
**Subject 12.2 Coastal Policy and related State Policies
 (8462320)**

To the General Manager

Division: Community Planning & Strategies Division
Department: Planning Services

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Summary

Council has been advised that the NSW Coastal Policy 1997 now applies to Shellharbour LGA, as well as all other coastal Councils within the Greater Sydney Metropolitan Region. This also brings into effect State Environmental Planning Policy No 71 – Coastal Protection and State Environmental Planning Policy (Major Projects) 2005 for Shellharbour LGA. The application of these policies has major implications for draft LEPs and development applications. This report provides an outline of each of the policies and the implications for both development assessment (current and future applications) and draft LEP amendments.

Recommendation

That the report be received and noted.

Background

On Friday 18 November 2005, the NSW Coastal zone maps applying to all coastal Councils within the Greater Sydney Metropolitan Region were gazetted. The maps identify a Coastal zone which covers an area of approximately 1 kilometre from the coast inland. The gazettal of these maps brings into effect the Coastal Protection Act 1979 and the other policies and direction outlined in this report. These are all key elements in implementing the Government's Coastal Protection Package first announced by the Premier in 2001 to manage development in and around NSW coastal areas.

State Environmental Planning Policy No 71 – Coastal Protection and the NSW Coastal Policy has been in existence for some time (1 November 2002) but did not apply to Shellharbour LGA or other nearby Councils. The Department has foreshadowed the introduction of these policies for some time however the gazettal of the coastal zone maps on the 18 November 2005 came without warning. The local office of the Department was also unaware of the gazettal. Unfortunately, the sudden introduction of these policies without any warning has not enabled Council's staff (particularly for Development Services) to be prepared by way of appropriate mapping data and administrative processes.

The legislation means that any development application received prior to 18 November 2005 must comply with the planning provisions that apply to the Coastal Zone as outlined in this report, before determining the application.

Coastal Protection Act 1979

The NSW Coastal zone is defined under section 4A of the Coastal Protection Act and provisions of that Act will now apply to the Coastal zone within the Greater Metropolitan Region (Newcastle to Shellharbour) as it has done for the rest of the NSW coast since 1997. The Coastal Zone maps identify land generally within a 1km radius from the coast, measuring inland. This is the area where the NSW Coastal Policy and related state policies now apply (refer to Attachment 1).

The Act requires concurrence (approval) from the Minister for any development in the coastal zone (including the carrying out, use or occupation of any part), if the proposal may in any way:

- be inconsistent with the principles of ecologically sustainable development, or
- adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

NSW Coastal Policy 1997

The NSW Coastal Policy aims to provide for population growth and economic development without placing the natural, cultural, spiritual and heritage values of the coastal environment at risk. The policy is based on the principles of ESD – Ecologically Sustainable Development. The NSW Coastal Council oversees the implementation of the Coastal Policy and reports annually to the NSW Parliament on progress made towards its implementation. Although the Policy came into effect in 1997, it has previously not applied to Shellharbour LGA until now. Council is required to consider the Coastal Policy in determining a development application and in drafting a local environmental plan (LEP).

State Environmental Planning Policy No 71 – Coastal Protection

This policy aims to:

- Encourage a strategic and consistent approach to coastal planning and management;
- Ensure that the coastal zone is managed and protected in accordance with ecologically sustainable development principles;
- Facilitate the assessment of development proposals and assess each proposal on its individual merits;
- Set out matters for consideration by Councils and consent authorities;
- Develop a review process for significant coastal development proposals in the coastal zone;
- Requires certain development applications for development proposed in sensitive coastal locations to be referred to the Director-General of the Department of Planning for comment;
- Requires a 'master plan' (now DCP under the Planning Reform legislation) process to ensure developments involving particular types of subdivisions in the coastal zone are consistent with the SEPP's provisions.

The SEPP is seeking to provide a more consistent approach to coastal planning and management. Undoubtedly a more co-ordinated and consistent approach to managing urban coastal development has merit, however the sudden implementation of the policy has had some immediate undesirable impacts.

Significant coastal development

The policy identifies the following development as 'significant coastal development':

- Development comprising the erection of a building that is 2 or more storeys in height, on or partly on, land within a *sensitive coastal location*, and
- Development within 100m below mean high water mark of the sea, a bay or an estuary (ie: seaward side), and
- Development that is considered 'significant coastal development'.

The Department has advised Councils that they intend to delete the first requirement relating to buildings 2 or more storeys from the SEPP. However, until this occurs, the requirement remains, with all current and future development applications falling within this category having to be forwarded to the Department of Planning.

A *sensitive coastal location* means land within the coastal zone with any of the following:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary (ie: inland),
- (b) a coastal lake,
- (c) a declared Ramsar wetland within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,
- (e) land declared as an aquatic reserve under the Fisheries Management Act 1994,
- (f) land declared as a marine park under the Marine Parks Act 1997,
- (g) land within 100m of any of the following:
 - (i) the water's edge of a coastal lake,
 - (ii) land to which paragraph (c), (d), (e) or (f) applies,
 - (iii) land reserved or dedicated under the National Parks and Wildlife Act 1974,
 - (iv) land to which State Environmental Planning Policy No 14 - Coastal Wetlands applies,
- (h) residential land within 100m of a Littoral Rainforest (under State Environmental Planning Policy no 26 - Littoral Rainforests).

The following forms of development will also be considered significant coastal development within the Coastal Zone, identified under State Environmental Planning Policy (Major Projects) 2005 as Part 3A projects – Specified sites (see below for further information):

- Extractive industries
- Landfill facilities
- Mining where wholly or partly within a *sensitive coastal location*
- Marinas where wholly or partly within a *sensitive coastal location* (this will not apply to Shell Cove as ministerial approval has already been given)
- Various other heavy industries identified as designated development where wholly or partly within a *sensitive coastal location*
- Large recreational or tourist facilities for 100 persons or more where wholly or partly within a *sensitive coastal location*, or where outside and not connected to an approved sewage system where it is for 25 persons or more
- New Buildings or structures greater than 13 metres in height where wholly or partly within a *sensitive coastal location*
- Residential land subdivision of more than 25 lots
- Rural residential subdivision of more than 5 lots
- Unsewered subdivisions of more than 5 lots (within the Coastal zone)

These requirements have implications for the types of development applications which will now need concurrence from the Department if located in this area. Council staff have now

mapped the information that is applicable in Shellharbour and have placed a notation on all properties that are now affected by the state policies or which fall into the definition of a sensitive coastal location. The late notice by the Department of Planning in advising Council that these policies now apply, has meant delays in the issuing of Section 149 certificates, until this information had been confirmed.

Master plan requirements

The policy also requires that a 'master plan' (now referred to as a DCP) be adopted by the Minister for Planning for the subdivision of land, as follows:

Residential zone land:

- Any subdivision where part or all of the land is within a sensitive coastal location
- Any subdivision of more than 25 lots, where located within the Coastal zone but outside the sensitive coastal location
- Any subdivision of 25 lots or less, but is located on or adjoins land in the same ownership that could be subdivided into more than 25 lots

Rural Residential zoned land:

- Any subdivision, where part or all of the land is within a sensitive coastal location
- Any subdivision of more than 5 lots, where located within the Coastal zone but outside the sensitive coastal location

This has major implications for all subdivision applications in the coastal zone, as a development application fitting this criteria cannot be determined unless the consent authority has taken into consideration the provisions of the master plan. The state policy sets out the criteria for what the master plan must address. The master plan must also be publicly exhibited for a period of 28 days.

Referral to the Department of Planning

This policy requires referral of significant coastal development proposals to the Director General of the Department of Planning. This includes development within a sensitive coastal location or within 100m below mean high water mark.

Council must send a copy of the development applications to the Department within 2 days after the application is received by Council. The Department must then comment within 28 days to indicate if there are any matters for special consideration in determining the application. Council cannot determine the application within 28 days, irrespective of whether or not earlier advice is received from the Director General. This is an additional requirement that Council's Customer Services staff must come to grips with. Staff will need to be familiar with the policy and be able to identify if a development and site is affected.

Unlike Integrated Development, the referral for developments affected by SEPP 71 does not attract a fee. Accordingly, there is no additional administration fee payable to Council for the additional tasks required to assist in the implementation of the policy.

Savings and Transitional Provisions

Typically upon implementation of a new policy, there are savings and transitional provisions. This means that those development applications lodged with a consent authority are assessed under the policies that prevailed at the time of lodgement. This is not the case for SEPP 71.

Those development applications lodged prior to 18 November 2005 that have not yet been determined and are affected by the SEPP, have been caught by the extension of the NSW Coastal Zone. This includes two applications recently considered and deferred by Council –

3 Surf Road and 38 Wollongong Street, Shellharbour Village. Copies of these applications have been sent to the Department for review and comment.

Noting that Council cannot consider the applications for a period of 28 days, these applications will not be considered by Council at the meeting in December and will be presented to Council in the New Year. The applicants have been advised of the introduction of the SEPP. In addition to these applications which have been with Council for some time, there are other applications which have been similarly 'caught'. Assessing Officers are advising affected applicants of the SEPP as they are identified.

State Environmental Planning Policy (Major Projects) 2005

This SEPP identifies State or regionally significant development. Such development will need the approval of the Minister. Such development includes certain subdivisions extractive industries, buildings and structures greater than 13m in height etc, as outlined previously in this report.

Where the Department is responsible for processing such applications, it could theoretically issue consents which involve works which Council may ultimately have to accept responsibility for. Accordingly, it will be important for Council to participate in the approval process to ensure that development is consistent with Council standards etc. Council may also be asked by the Department for advice, such as draft conditions (for example: section 94 contributions), which Council will need to provide free of charge.

Section 117 Ministerial Direction No 6 – Coastal Protection

This Direction will apply when Council prepares a draft LEP that creates, removes or alters a zone or a provision relating to land in the coastal zone. A draft LEP must include provisions that give effect to and are consistent with the NSW Coastal Policy 1997 and may only be prepared in this instance, if the following is satisfied:

- (a) The land has been identified in a strategy prepared by the Council and approved by the Director-General, or
- (b) The rezoning is justified by an environmental study, or
- (c) The rezoning is in accordance with the relevant Regional Strategy prepared by the Department, or
- (d) The rezoning is of minor significance.

Consultations**Internal**

Manager Development Services
Group Manager Customer and Environmental Services
Director Community Planning and Strategies
Director Shell Cove Business Unit
Director Operations & Services

External

There have not been any external consultations associated with the preparation of this report.

Considerations

Financial/resources implications

The application of these policies and plans will mainly impact on staff resourcing within Development Services and Customer Services, due to the requirements for referrals to the Department and the impacts on the timing of development approvals.

Legal & policy implications

In recent years the NSW Government has made several changes to the assessment process by way of legislative reform and implementation of new policies in order to streamline the process whilst encouraging better quality development. Regrettably, the assessment process in turn is becoming more complicated with the number of issues to be taken into account growing thus impacting on turnaround times. The introduction of Integrated Development, Bushfire Legislation, BASIX and now the Coastal SEPP and related policies are some examples. This will also impact on the formulation process of a draft LEP affected by the policy, adding further complications similar to the impacts on development applications. We are waiting advice from the Department on the impacts for existing local environmental plans that have previously been adopted by Council but not yet gazetted. This is in addition to the major implications of the Planning Reform legislation.

Public/social impact

The requirements of the policies will increase development application approval times which will impact on the landowner or developer. The environmental advantages are however, very advantageous.

Options

1. To adopt the recommendation.
2. To alter the recommendation.

Conclusions

The introduction of these policies within the Shellharbour LGA has major implications for both draft LEPs and development applications. As outlined in the report, Council staff have not been given adequate time to prepare for the application of these policies or to predict what the implications may be. This will affect our development application processes significantly, and will add more time onto approvals by adding more policies which planning staff have to comply with, in accordance with planning legislation.

Approved for Council's consideration: _____

Attachment

Nil