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Consumer Action in Boating

Review of Rental for Domestic Waterfront Tenancies in NSW
Independent Pricing & Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear **Sir**

RE **Review into Rentals for Waterfront Tenancies on Crown Land in NSW**

BOA is the peak recreational boating group in NSW and has operated since 1989. Many of our members are lessees of waterfront facilities appurtenant to private residences, and they spread throughout NSW,
Several of our members own waterfront access only properties at Scotland Island, Western foreshores Pittwater, Dangar Island, and Little Wobby Beach and upper Hawkesbury River.

Most of our membership belong to small sailing and boating clubs having waterfront leases for access to the waterways. Those clubs typically conduct learn to sail courses and youth training and development programs. Any action which increases the affordability of these classes and programs is to be resisted **as** contrary to the public interest. To increase their waterfi-ont rental costs in the range of 500% pa, will result in many such classes and programs ceasing. Does anyone measure the community cost of such foreseeable consequences?

We believe that the proposed rental structure will reduce the waterfi-ont accessability to recreational boating, over time. The flow on is likely to increase the cost of recreational boating as there is a parallel with rental reviews of commercial leasing of marina sites etc.

The Background and the Formula proposed by the Department of Lands ("Lands") and the Waterways Authority ("Waterways") **is** fundamentally flawed because:-

1. <u>It omits the public review (and outcomes) of domestic waterfi-ont rentals conducted by Waterways December 1992</u>
   The review proposed linking waterfront rentals to a percentage of the value added to an appurtenant freehold by the lease of waterfi-ont facility. The review entailed a mail-out to all customers, invitation to comment and a number of public meetings. The review resulted in the proposal being dropped. The findings were

(a) leases were limited to 1 or 3 years (maximum) which is insufficient to amortise the cost of a $50,000 jetty with an average life of 50 years
(b) there was no "market" rent because the tenant was prohibited from sub-letting the facility to third parties and from transferring the lease on sale of freehold
(c) the proposal was *"moving the goalposts"* --- changing the rules without a phase-in, and changing the reasonable expectations of property purchasers

2. It involves Double Counting and Double Dipping
The rental formula proposed in the Attachment to Terms of Reference includes "Valuer General's Statutory Land Value (of adjoining waterfront precinct)".
Section 6A of the Valuation of Land Act 1916 (as amended) provides that **land below the high-water mark held under licence (or lease) from the Crown is deemed equivalent to freehold land and is included in the valuation of the adjoining land. A** letter from the Valuer General, LPINSW confirms this and is consistent with VG valuations including details of waterfront licence/lease.
However the proposal before IPART would factor in adjoining waterfront values to rentals.
This is double counting and would result in double dipping.

3. It is contrary to prudent management and stewardship of public land
The lease and licence fees per sq metre charged by Waterways, and the permissive occupancy fees per sq metre charged by Lands have been unchanged for between 10 and 12 years. CPI has not been applied.
Now, Waterways and Lands propose to increase those fees by an average of 500% in one hit.
Is this prudent management and stewardship of public land?
What would be IPART's response to an application for 500% across the board increase in ferry fares, bus and train fares or water, power and electricity charges? What would PART say to the same providors if they had held prices and charges unchanged for a decade?
What would be the likely finding of Fair Trading or a Rental Tribunal if residential tenancy rates were unchanged for 10 years and then increased 5 fold in the 11th year? What would tenants say?

4. There is no tenure and there is no market
The Terms of Reference to PART (4. Scope of the review, para 1, first point) tasks the Tribunal to consider *"aligning rental returns to reflect and maintain their **market** value."*
The current Waterways Lease* provides
Clause 11 says that the **lessee shall not assign, transfer, sub-let, mortgage or share possession** with any person (there is not even an exemption in this clause for the lessor to give prior consent on sale of adjoining freehold)
Clause 9 says that **before the end of the lease** term or any ensuing tenancy, the **lessee shall without notice from Waterways remove the lease structures at its own cost and without compensation**

The combined affect of these clauses and the maximum term being 3 years, is that there is no tenure and no transferability. There is no market.
How can there be a market if the lease cannot be traded, is *3* years and a typical jetty structure which cost $60,000 must be removed before lease-end?
* standard wetland Deed of Lease issued by Michell Sillar solicitors for Waterways in 2003.

5. Unsustainable assumption on rate of return on residential waterfront properties
Page 3 of the Review states that *"the Department (Lands) and Waterways indicate a six percent rate of return is consistent with analysis of investment returns from residential properties rented throughout NSW and court decisions."*
No evidence is provided.
We assure you that 6% pa is unrealistic and unattainable.
For example, in Sydney, a residential waterfront property valued at $2.5 would need to be rented at $150,000 pa or $2,884 per week to return 6% gross pa.
The evidence of a registered property valuer experienced in Sydney properties indicates the actual return to be between 1.5% and 2% per annum, or less than a third of what is proposed by Lands and Waterways.
We understand that a registered valuer's figures and research data will be submitted to IPART, but after the closing date for submissions, due to need to collect data.

Alternative Proposals

1. Genuine not for profit organizations which provide education and youth training and development programs should only pay the lease administration fee. Examples are sea scouts and rowing and sailing clubs provided they do not have entertainment, bar or gambling facilities.
2. Properties which have access by boat only, should have the lease administration fee applied to the jetty and boat mooring facility because safe access is a necessity of life. The fee should apply irrespective of whether the jetty is 2 metres or 20 metres in length. Shallow water access properties requiring a longer jetty should not be disadvantaged.

Yours faithfully

Michael Chapman

MICHAEL CHAPMAN
President
23 November 2003