



## **The People's LEP**

### **Port Hacking Protection Society Submission to Sutherland Shire Council**

The Port Hacking Protection Society supports the People's LEP, particularly in relation to foreshore protection. We believe that it is a necessary reform. We also believe that this reform has to be supplemented by a major reform of the practices of implementation, for it is failures of implementation that have drawn the current approaches into discredit.

This submission makes the following points, and provides supporting detail.

1. More effective foreshore protection is essential to protecting the ecological, economic and social values of Port Hacking. The sub-points we make are
  - a. Port Hacking is an estuary which is seriously under threat, in terms of
    - i. The basic biophysical processes that generate its richness.
      - Loss of seagrasses
      - Loss of marine biodiversity
      - Foreshore vegetation and habitat quality
      - Contaminant and sediment inflow
    - ii. The social qualities that generate value-in-use
      - Aesthetic quality of the foreshores
      - Community access
      - Low impact use opportunities
  - b. The erosion of the environment has significant implications for the community and its uses of the estuary
    - i. Recreational use and recreational use value
    - ii. Economic uses
      - Tourism
      - Property value and quality of life
      - Fisheries
  - c. The community has demonstrated the priority that it places on the protection of these values
    - i. Voting patterns and political activity
    - ii. Surveys.
  - d. The past foreshore development codes have failed the community
    - i. The visual evidence supports the bio-physical evidence;

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- ii. Private-benefit developments consistently prevailing over publicly owned property and use opportunities;
  - iii. Developments increasing high-impact use pressure on the estuary and low impact users, and creating demands for public subsidy.
  - iv. Failures to implement effectively
- 2. The LEP reforms are necessary, but are not sufficient to deliver this protection.
  - a. The litany of examples of failure of implementation
    - i. Northern shore examples
    - ii. Southern shore examples
    - iii. Public space examples



## **Effective foreshore protection is essential to protecting the ecological, economic and social values of Port Hacking.**

Port Hacking is an estuary which is under serious threat. There is substantial evidence of the degradation of the basic biophysical processes that generate its richness.

### **Proof of the loss of seagrasses**

*Despite the diversity of seagrass habitat in Australia, these areas have experienced severe and rapid declines in the past 40 to 50 years (Butler & Jernakoff 1999). In 1985 NSW contained around 154 km<sup>2</sup> of seagrass habitat (West et al. 1985; SoEAC 1996). However surveys in 1997 recorded only 15 km<sup>2</sup> of seagrass habitat (Kirkman 1997). (NSW SOE report 2001, Part 3.2).*

Port Hacking has suffered losses at the upper end of the scale of degradation, having lost over 50% for the whole of the estuary and over 70% for the main channels. It is demonstrable by scientific survey that the most extensive losses have been on the Northern side, associated directly with the effects of foreshore development (both direct impacts and the effects of smothering or loss of access to light). The most recent scientific evidence for this proposition is the studies of Williams (Fisheries NSW 2001, forthcoming publication). We have lost >70% of such beds in the main channels, and >50% overall. The major causes are boating impact, notably due to the requirements of deep-keeled vessels<sup>1</sup>. Of course, this degradation has been known to Council, Fisheries, DLWC and other agencies for some time though no strategies for its control have been agreed and implemented.

It is of particular concern that the relatively rare *Posidonia australis* communities within Port Hacking are in marked decline. This is also a consequence of the same development pressures, coupled with mooring and anchoring impact (which are in turn related to the patterns of waterway use that derive from the patterns of foreshore development).

Since the time of the Williams et al study *Caulerpa taxifolia* has invaded the Port, placing significant pressures on the remaining seagrass areas;

- a. There has been further development and no increase in protective controls.
- b. There have been many incidents of illegal development activities on the foreshores, which have resulted in further smothering of remaining seagrass areas.

It can therefore be expected that the loss of seagrasses is not abating and may be accelerating.

*Once lost, seagrasses do not readily recover. This loss may contribute to declines in the abundance and diversity of fish and invertebrates within the estuaries and nearby coastal zone. The seagrass *Posidonia australis* (strapweed) is particularly fragile and has not been known to recolonise areas from which it has been removed (NSW Fisheries 1998). Other common species, such as *Zostera* sp., will fluctuate seasonally in some areas. According to the 1995 State of the Marine Environment Report (Zann 1995), the decline of temperate seagrass is one of the most serious issues in Australia's marine environment. (NSW SOE report 2001, section 3.2)*

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<sup>1</sup> <http://ssec.org.au/EstMeehan.html>



### **Evidence of the loss of marine biodiversity**

There is evidence that the pressures on the estuary, including loss of habitats, is impacting on the biodiversity of the estuary. The most detailed evidence of the impacts of pressures is on juvenile fish species. Professor Ron West, University of Wollongong, conducted a detailed study of the Basin, to identify the impacts of ecological pressures on this important indicator site for the health of the estuary. A copy of this study ("Cabbage Tree Basin: Natural Values and Options for Management, commissioned by the Hacking River Catchment Management Committee, December 2000) can be downloaded in full from [http://ssec.org.au/hacking/html/fact\\_sheets.html](http://ssec.org.au/hacking/html/fact_sheets.html)

This study demonstrates that we are suffering species loss in Port Hacking, as with other estuaries along the central and southern coasts of NSW. It highlights habitat change including seagrass loss, and change to intertidal areas, as the source of the problems. Whilst the study deals with the Basin, the same conclusions can be said to apply to most (if not all) estuarine environments.

### **Proof of the loss of foreshore vegetation and habitat quality**

It is not necessary for the Society to adduce this evidence, since Council has had the benefit of a comprehensive foreshore study that bears out what community groups have been saying to Council for years. It also is the third in a series of studies that have tracked the same pattern of degradation, commencing with the foreshore studies accompanying the proposals for the Tomolo in the mid 1980s. The foreshores of Port Hacking are being systematically denuded, with the damage reaching down below the water line.

We have, in our confidential Attachment 2, provided an outline of some damage that has occurred, and is still occurring. Further, that attachment illustrates that much of the damage occurs with the knowledge of Council and continues notwithstanding

- proven breaches of development consent conditions;
- demonstrable illegality; and
- orders for rectification or remediation.

Also provided as attachments is a set of extracts of the Protectorate, which document from 1993 to the present, many instances of foreshore degradation and injury which have been reported to Council. There has been virtually no evidence of an effective response by Council on these matters, even the most blatant of breaches and illegalities. We find this very hard to accept or understand.

### **Evidence of contaminant and sediment inflow**

The harm that is apparent within Port Hacking is evidence of the impacts of contaminant and sediment inflow. There are further pieces of evidence in the literature. These studies<sup>2</sup> show

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Albani, A.D., Port Hacking tidal delta sediment study for the Hacking River Catchment Management Committee (1999)

Nelson, H., Port Hacking Northern bays issues and existing data unpublished (1997)

Patterson, Britton and Partners Pty Ltd, Yowie Bay Estuary Management Study and Plan Draft Report Issue No.2, Patterson Britton and Partners Pty Ltd (1997)

Patterson, Britton and Partners Pty Ltd, Yowie Bay estuary processes study issue 2 (1996).

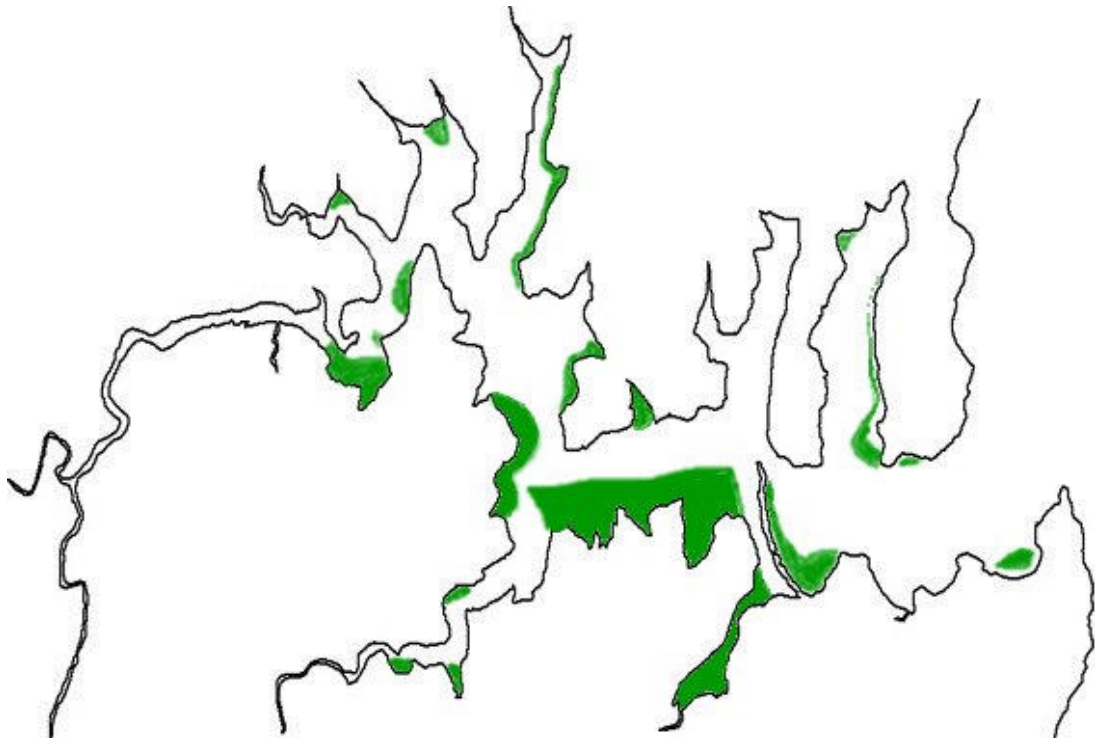


- a. substantial inflows of sediment from development sites, and from continuing runoff from denuded foreshore sites;
- b. the presence of heavy metals and other contaminants, which would seem to be sourced from foreshore runoff;
- c. the significant environmental harm that continues to arise from foreshore overdevelopment and poor foreshore development practices.

In principle, Sutherland Council has now put in place development guidelines to prevent the continuing replacement of natural flora with either hard surfaces, or exotic species. In practice there is very little evidence of any reduction in the rate of loss of indigenous foreshore environments. There are also many reported instances of un-remediated sediment inflow, some of which are noted in our Confidential Attachment.

### ***How poorly controlled development contributes***

The correlation between such environmental harms and the development practices on the foreshores are apparent from the maps of where seagrasses have been lost, and where sediment has entered the estuary. Basically, the more development that has taken place on the adjacent foreshores within Port Hacking, the less seagrass (and therefore submarine biodiversity) can be found.



The causal links are a little complex, and can be explained in terms of direct and indirect effects (which are closely interrelated).

Direct effects of poor management of the foreshores are those that arise from the immediate physical impact of excessive development, or poor development practice. These include

- a. the removal of foreshore vegetation at the time of original development;
- b. excavation, continuing in some instances to or beneath the waterline;
- c. disturbance of soil and subsurface water or other requirements of plants, resulting in death over time;



- d. Runoff during development, including sediment and chemicals, and over the life of the occupation of the site;
- e. loss of the understory, either as part of the immediate development or over time as the developed area is 'civilised', which removes lower level species, seed banks for regeneration, and habitat for fauna.
- f. Shading of seagrasses, and the removal or smothering of intertidal species.

The indirect impacts are insidious, and probably no less significant.

- a. use of the complete foreshore removes refuge areas for foreshore plants and animals, and increases the rate of harm from invasive species and predators;
- b. Intensive development of the foreshores and bays for boating purposes increases the use of large and powerful vessels, in turn adding to pressure on the declining seagrasses, and on other users;
- c. The "Miami-isation" of the foreshores is accompanied by changes in the mental model of the users of the area, reducing sensitivity to and appreciation of natural conditions, and encouraging uses that are increasingly harmful to the remaining environment.
- d. Chemicals and contaminants, from gardening the foreshores, from boating and foreshore activities, and from more distant locations, are no longer trapped and filtered, accelerating degradation of the estuary.

### **Summary of issues**

There can be no doubt that the foreshores of Port Hacking are in a dreadful state, and continue to deteriorate under the management regime that has been used by Port Hacking. There can be little doubt that this degradation does threaten the biodiversity and system health of Port Hacking. Recently, a range of groups provided a report card on the environmental management. Universally they have condemned the failure of the authorities to respect and protect Port Hacking and its foreshores.

Sutherland Council, and the NSW government, have policies which bespeak a firm commitment to sustainability and in particular the protection of Port Hacking. It would be impossible to believe that these policies are being honoured in the light of the continuing degradation of the foreshores and the estuary.

Council has an obligation to comply with its own stated policy commitments.

### ***Social costs of over-development***

The foreshores of Port Hacking are of importance beyond their economic value for a small number of (already privileged) developers. Much has been heard from the development and trading interests about how the proposed controls are contrary to their interest. These people have invested heavily to create fear of economic and other loss to all residents, even when the arguments that they use are palpably hysterical.

### **Over-development reduces value for others**

Existing residents, who seek to enjoy the natural condition of the place they have chosen to live, have an interest in constraining over-development and loss of views. One of the characteristics of property development in the Shire is that almost every time a developer proposes an exploitative use, there is outrage from the neighbours. These cries are the proof that there is a strong economic and social interest among existing residents, to protect the views and amenity of their area.



They are losing consistently in the courts and in Council because the existing codes are not effective. They will continue to lose if the LEP (and associated management improvements to make the code effective) are diluted.

It is possible to provide some indication of the economic value of this protection of amenity. High quality natural foreshore environments, close to urban areas, with good public transport, attract a premium. Studies by Costanza (the "father" of ecosystem valuation) suggest that this premium is typically as high as \$US40,000 (\$A80,000). In an inflated property market such as Southern Sydney, that premium is likely to be considerably higher. This is in addition to the (approximately) \$US20,000 per hectare<sup>3</sup> per annum which is the estimated ecosystem value of a healthy estuary with intact seagrasses and other habitats.

Ecosystem	Total value (US\$) hectare per year
Estuaries	22,382
Seagrass/algae beds	19,004
Coral reefs	6,075
Tidal marsh/mangroves	9,990
Swamp/floodplains	19,580

*Adapted from R. Costanza et al., 1997. "The Value of the World's Ecosystem Services and Natural Capital," Nature, Vol. 387.*

Recent correspondence with Professor Costanza has indicated that more recent works for the United Nations<sup>4</sup> show some of these valuations to be under-estimates of the worth of intact marine ecosystems and foreshore habitats.

It is enlightening to note that the pressure against the LEP is coming primarily from those who maximise their wealth through trading of other people's property. In effect they are seeking a wealth transfer from the 'stayers' (those who have an economic interest in sustainable use) to the 'traders' in the local property market (who have an interest in 'churn' in the use and transfer of property).

### Appropriation of public assets

The estuary is public space. Considering the public as a 'neighbour' and a collective 'owner' of this space puts the present debate into a different light. Much over-development involves

- a. inhibiting rights of access to this public space;
- b. reducing the amenity of the use of this publicly owned space; and
- c. (very often) direct encroachment into this space, with private facilities extending into the public lands.

This transfer from public to private interests occurs every time a developer avoids controls to protect public space, or manages to achieve permission (or passive

<sup>3</sup> The value of the world's ecosystem services and natural capital, Robert Costanza, Ralph d'Arge, Rudolf de Groot, Stephen Farberk, Monica Grasso, Bruce Hannon, Karin Limburg, Shahid Naeem, Robert V. O'Neill, Jose Paruelo, Robert G. Raskin, Paul Suttonk & Marjan van den Belt, NATURE, VOL 387, 15 MAY 1997

<sup>4</sup> Economic Reasons for Conserving Wild Nature, Andrew Balmford, Aaron Bruner, Philip Cooper, Robert Costanza, Stephen Farber, Rhys E.Green, Martin Jenkins, Paul Jefferiss, Valma Jessamy, Joah Madden, Kat Munro, Norman Myers, Shahid Naeem, Jouni Paavola, Matthew Rayment, Sergio Rosendo, Joan Roughgarden, Kate Trumper, R.Kerry Turner , 9 AUGUST 2002 VOL 297 SCIENCE



acceptance of) some facility that spans or degrades the public resource. A review of the marketing of foreshore development in the shire shows this type of appropriation to be endemic. Further examples are provided in the attachments.

We rightly expect access, amenity and ownership to be respected for private lands. The proponents of over-use of the foreshore do not respect these similar interests for lands where there are multiple owners (the public). The role of the foreshore protection aspects of the LEP is primarily to define and protect this public ownership interest, which has been substantially violated in recent years.

### **Foreshore degradation has secondary impacts**

The visual quality of the Port, and the richness of its environment, are important to its economic value. We do not have figures on the economic value of activities like tourism, purchasing by visitors, or other diffuse economic interests. Destination choice is a comparative choice – visitors will select those areas that offer the best environment for their intended use. Visual degradation of the foreshore environments, limited access to foreshores, and reduction in the fish biodiversity, are all threats to this economic activity.

### **Public access is important**

Council has, through its Port Hacking Plan of Management (which has been endorsed by Council and by State government agencies as the guiding plan for the estuary) committed itself to improving public access and public amenity. The LEP is a small part of what is needed to make this intent a reality. Watering down the LEP will be a retraction of part of this important policy.

### ***The community does want better protection of the foreshores.***

Hysteria has been engineered by the self-interested opponents of foreshore protection. The voice of those who care has been substantially silenced through confusion and intimidation. This could create the impression that there is little support for the protection of the estuary and the foreshores. Nothing could be further from the truth.

In every survey of attitudes<sup>5</sup> including those of foreshore residents, the constant message is of real concern for the degradation of the estuary and its foreshores. This has been constant over time.

In 1985, Sutherland Shire Council commissioned a survey of resident attitudes<sup>5</sup> to Port Hacking. That survey showed that for all classes of residents, including foreshore residents, the paramount concern that they had was to protect the natural beauty and ecological health. Above all, they did not want to see the creeping erosion of ecological values which they had already seen occurring, to continue.

In 1997, the Hacking River Catchment Management committee, concerned about claims by developers and the boating community about what people on the foreshores wanted to see happen with the management of Port Hacking, commissioned a door-to-door survey of attitudes of foreshore residents<sup>6</sup>. That survey, summarised in Attachment 3, showed that

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<sup>5</sup> Shanahan, P., A study of resident attitudes to Port Hacking - October 1985, Elliot and Shanahan research Communication and Research Psychologists 1985

<sup>6</sup> Hacking River Catchment Management Committee, Issues for the management of the Hacking estuary - foreshore residents' perceptions. Results of a survey of residents of the foreshores of the Hacking Estuary NSW Department of Land and Water Conservation 1997





- the dominant preferred uses of the estuary by foreshore residents were low-impact recreation
- the dominant concern was the protection of the estuary from

One could (perhaps) dismiss these views as merely theoretical, if the pattern of voting in the Shire had not so strongly indicated the commitment of the community to these values. In both local government and state government elections in recent times, the electorate has voted consistently against over-development and intensification of land use.

The details of these studies are provided in the July 1998 Protectorate, extracts of which are provided in the attachments.

### ***Foreshore development codes have failed the community***

The physical of photographs and reports of foreshore development code breaches is clear. The present codes and management practices of Sutherland Shire Council in relation to the foreshores have consistently failed to protect the environment, the interests of the majority (even including foreshore owners) and the public domain.

The 'paper trail' which highlights the way in which such matters have been handled procedurally or on the courts, shows a similar pattern of failure. It shows

1. The approval of foreshore developments which clearly violate the principle, if not the terms, of the foreshore development code and other controls;
2. Developers and property owners acting in breach of the Foreshore Development code, in breach of express development consents, and in breach of other controls over clearing, pollution and land use, with no effective control being exercised even when breaches are proven.
3. Private-benefit developments consistently prevailing over publicly owned property and use opportunities;
4. Developments increasing high-impact use pressure on the estuary and low impact users, and creating demands for public subsidy.

In past editions of the Protectorate we have documented instances of this. We refer you also to the Proceedings of The Estuary Forum held on 1 June 2002 at Gunnamatta Pavillion, Cronulla, <http://ssec.org.au/EstIndex.html>, and in particular the papers by West, Meehan, Cotis, Martin and Ridge. Each of these papers documents a different aspect of this failure to protect the foreshores and the estuary.

Further details of current instances are provided in the Confidential Attachment.

### ***The LEP reforms are necessary, but are not sufficient .***

The failures illustrated are the result of a number of factors, some of which are addressed by the LEP. The LEP should reduce the risk of successful Land and Environment Court challenges to council decisions. It should also clarify, and to a small degree extend, the ostensible protection of the foreshore zone.

For these reasons, we believe that it is important, and needs to be implemented.

However, many of the failures of the present codes are attributable to factors which the LEP will not address. Without a number of complementary reforms, we are not confident that the purposes of the LEP will be met. It is to these complementary reforms that we address our submission.



### ***Management of expectations and culture***

There is a prevailing expectation, created by past practices, that compliance is negotiable. This expectation has been fuelled by a number of considerations which need to be addressed in order to create a better outcome from the LEP.

- a. The low level of social responsibility and the high expectations of economic return which are demonstrated by local development practice. This is coupled with a poor understanding of best development practice, and a weak market demand for developers and vendors to demonstrate good practice and high level of social responsibility. Community attitudes largely determine how the market operates, and it takes a substantial amount of effort to shift attitudes and knowledge.
- b. the practice of granting of concessions to developers, on the basis that their economic interest will be harmed by failures to do so. This bald fact is obscured by the use of expressions like 'practicality' or 'unreasonableness'. A piece of land is a canvas on which a host of different constructions can be placed. The choice to buy or build, or to build a particular type of construction, is an expression of preferences and perceived opportunity. Any limitations of opportunity are not in the landscape per se. Similarly when considering 'restrictions' of zoning. Ownership rights are exclusively the rights granted by law, within the limits of that grant. If the law does not permit a certain type of use, that is not a restriction it is merely the boundary of ownership. Council and council officers will not be able to constrain unreasonable expectations unless they have a clear understanding of how their practice of giving concessions (formally or informally) fuels further demands for further concessions.
- c. A failure to recognise that public ownership is a clear, exclusionary property right. The past practice of deciding all ambiguity of public versus private rights on the basis that the public land is 'less owned' than the private land serves to encourage the creation of ambiguity, in order to extend the private landowners interest. Such a concept would not be accepted in conflict of right between two private landowners. To accept it when the conflict is between public and private lands is to invite ambiguity, confusion and conflict and to accelerate the erosion of public interests.
- d. Council has a culture of weak enforcement. This is not a matter that will be corrected by the LEP. It requires re-education, persistent pressure to become more rigorous, and an investment in the legal actions that this will take. The process of teaching the community that they will not get away with 'gaming' the system will not be easy, but it is fundamentally important to achieving the LEP goals.

### ***A broader approach to instrument design***

Sutherland Council, through the LEP, continues to place its faith in zoning as the key to environmental protection. Yet it is clear from the experience of Sutherland Council that this is not a sufficient tool to achieve its social and environmental aims.

The weaknesses of this tool include the failure of the Land and Environment Court (and Planning NSW) to support local government in their attempts to protect local environments, and the failure of Council to 'hold the line' on its own codes. From the many examples we have provided of developers clearly breaching the spirit if not the letter of Council's controls, a constant pattern emerges of 'negotiability' of compliance. This arises at all stages in the process

- a. Council officers negotiate deviations from the codes, often on the spurious basis that the application of the rules will result in some economic loss or amenity loss to the developer. This argument is spurious because the price of an asset at the



time of its acquisition includes whatever discounting is applicable because of legal or natural constraints. By granting various waivers, Council simply transfers value from the public to the individual, by way of an unearned gain.

- b. Council does not seem to sufficiently police compliance, either by way of detecting variation from approvals and conditions, or in acting once a problem is identified. Again, this pattern is amply demonstrated by the history of incidents highlighted in our attachments (and again with the recent #6 Shiprock Rd. incident). Perverse developers seem to be able to act with confidence that compliance is optional, or that breaches can be negotiated away in face to face discussion with Council officers.
- c. Once a breach is detected, the pattern is one of negotiation towards a claw-back of the harm rather than enforcement towards the pre-harm condition. It seems from our examples that the approach is to commence the negotiation from the now-created status-quo, rather than from the pre-breach condition. Compromise, or even decisions not to take action, are the norm.

One result of this is that the unscrupulous developer can be (and often is) advised to treat environmental protection 'rules' as negotiable guidelines, and to act on the basis of breach being an acceptable negotiation tactic that will generally result in an outcome that is better than compliance. This in turn continues a culture that makes any rules based structure of dubious value.

There are many local and international examples of better approaches. These include

- a. the use of contracts with landowners and developers, in which the penalties and costs of non-compliance are agreed up front, and the enforcement mechanisms bypass the Land and Environment Court;
- b. tradeable development rights, in which a total level of acceptable harm to an environment is agreed, developers purchase such rights through auction or other market mechanisms
- c. Absolute policing, in which breaches always result in action, and in which the performance of the officers is objectively measured in terms of compliance outcomes (independently audited).

It is not the place of this submission to argue in detail how these changes might be made, but we can say with confidence that in other jurisdictions zoning has been supplemented or replaced by other arrangements that are more effective than those operating on the foreshores of Port Hacking.

The Port Hacking Protection Society would be keen to work with Council if it decided that it wished to work out some more effective strategies.



## Attachment 1

### ***from the Port Hacking Protectorate: A decade of unsolved problems***

This set of attachments are extracts from the Port Hacking Protectorate, which in turn reflects a history of submissions to Council about issues and incidents of direct relevance to the LEP and the foreshores. In summary it can be said that the continuing degradation of the Foreshores has occurred not due to ignorance of the issues, but to a lack of willpower and effective instruments. In essence, without strong planning instruments **backed by a powerful will and adequate resourcing**, Port Hacking will continue down its path of accelerating decline.

- November 1993 We welcomed an integrated Plan of Management for Port Hacking. The issues identified then still remain and the need for urgency is even greater. That Plan remains un-implemented. The LEP picks up some of the issues, but needs to be supplemented with a powerful implementation and enforcement approach.
- August 1995 Issues for the Foreshore code. These issues remain the same, and have not been addressed. They are only peripherally addressed in the LEP.
- October 1996 Pesticides and Pollution sources. Some of these issues are addressed. The issue of boating sourced pollution requires more careful attention in the LEP. Notably the LEP should require full implementation of the Environment NSW Environmental Guidelines for Marinas, particularly as they relate to the prevention of contaminants entering the waters. A number of the boat servicing facilities in Port Hacking do not meet these standards (EPA has carried out inspections and details are available to Council).
- Data on the degradation of Yowie Bay. These problems are largely unchecked, and more degradation from foreshore construction has occurred.
- August 1997 More on the pollutants impacting Port Hacking. Many of these problems remain in the current management regime.
- December 1997 What Foreshore residents think. This study, from the Hacking River Catchment Management Committee, clearly shows that even among foreshore owners the dominant concern is protection of the environmental values of the Port. This message has been lost in the engineered opposition to the foreshore aspects of the LEP.
- March 1998 An illustration of the ongoing effects of poorly considered 'engineering' on increasing runoff and degrading the foreshore ecosystems. The impact this has on water quality and sediment ingress.
- July 1998 Information on the further degradation of the foreshores. A specific example of the type of violations of foreshore development controls is provided (once again from near Shiprock, purportedly the most environmentally protected part of Port Hacking).
- Identification of the effects of degradation and poor development on attitudes to the Port and the environment.
- November 1998 Further information on the effects of re-engineering on the ecological health of the foreshores and the estuary.
- Critique of the landscaping DCP. It would seem that these issues of under-story and intact habitat have not been addressed in the LEP.



- March 1999      An audit of the implementation of the Plan of Management for Port Hacking and related instruments including the Foreshore Development Code. The audit documents the failure of these instruments.
- The issue of moorings (private use of public lands). The LEP does not propose any mechanisms to prevent the further alienation of public space for private purposes, including moorings.
- July 1999        “How many plans?” A critique of the explosion of the instruments in use which have little impact in practice. The issue remains one of commitment and capacity to implement, and the choice of instruments. These problems remain with the LEP.
- Further examples of the degradation of Dolan’s Bay.
- “What does the community want?” A summary of community attitude surveys since 1985, all consistently showing that the community wants strong protection of the environment, and deplores the degradation of Port Hacking. This is also supported by voting patterns.
- May 2000        An example where cluster housing in Dolan’s Bay had the potential to improve environmental outcomes on the foreshore. The LEP proposes a blanket ban on cluster development. We do not believe that this is the optimal way to go, since properly designed cluster development does allow a greater potential to reduce the amount of infrastructures (hard surfacing) for a given density of housing.
- A study of Shiprock (now once again threatened by the failures of foreshore protection).
- Erosion, sediment and visual issues.

This longitudinal examination of the issues over time sits alongside the specific examples of current problems contained in our Confidential Attachment, to provide a clear indication that the current approaches have failed, beyond all doubt. The problems are not merely historical, they are current and (it would seem) accelerating. The evidence is all around us of the need for a more powerful protective regime.