Review of Rental for Domestic Waterfront Tenancies in NSW
Independent Pricing & Regulatory Tribunal
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or

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Dear Sir,

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

I am the lessee or licensee of waterfront facilities from Waterways at Northbridge and the leasehold improvements are boatshed, pontoon and slipway contained in an area lease of 80 sq metres., which we have leased from Waterways in excess of 45 years.

Please be aware that a very similar review of waterfront rentals was undertaken by the Waterways Authority ("Waterways") during November and December 1991. The review set out with the objective of linking wetland lease rental to the value of the adjoining freehold land.

What that review vividly illustrated is that wetland value is a function of depth of water and amenity to use the waterway. It is not a function of the value of the adjoining freehold land. Quite simply --- deep water is more valuable than shallow water, and deep water can occur in front of low value freehold land, just as shallow water can occur in front of high value freehold land. Also, wetlands protected from high winds and wave action are more valuable than unprotected waters because wetberthing a vessel and accessing a jetty may be impossible in exposed areas during adverse weather.
In layperson's language – a long jetty is needed in shallow water and a short jetty in deep water. In shallow water, a wetberth is virtually useless because a vessel will sit on the bottom and damage its propellor or topple over, causing more damage.
The water depth has not changed along the harbour foreshores since 1991. You are no doubt aware that it is an offence to dredge without an approval and virtually no approvals have been granted since then.

The 1991 review is not referred to in the IPART paper.
Why? Is it because the findings contradict the objective of Waterways to link wetland rent to freehold land values?

The outcomes from the 1991 review still pertain today to wetland rentals for residential use from Waterways.
The same lease/licence structure with a maximum of 3 year term and conditions which give no right to transfer and which provide that structures be removed before end of lease or licence without compensation, still appear in Waterways documentation in 2003, as in 1991.

The 1991 findings were not anticipated when the review was undertaken. I suggest the same findings might be identical, if not similar in 2003.
The findings have been obtained from the then Managing Director of Waterways who is prepared to verify the following by sworn statement or direct evidence to the Tribunal, if called upon:-

In 1991 Minister for Transport, Bruce Baird directed the Waterways Managing Director to implement a *rental pricing policy for Sydney Harbour wetland which recognized the increase in value that waterfront structures added to the appurtenant freehold.* This is similar to the terms of reference before IPART and the claimed linkage between freehold value and leasehold value.
The 1991 review consisted of a mail-out to all customers, an invitation to comment and several public meetings. The review resulted in the proposal being dropped. The findings were

(a) There is no causal linkage between freehold value and waterfront leasehold value. In many cases the reverse is true – eg..(the review found) some Rose Bay waterfront freeholds had very high values due to closeness to CBD and direct views to the Harbour Bridge and Opera House. However these freeholds had no deepwater at the harbour frontage and therefore required long jetties which were accessible only at high tide (typical area of rented wetland required for jetty 16m x 1.5m = 24sq m), whereas similar size freehold allotments at Vaucluse, with no such views and lower freehold value per square metre, had deepwater at all tides and only needed very short jetties (3m x 1.5m = 4.5sq m of wetland rented for jetty). In summary, a Rose Bay jetty typically needed 500% more rented wetland than a jetty at Vaucluse, but the freehold value per square metre at Rose Bay was more valuable due to views and closeness to CBD. Some waterfront properties have deepwater and others have frontages so shallow that jetties are very long and boatberthing is virtually impossible. Yet the Waterways Authority's proposed rental policy treats us all the same way. This is indeed strange for the authority having responsibility for navigation.
(b) Wetland 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
(c) There is 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; the lease provided that all improvements must be removed prior to lease-end without compensation
(d) The proposal is "*moving the goal posts*" --- changing the rules without a phase-in, and changing the reasonable expectations of property purchasers

Minister Baird then directed Waterways not to proceed with the proposed policy but to apply a rate per square metre of wetland based on the value of wetland, bay by bay (as opposed to the value of appurtenant freehold). The rate was to be adjusted annually by CPI and a factor was to be applied according to the type of activity or development. Those activities included reclamation, swimming pool, boatshed, slipway, jetty and wetberth. The highest rental factor was for reclamation.

Since 1993 Waterways has frozen these rates and has not adjusted or even applied CPI to them. I believe there are presently 8 different precinct areas applying a rental value to each varying from $3.50 to $15.50 per sq m depending on the location. I understand that 117 different precinct rates per square metre are proposed to be used by Waterways comprising streets with similar freehold land value. However I believe a more fair and equitable policy would relate rental rates to wetland amenity, to the use of the leasehold with some relationship to land values in the precinct, but related more directly to

(a) availability of deepwater
(b) protection from high winds and wave action for safe berthing and navigation.

I believe the system currently used by Waterways is basically correct, excepting for the omission of (a) and (b) and the failure to apply CPI annually. If CPI had been applied each year, the rates would still be reasonably fair and accurate today, because water depths remain unchanged in 11 years.

Conclusion:-
The rental should be based on

1. the type of activity or structure on the leasehold (higher rate for boatsheds and lower rate for decks and reclamations to reflect ease of passage by the public along the intertidal zone)
2. the value and amenity of the wetland leased (water depth, and protection from adverse winds and wave action/fetch) in the bay or area

My comments on the proposal put forward by Waterways and Lands:-

1. <u>It involves Double Counting and Double Dipping</u>
   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 <u>deemed equivalent to freehold land and is included in the valuation of the adjoining land</u>**. 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.

2. <u>It is contrary to prudent management and stewardship of public land</u>
   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 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 IPART 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?

3. There is no tenure and there is no market
The Terms of Reference to IPART (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.
I assure you that 6% pa is unrealistic and unattainable.
For example, in Sydney, a residential waterfront property valued at $2.5 million 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 Waterways.
I 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. If I could have a 50 year lease, and if I had the right to transfer the lease on sale of my home, then I would probably agree to the proposed rental arrangement. That would be fair and equitable
2. Because I have no tenure and no right to transfer and no opportunity to amortise my structure, I can only support the current rental arrangements being continued based on the formula arrived at for Sydney Harbour and adjusted bay by bay in my area. However in fairness, I would consider CPI being applied from next rental year and to the existing rental base being

increased by CPI (Commonwealth) for the past 10 years as a "catch-up" caused by apparent mismanagement.

Other issue

I draw attention to the Terms of Reference and "limited ability to pay". We believe that self-funded retirees and pensioners should be required to pay only a fee to cover lease administration ($300 pa plus GST) unless of course they apply to change or modify the leasehold.

Yours faithfully

Ronald Ewen

Date: 4th December 2003.