



MASTER PLANNING UNDER
STATE ENVIRONMENTAL
PLANNING POLICY 71 -
COASTAL PROTECTION
PERIODIC PROGRESS REPORT

April 2007



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1 Introduction

The NRC provides an independent review in the *State Environmental Planning Policy 71 – Coastal Protection* (SEPP 71) master planning process. SEPP 71 aims to protect the natural, cultural, recreational, economic and aesthetic attributes of the NSW coast; to encourage a strategic approach to coastal management; and to further the implementation of the *1997 NSW Coastal Policy*. Requiring master plans is one of a number of mechanisms SEPP 71 uses to achieve its aims. Master planning ensures those aims are met during large subdivisions, and subdivisions in sensitive coastal locations.

The Minister for Planning must consult the NRC when considering waiving the need for a master plan or adopting a draft master plan for certain coastal developments.¹ Through its assessment the NRC promotes the aims of SEPP 71 and encourages greater connection between planning processes and natural resource management.

The NRC has reviewed eight requests for master planning waivers since November 2006. The NRC recommended waiving the master planning requirements for seven matters, and recommended not waiving the master planning requirements for one matter.

Through assessing these waiver applications, the NRC has become aware of two areas where the aims of SEPP 71 are not being met effectively:

- Development assessments under the SEPP are not required to consider the development's impact on NSW's ability to meet the state-wide targets for natural resources as reflected regionally through the relevant Catchment Action Plan.
- The master planning process of SEPP 71 is only triggered for subdivisions. Developers can and do effectively circumvent the master planning requirements of SEPP 71 by applying to subdivide the land after the consent authority has granted consent for development. Once development consent has been granted there is limited scope to improve consideration of natural resource outcomes from a development via SEPP 71 master planning provisions.

This periodic progress report collates and explains the recent advice the NRC has provided to the Minister and suggests improvements to the operation of the SEPP:

- Chapter 2 explains the NRC's approach to minor development applications requesting a master plan waiver
- Chapter 3 explains how the NRC provides a robust, independent assessment of more complex development applications and provides a summary of advice provided to the Minister on these significant proposals
- Chapter 4 describes the two areas the NRC has identified where SEPP 71 is not operating effectively, and proposes solutions to these issues.

¹ Pursuant to cl.18(1)(e) and cl.21(2) of SEPP 71

2 Advice provided on all minor development proposals

In November 2006, the NRC streamlined its involvement in SEPP 71 by providing the Minister for Planning with generic advice for all minor proposals requesting a master planning waiver.

During 2005/06, the Department of Planning, exercising the Minister's SEPP 71 powers and responsibilities under delegation, referred approximately 100 coastal development applications to the NRC. Around 90% of these applications were for minor developments (eg. two or three-lot subdivisions) for which advice must be sought but may not be needed.

The Department of Planning also sought advice on these applications from the Department of Environment and Conservation, the Department of Natural Resources and relevant coastal local governments.

In November 2006 the NRC provided the Minister with generic advice that the Minister waive the need for a master plan for all minor development proposals. This advice was tendered to streamline the development application process for minor proposals while maintaining a strong system of independent review for the more complex applications. The NRC considered that seeking its advice on minor developments applications:

- duplicated advice provided by other agencies, so was unnecessary and inefficient
- posed unnecessary administrative costs and delays on local governments, developers and the Department of Planning
- served no strategic purpose, as a master plan is not a strategic planning tool.

As a guide, the NRC considers minor proposals to include:

- two or three-lot subdivisions
- conversion of existing buildings to strata title
- minor boundary adjustments
- infill development in existing urban areas.

Chapter 3 summarises the recommendations the NRC has made on SEPP 71 matters since providing this advice on minor development proposals.

3 Advice provided by the NRC between November 2006 and March 2007

The NRC continues to provide the Minister with a robust, independent assessment of more complex development proposals. The NRC assesses the nature of each development and the adequacy of existing planning controls against the aims of SEPP 71, the matters for consideration listed in the policy and the policy's development control provisions (relevant excerpts from SEPP 71 are included in attachment 1). Any issues that do not appear to have been addressed in the application or existing planning controls, are assessed against a risk matrix.

Since providing the Minister with generic advice in November 2006, the NRC has advised on eight matters. In summary, the NRC recommended:

- the Minister waive the requirements for master planning in six matters
- the Minister waive the requirements for master planning subject to further information being provided in one matter
- the Minister not waive the requirements for master planning in one matter.

The NRC was not asked for any advice regarding approval of draft master plans. Table 1 provides details of each matter referred to the NRC, and the NRC’s recommendations.

Table 1 SEPP 71 advice provided November 2006 - March 2007 (in chronological order)

Location	Matter	NRC recommendation	Reasoning
Lots 206, 1168 and 8031 8 Cove Boulevard Shell Cove	Subdivision into approx. 230 lots as part of larger staged development	Do not waive need for master plan	Insufficient information provided to justify waiving a master plan. The proposed development is significant in nature and adequate consideration of the potential impacts on beach environment, coastal water quality and potential wildlife corridors was not demonstrated. Assessment should include consideration of the development’s contribution to the state-wide targets for natural resources.
Lot 49 15 Lagoons Circuit Nelson Bay	Community title subdivision into 62 lots. This is the last stage of a development already approved by the Land and Environment Court.	Waive need for master plan	The development is significant in nature and adequate consideration of the potential impacts of the development on the cultural heritage, resident native flora and fauna, and wildlife corridors, was not demonstrated. However, there is limited scope to mitigate any potential impacts through further master planning, given that development consent has already been granted.
Lot 1 485 Lake Conjola Entrance Rd Lake Conjola	Subdivision into 21 lots and land tenure change to community title. A staged tourist development is currently being constructed.	Waive need for master plan	There is limited scope to mitigate any potential impacts from the design of the project through further master planning, given that the consent authority has already granted development consent for the land use.
Lots 144 and 45 Solitary Rd Sapphire Beach	7 lot subdivision	Waive need for master plan	The development is minor in nature and complies with existing planning controls which adequately address SEPP 71 matters. The proposal will improve public access to the foreshore through the granting of land to the council.
Lots 53, 54 and 156 Bucketts Way Tinonee	2 lot subdivision, ultimately to be 150 lots under Part 3A EP&A Act	Waive need for master plan	Minor matter of a subdivision of 2 lots. Recommend that when assessing Part 3A application, consideration be given to the development’s contribution to achieving the state-wide targets for natural resources.

Location	Matter	NRC recommendation	Reasoning
Lots 11 and 12 22-24 Henry Rd Morisset Park	7 lot subdivision; 6 lots for housing and 1 community title lot	Waive need for master plan	The development is minor in nature and adequate planning controls are in place. Any potential impacts of the proposal have been addressed in the proponent's Statement of Environmental Effects. The proposal will improve opportunities for public access to the foreshore through the provision of a public reserve.
Lot 1 4 Ocean St Dudley	14 lot subdivision	Waive need for master plan, providing proposed sewer system connection is confirmed, and alternative road alignments are considered	The development constitutes low-impact development on land that has previously been developed and will be adequately assessed under the existing planning regime.
Lots 2, 3 and 41 138-142 Grand Pde Bonnells Bay	5 lot subdivision	Waive need for master plan	The development constitutes low-impact, medium density in-fill development consistent with government urban consolidation objectives on land zoned for that purpose.

4 Enhancing the operation of SEPP 71

The NRC's analysis of applications for master plan waivers has identified two instances where the operation of SEPP 71 could be improved to meet its aim of protecting the coast. Firstly, the SEPP, and the planning process in general, is not operating in alignment with the regional natural resource management model. In particular, the state-wide and regional targets for natural resources are not considered in subdivision applications. Secondly, because master plans are only required for subdivisions, the SEPP allows development consent to be granted without requiring broader consideration of coastal protection through a master plan.

4.1 Linking the planning regime with natural resource management

The existing statutory planning process under the *Environmental Planning and Assessment Act 1979* has no obvious mechanism for the consideration of the state-wide natural resource targets during development assessment. It is appropriate that assessment of the more complex coastal developments take into account the contribution a development would make to, and the effect it would have on, attainment of the state-wide targets as expressed at the regional level through the relevant Catchment Action Plan.

As planning instruments are reviewed, consideration needs to be given to how the instruments can be aligned with the natural resource management framework. This includes the state-wide standard and targets (as expressed within the NSW State Plan) and the regional Catchment Action Plans produced by Catchment Management Authorities.

The next review of SEPP 71 should require consent authorities to consider (such as through Clause 8) the contribution the development will have to the catchment's ability to meet the natural resource targets as described in the relevant Catchment Action Plan.

As many large subdivisions are assessed by the Minister under Part 3A of the *Environmental Planning and Assessment Act 1979*, that assessment process also should consider the natural resource targets.

4.2 The relationship between subdivision and development consent

Master planning provides the public with assurance that the aims of SEPP 71 are being appropriately considered in large subdivisions and subdivisions in sensitive coastal locations. An approved master plan provides the consent authority with a more detailed description of the proposal from which they can determine development consent.

However, master planning is only considered for subdivisions, not for all development that can impact on sensitive coastal locations. If land is not being subdivided, development consent, sometimes significantly changing the use of the land, can still be granted by the consent authority without master planning consideration. Developers can and do effectively circumvent the master planning requirements of SEPP 71 by applying to subdivide the land after the consent authority has granted consent for the development. Once development consent has been granted there is limited scope to improve consideration of natural resource outcomes from a development via the SEPP 71 master planning provisions. Enforcing the SEPP 71 provisions at this point, while a legal requirement, serves no useful planning purpose and simply adds unnecessary costs and delays.

In light of this, SEPP 71 should be reviewed to require a master plan in all development circumstances where these plans would be beneficial, not just subdivisions. Until such a review, the Minister should consider granting a generic master planning waiver for subdivisions where development consent has already been granted.

Attachment 1 Factors the NRC takes into consideration

The NRC considers the following elements of SEPP 71 when advising the Minister for Planning on master planning matters.

Clause 2 Aims of Policy

(1) This Policy aims:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management

Clause 8 Matters for consideration

The matters for consideration are the following:

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment, and
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

Clause 14 Public access

A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.

Clause 15 Effluent disposal

The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.

Clause 16 Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.