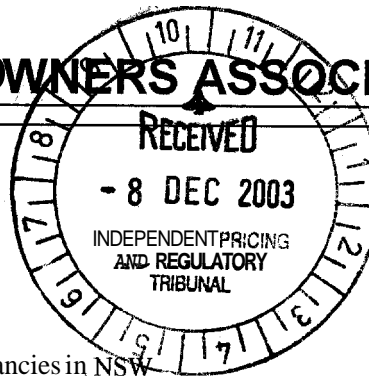


THE FORESHORE OWNERS ASSOCIATION INC.



P O Box 132
Edgecliff NSW 2027

Phone: (02) 9363 5199
Fax : (02) 9327 1033

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

4 December 2003

Dear Sir

Our Association was formed in 1991 and represents over 100 foreshore owners in Sydney's eastern suburbs. At that time considerable discussion and persuasive argument was provided in respect of proposals to dramatically increase rentals by the Waterways Authority.

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

What that review vividly illustrated is that wetland value is a function of depth of water and amenity to use the waterway. It is not a function of the value of the adjoining freehold land. Quite simply --- 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.

In layperson's language - a long jetty is needed in shallow water and a short jetty in deep water. In shallow water, a wet berth is virtually useless because a vessel will sit on the bottom and damage its propeller or topple over, causing more damage.

The water depth has not changed along the harbour foreshores since 1992. You are no doubt aware that it is an offence to dredge without an approval and virtually no approvals have been granted since then.

The 1992 review is not referred to in the IPART paper.

Why? Is it because the findings contradict the objective of Waterways Authority to link wetland rent to freehold land values?

The outcomes from the 1992 review still pertain today to wetland 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 the end of the lease or licence without compensation, still appear in Waterways documentation in 2003 unchanged from 1992.

The 1992 findings were not anticipated when the review was undertaken. The same findings might be identical, if not similar in 2003.

The findings have been obtained from the then Managing Director of Waterways who is prepared to verify the following by sworn statement or direct evidence to the Tribunal, if called upon:-

In 1992 the then Minister for Transport directed the Waterways Managing Director to implement a *rental pricing policy for Sydney Harbour wetland 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 includes cases where the reverse is true

- (a) There is no causal linkage between freehold value and waterfront leasehold value eg. (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 wetland 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 wetland rented for jetty). In summary, a Rose Bay jetty typically needed 500% more rented wetland 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. Some waterfront properties have deepwater and others have frontages so shallow that jetties are very long and boat berthing is virtually impossible. Yet the Waterways Authority's proposed rental policy fails to differentiate. This is indeed strange for the authority having responsibility for navigation.
- (b) Wetland leases were limited to 1 or 3 years (maximum) which is insufficient to amortise the cost of (say) a \$50,000 jetty with an average life of 50 years
- (c) There is no "market" rent because the tenant is prohibited from sub-letting the facility to third parties and from transferring the lease on sale of freehold; the lease provides that all improvements must be removed prior to lease-end without compensation. There is in fact no "market" for the leasehold area as the only buyer or lessor of interest is restricted to the adjacent freehold owner due to access reasons. The lease is virtually without value because of the extreme restriction placed on it due to the requirement of the landowner's (Waterways) consent.
- (d) The proposal is "moving the goal posts" --- changing the rules without a phase-in, and changing the reasonable expectations of property purchasers

The Minister then directed the head of Waterways not to proceed with the proposed policy but to apply a rate per square metre of wetland based on the value of wetland, 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 wetberth.

Since 1993 Waterways has frozen these rates and generally has not adjusted or even applied CPI to them.

We understand that Waterways currently work on eight different area precincts applying a rental value to each varying from \$3.50 sqm to \$15.50 sqm dependant upon location and general land values. More recently we understand that there have been 117 precincts identified by Waterways comprising streets with similar freehold land values. The proposed rental values should be related to the wetland amenity, the use of the leasehold with some relationship to land values in the precinct but related more directly to availability of deepwater, protection from high winds and waves for safe berthing and navigation.

The current system used by Waterways is basically correct, excepting for the failure to apply CPI annually. If this had been done, the rates would still be reasonably fair and accurate today, because water depths remain unchanged. The wetland lease rates are directly related to the area leased, the type of activity or use, and to the amenity offered --- the wetland 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** (e.g. boatsheds have highest rate and reclamations and decks lowest rate per square metre having regard to the degree of obstruction to public access and possible alienation)
- 2. the wetland value and amenity** (depth, protection offered from wind and wave and navigability etc) **in the bay or area**

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 licence (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 licence/lease. However the proposal before PART 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 licence fees per square metre charged by Waterways, and the permissive occupancy fees per square 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 PART 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?

3. There is no tenure and there is no market

The Terms of Reference to PART (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 effect 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.

It is a fact that 6% pa return 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 real estate agents experienced in Sydney foreshore properties indicate the actual return to be below 2% per annum and more commonly below 1%, or considerably less than a third of what is proposed by Waterways.

We anticipate further evidence to support this being submitted to PART, but after the closing date for submissions, due to need to collect data.

Alternative Proposals

1. If a 50 year lease was available with the right to transfer the lease on sale of the adjacent freehold home, then some consideration of the proposed rental arrangement would be warranted. That would be fairer and more equitable
2. Because there is no tenure and no right to transfer and no opportunity to amortise any structure, we can only support the current rental arrangements being continued based on the formula arrived at for Sydney Harbour and adjusted bay by bay in each area. However in fairness, we would consider CPI being applied from next rental year and to the existing rental base being increased by CPI (Commonwealth) for the past 10 years as a phased in "catch-up" caused by apparent mismanagement.

Other issues

We draw attention to the Terms of Reference and "limited ability to pay" and believe that self-funded retirees and pensioners should be required to pay only a basic fee to cover lease administration (say \$300 pa plus GST) unless of course they apply to change or **modify** the leasehold.

We further believe that there should be a right of appeal to a higher and independent authority covering many matters such as where the lessor's consent to assignment is unreasonably withheld etc.

Yours faithfully



BARNEY REMOND
PRESIDENT