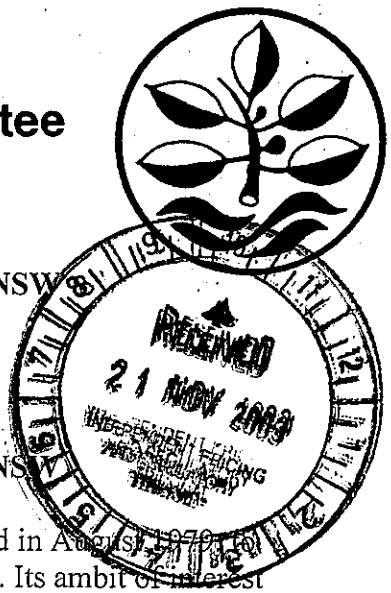
Bob Burford

Sydney Harbour and Foreshores Committee



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

The Sydney Harbour and Foreshores Committee was founded in August 1970 to work for the protection and enhancement of Sydney Harbour. Its ambit of interest extends from Port Jackson to Middle Harbour and the Parramatta River. Membership includes a range of waterside Councils, community organisations, and individuals.

Our interest in the Review is founded on our general support for the maximum practical public access to the foreshores of the Harbour and its tributaries, having regard to its public ownership and its icon status for Sydney. The content of this submission was endorsed by the Committee at its 19 November 2003 meeting.

Impact of domestic tenancies

Domestic waterfront tenancies privatise the waterfront, essentially for the purposes of the adjoining landowner. (In that regard, they differ from commercial tenancies, which extend the use of the waterfront to their customers generally.)

Domestic tenancies have important environmental and amenity impacts.

We assume they add recognisable value to the adjoining dry lands for tenants, who would otherwise surrender their leases.

However, domestic waterfront leases tend, generally, to *reduce* value from the perspective of the general public. They obstruct public passage along the foreshores, and replicate structures such as boatsheds, jetties, and piers, pontoons, reclamations and retaining walls, often very near - but not necessarily continuous with - others of similar kinds. In so doing, they fragment the marine ecology of their neighbourhood, with environmental dis-benefits that are not always well-recognised.

An inclusive approach to public access across or along their leases by several tenants can effectively be negatived by another tenant refusing public access across or along a single lease.

The fragmented location of leases and the variety of improvement types present a discontinuous array of property boundaries and a jumbled, disjointed edge to the Harbour. This has adverse impacts on visual amenity and creates uncertainty about access rights for users of the waterways and foreshores.

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Policy context of the Review

The August 1997 *Statement by the Premier of New South Wales* was a forerunner to the main New South Wales planning instruments regulating Harbour development. The Premier stated that 'protection of the Sydney Harbour foreshore is an issue of State and National significance'. He emphasised the guiding principles of the Government, with objectives including the maximisation of public access to, and use of, land on the foreshore, and the requirement that 'any change in foreshore land use should protect and enhance the unique visual qualities of the Harbour'.

State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries was gazetted in August 1998. Its guiding principles statement includes the following:

> 7(a) increasing public access to, and use of, land on the foreshore,.....
> (g) the protection and improvement of unique visual qualities of the Harbour, its foreshores and tributaries.

Amendment No. 1 to State Policy No. 56 was gazetted in April 1999. Its provisions include:

> (3) This Policy aims to amend the Principal Policy:
> (b) to ensure:
> (i) that the public are able to have unrestricted access to, and use of, the foreshore public domain...

SydneyRegional Environmental Plan No. 23 – Sydney and Middle Harbours sets out the Government's aims and objectives for the Harbour. They include,

> 2(1)(c): to ensure that the Harbours and their foreshores are developed and promoted as a community asset.....
> 2(1)(e): to recognise, protect and enhance the natural, scenic, environmental, cultural and heritage qualities of the land to which this plan applies....
> 2(2)(c)(iii): to improve access to the waterway and from the waterway to foreshore parks....
> 2(2)(f)(i): to protect and enhance the landscape and special scenic qualities of the Harbours; and
> (ii): to ensure that adequate consideration is given to the visual impact of development....

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2(2)(f)(i): to protect and enhance the landscape and special scenic qualities of the Harbours; and
(ii): to ensure that adequate consideration is given to the visual impact of development....

- the protection and improvement of unique visual qualities of the Harbour and its tributaries; .....

The principles and intents of these instruments are reflected in the local environmental plans and associated development control plans of the harbourside councils.

Altogether those plans make it clear that the Government's policy setting encourages public access, and discourages avoidable exclusions from access, to and along the foreshore lands.

The *Sharing Sydney Harbour Access Plan*, prepared by the department of Infrastructure, Planning and Natural Resources and the NSW Waterways Authority, was published in August 2003. The Plan's *Vision* is stated (at p.8) as,

> *To improve public access to and enhance the recreational enjoyment o Sydney Harbour and its tributaries for the people of Sydney and visitors to the city.*

The perpetuation of exclusive domestic tenancies would not usually be consistent with that vision. The encouragement of non-exclusive tenancies would progress the vision unambiguously.

Importantly, the Plan for Access Improvements incorporated in the *Sharing Sydney Harbour Access Plan* includes a commitment in relation to inter-tidal access, to the effect that t*he Waterways Authority will ensure that no structures impede access for pedestrians* (p.14).

All of the above policy and plan purposes and principles are consistent with our support for the encouragement of non-exclusive access domestic wetland and foreshore tenancies, in place of the present exclusive tenancies. We think rental structures should embody those principles.

The basis of rental charges

We note that the wetlands owners wish to ensure that rents more accurately reflect current market values for adjoining dry land, and that they propose a formula approach based on the statutory land values assigned by the Valuer General, as used for municipal rating and land tax.

The Tribunal's *Issues Paper* (DP71, October 2003) notes that there are issues relating to **administrative cost recovery** in lease administration. We think administrative cost recovery might best be addressed by the imposition of a base charge component in lease rentals. That component would be a type of access charge, common to all leaseholders and reflective - when applied to all leases - of the total cost of their administration. It should not constitute part of the nominal return to land value.

A second component might vary between tenants, being reflective of **land values** and constituting a return on land value, as proposed by the owners. The wetland owners' approach does not envisage any component in the rental to compensate for the adverse environmental and amenity impacts of private use of the public estate. We think rentals should include such an explicit element. It could perhaps be most readily implemented as an addition to the adopted nominal rate of return to land value.

We anticipate that the Tribunal would apply its normal criteria to the determination of an appropriate **level of return** to the assessed value of the wetlands involved.

Rental structures

As is evident in the Government policy instruments listed above, there is a large and growing element of public interest in the return to the public of foreshore lands that have been alienated over time, including those leased to domestic tenants. This is especially active in the Harbour foreshore areas.

Generally, it suggests that the approval of additional exclusive domestic leases should be avoided where practical, and the resignation/surrender of existing exclusive leases should be encouraged. One vehicle for that would lie in the rental structures for leases.

We see considerable merit in and scope for the provision of a non-exclusive lease provision, and a corresponding rental incentive to tenants for the extension of public access to leased lands, and where appropriate to the structure(s) on them. A review of public risk insurance requirements might well be appropriate in that context.

Where the sole access to a property is by way of the water, we think it is not appropriate for the access to be privatised under an exclusive tenancy. Rather, public access should be expressly retained. Depending on the circumstances of the case, this might be managed by a non-exclusive tenancy, with appropriate rental adjustment, of the kind we suggest above.

Equity issues

The Tribunal has directed attention to issues concerning the **capacity of tenants to pay** rentals for wetlands leases.

We note that, generally, the structures on and uses made of domestic wetland leases might be seen as optional. Surrender of the lease may be an option if rentals rise to unacceptably high levels.

A rental structure that included a non-exclusive occupancy provision, with a corresponding rental adjustment, would provide a vehicle for the extension of lower-than-'normal' rents to those who found 'normal' rents too high but who wished to retain use of the lands.

A facility for rental payment by instalments, comparable with that available for council rates, would provide a useful facility to assist tenants who might otherwise find annual rental payments burdensome.

We see obvious benefits for tenants and owners in the establishment of a rental review system that is predictable, simple, and appellable where appropriate.

Assuming rentals are fixed partly by reference to adjoining land valuations, and given the appeal procedures that accompany the normal land valuation cycle, a similar appeal/review procedure to that available for rates and land taxes valuation disputes would be readily applicable for the valuation underlying wetlands rental components based on land values.

For the base charge component that we advocate, normal freedom of information and accountability procedures should be sufficient for people to satisfy themselves that the component is accurately reflective of administrative costs divided among all tenants.

The assessment of whether those administrative costs are themselves fair and reasonable might best be left to the Tribunal, for review at regular intervals. We think a useful cost benchmark might lie with local councils in their administration of rates.

Michael Rolfe
Chairperson
20 November 2003