Review of Rental for Domestic Waterfront Tenancies in NSW
Independent Pricing & Regulatory Tribunal
PO Box Q290
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Dear Sir

Re: Review into Rentals for Waterfront Tenancies on Crown Land in NSW

We are all lessees of waterfront facilities from the Crown on the Lane Cove River

Some of our lease/license references are adjacent to our addresses listed on the attached Addendum "A" of this submission.

We have become aware of the above review, not by direct notice to lease or license holders, a list of which would have been simple to obtain from the three lease/license-issuing Government bodies, but mainly through our own personal contact with friends and acquaintances. Although it is, in general matters, an accepted way of communicating, it has not been a common practice for a matter as significant as a completely new base method of assessing value by a Government body, to give notice by way of an advertisement on only one occasion.
This would indicate that IPART will have great difficulty in obtaining widespread submissions from all affected residents, in order to carry out a full and fair inquiry into any review of this nature.

Prior Reviews of this nature.
We draw your attention to the outcomes of a very similar review of waterfront rentals undertaken by the Waterways Authority ("Waterways") during November and December 1992.

During that review, it was determined that wet-land value is a function of depth of water and amenity to use the waterway. 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.
It is not a function of the value of the adjoining freehold land.
The review findings recognised that a long jetty is needed in shallow water and a short jetty in deep water. In shallow water, a wet-berth may only be used for a restricted period of the day/night due to the tidal levels.
The water depth has not changed along the harbour foreshores since 1992 and most users of the waterways are aware that it is an offence to dredge without an approval. Virtually no approvals have been granted since that time.

The 1992 review is not referred to in the IPART paper.
Why? Is it because the findings contradict the objective of Waterways to link wet-land rent to freehold land values?

The outcomes from the 1992 review still pertain today to wet-land 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 1992.

The 1992 findings were not anticipated when the review was undertaken. We suggest the same findings might be identical, if not similar in 2003.
The findings have been obtained from the then Managing Director of Waterways (Mr Chapman) who is prepared to verify the following by sworn statement or direct evidence to the Tribunal, if called upon:-

In 1992 Minister for Transport, Bruce Baird directed the Waterways Managing Director, Michael Chapman to implement a *rental pricing policy for Sydney Harbour wet-land 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 1992 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 – e.g. (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 wet-land 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 wet-land rented for jetty). In summary, a Rose Bay jetty typically needed 500% more rented wet-land 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. Here on the Lane Cove River, some waterfront properties have deepwater and others, in the same "homogenous" precinct, have frontages so shallow that jetties are very long and boat berthing 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) Wet-land 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 the head of Waterways, Mr.Chapman not to proceed with the proposed policy but to apply a rate per square metre of wet-land based on the value of wet-land, 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 wet-berth. The highest rental factor was for reclamation.

Since 1993 Waterways has frozen these rates and has not adjusted or even applied CPI to them. We believe there are 117 different rates used by Waterways, comprised of different use rates and also, different bay/wet-land area rates.

We believe the system currently used by Waterways is basically correct, excepting for the failure to apply CPI annually. If this had been done, the rates would still be fair and accurate today, because water depths remain unchanged. The wet-land lease rates are directly related to the area leased, the type of activity or use, and to the amenity offered. The wet-land rates are not related to the value of the adjoining freehold.

Conclusion:-
The rental should be based on

1. the function or activity carried out in the leasehold *
2. the wet-land value and amenity (depth) in the bay or area

** highest rate could be a boatshed through to the lowest for reclamation or deck, to reflect the degree of limitation of public access.*

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

1. 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 license (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 license/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. It is contrary to prudent management and stewardship of public land
   The lease and license 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 on 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 reaction would be from tenants?

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 wet-land 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, *"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 believe 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 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 the need to collect data.

Alternative Proposals

1. If a lessee could have a 50 year lease, and if that lessee had the right to transfer the lease on sale of the adjoining property, then *it may be acceptable to agree to a model based on the proposed rental arrangement*.
However, the proposed "homogenous" precinct averaging would require considerable and expert assessment in line with the findings of the 1992 review.

2. Because there is no tenure and no right to transfer and no opportunity to amortise any structure, there could only be support for the current rental arrangements being continued based on the formula arrived at for Sydney Harbour and adjusted bay by bay in the lease area. It would be considered agreeable that the CPI be applied from next rental year and that the existing rental base be increased by CPI (Commonwealth) for the past 10 years, as a "catch-up" caused by apparent mismanagement.

Other issues

- 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.

- If it be recommended by IPART that new leases have to be drawn to accommodate any new fee structure, the associated costs should not be the responsibility of the lessee.

- Should the formula be adopted with any relativity to SLVs, a limitation of calculated annual fee increase should be applied, on similar lines to the limit imposed on Local Councils with annual Council Rates income.

- It is important to the integrity of the findings of this inquiry that the anomalies existing in areas, particularly the Lane Cove River, such as rules limiting the length of structures below high water mark to 13 metres on properties almost adjacent and certainly within the same "homogenous" precinct to others without the limitation, either be removed or the disadvantage be shown to have been taken into account in the assessment calculation.

We reserve the right to make further submissions on these and other issues pertaining, after the date of closure of submissions, due to inadequate allowance given for preparation of evidence.

Yours faithfully,

Richard Griffin

(and for and on behalf of those listed on Addendum "A")