, support for this rationale is not universal. Stephen Ellis in an article entitled 'Report challenges negative view of the urban sprawl' argues that the assumption that urban sprawl is inefficient and unfairly subsidised and that urban consolidation is economically desirable is "based on surprisingly slight factual evidence on the economics of urban settlement in Australia"⁴² and is not borne out in a Report by the Industry Commission released in December 1992.⁴³

The Industry Commission, is a Federal body which examines issues of economic and industrial efficiency. It was asked to look at the impacts of government taxation and financial policies on urban settlement patterns. According to Ellis, a number of findings made in its Report "shoot down some major myths about urban settlement in Australia".⁴⁴

The most significant are that:

- scant evidence is available to suggest that provision of infrastructure and services in housing developments at the fringe of cities are unduly subsidised; and
- the economic value of urban consolidation and high density housing was less apparent than most policy makers and planners have assumed. Although governments have attempted to increase the use of existing infrastructure by encouraging and mandating increased density of cities, the Commission states that existing infrastructure can only service new developments when there is an excess of all types available.

If there is an excess in some areas but not in others, it is possible that the cost of augmenting under capacity areas such as roads or drainage outweighs savings that may have resulted from better use of services such as water or power supply. This means that urban consolidation in some areas may be more expensive than fringe development.

- since the early 1970s surveys have shown that the majority of Australians appear to prefer to live on relatively large blocks of land in low-density suburbs. This appears to still be the case, which could affect the popularity

⁴² Stephen Ellis, op.cit. A similar conclusion was reached by Commissioner Simpson in his inquiry.

⁴³ The Report at that stage was in draft form. Since then the Final Report, *Taxation and Financial Policy Impacts on Urban Settlement*, Report No 30, AGPS, April 1993, has been released.

⁴⁴ Ellis, op.cit.

of dual occupancy development.

- most Australian cities are more demographically and economically diverse than previously thought. That this was not the case was one of the reasons put by John Roseth, (then Assistant Chief Planner (Policy & Services), NSW Planning and Environment Commission) for encouraging dual occupancy development. He said:

Doubling up is likely to increase social diversity. Dual occupancy would help retain old people in the original home, but at the same time bring young families to ageing areas. It would mix renters with owner/occupiers as well as varying income groups. This is in stark contrast to what happens today, where vast areas are inhabited by people of similar kinds and ages. It would tend to equalise the need for services, so that established areas would need maternity wards and schools, and not only geriatric hospitals.⁴⁵

Other findings of interest were:

- first home buyers tend to be evenly distributed across our major metropolitan centres, rather than concentrated at the urban fringe.
- average travel times to work do not vary much between inner city and outer city dwellers.
- a shift to higher density housing patterns would not necessarily reduce the total area of our cities, or halt the tendency to urban sprawl; and
- low income earners are in fact evenly spread across Sydney.

A middle way

While a number of the arguments listed above - both for and against - are valid, they represent the more extreme points of view in the debate. Others would argue that the true position regarding dual occupancy development lies somewhere in the middle. It would appear on balance that the majority of the community does not oppose dual occupancy development per se but rather development which is inappropriately designed and of an inferior quality. Kim Crestani, an architect who has recently won awards for a dual occupancy development in Sydney, says that:

a good architect, when designing any building, should have full respect for the environment in which the building sits. If the area/environment in which a building sits is responded to in the

⁴⁵ Roseth, op.cit, p122.

correct way, then the new building will fit.⁴⁶

In relation to dual occupancy this means development which suits the locality, ensures privacy, does not overshadow adjoining properties and so on.

Councils' concern with the amenity in their local government areas is understandable. However refusing dual occupancy developments per se is not necessarily a means by which this amenity can automatically be maintained. Insisting on appropriate design standards for all development may be a better way of achieving this end. Similarly where existing services cannot cope with any increases in development, then an adequate contribution should be required of the developer to ensure appropriate service levels can be retained, or the development should not go ahead.

POINTS OF VIEW (as at 25 March 1995)

NSW Government (Liberal/National Coalition)

As outlined above, the State government sees the containment of urban sprawl as an important planning issue and believes that dual occupancy is an "effective means of achieving higher densities in urban areas, which also offers our changing population a greater housing choice including improved housing affordability".⁴⁷ It maintains that for urban consolidation to be achieved a successful working partnership between the State and local government and the community is necessary.⁴⁸ To this end, exemptions from the State planning instruments are available where local councils can demonstrate that they have developed a housing strategy consistent with the State's urban consolidation strategy. This allows councils to determine what is appropriate for their local area and according to the Minister for Planning, 20 councils have been granted such exemptions to date.⁴⁹

NSW Opposition (Labor Party)

The original dual occupancy provisions were introduced by the Opposition when it was last in office and urban consolidation has had general bi-partisan support over the last few years. However in early February this year the Opposition indicated that if it won office on March 25 it would repeal the current policies relating to dual

⁴⁶ Notes provided to the author.

⁴⁷ Media Release, Minister for Planning, 'Meeting the challenge of Sydney's Future', 29 June 1993.

⁴⁸ Media Release, Minister for Planning, 'Dual Occupancy exemption for Manly', 13 October 1994.

⁴⁹ Donna Reeves, 'Clamp on housing in Homebush', *Sydney Morning Herald*, 20 March 1995.

occupancy development and urban consolidation.⁵⁰ The new Labor urban consolidation policy, which would give councils greater flexibility in achieving higher densities, was announced by the Opposition Leader on 18 March 1995.⁵¹

Local Government

In a strategy document prepared for the March election, the Local Government and Shires Association of NSW identified planning issues as an area of concern. This body sees policies such as SEPP 25 and REP 12 as examples of State Government intruding into local planning matters and taking away council's ability to regulate sympathetic land use planning in their areas. Local Government wants to be recognised as an equal partner in the land use planning process and for decisions to be negotiated rather than imposed. It argues that council areas are all different and therefore solutions to planning problems in one area may create difficulties in others. The Association has demanded that the dual occupancy policy be set aside, or it has "threatened to urge all 177 councils in the State to refuse applications before them".⁵² The President of the Association and Mayor of Concord, Peter Woods, announced on 20 March 1995 that all dual occupancy and subdivision applications will be refused from 21 March 1995, regardless of their merit. He said:

Councils have no choice but to take drastic action against the State Government's failure to respond to community concerns about urban consolidation. This is an area of enormous importance. Council's freedom to approve development which is in character with existing local areas, and which is, appropriate to particular sites, has been seriously eroded.⁵³

Stop Dual Occupancy Party

The Stop Dual Occupancy Party is a resident action and protest group primarily opposed to urban consolidation. According to its Constitution, although it was formed to assist council obtain an exemption from dual occupancy provisions, it decided to contest the recent election. It was intending to run candidates in Lane Cove, Willoughby, Gladesville and Gordon, concentrating on an upper house ticket in association with SOS (Save our Shire) Sutherland Group.

⁵⁰ Robert Harley and AAP, 'Labor promises radical change for dual occupancy planning', *Financial Review*, 8 February 1995.

⁵¹ Rochelle Tubb and Anna Patty, 'Carr's policy re-think', *Sun-Herald*, 19 March 1995.

⁵² Mark Skelsey, 'Councils to block dual occupancies', *Telegraph Mirror*, 22 February 1995.

⁵³ Donna Reeves, *op.cit.*

Architects and Planners

Architects

A section on urban consolidation is contained in the draft housing policy of the Royal Australian Institute of Architects (NSW Chapter). In essence the Institute supports a balance between new housing on the metropolitan fringes and new housing in established areas. It says development in established areas can take place on both vacant land and through redevelopment and that this development should be in the most appropriate form based on the infrastructure available and the physical capabilities and quality of the area. In new areas development should also be environmentally sympathetic, appropriate for the physical attributes of the site and applicable for a range of different communities.

Planners

According to Macken and Knox,⁵⁴ few planning experts argue against the need for urban consolidation but many believe that dual occupancy is a blunt town planning tool and the way in which it has been allowed to happen almost without regulation is a town planning disaster.

CONCLUSION

That dual occupancy development is a controversial issue is quite clear. In recent times strong action has been called for by a number of local councils and many candidates at the recent election had a party platform which relied, on the whole or in part, on bringing a stop to dual occupancy development in its present form. What is not disputed is that planning strategies and policies need to be in place to address the changing nature of Sydney as we move into the 21st century. As pointed out by Russ Evans and Ian Bowie:

It is probably correct to assume that Sydney will continue to grow for the foreseeable future despite anything done by government. There are however opportunities to slow the growth by diverting some of it to localities where population increases will have positive rather than negative impacts on the lifestyle of the present populace.

Slowing the city's overall growth will give greater time to develop technological, economic and political solutions for its inherent environmental and other problems. Policy decisions of this nature are of necessity very long term and will be negated unless there is a genuine bi-partisan approach.⁵⁵

⁵⁴ Macken and Knox, *op.cit.*

⁵⁵ Russ Evans and Ian Bowie, 'Slowing Sydney's growth' *New Planner*, June 1993, pp6-7.