The Chairman,
Independent Pricing and Regulatory Tribunal of N S W
P O Box Q290,
QVB Post Office,
N S W 1230.

3rd December **2003.**

Dear Sir,

I have, very recently, heard that you are undertaking a fundamental review of the lease arrangements for reclaimed land on the Harbour Foreshore, and wish to bring to your attention a number of points relating to our particular lease, to which I hope you will give consideration.

If more time were available for submissions, which I am told have to be with you by 5th December, I might have arranged for this submission to be made by my solicitor, but in the circumstances I must ask you to accept that the presentation may not be as professional as I would have wished.

I feel that I must start by briefly explaining some of the history of this reclamation.

When we bought the adjoining land in **1963** the vendor had already entered, together with his neighbour, into an agreement with the Maritime Services Board to erect a seawall to reclaim a small indent in the foreshore. We understood, then, that the Board were keen to have these small areas reclaimed because they collected quantities of refuse which they had to collect at no little expense.

The rental was therefore very low, £8.00 for our section, which covered administrative expenses. This was raised to **$40.00** in **1983,** presumably because of increased clerical costs.

We obtained permission from the Board to build a swimming pool behind the wall, submitting our plans to them, and, for information only, to the Woollahra Council. We understood that, provided we kept the pool and its surrounds in good order, there would be no limit on the duration that the structure could remain, and that any future owner would be able to enjoy the amenity on the same terms.

In **1975** we were asked by the Board if we wished to buy the reclaimed land. Our Neighbour had already bought his half of the reclamation as the offers were being made progressively, going west out of the bay. We were in the midst of agreeing a price when suddenly a moritorium was called on all sales.

Then, in **1986,** the Board decided to raise the rentals considerably, to **$2696.** An increase of over **67** times. Then in **1989** they announced that rentals were to rise yet more. In our case to **$11,270.** We had to pay at this rate for several years, but finally the outcry about this imposition was such that a lower figure was agreed in **1993,** following advice to the Board from the Valuer General. This was a rental that we decided we could pay and remain in our house, which we had designed and built and brought up ourchildren in. As they said in "The Castle", 'Not just a house, a home'.

The rental was much more than we would have agreed to if we had been asked for it at the time the seawall was being built, and before we constructed the pool, but with our expensive outlay unable to be retrieved, we had been driven into a position where we were left with no alternative.

In **1990** we gathered that the Board would be prepared to sell reclamations, like ours, which were isolated from public access, and of no possible use to the Board, but they wanted the neighbouring Councils to agree that the sale could go ahead.

Woollahra Council placed a blanket refusal on all such transfers, and repeated efforts to persuade them to change their minds failed to produce a result. There was a scheme to build a walkway along the foreshore from Neilson Park to Vaucluse Bay, and they would not see that a small triangular piece of

land, which would be about 2 metres above the existing shore level, would be of no use to them. Indeed, such a walkway would have produced an ideal escape route for burglars, a place for drug users to inhabit at night (away from police surveillance), and a very high and continual maintenance expense, and therefore had little practical chance of ever being realised.

In 1995, the Council at last agreed to examine the status of the various reclamations, and a sub-committee produced a report dividing the reclamations into three categories. Those which adjoined existing public areas, and could be incorporated into them easily; those which might, at some future time, be able to be of value to the Council; and those which were isolated and of no foreseeable use to them. Our reclamation fell into this last category.

At the Council meeting where this was considered it seemed that the Committee recommendation that we should be allowed to buy was about to be agreed, when one of the owners, in one of the borderline cases, raised the point that he should get the same permission. The Council decided that it would be easier to say no to everyone, and we were back where we started.

We are still hoping that we may be able to buy this land, and such a purchase would rationalise the anomalous position created by a length of seawall which at present retains a privately owned piece of land along half its length, and a rented Board owned piece along the remaining half.

Clearly we would not have contemplated paying for a reclamation which would leave us with the public sitting at the bottom of our garden. We would have left the ground at its lower level, and built our pool on the next level up.

Bearing in mind the foregoing, we are sure you will appreciate our alarm at being informed that there would be no assured right of transfer if we sold our property. This would leave us, or the purchaser, in the position of having to remove the pool, and be encumbered with a piece of waste ground which the Waterways Authority would be unlikely to maintain in reasonable condition.

We also understand that the new regulations would give the public the right to enter on this land. If our pool were there we could have them using our pool. As well as the very obvious objections to this, there is also the point that we could not accept responsibility for the safety of such persons.

We have always thought it important to maintain a fence on top of the seawall so that we could not be held to have led anyone, especially young children, to endanger themselves by using the pool when not supervised. Your committee will, we are sure, be aware of the claims that have been made against Councils etc in recent years, and if such a condition were imposed on us we would have to insist that we were fully indemnified, and that all insurance costs be met by the Board.

We understand that there are about 86 conditions on the licence, some of which are burdensome and not normal residential conditions. We believe that one of these conditions is that future licencees are not permitted pools. We have stated above our objections to the unreasonable suggestion that we could not transfer the use of the pool when the licence was transferred to the new owner of our land: but it may be that this is meant to imply that permission will not be given for new pool construction.

We believe that in order to ensure that future administration of the licences is fair, licensees should have access to the Department of Fair Trading, like any other normal tenant, or that some other suitable safeguard should be available.

Under the Valuation of Land Act we are already rated on this land as if it were part of our freehold, because its presence is an element in the SLV. On top of this we are also subject to the Special Land Tax, so we pay an amount of this tax which is incurred because of the added value of this land which we have not been permitted to own.

The Waterways rentals are subject to VAT, unlike all other rentals and rates. Thus we are paying an additional **10%** on the assessed rental, maybe to a different government entity, but still to the State in one form or another.

Valuing the reclaimed land at 0.5 of the valuation per square metre of the adjoining property is a reflection of the fact that this piece of land is not of equal value to the remainder of the property. If there had been no reclamation we would still have had a waterfront, albeit without all the complications that have since harassed us, and we would still have had a swimming pool, and this without any question as to whether we could transfer it with the sale of our house.

Thus we can say, with some emphasis, that we would not have considered any reclamation if we had had any intimation of the restrictions and rentals to which this was going to make us liable .

The suggestion that the rental should be **6%** of this valuation, is manisfestly excessive. Few, if any, landlords can obtain anything approaching this amount on the valuation of their property, and on top of this they have to pay rates, insurances, maintenance, and, usually an agent. The Waterways Authority will be collecting a rental on a facility that they did not have the expense of building, on which they have no maintenance cost, and on which they will expect their tenant to pay for any insurance expenses.

I hope that you will reassess this percentage to be nearer to the figure of about 2%, which would be the maximum that most landlords would clear on property rented in this area.

We would have liked to have been fully informed of the changes which are contemplated. Instead we have only heard of what is being planned through the Foreshore Owners Association. Luckily we are members. But there will be many who have dropped out of this Association during the relatively calm period, which has lulled us into an, apparently, false sense of security.

We receive quarterly accounts for our rental, and we would have thought that it would have been reasonable to assume that, if radical changes were planned, we would have been notified as to their extent, and given time to obtain expert opinion. Some will probably only hear of this when they receive their revised conditions. I am sure you will feel that this is far from satisfactory.

Summarising, our principle objections are:-

(1) Possible restrictions on the transfer of existing facilities, bearing in mind the above history, and the impracticability of removing the amenity without threatening the adjoining freehold property.
(2) Possible right of the public to traverse the land, and consequent **loss** of our amenity and privacy, and an insurance liability that would be entirely the Board's responsibility as we could not supervise **use.**
(3) Possible conditions of which we are not fully informed at present, and therefore cannot contest.
(4) **No** outside authority to which we could appeal in future.
(5) The short time available for consideration, and complete lack of information or notice that any changes were being contemplated.
(6) The amount of rental that this new method of assessment may involve.

All of the above problems would be resolved if we were permitted to purchase this small area of land at a reasonable price, to the benefit of ourselves, the Waterways Authority, and the Council.

Yours truly,

Mrs P M J Foulsham.