

30 November 2003

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

Submission in respect of the Issues Paper (Discussion Paper DP71) regarding the review of rental for domestic waterfront tenancies.

We support in principle a rental determination methodology that is:

- objective
- transparent
- relates to market value, usage or “user pays” rather than ability to pay.

The rental formula in the IP does not satisfy these requirements and is inappropriate for the reasons set out below.

1. 6% p.a. investment return from residential properties is inappropriate:
 - a. 6% p.a. average returns are unachievable in the current market. Data can be obtained from the Real Estate Institute for NSW as to the level of returns on various types of property but our own experience is that 2.5% p.a. is the level in today’s market.
 - b. The subject licences are effectively for the sub-marine land excluding improvements; the capital cost and maintenance of those improvements are for the account of the licensee. The return on residential property (i.e. land plus dwelling) cannot be applied to other types of property and is equally unsuitable to the determination of rent on sub-marine land as it is to commercial property, laneways, roads etc. Typically vacant land yields a lower return than residential property and this is not fully compensated by the arbitrary discount of 50%
 - c. Residential property yields are determined in a free market situation and cannot be translated to the rental rates for waterfront tenancies, which
 - i. are administered as a monopoly with artificial constraint on supply,
 - ii. do not take into account that there is a virtually unlimited natural supply of locations for waterfront facilities,
 - iii. have adjacent property ownership requirements to qualify for a licence, and
 - iv. impose restrictions on the nature and extent of leasehold improvements, usage and sub-licensing.

- d. The rental yield does not take into account the relative utility or accessibility of the facility e.g. low tide access, type of facility or the availability of utilities.
2. The Valuer General's Statutory Land Value (SLV) of dry land in the adjoining precinct is inequitable:
 - a. Items 1 b and c above apply also to values determined in relation to a particular parcel or precinct of land being applied to different kinds and uses of land.
 - b. In our precinct there is waterfront reserve and privately owned land adjacent to the wetland. Our property at the above address runs to the mean high water mark of Woodford Bay but approximately a third is zoned Residential Open Space Reserve. This zoning prohibits any construction and in this context has two impacts. First, the average value of the land adjacent to the wetland (the ROSR) is inflated by the value of that part of the property that can be developed. Secondly, the ROSR zoning has been used by Waterways as a means to restrict the utility of our waterfront tenancy and prevent our full and quiet enjoyment of the licence. This impacts negatively the value of the tenancy, or the rental yield, or both.
 - c. The use of a land valuation determined by reference to the value of adjacent dry land is an insidious way of achieving what has been outlawed by weight of public opinion in respect of Land Tax. It is clearly a wealth tax; the rent bears no relation to the nature, utility, accessibility or other attributes of the licence.

3. Rental applied to the designated area of the licence may be inequitable:

The determination of licence value and rental based on nominal area is already unfair and inconsistent with the current rental and terms of the Lease, but will receive greater scrutiny if rents are increased.

Our tenancy includes significant Reclaimed Land situated between the boundary of our property (the mean high water mark) and the boatshed. Although our Lease specifically provides that the area is to be used for private purposes, this Reclaimed Land is the only means of public access, other than trespassing on private land, to that section of the foreshore of Woodford Bay.

In these tenancy situations a hefty increase in rent, as proposed by the Issues Paper, might give rise to indirect consequences which will disturb an harmonious *status quo*. It would be appropriate for the Tribunal to consider a different rent rate or valuation to apply to tenancies that are not entirely for private use.

In the absence of this concession, we will consider either applying for reduced area of tenancy or taking action to deny public access to the Reclaimed Land, thereby cutting foreshore access by the public, thereby frustrating a long held aspiration of the State Government regarding foreshore access.

Under the terms of the Lease, removing the Reclaimed Land from the lease would oblige us to remove the Reclaimed Land itself, an act that would also make foreshore access for the public very difficult.

4. The objective to match rentals with the “efficient costs” of administration is clearly going to impose an increasing burden on the available pool of licence holders. First the cost of public administration typically rises faster than the rate of inflation and if waterways land rises at a rate similar to other Sydney property then matching revenues with costs will guarantee declining efficiency. Secondly, the Minister and Waterways have a well-publicised program to reduce the number of private waterfront tenancies and therefore the predominantly fixed costs of administration will need to be borne by a reducing population of tenants.
5. The basis of tenure and conditions of the tenancies needs to be reviewed for consistency and equity.

Waterways apply different rules for determining what is acceptable in different locations in Sydney Harbour and exploits a very restrictive definition of the term “development”. In Woodford Bay for example, on the eastern side pontoons are allowed, but not on the western side. In some parts of the harbour boat sheds have full facilities and unrestricted use.

The zoning of part of our land as Residential Open Space Reserve affords them the opportunity to prohibit any design changes to the facility, as this would be development adjacent to Reserve.

Yours sincerely

Doug & Kay halley