

Issues for community title in agricultural areas

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This Primefact identifies the critical agricultural planning issues, principles and factors to consider when assessing proposals to subdivide rural lands under community title legislation.

The emphasis of this guide is on rural community title ventures that involve agricultural activities. Similar issues may also apply to other community title developments in rural areas, for example, ecotourism.

Community title enables shared property to be created within a Torrens title subdivision. It is essentially a horizontal form of strata title.¹

This guideline is part of a series that helps local councils to maintain sustainable primary production and minimise land use conflict when assessing a Development Application (DA).

The guidelines may also help applicants, developers, consultants and the community to identify important agricultural issues to be addressed.

The guideline focuses on agricultural issues rather than the full range of issues that consent authorities must address.

Integrated Development proposals that trigger provisions of the *Fisheries Management Act 1994*, the *Mining Act 1992*, or the *Plantations and Reafforestation (Code) Regulation 2001* should still be routinely referred to the relevant section of Industry and Investment NSW (I&I NSW).

¹ Common ground – [UDIA NSW Community Title Principles](#), UDIA 2008.

The applicant or Council may also need to seek additional specialist advice from other government agencies, independent planning, agricultural and/or agri-business consultants with relevant expertise.

As councils are the usual planning and development authority in NSW, all DA enquiries should be directed to the relevant local council.

Community title on rural lands

Since its introduction to NSW in 1989 there has been steady growth in the use of community title as a market niche. By June 2007 there were 450 community title schemes registered in NSW, mostly in urban settings.¹

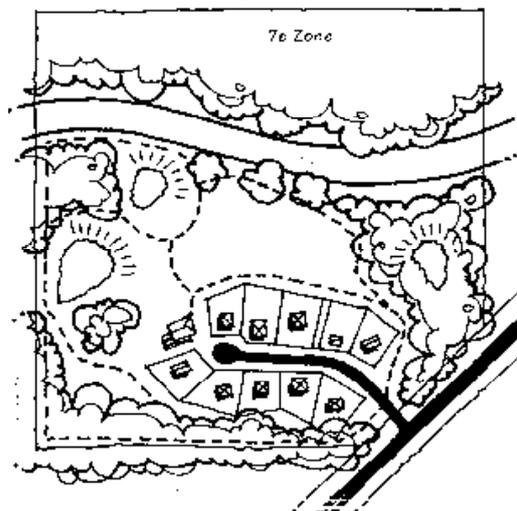


Figure 1: Community title plan for biodiversity conservation from DUAP 1995²

In rural areas community title subdivision may be proposed to enable eco-tourism or rural lifestyle

² Rural Settlement, Dept of Urban Affairs and Planning 1995.

developments or less commonly to facilitate investment in a farming enterprise.

Sustainable development

A key planning principle for successful community title schemes is that landowners have a clear understanding of the potential risks and their financial obligations for both their private property and the commonly owned property.

It is critical that purchasers have a sound understanding of the issues and risks of managing a farming business to ensure adequate design of community title proposals, neighbourhood agreements and consent conditions.

Agricultural community title investors also need;

- the skills, motivation and resources to develop, operate and maintain a complex business enterprise in partnership with other landholders; and
- sufficient capacity to ensure sustainable management of natural resources and to purchase, develop and maintain a farming enterprise and rural lifestyle.

Some of the many interactive variables that affect the sustainability and potential profitability of farming operations include: climate, water, and soils; vegetation, pests and weeds; livestock performance and welfare needs; global supply and demand pressures; transport costs, market access options, natural disasters and evolving legislative requirements.

These risks may not always be immediately apparent or predictable. Farm businesses may also operate at a loss or produce low levels of return over multiple years.

Such pressures may contribute to the relatively high failure rate for community title farming ventures. In turn this increases the alienation of agricultural resources and results in multiple dwellings on small lots with no connection to primary production, contrary to planning strategies and zone objectives.

Conflict and overheads

The multiple owners of rural community title may buy into the development for very different reasons such as; to secure a rural residence or lifestyle, to co-manage a rural property, or to invest in a farm business. This can result in conflicting expectations, management goals and priorities.

Community title owners may also have diverse knowledge about agricultural operations, rural resource or farm business management.

Significant internal conflict can result and the community body may be unable to provide sufficient

funding or make effective timely business decisions critical to the sustainability (and profitability) of the business and the property.

Community title developments can also impose additional business costs such as building and maintaining additional internal fencing and access roads or employing professional staff to undertake work normally done by the farm owner or farming family. These additional costs may make the farming venture unsustainable.

The management complexities and additional costs of multiple owners can also restrict effective, efficient business and resource management and contribute to the failure of the agricultural venture. For instance increased residential densities and vehicle movements on and off site increases the difficulty of ensuring effective on farm biosecurity and disease control.

Community title legislation provides a framework for resolving internal conflicts and for redressing unpaid dues, but this takes time and can further add to business overheads.

Consequently while community title may suit tourism or bushland protection proposals there are few examples of sustainable community title agricultural developments.

Recommended assessment criteria

To minimise the potential risks and enhance the scope for sustainable community title development in rural and E3 zones Councils are advised to verify that the DA:

- Is consistent with state, regional and local planning policies and strategies, including the Rural SEPP planning principles and subdivision criteria.
- Is consistent with Council's settlement strategies and the zone objectives.
- Does not increase the number of residential lots above that permissible under the relevant minimum lot size standard.
- Restricts individual ownership to essential building curtilages around a proposed residence to minimise the alienation of productive resources.
- Clusters residential lots, recreational or lifestyle related facilities to minimise constraints on farming activities and the risk of land use conflicts (see Figure 2).
- Retains all agricultural development areas and facilities (eg orchards, farm dams, packing facilities, irrigation systems) in common ownership.

- ☑ Documents that there will be sufficient water and other resources to develop and sustain the proposed farming business (see additional information for links to a I&I NSW guideline on assessing DAs to develop land for Intensive Plant agriculture).
- ☑ Considers land use on adjoining lots, proposed measures such as set backs and/or buffers are appropriate, and ensures that the development will not result in significant additional land use conflict.
- ☑ Access routes to residential lots should be separated from intensive agriculture development areas.
- ☑ Maximises the opportunities to reuse effluent and plan for the management of waste material.
- ☑ Sets out a clear, functional management structure and procedures to ensure that the proposed use of the community land can be sustained. Issues of particular relevance are:
 - the appointment of a competent appropriately skilled farm manager;
 - ongoing availability of adequate funds for the business enterprise;
 - ensuring compliance with covenants;
 - the timely and effective resolution of conflict between land owners.
- ☑ Specify required building envelopes and appropriate buffers to developments on adjoining properties.
- ☑ Prescribe additional measures to minimise internal conflict, such as an effective community association (body corporate), clear business goals and farm management plans and effective consultation and education strategies.
- ☑ Require the submission of an approved Development Contract, Management Statement and associated documentation to council for lodgement with the Lands Titles Office.
- ☑ Require critical farm infrastructure (eg irrigation facilities) and the proposed farming enterprises (eg vineyard areas) to be established before the construction of residential components.
- ☑ Require applicants to develop management plans for the property including the development of a business and physical property plan.

I&I NSW conducts *periodic short training courses* on property planning. Applicants can also consult with their regional *Catchment Management Authorities* about property planning and resource management incentives.
- ☑ Ensure responsible land management. For example – require a weed eradication and waste management plan submitted and approved by the principle certifying authority prior to the issue of a construction certificate.
- ☑ Require fencing around the perimeter of all rural residential allotments to prevent companion animals entering the community lot.
- ☑ Specify significant native vegetation to be retained and managed as part of the development.
- ☑ Require applicants to monitor and report on the success of the development against the proposed business objectives.



Figure 2 Clustered residential lots along ridge at Nangarin with vineyard development on best sites. Photo Ian Sinclair, Edge Land Planning 3

Recommended consent conditions

Council can also specify consent conditions to further minimise the risk of conflict and reinforce the importance of the agriculture development component. Such conditions might:

- ☑ Acknowledge that farming activities can produce noise, odour and dust.

Pre-application enquiries

Preliminary pre lodgement advice from the consent authority can be critical for ensuring sustainable development of rural lands under community title legislation.

Useful assistance from council may include:

- a copy of the relevant sections of the LEP, DCPs and SEPPs, and a written guide as to the type of supporting information to accompany the DA;
- Indicating Council's policy on the community title subdivision of rural properties in that zone or locality;
- Providing a copy of this guideline.

³ Rural Settlement, Dept of Urban Affairs and Planning 1995

Strategic approaches

Unsustainable or poorly planned community title subdivision in rural zones can circumvent zone objectives and planning strategies.

Community title developments can fragment rural resource lands into small lots that, as individual holdings, are not suitable for sustainable primary industries.

Because community title also facilitates residential development in rural locations it can increase the risk of conflict with the productive management of adjoining farmlands. Resolving such conflict can impose additional restrictions on farming operations and restrict the capacity for sustainable future adaptation and sustainable agriculture.

Community title development can additionally facilitate the development of numerous rural residential lots in localities that may not have appropriate community facilities, infrastructure or service reliability to sustain such development.

Other options exist to facilitate rural residential development and additional investment in rural enterprises. For instance business partnerships, share farming, lease arrangements, boundary adjustments and property sale.

To enhance the sustainability of rural developments, and community title development in particular, I&I NSW recommends that Councils:

- Adopt local LEP provisions that prohibit Community Title in lands zoned for primary production (eg RU1, RU4 or Rural 1a).
- Strategically review desired planning outcomes for rural lands considering in particular the resources and sustainable development opportunities for primary industry enterprises and relevant minimum lot sizes.

Alternatively Councils can reduce the risk of conflict and resource loss associated with community title development in Rural zones by;

- Adopting LEP clauses to restrict each residential lot to not more than 2 hectares and require them to be clustered.
- Adopting LEP clauses to ensure that the total number of residences does not exceed that possible if the minimum lot size applied, and does not exceed 10 dwellings per community title proposal.
- Developing relevant Development Control Plans for rural subdivision that include measures to limit rural conflict and encourage sustainable land management.

Additional information

The I&I NSW website (www.industry.nsw.gov.au) has additional information about planning for primary industries and minimising conflict.

The following guidelines provide additional information on determining the requisite separation distances to minimise conflict:

- [The Living and Working in Rural Areas handbook](#): A handbook for managing land use conflict issues on the NSW North Coast (NSW DPI, Dec. 2007)
- Some precautions when buying rural land (Agnote NSW DPI, Sep. 2004) www.dpi.nsw.gov.au/__data/assets/pdf_file/0007/179638/land-purchase-precautions.pdf

Other useful references

[State Environmental Planning Policy \(Rural Lands\) Dept of Planning 2008](#)

Common Ground - UDIA NSW Community Title Principles, Urban Development Institute Australia, 2008, [UDIA NSW Community Title Principles](#)

Rural Settlement – guidelines on Rural Settlement on the north coast of NSW, Department of Urban Affairs and Planning 1995

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