

## **INQUIRY INTO CROWN LAND IN NEW SOUTH WALES**

**Organisation:** The Recreational Fishing Alliance of NSW  
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# The Recreational Fishing Alliance of NSW

## “Promoting Sustainable Fishing”

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GENERAL PURPOSE STANDING COMMITTEE NO. 6

Attention: The Chair, Hon. Paul Green MLC

Parliamentary Inquiry into Crown Land

24<sup>th</sup> July 2016

The Recreational Fishing Alliance of NSW (RFA) is the peak representative body for recreational fishers in NSW. It represents the interests of fishers in the management of the State's recreational fisheries, promotes sustainable fishing practices, encourages the participation of children and the disabled, helps secure rights to fishing access, encourages recreational fishers to become involved in the well-being of the fishery, promotes consultation and communication between government and recreational fishers and promotes fishing safety. The RFA is a not-for-profit, volunteer organisation supported by recreational fishing clubs, associations and individual anglers.

One of the greatest challenges facing anglers is securing, maintain and retaining fishing access.

The RFA continues to work with the NSW Government and various Agencies to consider how the future use and management of publicly owned Crown Land can meet recreational fishing access or use needs. The RFA takes a proactive role in retaining, maintaining and improving angler access to publicly owned fresh and saltwater fishing locations, as well as other public land that may be used to support recreational fishing, of fishers needs like fishing clubs, meeting rooms, infrastructure that provides access for able bodied and disabled fishers. The RFA is continually attempting to cooperate with managers from both the NSW Department of Primary Industries and the Land & Property Management Authority of NSW who often overlook and undervaluing the needs of anglers or the requirement to ensure and retain access to any fishable bodies of water.

The Alliance believes that the appropriate reservation of Crown land can ensure that angler access is secured for future generations, in addition to other uses of that land. Many are areas adjacent to Recreational Fishing Havens, National Parks and in water artificial reef reserves where public access is important.

The RFA will continue to work on preserving access to these irreplaceable, valuable public resources.

### **Fishing access to the sea, rivers and creeks**

At common law, the public has a right to fish in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to fish in non-tidal waters—the right to fish in those waters belongs to the owner of the soil under those waters. The public may also fish in non-tidal waters if the soil under those waters is Crown land. However in order to allow for angling access in NSW rivers and creeks, section 38 of the NSW Fisheries Management Act 1994 declares that the public has a right to fish *despite the private ownership of the bed of the river or creek*.

The NSW Fisheries Management Act 1994 No 38

Part 2, Division 5, Section 38

Right to fish in certain inland waters

(1) A person may take fish from waters in a river or creek that are not subject to tidal influence despite the fact that the bed of those waters is not Crown Land if, for the purpose of taking those fish, the person is in a boat on those waters or is on the bed of the river or creek.

(2) The right conferred by this section is subject to the other provisions of this Act.

(3) In this section, bed of a river or creek includes any part of the bed of the river or creek which is alternatively covered and left bare with an increase or decrease in the supply of water (other than during floods).

This legislation ranks above anything about 'old title' and the 'Queen's chain' access. Under this legislation the public can legally access streams by entering from public land such as road crossings and some types of reserves.

### **The Benefits of Active Use and Management of Crown Land in New South Wales.**

#### **Expenditure on Recreational Fishing in NSW**

The continued public access to Crown land and its role in providing fishing access is a very significant driver with regard to the economic benefit to NSW that recreational fishing provides.

The expenditure of an estimated 773,000 adult anglers in NSW in 2012 was:

- \$1.625bn on travel for recreational fishing trips, fishing tackle and boat-related items. This included \$186.1m of expenditure by Interstate visiting fishers. The total expenditure translated into the following impacts in the NSW economy:
- \$3.42bn of economic output;
- \$1.625bn added value;
- \$877.3m household income; and
- 14,254 full time equivalent (FTE) jobs.

The economic output for recreational fishing in all NSW was \$3.42bn with an associated employment of 14,254 equivalent full time jobs. These jobs are in the retail trade sector, hospitality, personal and other services and in the transport and storage sector. The value added was \$1.625bn, which is 0.36% of estimated gross state product in NSW. Household income from recreational fishing was \$877.3m in retail, finance and insurance, hospitality, professional and technical services and the wholesale trade sectors.

[http://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0009/499302/UOW-statewide-economic-survey-final-report.pdf](http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0009/499302/UOW-statewide-economic-survey-final-report.pdf)

#### **Health and Well-being Benefits of Recreational Fishing in NSW**

The benefits and active use of Crown land in NSW are "good for the mind and body" if we look a similar story from WA where a study has found that access to Crown land is good for society. In a story in the West Australian from the 30 December 2015, found the use of Crown land for fishing is good for the mind and body. A survey of more than 600 recreational fishers found relaxation and stress relief were the biggest health benefits from the popular pastime. Researchers from Curtin University's Centre for Excellence for Science, Seafood and Health conducted the survey, after a 2011 Australian study found fishing improved mental health and also reduced antisocial behaviour in teenagers.

The study surveyed 604 recreational fishers, 85 per cent of them male, from Esperance to Kununurra. Three-quarters of those surveyed said fishing helped them relax and de-stress, 69 per

cent said they enjoyed being outside in the sunshine and fresh air, and half felt fishing improved their fitness. One-fifth cited the nutritional benefits of eating seafood. Writing in the Australian and New Zealand Journal of Public Health, researchers said WA had one of the highest rates of recreational fishing, with one-third of people enjoying the pastime.

“The value anglers placed on recreational fishing was highlighted, with 79 per cent rating it as important or very important to their health and well-being,” the researchers wrote. “The benefits to societal health gained from a positive state of mind cannot be overstated. This has implications for the promotion of a low-cost, highly accessible individual or group activity, regardless of participants’ age or ability.”

<https://au.news.yahoo.com/thewest/lifestyle/a/30459721/go-fishing-its-good-for-relaxation-stress-relief-says-wa-study/#page1>

In another study on the benefits of recreational fishing, this study found that considerable health and well-being benefits can be gained through involvement in recreational fishing. Encouraging young children, youth, adults and families to fish offers healthful outdoor recreational activity that can be enjoyed throughout life. Benefits were evident for individuals and groups. Recreational fishing also provides significantly benefits to children and youth with behavioural and mental health issues. The major benefits identified were: youth development; social support; good mental health outcomes, behavioural management, rehabilitation of upper body musculoskeletal injury and reductions in stress and anxiety.

Seniors can also gain significant health benefits by continuing to remain active both physically and mentally through this enjoyable, low cost outdoor pursuit. Intergenerational transfer of knowledge and skills from seniors to younger generations is another major benefit that should be exploited by recreational fishing groups.

Access to Crown land is often the only way young children, families, the elderly can participate in recreational fishing.

<http://cessh.curtin.edu.au/local/docs/RecFishinglr.pdf>

## **The Adequacy of Community Input and Consultation Regarding the Commercial Use and Disposal of Crown Land**

### **What a Crown Road means to a freshwater angler**

Crown roads (also known as 'paper roads') are unformed public roads owned by the Crown that are bounded by private freehold land, mainly farms, and provide anglers and other users with legal access to waterways. These Crown roads are often just tracks, sometimes not in use and not even visible. Even if they are visible they are sometimes blocked by fences and illegal 'no trespass' signs. It can be difficult to know where they are unless you check maps at your local Crown Lands office.

In NSW there are tens of thousands of Crown roads that crisscross the countryside, providing access to waterways, public reserves and areas of Crown land. Many anglers use these Crown roads to access their favorite fishing spots. There are probably numerous other Crown roads that anglers could use legally if only they knew where they are.

The government is converting Crown roads to 'freehold', i.e. private ownership and many of these old Crown roads are not used by public vehicles these days, so some adjoining landowners like to legally make them part of their properties. This also suits the NSW government, which can sell these Crown roads to a landholder and receive the money. However a significant number of these Crown roads provide freshwater anglers with convenient and legal access to waterways.

These Crown roads belong to the people of NSW, once they are sold and converted to freehold they are lost to the public forever and there is no way to reverse the process. There is also no way to appeal this process if the government decides to sell the Crown road. The value of these Crown

roads to the people of NSW now and in the future greatly exceeds the value that the government will receive from their sale.

Conversion of Crown roads to freehold is not a new process—it has always been possible—and at any time there have always been Crown roads that were being processed for sale. However on 30 August 2012 Deputy Premier and Minister for Regional Infrastructure and Services Andrew Stoner announced that he had directed Crown Lands (part of the NSW Department of Primary Industries) to accelerate the processing in order to clear a backlog of applications. This was achieved by reducing timeframes for consultation and objections, processing applications in batches rather than one at a time and employing a large team of people to process the applications.

Advertising in just local newspapers, with a shortened period for objections, is not a satisfactory way of publicising these closures and consulting with the public—the real owners of the Crown land. The advertisements do not indicate what land or waterways adjoin the Crown roads, so the public really has no idea if the Crown road might provide access to a recreational fishing location. The current method of advertising does not provide adequate information for the general public to identify the location properly and make an informed comment on the closure. Understanding the exact location of many of these Crown roads requires access to specialised property databases that are not available to the general public.

The problem is worse for city-based anglers ... if they do not live in the districts in which the closures will be advertised, they have little chance of even being aware a Crown road closure has been applied for.

Anglers understand why many farmers want to consolidate these old Crown roads into their freehold property. It may be more convenient, may have security and management advantages and can add to the value of their properties. In many cases conversion of these Crown roads into freehold will not cause problems for anglers or any other users. But the Crown roads that provide important access for anglers and other waterway users are currently owned by the public and should stay that way. There is also a lot of potential access that has been concealed over many decades by landholders helping themselves to Crown roads, fencing them in, locking gates, putting up fraudulent signage asserting private property rights and abusing and intimidating members of the public, including anglers, who attempt to use the public land corridor (being a Crown road) to get to the river bank or reserve etc.





## What Crown Land means to a saltwater angler

There are major benefits of keeping Crown lands open to public access to encourage active use. Anglers in NSW have continually lost access to Crown land in saltwater locations throughout NSW for many years. This is often exacerbated in coastal cities and towns in NSW where almost all safe and easily accessible land based access is reduced by commercial interests, landholders or the myriad of managing agencies with very public anti-fishing agendas.

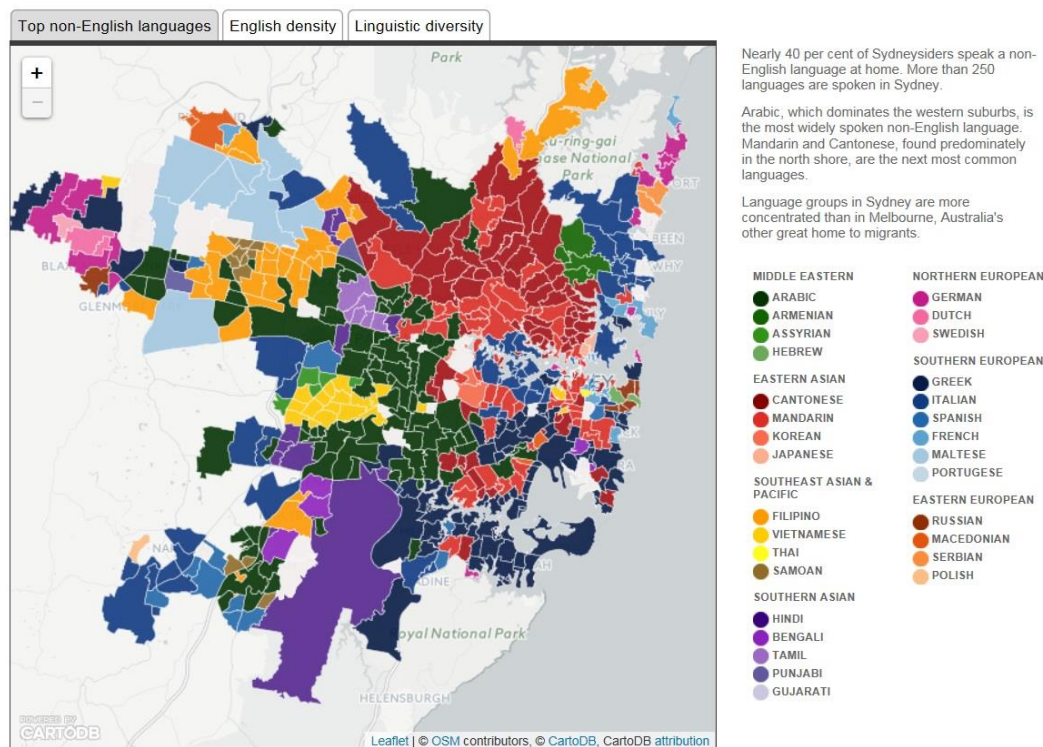
Loss of access is occurring in NSW National Parks, NSW Marine Parks, public spaces and reserves that impact land based anglers.

Wharves, piers and breakwalls are being closed to fishing every day, these are often on Crown land that has been sold off or leased without consideration to anglers' access and any attempt to negotiate access is refused. **(Attachment A)**

Unlike boat-based fishers that can up anchor and move, to a new spot, land-based anglers have limited locations to choose from and often are from a migrant and low socio-economic background that relies on fish to supplement the family's diet.

With approximately 30% of the NSW population being born overseas and many having a low socio-economic standing these anglers make up a huge percentage of land-based anglers that rely on access to Crown land to catch and eat fresh fish. The NSW Government conducted the last major assessment of recreational fishing in Sydney Harbour in 2008. An estimated 62% of fishing was conducted from land and 38% by boat.

Anglers have already lost access to safe and fishable Crown land under the Harbour Bridge, around Barangaroo, Circular Quay, around and under Woolloomooloo, Darling Harbour, the Opera House, the Botanical Gardens and the myriad of places they have lost access to as land-based fishers. Anglers are currently under threat of losing more of our land based fishing spots towards Balmain as well and potentially the NSW Government's dietary advice might change again and make fishing off limits in toxin-affected waters west of the Bridge.



### **Appropriate and Effective Measures for Protecting Crown land**

The Better Planning Network has similar concerns that align with recreational anglers' concerns with the way the NSW Government is proposing to change the way Crown land is managed. This includes the introduction of a business-orientated model and the transfer of Crown land to councils. As a consequence, this will see land being reclassified as operational land, or alternatively commercialised or sold off and the anglers of NSW will lose access to the waterways of NSW at the same time.

Crown lands must be preserved for the benefit of the community and our future generations. These lands are fundamental to our social, economic and environmental well-being and their management must conform to ESD principles.

By 2036, NSW's population is projected to increase by 2.2 million people. Yet Crown Land is increasingly being commercialised or sold off, when it needs to be retained and expanded.

The Inquiry is a critical generational opportunity for the Committee to recommend to the NSW Government that any Crown land sale must first recognise;

- The value of fishing - social, economic, health and well-being.
- That stakeholders directly rely heavily on an effective system of legal access through the Crown land reserve and Crown road network to access the State's waterways.
- That fishing has significant social, cultural, and economic benefits to the State of NSW.
- That anglers have identified that limitations on and a lack of recognition of use and loss of access to waterways is a major concern including the loss of access to traditional fishing grounds. Any limitation on use can impact on social or economic benefits for anglers and local communities.
- That due to the inconsistencies of management with councils across NSW that there are provisions to ensure that the current or ongoing management of reserves etc. by Local Government will be conducted in a consistent manner that benefits fishing stakeholders and the broader community.
- That if council management is implemented, the management of all Crown land remains consistent with the objectives of the Crown Lands Act and its obligations relating to the Fisheries Act, including disposal, use, licensing, leasing or permitting of Crown land areas and that the role, responsibilities, and governance standards of councils managing the land also takes into consideration the objects of the Fisheries Act and Fisheries Strategies.

The RFA asks the Committee to recommend to the NSW Government that a moratorium on the sell off or development of Crown and public land be implemented immediately, until such time as the report is handed to Parliament with sufficient time to consider and review the committee's recommendations.

## **Attachment A**

### **Loss of Access to Public land by privatisation or leasing Port Botany and Port Kembla Ports.**

Assurances were made by current NSW Ministers that access would be retained or increased during discussions with local recreational fishing clubs regarding the sale of the NSW Ports assets at Port Botany and Port Kembla.

Below is an extract from correspondence between the Hon Robert Brown and the RFA dated 1<sup>st</sup> May 2013 where assurances were given that access would not be lost to land based spots on the Port Botany Breakwall (Molineaux Point). Similar assurances were given to the Hon Rev Fred Nile in order to allow the passage of the sale through the NSW Parliament.

### ***Public Access to Port Botany Molineaux Point to be increased***

*Whilst we have been assured of public access for 99 years under the Port's lease conditions we would still like to see the details around this and negotiate further access to the Point to provide safer spots for rock fishers in the Bay. We cannot understand why the western arm of the Molineaux Point breakwall is off limits with razor wire. In the spirit of what the Hon Duncan Gay calls free access for the public and fisherman over the term of the lease, we would like to know why we have a razor wire fence at the turning circle and down to the water and why we cannot access the western side of the breakwall?*

*The security issues we imagine are the same as the rest of the Breakwall.*



*It would also be desirable for a fishing platform to be installed somewhere along the extreme south eastern end of Molineaux point. This is an iconic Botany Bay fishing location and while it offers a reasonably safe fishing option during most weather conditions it would be desirable if a fishing platform and a safer means of gaining access across the concrete pylons to the water could be initiated.*



## Public Access to Port Kembla

In 2016 Port Kembla was closed to night fishing under the misleading and deceptive pretence of fishing safety. During 2015 Molineaux Point at Port Botany was closed completely to fishing under similar deceptive pretences despite the assurances by the then Minister and still current Minister of Ports, The Hon Duncan Gay.



**Wednesday January 06, 2016 ILLAWARRA MERCURY 3**

Whilst recreational fishing representatives and NSW DPI-Fisheries staff have attempted to re-negotiate access, NSW Ports has refused to consider allowing access to the public to fish, and continues to justify safety as a main concern for refusing public access. Most logical and sensible arguments for safety would have to focus on giving anglers access to safe, well maintained and well-lit areas to fish from that are often alternatives to the ocean rock platforms that are adjacent to these breakwalls.

Public access has been denied despite assurance it would not and many safe fishing spots have been made off limits under the sale of NSW assets.

On Tue, Mar 8, 2016 at 8:42 AM, Jim Harnwell the NSW Saltwater Access Officer funded from the NSW Recreational Fishing Saltwater Trust Fund – wrote to NSW Ports:

Dear Wayne & Trevor,

Thanks for your time at our meeting on Tuesday, March 1. Stan and I were appreciative of the opportunity to meet with you both and discuss angler access issues. What I'd like to do here is outline the main points covered at our meeting with a view to progressing and formalising our discussions on angler access at Port Kembla and Port Botany. I propose to address each of these locations separately.

#### **PORT KEMBLA**

NSW DPI and the RFA appreciate and understand the safety concerns NSW Ports has articulated in regard to anglers accessing the Eastern Breakwater at night and during bad weather conditions. In order to alleviate these concerns, and in doing so allow for fair and reasonable angling access to this location, we propose the following as a six-month trial:

- \* That NSW Ports close the breakwall on receipt of an RFA "SafeFishing Alert" email and re-open when appropriate and/or as advised by relevant authorities.
- \* That NSW DPI provide information signage and education campaigns advising anglers of these access regulations as well as anti-litter information.
- \* That NSW DPI investigates the potential of compliance patrols of the Breakwall.
- \* That the RFA install an Angel Ring at the breakwall and provide rock fishing safety advice.

We are confident these compromise measures will result in satisfactory outcomes for NSW Ports and the local recreational fishing community. A six-month trial will allow the situation to be closely monitored and assessed by NSW Ports, NSW DPI and the RFA. If required, we can further investigate management initiatives recently developed by the Department of Defence, NSW DPI and fishing organisations to address issues of concern at Beecroft Peninsula. From all reports, the Beecroft situation has worked extremely well with the Defence Department and angling groups reporting very positive outcomes.

#### **PORT BOTANY**

As discussed at our meeting, it would be appreciated if NSW Ports would allow day time pedestrian access to the area of breakwall to the south-west of Molineaux Point Lookout. This section of breakwall offers safe and easy angling access, especially for families. Parking is available on Prince of Wales Drive.

A basic map with the area in question is attached. As discussed, funding may be available from the Recreational Fishing Trusts for construction of a fence restricting access to any sensitive areas alongside the breakwall if and when required. At present, about 1.6km of foreshore along Prince of Wales Drive is off limits to anglers. We are proposing land-based access to about 300m of breakwall to the south-west of Molineaux Point. Again, this access will be limited to daylight hours and pedestrian traffic only. We understand and accept that this access would potentially change if and when further developments by NSW Ports to the foreshore along Fishburn Road take place.

In closing, it would be appreciated if you could review the above initiatives and advise of any comments and suggestions. Ideally, we would like to see these ideas presented to your Board for discussion. Hopefully we will be able to work together to come up with mutually satisfactory outcomes.

Again, thank you for the opportunity to meet and we look forward to working with you in the future.

6 April 2016

## NSW Ports - Closure of Eastern Breakwater and Molineux Point

Dear Mr. Harnwell

Thank you for convening the meeting with the Recreational Fishing Alliance to discuss the above on 1 March 2016.

In response to your email dated 8 March, we understand and appreciate your commitment to providing safe locations for anglers to fish. Safety and security are high priorities for NSW Ports when determining appropriate public access arrangements for port lands. Your proposals for improved safety alerts, signage, compliance patrols and the installation of an "angel ring" at Port Kembla's Eastern Breakwater have merit in ensuring the safety of the people accessing the site. We support implementation of these measures to improve safety when the breakwater is open to the public.

NSW Ports Management has reviewed the closure of the Eastern Breakwater and Molineux Point and advise that our intention is for Molineux Point to remain closed at all times in the interest of safety and security. The Eastern Breakwater will also remain closed at night in the interests of public safety and safety of our staff and contractors. The review highlighted that it is more difficult to identify a rising swell and find safe escape routes to avoid large waves at night. The arrangement is also consistent with Prince of Wales Drive at Port Botany which is closed between sunset and sunrise.

The night time closure was also discussed in Port User Council meeting as well as our Port Safety Meeting. In December 2015, NSW Ports placed notices in the Illawarra Mercury, Wollongong Advertiser, NSW Ports' website and signage at the entrance to the Eastern Breakwater.

Yours sincerely,

Wayne Ashton

Operations Manager

NSW Ports Pty Ltd as trustee for NSW Ports Property Hold Trust ABN 25 674 171 329  
NSW Ports Operations Hold Co Pty Ltd as trustee for NSW Ports Operations Hold Trust ABN 28 792 171 144  
Port Botany Operations Pty Ltd as trustee for Port Botany Unit Trust ABN 25 855 834 182  
Port Kembla Operations Pty Ltd as trustee for Port Kembla Unit Trust ABN 50 132 250 580  
NSW Ports Finance Co Pty Ltd ABN 83 161 943 497