



Planning Assessment Report - MP 8-3-2005

SEPP 71 Master Plan – 312 Gregory Street, South West Rocks

1. SUMMARY

On 2nd of March 2005 Dutton Engineering submitted the proposed Master plan (MP 8-3-2005) to the Department for Lot 42 DP 878827 at 312 Gregory Street, South West Rocks, Kempsey Shire.

On 20th March 2006, following a site meeting (25th November 2005), the applicant submitted new plans and information with the aim of overcoming the shortcomings of the original proposal, as advised by the Department and Council.

The draft master plan proposes:

- 27 lot residential subdivision;
- a new vehicular access way to Gregory Street;
- new internal roads with associated infrastructure such as street lights;
- provision of utility services associated with residential development;
- landscaping to the Gregory Street frontage of the site;
- provision of open space and a drainage reserve;

The Minister for Planning is the determining authority to adopt master plans under clause 22 of *State Environmental Planning Policy No. 71 – Coastal Protection* (SEPP 71).

It is recommended that the draft Master Plan be **rejected** for the reasons outlined in Section 6 of this report.

2. BACKGROUND

2.1 Site context

The property is identified as Lot 42 DP 878827 and is known as 312 Gregory Street, South West Rocks in the Kempsey Shire Council Local Government Area. A location plan is shown at **Tag "A"**.

The area of the site is 4.2 hectares. The site is an irregularly shaped parcel of land, located within the southern outskirts of South West Rocks. On the eastern side of the site is Gregory Street, which is the main thoroughfare leading into the town. The site is approximately 2.9 kilometres from Trial Bay. A site plan and an aerial photograph are at **Tag "B"**.

The site is currently free of buildings or other forms of development, however significant stands of vegetation are located throughout the site, extending from dense cover on the higher slopes with sparser cover nearer Gregory Street.

The site slopes from approximately 57m to 14m from the east to the west respectively. The steeper slopes are situated in the eastern side of the site.

Land to the north, south and east of the site is largely free from development, with the exception of a small number of detached dwellings. Land to the west of Gregory Street is fully developed with existing residential dwellings.

A site visit was undertaken by Urban Assessments.

3. THE PROPOSED DEVELOPMENT

The applicant proposes the adoption of a draft Master Plan for the sub-division of an existing single lot (Lot 42 DP 878827) into 27 lots (consisting of 26 proposed residential allotments and one lot for a proposed recreation and drainage reserve).

The draft master plan includes a report that attempts to address the heads of consideration at Part 5 of SEPP 71. The plan as presented included extension of residential lots into the 7(d) zone where residential subdivision is not permitted. Subsequent plans show the subdivision pattern amended to conform to the zone boundary.

A copy of the Draft Master Plan is at **Tag "C"**, with variation at **Tag "D"**.

4. STATUTORY FRAMEWORK

4.1 *Statement of Permissibility*

The majority of the subject site is zoned Zone 2(a) – Residential "A" Zone under the provisions of the Kempsey LEP. A portion of the east of the site is zoned 7(d) Scenic Protection Zone. Subdivision is permissible with consent.

4.2 *Requirement for a master plan*

The site is within the coastal zone as defined by the 'Coastal Protection Act, 1997' and accordingly is subject to the provisions of SEPP 71. A master plan is required as the future development proposes residential subdivision in a *sensitive coastal location* (located within 100m of Hat Head National Park). The Minister for Planning is the determining authority for master plans required by SEPP 71 pursuant to Clause 22 of SEPP 71.

4.3 *Other relevant planning instruments*

Hat Head National Park is located to the east of the site across Arakoon Road which runs in a north south direction along the boundary of the site.

A number of other environmental planning instruments are applicable to the land to which the draft master plan applies. They are as follows:

- *State Environmental Planning Policy No. 1 – Development Standards;*
- *State Environmental Planning Policy No. 55 – Remediation of Land;*
- *North Coast Regional Environmental Plan;*
- *Kempsey Local Environmental Plan 1987;*
- *Kempsey Development Control Plans No 10, 22, and 36.*

An assessment of the proposal against these provisions is included as **Attachment 1**.

5. CONSULTATION, EXHIBITION AND SUBMISSIONS

5.1 *Public consultation and exhibition*

The application was notified, in accordance with Clause 21 of SEPP 71 including:

Notifications – landowners/occupiers	38 adjoining and surrounding landowners were notified.
Newspaper advertisements	Advertised in Kempsey Macleay Argus on 14 June 2005.

Site notices	A request was sent to Council to erect a site notice on the site.
Exhibition dates	Start: 15 June 2005. End: 14 July 2005.
Exhibition venues	▪ DIPNR Planning Information Centre, 20 Lee Street/then 23-33 Bridge Street, Sydney; ▪ DIPNR North Coast Office, 49 Victoria Street, Grafton; and ▪ Kempsey Shire Council, Cnr Elbow and Tozer Streets, West Kempsey. ▪ South West Rocks Branch Library, 22 Landsborough Street, South West Rocks.

5.2 Submissions

The referral/exhibition process garnered three submissions from the public, two offering conditional support and one registering objection. Details of the submissions are set out in **Attachment 2**. The objector cited traffic management/hazard concerns regarding access onto Gregory Street. The supporters also raised traffic management difficulties and the need for a single access to the area from the Lindsay Noonan Drive and drainage and privacy concerns.

Department of Environment and Conservation

- The interests of DEC are unlikely to be affected by the proposal.
- Recommended that the Bushfire APZ should be excluded from 7(d) zone as it provides buffer to National Park.

NSW Rural Fire Service

Comments in respect to '*Planning for Bushfire Protection, 2001*':

- Temporary turning circles required complying with Section 4.3
- Layout to consider water availability and pressure demand in emergency- location of hydrants.
- Internal road design to comply with Section 4.3.1
- No support for 20m APZ- 40m required north and south.
- Lot 27 appears to be unable to support both required APZ and adequate building envelope.
- APZ's should be located within allotment boundaries. Easements are shown on adjoining properties for the APZ, however it has insufficient width. Copy of easement is required.
- Building envelopes are shown within the APZ which is not permitted.
- The owner is required to obtain a Bush Fire Safety Authority pursuant to Section 100B of the Rural Fires Act, 1977 and its regulations for the subdivision.

Kempsey Shire Council

Road Access

- It is envisaged that all lots in this area will have vehicle access restricted to internal roads and direct access to Gregory St. will be prohibited.
- Confusion over temporary road access it is shown as dedicated public road on the plans.
- Footpath should be extended to lots.
- Future internal road network envisaged to the north at only one point, at the intersection of Gregory Street and Lindsay Noonan Drive.

Flora and fauna

- Survey did not address a number of issues including fauna trapping, identification of habitat trees to be retained, a survey and search of bat and frog populations, and recommendations for ameliorating the impacts of the development, .
- Further comment by the Ecological consultant was required addressing the above mentioned points.

Future Character

- Lot sizes proposed could allow further development – how will this be addressed to ensure that only 1 dwelling per lot is retained.

Water and Sewage

- Insufficient detail provided regarding Stormwater management.
- Connection to sewer requires Section 64 contribution.
- Water connection difficulties for lots 14,15,16,17,27.
- Inadequate building footprint for lots 14,15,16,17.
- Submission does not contain any correspondence for the Aboriginal Community.
- Council is not accepting isolated sections of neighbourhood park at this time.

North Coast Regional Office

- Further information required regarding (i) Soil tests, (ii) urban design & BASIX.
- Residual lot in Scenic Protection Zone and erection of dwelling could be permitted in the 7(d) zone on a suitable site if an appropriate scenic, fire and bushland plan of management is provided.

A detailed discussion of the significant issues is within Section 6 of this report.

5.3 Result of consultation and negotiated position

Following public notification and consultation with the relevant agencies, the Department undertook a preliminary review of the proposal and considered that there were a number of significant matters, which could not be satisfactorily resolved under the constraints of the current application.

A summary of the issues raised during the consultation period was forwarded to the applicant. In order to resolve the matters raised a substantial redesign of the proposal was required. It was suggested at that stage that the applicant withdraw the draft Master Plan application and review the issues raised. The application was not withdrawn. Accordingly an assessment of the application commenced using the information provided to the Department.

6. CONSIDERATION

The assessment of the Draft Master Plan has been based on the aims and master plan requirements of SEPP 71 along with submissions from relevant authorities and the community.

6.1 SEPP 71 Requirements

An assessment of the draft master plan against the relevant clauses in SEPP 71 concluded that the document is generally inconsistent with the aims of SEPP 71 (**Attachment 1**).

6.2 Issues from written submissions

Written submissions have been considered pursuant to Clause 21(1)(a) of SEPP 71. A summary of all written submissions received and responses to the issues raised are included as **Attachment 1**. The significant issues raised in submissions are discussed below.

6.2.1 Bushfire Risk Management

- Issue:* The draft Master Plan does not satisfy the requirements of the Planning for Bushfire Protection 2001 in terms of Asset Protection Zones (APZs).
- Raised by:* Rural Fire Service (RFS)
- Consideration:* Bushfire hazards lies to the north, east and south of the site. A Bushfire Protection Assessment has been prepared by Macleay Enviro Reports and submitted with the application. The report was forwarded to RFS for comment. RFS responded on 14th July 2005 and raised the following concerns:

- The 20m APZs proposed for northern and southern sides of the site is not supported by the RFS. A 40m APZ is required;
- Required APZs for the individual property boundaries are to be located within the boundaries of their allotment, however exceptional circumstances as identified in Development Control Note 2 "Establishment of Easements for the purposes of Asset Protection Zones" the RFS is prepared to accept the use of easements. The APZ required is greater than that which is stated by the applicant. A copy of the easement is to be attached with the application.

After some argument, the Applicant has now accepted the requirement for a 40 metre APZ to the north and south of the proposed dwelling sites. The applicant also advises that the relevant landowners have agreed to the required easement.

An APZ cannot be provided within the site boundaries without compromising a sustainable residential development. It is considered that a resort to "exceptional circumstances" is not satisfactory. It emphasises the problems of ad hoc, lot by lot development without an overall development plan for the area.

Resolution: The use of adjacent property in relation to the APZs for the site is unsatisfactory.

6.2.2 Subdivision Design

Consideration: The subdivision design considers only this site and is not part of a comprehensive plan for the future residential neighbourhood, except in indicating future possible road links. As a result lot sizes are excessive, well above the densities indicated in Council's residential strategies. This is wasteful and not according to the principles of ESD or the North Coast REP.

The RFS submission also raised the following design concerns in relation to the Draft Master Plan:

- Temporary turning circles are to be provided complying with S.4.3 of PFBP 2001;
- Design layout is to consider water availability and pressure demands during an emergency. Fire hydrants are to be installed as per AS2419;
- Design of the internal road system shall be in accordance with S.4.3.1 of PFBP 2001;
- Building envelopes are located within the identified APZs;

The Applicant responded to indicate that temporary turning circles to the north and south and a passing bay near proposed lots 6 and 7 could be provided in compliance with PFBP 2001. They also state that no building footprints are located within any of the APZs on their plan.

Resolution: Not resolved. An overall strategy should be adopted before individual master plans are proposed. Design detail at subdivision application stage can accommodate RFS requirements.

6.2.3 Impacts to flora and fauna

Issue: Impacts to flora and fauna.

Raised by: Council

Consideration: The draft master plan indicates that no threatened plant species or fauna were recorded during their survey. They note a number of vulnerable species are

known from similar habitats in the South West Rocks Area.

Council indicated that the flora and fauna study accompanying the master plan application was deficient. A new flora and fauna study has been carried out and the development proposed for that part of the site in the 7(d) zone has been redesigned.

As a result, the building envelope for the upper land has been relocated close to the residential zone boundary and access provided through the residential roads. This allows the densely vegetated upper slopes to remain undisturbed for a depth of 63.47 metres between Arakoon Road and the Outer Protection Area.

Resolution: The proposal now presents minimal likely impact to fauna and flora.

6.2.4 Utility Services

Issue: The provision of reticulated water to all lots.

Raised by: Council

Consideration: The original plans showed that a reticulated water supply could not be guaranteed to proposed lots 14,15,16 and 17 where the building envelopes are shown above RL 35AHD. Connection to the reticulated water system is required by Council for all new lots within a subdivision.

The applicant now advises that the submitted plans were in error, showing incorrect levels and that Council is now satisfied that water can be supplied to all lots.

Resolution: This matter is now resolved.

6.2.5 Contamination

Issue: Contamination and remediation of land for the proposed residential use.

Raised by: Council

Consideration: Consideration of Acid Sulphate soils and on site contamination is required pursuant to State Environmental Planning Policy No. 55- Remediation of Land (SEPP 55). No documentation was provided with the application which could verify that the site did not contain contaminated areas or acid sulphate soils. This is particularly relevant given that the proposed master plan is for residential uses. This is unsatisfactory.

Resolution: This matter is not resolved. No technical documentation was submitted that enabled an assessment of the extent, if any of site contamination and associated remediation. The contamination and acid sulphate status of the site cannot be determined. This is unsatisfactory.

6.2.6 Vehicular Access

Issue: Vehicular access to the site from Gregory Street is unsatisfactory.

Raised by: Council, DoP

Consideration: The proposed vehicular access point to Gregory Street shown in the draft master plan has not been designed as a temporary road. There has been no provision made for the conversion of the intersection of Gregory Street and the new road into a cul de sac in the design. Council's preferred option was an temporary internal road that connected with Cooper Street to the south

with a future road created to the north intersecting with Gregory Street at the intersection of Gregory Street and Noonan Drive to the north.

The applicant states that Council will accept access from Gregory Street on a left in, left out restriction basis.

It is not considered to be satisfactory to provide new roads without a comprehensive design for the area. The need for access and egress restrictions underlines the problems in providing access. The major attractors for vehicular travel from the site are to the north, a right hand turn from the site, i.e. the village centre, the major neighbourhood shopping centre and school. The desired direction of travel will lead to unexpected traffic movements from vehicles forced to turn left and changing direction.

Resolution: The applicant was advised in writing of this issue. Access from Gregory Street was still sought by the applicant. The internal road arrangement did not reflect the restriction on access. This matter is not resolved. This is unsatisfactory.

7. CONCLUSION

The Draft Master Plan is not a satisfactory proposal for Lot 42 DP 878827, 312 Gregory Street, South West Rocks. The proposal does not comply with the requirements of the Rural Fire Service (*Planning for Bushfire Protection 2001*), State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) or other issues raised in submissions.

The proposed subdivision of this isolated lot is considered to be premature development in that it pre-empt's overall planning for this future residential neighbourhood. Road access is unsatisfactory, required APZs cannot be provided within site boundaries and the subdivision design is wasteful of land. An overall strategy should be adopted before individual master plans are proposed.

On balance, it is considered that the Draft Master Plan is not acceptable and should be refused.

8. RECOMMENDATION

It is recommended that the Minister for Planning pursuant to Clause 22 of *State Environmental Planning Policy No 71 – Coastal Protection*:

- (A) **Reject** the draft Master Plan as a Master Plan for the purposes of development of the land at Lot 42 DP 878827 312 Gregory Street, South West Rocks, and
- (B) Authorise the Department to carry out post-determination notification.

For Ministerial Endorsement

Prepared by

Endorsed:

Stan Fitzroy-Mendis
Planner, Urban Assessments
Urban Assessments

Michael File
Team Leader
Urban Assessments