

Who OWNS the beach?



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Topics

- Assumptions
- Property Boundaries
- Coastal Works located in the Beach Fluctuation Zone
- Un-authorized Structures
- Public Trust Doctrine (S27)



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Assumption - We all Own the beach and surf zone



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Not necessarily so



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However, “Nature” knows who owns the beach



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The Beach Fluctuation zone

The “beach fluctuation zone” means the range of natural locations a beach profile occupies from its fully accreted condition to its fully eroded condition, with the landward limit defined by the escarpment resulting from the erosion associated with a 1% storm event and the seaward limit that is the 40m depth seaward of the highest astronomical tide for the open coast and 10m depth seaward of the highest astronomical tide for estuaries or tidal coastal lakes.



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Long Term Shoreline Recession



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Coastal Property Boundaries

Two coastal boundary types -

1. High Water Mark (Note MHW, not MHTM)
2. "Right Line" also called "fixed" survey line

Torrens Title defines ownership but not Boundaries

Real Property Act - real property exists above MHW

Courts have found that any land that falls below MHW
Reverts to the crown REGARDLESS of whether its
coastal boundary is MHW or "Right Line"

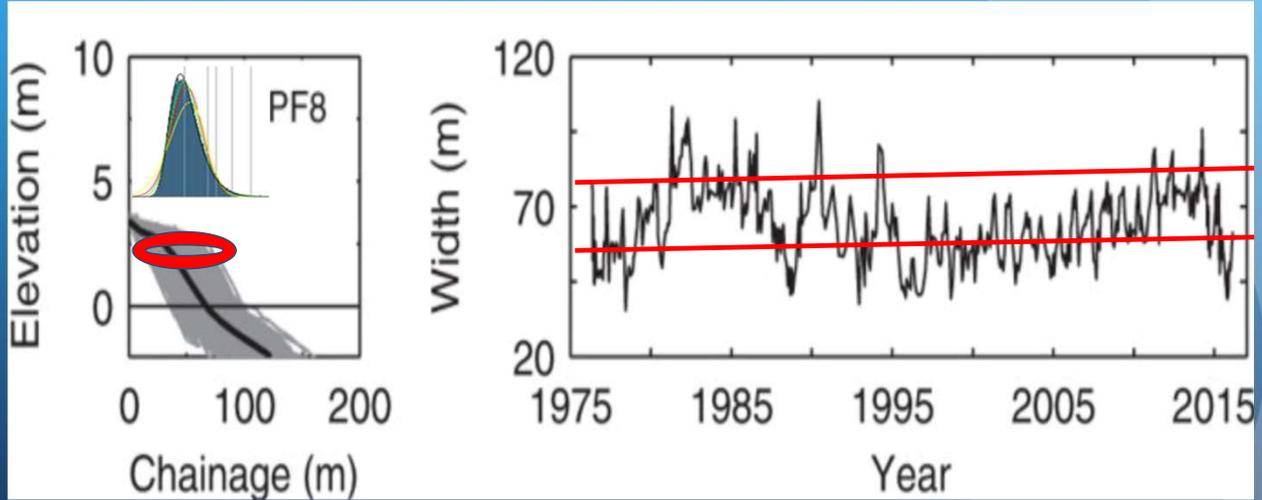
"Right Line" boundaries are also ambulatory



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Zone of MHWM variation due to beach fluctuations

- MHWM is NOT a single line



From Andrew Short's Collaroy profiles

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If you don't know who owns the beach how do you ensure owners consent ?



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Coastal Works located in the Beach Fluctuation Zone

The **common law rules** regarding reclamation of land by seawalls (“fixing”) a tidal water boundary indicate that the natural tidal boundary of MHW and hence the legal property boundary regardless of whether it was historically defined as being a MHW boundary or a “Right Line” boundary remains located where it was before works were done, and all ‘reclaimed’ ie filled land and or walls seaward of the old MHW are owned by the Crown **NOT** the adjacent landowner.



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Are some Coastal “Works” an **unforgivable legacy?**



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Unauthorised Works



Chief Judge of the LEC ruled that existing unauthorised works do not legally exist and therefore cannot be used to justify any proposed works



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Section 27 of the 2016 Coastal Management Act

Development consent **must not be granted** for coastal protection works unless the consent authority is satisfied that:

(a) the works will not, **over the life of the works**:

(i) unreasonably limit or be likely to unreasonably limit **public access to or the use of a beach or headland (including access over private land)**

(ii) pose or be likely to pose a threat to public safety, **and**

(b) **satisfactory arrangements** have been made (**conditions imposed on the consent**)

(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion occurs **for the life of the works** of the beach or adjacent land occurs

(ii) the maintenance of the works.

The arrangements referred are to secure adequate funding for the carrying out of restoration and maintenance, including by either or both of the following:

by **legally binding obligations** (financial assurance or bond) or :

by payment to council of an annual charge for coastal protection services

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Public Trust Doctrine - Right of Access

With increasing interest in the rights for both public and private use of beaches the PTD provides the approach to balancing the competing public and private interests. As S27 of the Act states: “any works must not unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland”. S27 is for works on any property public or private!

Climate change -

- Sea level rise
- Acidification



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Who Owns the Beach ??

remains a question without a robust answer



Pressingly, What Beach??

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