Lake Macquarie Foreshore Review

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The Project

The Department of Land & Water Conservation's Lake Macquarie Foreshore Review Project has been developed by staff of the Hunter Region. Initially, consultation between Maritime Services Board of NSW and the department involved survey staff from the region. The project was put to senior Head Office management as an innovative project utilising state of the art technology and minimising field and office costs. The department's survey expertise was not used or consulted after the initial consultation stage. This was despite suggestions from survey staff to use existing survey data as part of the project.

In September 1995, following a number of enquiries to the office, increasing publicity and meetings with some local surveyors, it was agreed that the department undertake a revision of the data being used for the project. The local office responsibility for this revision was placed in the hands of the Maitland survey staff.

The revision has involved:-

* a study of the digitised information to consider the accuracy and consistency of this data and its relationship with the cadastre;

* the consideration of the DCDB overlay, its accuracy and reliability when compared to the actual cadastre; and

* looking at the generation of plans and letters associated with unauthorised structures determined from the data.

The revision of the project has determined that:-

* aerial photography used for the digitisation of the foreshore was not corrected photography and photo control was derived from data transferred from LIC 1:25000 mapping data sets.

* The horizontal point position accuracy was not quantifiable, the consultant estimated it to be $\pm$ 5 metres at or near sea level. This satisfied the requirements of the MSB.

* Upgrading the data by re-digitising using more accurate photo control and even analytical stereo comparators is possible. The cost and final accuracy of the data would be unknown until a pilot study was undertaken.

* Information located at State Lands Services Maitland office includes departmental Foreshore detail surveys, PWD - Hunter Sewage Scheme foreshore detail surveys, recent identification surveys relating to authorised foreshore structures and other aids such as 1:4000 ortho photo maps, standard aerial photography and surveyor expertise.

* The data is contained in the Lake Macquarie Graphical Interface, a Graphical User Interface (GUI). The data can be manipulated to some extent by operators in Crown Land Information Branch located in Head Office.

* All data is coordinated on the ISG.

* The LIC DCDB is intended for mapping purposes only.

* By comparison with PWD detail survey information, the DCDB near the foreshore is consistent with the cadastre as determined from a some field monuments.

A result of the revision has been that specific areas around the Morisset Peninsula have been investigated using the office data and by comparing this with the GUI. Areas where differences were disclosed were targeted for close attention even field checking using survey staff. Additional information has been given to the CLIB staff for entry as a "field" layer in the GUI. Variations between the foreshore digitised data and the detail data may now be adjusted to agree with the field layer. There have been difficulties with this adjustment and results are not available, indications are that the photo anomalies should be resolved using the extra control.

State Lands Service Senior Management has directed that survey staff again be involved in the project. This involvement will include the supply of existing survey data and where necessary undertake additional foreshore detail surveys and advise the project team in matters concerning occupations and cadastral matters especially reclamations. Reclamations are to be handled with great care. Advice has been given to landholders that the revision is being undertaken and that authorisation of reclamations will be delayed until the revision is completed. It is probable that a more detailed investigation will be required with respect to reclamations, this will involve the staff surveyor.

Land Bounded by Tidal Waters (Crown land)

There has been a degree of misunderstanding when investigating and implementing actions relating to foreshore lands. This has resulted in the problem that many Licences and Permissive Occupancies where they still exist, have been and may still be issued over lands that may not be Crown land. There are also instances where reserves have been created over similar lands. This problem will continue unless action is taken to reconsider our current SLS foreshore licencing procedures.

Where the boundary of land adjoining tidal waters is defined as the Mean High Water Mark (MHWM), that boundary is an ambulatory boundary and is not fixed in time. Provided that changes in the position of the MHWM occur as a result of ***"natural, gradual and imperceptible accretion or erosion"*** then the title boundary moves. The ownership in such land varies with any corresponding changes in the position of MHWM as a matter of law, irrespective of the dimensions shown on any existing title deed or diagram. The decision of Attorney-General of Southern Nigeria v. John Holt & Co. (Liverpool) Ltd., 1915 A.C. 599 is from a point of law a precedent in the most explicit terms. "To suppose that lands which, although of specific measurement in the title deeds, were de facto fronted and bounded by the sea were to be in the situation that their frontage to the sea was to disappear by the action of nature to the effect of setting up a strip of land (be it yards, feet or inches) between the receded foreshore and the actual measured boundary of the adjoining lands, which strip was to be the property of the Crown, and was to have the effect of converting the land so held into an inland property, would be followed by grotesque and well-nigh impossible results and violate the doctrine which is founded upon the general security of landholders and upon the general advantage."

From time to time any party affected by MHWM boundary variation may apply for an amendment of title so as to reflect such variation on the title documents. It is not up to the Department to prove or disprove the reasonableness of any application for amendment of title, but more for the applicant to prove it beyond all reasonable doubt.

The reality of the above situation has been bought to the attention of the officers involved with the Lake Macquarie Foreshore Enhancement Project. There are hundreds of "unauthorized" structures attaching to properties adjoining Lake Macquarie. These structures include jetties, slips, ramps and reclamations / sea walls. Without evidence the SLS cannot assume that a structure built on land below the original deed MHWM is situated wholly on Crown land. In the Land Board case of Vickers, it is documented that in the Board's opinion it is an apparent injustice that an officer of the Crown should make an assumption, i.e. "the land appears to be Crown land", and then exercise a proprietary right over the land. The Department can identify by survey the position of the present MHWM and it can also identify by survey the position of the deed MHWM. Any difference between the two MHWMs cannot be declared "reclamation" and then be subject to authorization by way of licence. This will apply whether the land appears to be in a fairly natural state or has been altered by the construction of a seawall. Where it is possible to prove that the seawall or other structure is constructed below the title MHWM, then action should progress to authorize by way of licence. Where it is not possible to prove that reclamation has in fact occurred, then action cannot proceed until evidence is obtained, this may never eventuate.

With regard to the problem as it relates to sea walls or so called reclamations there are a number of issues that need to be considered:

* foreshore access, this land must be considered freehold unless we can prove that the position of the present MHWM would be on the landward side of the seawall. Access along the foreshore cannot be provided if the land is not Crown land.

* Previously authorized "freehold" land, the Department has been licencing and collecting rent for land that it may not have held any proprietary right.

* To continue to manage the foreshore of tidal waterways, the Department can choose to disregard existing structures that may or may not be on Crown land or allocate funds to undertake investigations, such as those required by the Surveyor General for amendment of freehold title, to collect the proof necessary to support a MHWM redefinition. A MHWM redefinition may show that for some areas the changes were natural, gradual and imperceptible and the structures are on freehold land while other areas were reclaimed.

Actions to authorize jetties, slips and ramps can be continued however, the area of Crown land occupied may not be precise due to the unknown extent of title. In regard to most jetties this will be small in comparison to the total structure.

Action is continuing to resolve the above problem so that effective management of the State's foreshore lands can continue.