

Coastal Council of NSW

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Dr Thomas Parry
Chairman
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24 November 2003

Dear Dr Parry

**"Review of Rental for Domestic
Waterfront Tenancies in NSW"**

The Coastal Council of NSW wish to submit the following points for consideration:

1. WATERFRONT AREAS GENERALLY

Waterfront areas are extremely important for the healthy functioning of ecological systems within estuaries, coastal areas and river systems. Estuaries are extremely important areas because they provide the nursery and breeding grounds for a large number of fish species that have commercial and recreational values.

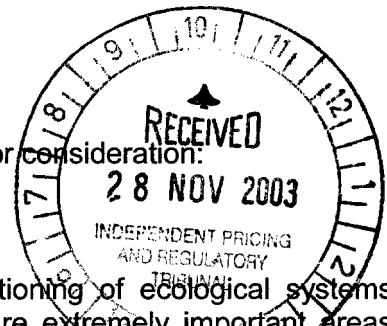
Within estuaries, waterfront areas and in particular intertidal areas are vital for the wellbeing of numerous commercial and non commercial fish and invertebrate species. Intertidal and nearshore areas are significant providing habitat for plants and animals that are integral to the estuarine and marine food chain.

A national audit of the condition of Australia's estuaries has revealed that they are under serious stress particularly from anthropogenic impacts such as habitat destruction, reclamation and siltation (NLWRA, 2001). The audit revealed that NSW's estuaries are in particularly poor condition notably as a result of heavy coastal development pressures including waterfront occupations.

2. RENTAL CALCULATION

2.1 Ecological Considerations

The proposed method of assessing rental payments by occupiers of waterfront lands has deficiencies and is not supported. Rent calculations need to reflect the fact that occupations of waterfront land have a direct impact on the environmental wellbeing of much larger areas. Occupations of waterfront and "over water" areas directly impact on estuarine ecosystems. Waterfront areas are key areas that can set the overall health of estuaries. Heavily developed waterfront areas can totally destroy ecological wellbeing with consequential impacts on the health of broader plant and animal communities.



managing the coast for an ecologically sustainable future

If occupations of waterfront areas are to be permitted the rent that such occupations attract should have regard for the ecological productivity foregone through such occupations. The impact of individual occupations must be assessed as should the cumulative impact of a large number of occupations in local areas.

Recommendation:

Rent Calculations Should Include Allowances for the Ecological Value Including a Provision for Ecosystem Health Foregone.

2.2 Community Rights and Values

Public waterfront areas are highly valued by communities. Public access to Waterfront areas is often denied through authorised occupations. The community of NSW values access to public lands but is often oblivious to the location of such lands due to alienation of the foreshore that disguise public areas from public view and interpretation.

Communities of NSW are currently denied access to many waterfront areas but yet they observe that certain landowners benefit in ways which are not available to the broader public.

The NSW Coastal Policy 1997 and SEPP71 highlights the importance of maximising access to the coastal zone. The denial of access to public lands should follow full community engagement.

Recommendation:

The Calculation of Rentals for waterfront occupations should include a recognition of the importance of these areas to the NSW community by including an allowance that covers their removal from public access.

3. RESPONSES TO TERMS OF REFERENCE

3.1 Rentals

(a) Aligning returns to reflect and maintain market values

Market value should not be restricted to definitions attributable to land areas only. Market values should accommodate

- value of area occupied in terms of as if freely accessible to all parties not only an adjoining owner
- value of the area occupied in terms of its ecological productivity foregone. This consideration should accommodate considerations of cumulative impact and ecological thresholds in terms of ecosystem tolerance.

(b) Rents to cover costs

A number of NSW and Local Government agencies experience costs through the need to manage estuaries. Foreshore occupations contribute directly and indirectly to estuarine stress and hence estuarine decline and hence to this need for management responses and works. The Department of Infrastructure Planning and Natural Resources experiences significant costs in managing estuaries (viz Estuary Management Program). Local Councils also endure considerable management costs most of which are increased due to the existence of foreshore occupations. Rent assessments should cover all agency costs.

Increasingly Estuary Management Plans prepared by State and Local Government (80 Estuary Management committees exist in NSW), list issues pertaining to foreshore structures such as over proliferation of structures and destruction of inter tidal areas and seagrass beds.

(c) Equity

Foreshore occupations commonly reduce the ecological health of estuaries. Foreshore occupations result in the **loss** of foreshores, and intertidal and subaqueous vegetation with the consequent **loss** of fish habitat. Fish nursery areas are reduced. Boat traffic is mostly responsible for such negative ecological impacts.

Occupations introduce foreign materials into natural areas and concentrate impacting human uses. Foreshore structures shade ecological systems and lead to their decline. Therefore, those enjoying the occupations should compensate the community through realistic rental payments.

(d) Ability to Pay

"Ability to pay" is not a concept that should be applied to non-essential services. Waterfront occupations introduce costs and lost opportunity to the community waterfront occupations can rarely be described as an essential service. Waterfront occupations are in most instances a privilege enjoyed at the community's expense. "User pays" is the appropriate principle to follow where the full cost of the use, including environmental cost should be included in assessments. No rebates should be offered for privileged occupations.

(e) Appropriate arrangements for special circumstances

As for (d) the full cost of occupations should be reflected in rental fees. Where access to properties is only available via the waterfront the original sale price of such property would have reflected access conditions. It is not reasonable to subsidise rental payments on this basis. A review of other policies of the Department of Lands and Local Government indicates that no subsidy should be offered. Where a remote parcel of land remains unserviced by a formally constructed roadway the owner of the 'disadvantaged' land does not get the offer of a reduced cost roadway funded at the expense of either the Department of Lands or local Government or the community. Similar logic should apply here such that public assets should not be dispersed to selected individuals other than on a commercial (full cost recovery) basis.

4. MECHANISMS FOR STREAMLINING ADMINISTRATION

(a) Legislative Requirements

Mechanisms should be put in place to regularly verify compliance with approvals given. History indicates a high level of unauthorised occupations occur and that conditions of occupation are commonly breached (eg unauthorised protective seawalls). The fact that there is little auditing to discover non conforming and unauthorised occupations is a concern given the environmental impact of such occupations.

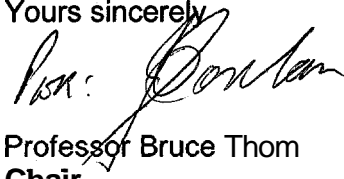
(b) **Basis for Tenure**

Whatever system of tenure is adopted it is imperative that occupiers lodge securities that can be accessed by authorising agencies in circumstances where compliance breaches or failure to pay rents occur. It is imperative that bonds/securities are lodged to fund structure removals for those circumstances where the authority agency wishes to terminate the occupation. History shows the Department of Lands has inherited from earlier years many structures that have fallen into disrepair.

In inclusion the Coastal Council submits that the importance of waterfront lands to the ecological health of estuaries has been significantly understated in the past. Occupants of foreshore lands should be required to pay rentals that reflect the full cost (direct and indirect) of all foreshore occupations. Higher rentals opens up opportunity for hypothecation of any increase in rent to coastal/estuarine management to help overcome impacts of foreshore use.

The Coastal Zone is of paramount importance to the people of **NSW** as reflected in the Coastal Protection Act 1979 (amended 2002), the NSW Coastal Policy 1997, and SEPP71, and its further decline through a proliferation of further heavily subsidised occupations must be avoided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Thom', is written over the typed name.

Professor Bruce Thom
Chair

Reference:

NLWRA (2001) Australian Estuaries and Coastal Waterways: A geoscience perspective for improved and integrated resource management. A report to the National Land and Water Resources Audit Theme 7.A650 Geoscience Australia