5th December 2003

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

Dear Sir

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

As a committee member of the Boat Owners Association, a Hon. Life Member and past Commodore of Avalon Sailing Club and active supporter of other Sailing Clubs and Sailability in Pittwater I would like to support all other submissions forwarded to you regarding the above item which has become of great concern to many.
In particular, and using Avalon Sailing Club of which I have been a member and volunteer contributor for many years as an example, you may care to consider the following thoughts.
This Club, similar to many other clubs, have provided learn to sail programs for children for half a century on the waters of Pittwater. It also provides youth training and development programs.
The Club leases wetland for launching and clubhouse facilities built by members, which is typical of many family and community-based sailing and small sporting clubs.
Most clubs pays a modest rental, which in tight budgets together with insurances and other cost create a significant financial drain on members and activities.
Most of the Club's training activities are supported by volunteer coaches, because of scarcities of funds.
However, if the proposed rental formula is applied to the leasehold, then it is assumed that the rental will be a function of surrounding residential land values. Yet the Club has no connection with or use as a residence.

If the proposed rental formula is applied to the leasehold, the Club will be unable to sustain the 500% estimated increase, and I believe that ail of the learn to sail and youth training activities at the Clubs and in most areas will slowly but most certainly, be priced off the water.

Avalon Sailing Club together with similar volunteer clubs in Pittwater and elsewhere provides significant benefits to the local and state community.

To demonstrate the COMMUNITY NET BENEFIT of a club's activities, may I suggest that the assumed rental value be reduced by the appreciable value of the impute of voluntary labour which gives the CNB in lieu of employment costs that otherwise may have to be meet by local or state governments.
To audit such CNB each Club should be required to keep records and lodge annually with the lessor: -

*(a)* a record of the number of person hours involved in coaching and training whether employed or volunteer, and attach a $ value to same including the commercial value if voluntary labour
(b) a record of the number of students and youth who have learnt to row, sail or achieve skills applicable to the sport.
(c) a record of the number of student hours spent in sailing and rowing or achieving skills activities at or from the leased facility

This recording and reporting requirement can be incorporated in the lease conditions and required to be emailed to the lessor within a month of the end of the financial year. The Authorities can then report in its Annual Report the statistics of youth training and development it has supported during that reporting period in return for granting concessional rentals.
In this way the Authorities and the State Government can quantify the social benefits and the notional cost of its support of youth and sporting education programs.

I am aware that a Sydney metropolitan council already conducts such a 'Community Net Benefit' program and an associated reporting regime, which applies to its leases to

(a) surf lifesaving clubs
(b) sporting clubs
(c) community clubs
(d) bushfire fighting facilities operated by volunteers

Full details of this successful scheme can be made available if required.

I would also like to draw to your attention the outcomes of a review of waterfront rentals undertaken by the Waterways Authority ("Waterways") during Navember and December 1992.

The review demonstrated that clubs providing learn to sail or row and youth training and development programs could not exist, or could not support their current services if a commercial or market rent were applied to the wetland leases for their waterfront facilities.

The outcomes from the 1992 review still pertain today.
My comments on the proposal put forward by Waterways and Lands as applicable to wetlands leased appurtenant to residences: -

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 licence (or lease) from the Crown is deemed equivalent to freehold land and is included in the valuation of the adjoining land.
   However the proposal before PART would factor in adjoining waterfront values to rentals.
   This is double counting and would result in double dipping.

1. 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 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 providers 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?

2. There is no tenure and there is no market
   The Terns of Reference to IPART (4. Scope of the review, para 1, first point) tasks the Tribunal to consider *"aligningrental returns to reflect and maintain **their market value.**"*
   The current Waterways Lease* provides
   Clause 11 says that the **kssee 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.
6% pa is unrealistic and unattainable.

CONCLUSION
Sailing clubs, rowing clubs, sea scouts and schools etc providing learn to sail/row classes and youth training and development programs should only be obliged to pay a lease administration fee. This is subject to no entertainment or gambling on the premises.
Such clubs could be required to record and report annually to the lessee on the COMMUNITY NET BENEFITS of concessional rentals.

Yours faithfully

D. Lyall .

David Lyall PSM

Date – 5th December 2003