

W.E.A.R. Inc

Waterfront Environment Action Reform

17 November 2003

IPART Submissions
Attention: Bob Burford

Review into Rentals for Waterfront Tenancies on Crown land in NSW W.E.A.R. Inc. Interim Submission

BACKGROUND:

What is W.E.A.R.:

W.E.A.R. (Waterfront Environment Action Reform Group Inc.) is a non profit community organisation which was formed in 1998 as the official body representing the owners of some 1,000 residential properties in the Hawkesbury River, Pittwater and Berowra Creek areas who have no road access and who rely solely on water access to reach their homes. These areas are all within Greater Metropolitan Sydney yet typically have no access to public transport, no rubbish collection, no mains water or sewerage, no local shops, medical services, school or libraries and in some cases, no mains power. W.E.A.R. Inc., was formed as a direct result of dissatisfaction with the way WAO property owners were treated in dealings with DLWC. The basis for this dissatisfaction is detailed in a W.E.A.R. Inc., submission to the Ombudsman dated 19th September, 1999 (Appendix A).

Access:

Owners of water-access-only (WAO) property typically live on the shore of a tidal river system in isolated bushland environments with inherent bushfire dangers where the only form of emergency evacuation is by boat. WAO property owners are totally reliant on boats from the initial building and furnishing of their homes to commuter transport to take their children to school, go to work, do their shopping, and simply go about their daily lives in the same way as land based people do.

Safety Access Structures:

These structures include jetties and steps, handrails, hinged ramp and pontoon, seawalls (where required), mooring poles, slipway and ancillary storage facilities individually or in any combination which for WAO property owners are essential for normal daily living and are NOT for private recreation purposes.

Approvals and Costs:

To build safety access structures under the present licencing system requires approval from five separate government departments with a waiting time in most cases of many years before a Licence is issued. There is no statutory timeframe within which an application must be determined and initial rental determination has no right of appeal. The cost of constructing a jetty alone can range between \$20,000 and \$100,000 on top of which the WAO property owner must pay for on-going maintenance, public liability insurance and comprehensive insurance covering loss or damage to such structures.

Under the current system, because these structures are over Crown Land (the river), a WAO property owner must pay the Department of Land & Water Conservation

(DLWC) an initial application fee of \$438 plus an on-going licence fee generally ranging between \$300 to \$2,000 per annum. A further \$400 per annum 'wet berthing' fee is now being imposed on WAO property owners by DLWC for each boat moored alongside a jetty or pontoon.

When a property is sold, and the owner has an individual domestic licence for safety access structures this licence is cancelled and the new owner must re-apply for the issue of a new licence. DLWC charges another fee of \$438 to re-issue the existing licence to the new owner.

On top of all these costs and charges, most WAO residents must pay private marina fees at the 'mainland' end of their water journey as there is no boating equivalent of a council car park for commuter vessels. The charges for such mooring facilities for an average commuter boat range between \$200 and \$800 per month.

Tenure:

The Terms & Conditions imposed by DLWC for safety access structures are contained within a Licence Agreement which has no fixed term and which may be revoked at any time at the will of the Minister rendering approved safety access structures illegal. Ownership of safety access structures does not vest in the property itself and licences are not transferable. Under the present system, WAO property owners have no title to or any security of tenure over the expensive access structures that they have built and paid for. There is also no right of transfer of safety access structures to heirs, executors or successors in title. When change in ownership of a WAO property occurs, the existing licence is cancelled and the new owner must make application to DLWC for the issue of a new licence.

Furthermore, when a WAO property is sold the safety access structures form part of the purchase price on which stamp duty is levied--yet the owner and purchaser have no security of tenure over these safety access structures whatsoever i.e., they can be directed by DLWC to remove all such structures at any time.

Fairness:

Owners of property with road access incur none of the costs associated with WAO property owners to reach their homes. They can park their cars in the street which is also Crown Land and access their properties over Crown Land without charge. They have no tenure issue, no application fees, no licence fees, no parking/berthing fees and no on-going maintenance or insurance costs associated with access structures..

It is interesting to note that Oyster farmers pay something in the order of 0.0004 cents per square metre/per annum for long term commercial leases over Crown Land. By comparison WAO property owners along the Hawkesbury River system pay 4,000 to 8,000 times this rate for domestic licence agreements for safety access structures.

These domestic licence agreements have no fixed term and may be terminated at will by the Minister.

Crown Lands Act:

The Crown Lands Act (CLA) has been designed to generate income to the State from the commercial and leisure use of public land but in doing so unjustly penalises WAO property owners. Clearly WAO property owners were not considered when the CLA was drafted and DLWC states that current policy (Crown Lands Act) is silent on the specific issue of water access only clients (NSW Ombudsman's report, John Davies, 8/11/2000 ref C/99/2600jrd, page 12, clause 1.14). Although this situation may not

have occurred by design there has been no genuine attempt to redress this injustice in the 4¹/₂ years W.E.A.R. Inc., has been negotiating with DLWC.

W.E.A.R. Inc., Aims & Objectives:

- (1) That WAO property owners are recognised as a separate group with unique circumstances and as such are entitled to appropriate arrangements quite distinct from other waterfront property owners that have road access. WAO property owners should not be subject to 'market rental' determinations.
- (2) Recognition by the Crown that where access to residential property can only be gained by water, then this access is a fundamental right and not a privilege. This concept is implied in the original governmental approvals for subdivision which created these water access only settlements in the first place. WAO property owners should have the same fundamental right of free and unencumbered access to their property as the owners of road access properties. Crown land which in this context means 'public waterways' has the same meaning for WAO property owners as the term 'public roads' has for property owners in normal suburban developments with road access. Roadways are not subject to market rental nor should the use of waterways below M.H.W.M. for access be subject to market rental. It is therefore discriminatory to only levy charges on that small segment of the community whose only access to their property is over Crown Land (public waterways).
- (3) That each WAO property owner be entitled in principle to install approved safety access structures. These structures shall include jetties and steps, handrails, hinged ramp and pontoon, seawalls (where required), mooring poles, slipway and ancillary storage facilities individually or in any combination.
- (4) That WAO property owners have full security of tenure over safety access structures and that the current system of licences be replaced by either an easement for right of access and other safety access structures which vests in the property and is noted on title OR a lease in perpetuity at a nominal fee OR conversion to freehold title.
- (5) That WAO property owners will not be charged an additional 'wet berthing fee' to moor their boats at safety access structures.
- (6) That there be no requirement for individual property owners to share safety access structures with their neighbours unless they should chose to do so as this can often lead to on-going friction and disputes.
- (7) That WAO property owners with a tidal foreshore which requires extended jetties being built at high construction cost to reach deep water should not be further penalised by a system which requires them to pay fees per square metre.

Administration DLWC:

WAO properties comprise only a small fraction of N.S.W. Crown Land tenures. By the granting of an easement or other form of long-term tenure, the administrative burden on DLWC will be greatly reduced and cost savings generated. These cost savings may well equal or exceed the reduction in revenue resulting from the exclusion of WAO property owners from a market based valuation system. The need for rental reviews will no longer exist; the need to reissue licences upon sale of a

property will no longer be required; and there will be no need for costly appeals against DLWC.

DLWC to develop and make available a policy handbook outlining procedures and timeframes (including appeals procedures) for all matters relating to the use of Crown Lands by WAO property owners.

DLWC to adopt a policy of helpful, transparent accountability.

DLWC to ensure rapid processing of applications for safety access structures with a statutory time frame similar to requirements for determination of development applications by local councils.

DLWC to maintain a 'development consent register' available to any WAP applicant or other member of the public to show the terms and conditions of any tenure given over Crown Land. This shall be considered as a matter within the public domain demonstrating transparency and accountability.

It should be noted that safe access for emergency services personnel is provided by WAO property owners with approved safety access structures over Crown Land. Emergency Services frequently use safety access structures for public benefit and utility e.g.,

- ✓ Rural Fire Service and Volunteer Bush Fire Brigades make use of WAO safety access structures to reach fires on public land (National Parks) to carry and store equipment, to conduct back-burning operations and carry out evacuations.
- ✓ Water Police and Ambulance Officers make use of WAO safety access structures for medical emergencies, rescues, searches and accident recovery from adjacent public lands and National Parks.

Summary:

- WAO property owners are a separate group with unique circumstances distinct from other property owners with road access who may also have waterfront structures constructed for leisure purposes.
- WAO property owners have a fundamental right of free and unencumbered access to their properties and should not be subject to 'market rental'. Any fees and charges to be nominal only and designed to cover administrative costs only.
- WAO property owners to be entitled in principle to install approved safety access structures. For WAO property owners such structures are essential to normal daily living and are NOT for private recreation purposes.
- WAO property owner applications to DLWC to be determined within a statutory timeframe similar to that imposed on local councils for the determination of development applications.
- WAO property owners to have full security of tenure over safety access structures by means of an easement noted on title or some other form of long-term tenure.
- WAO property owners not be charged a 'wet berthing fee' to moor their boats at their jetty or pontoon.

- WAO property owner's Application fees for establishment of new safety access structures or variations shall be nominal only.
- WAO property owners should not be required to share safety access structures.
- WAO property owners with longer jetties built to reach deep water should not be further financially penalised by higher charges.

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