

December

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

Via Email; [ipart@ipart.nsw.gov.au](mailto:ipart@ipart.nsw.gov.au)

Dear Sirs

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

My name is Elda Argenti, I am the lessee or licensee of waterfront facilities from the Crown at (address details deleted)

I thank you for, and welcome the invitation to submit my proposal based on the following observations.

### **1. The proposal by the Department of Lands (Lands) and Waterways Authority JWA precludes the findings of the public review (and outcomes) of domestic waterfront rentals conducted by Waterways December 1992**

The review proposed linking waterfront rentals to a percentage of the value added to an appurtenant freehold by the lease of waterfront facility. The review findings were:

- (a) leases were limited to 1 or 3 years (maximum) which is insufficient to amortise the cost of a \$50,000 jetty with an average life of say 50 years
- (b) there was no "market" rent because the tenant was prohibited from sub-letting the facility to third parties and from transferring the lease on sale of freehold
- (c) the proposal was "*moving the goalposts*" --- changing the rules without a phase-in, and changing the reasonable expectations of property purchasers

As a result of the above the 1992 proposal was dropped.

### **2. It involves Double Counting**

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 which is not fair

### **3. The increase is unreasonable**

Waterways and Lands propose to increase those fees by an average of 500% in one hit. This increase would be unacceptable in any other public sector domain, eg, what would be PART's response to an application for 500% across the board increase on public transport 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 to increase 5 fold in one hit? What would tenants say?

### **4. 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 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 Dronerties**

Page 3 of the Review states that *"the Department (zards) and Waterwqs indicate a sixpercent rate of return is consistent with analysis of investment returns@om residential properties rented throughout NSW and court dicisions. y"*

The 6% pa is unrealistic and unattainable.

For example, in Sydney, a residential waterfront property valued at \$3.0 million would need to be rented at \$180,000 pa or \$3,462 per week to return 6% gross Pa.

The evidence of a registered property valuer experienced in Sydney properties indicates the actual return to be between 1.5% and 2% per annum, or less than a third of what is proposed by Lands and Waterways.

I understand that a registered valuer's figures and research data will be submitted to PART, but after the closing date for submissions, due to need to collect data.

### **6. The rental assessment methodoloev is already included in the above mentioned executed lease**

As a result the new proposed methodology is inconsistent with the terms of the lease in calculating the annual rent.[ see Item 3, page 2 of lease document]

## **7. Value/ Benefit to the Lessee**

While it is clearly understood that there is increased \$ value in proposing this , for the government coffers, it is not clear what we, as lessees, are getting in return,.

To put forward a massive increase in rental should sure be done in return for a massive increase in services. As there is no evidence of this it is assumed this is a tax opportunity targeted against what may be seen as a 'tall poppy' sector of society. This cannot be further from the truth.

## **8. Monopoly Market Value**

Unlike real property which competes in market environment and therefore has market value value based on competition this lease/licence is at the sole discretion of the Minister with no assured right of transfer if the property is sold. The licensed area cannot be rented out. The licenced area has restricted use, with no livable structure etc, the licenced area is not freehold. Surely all these restriction must reflect in a more realistic rental than the one being proposed. since the only licensee possible is the adjoining land owner.

## **Alternative Proposals**

1. If I could have a 50 year lease, and if I had the right to transfer the lease on sale of my home, then I could understand the increased value which could justify the increased rent.
2. Because I have no tenure and no right to transfer and no opportunity to amortise my structure, I can only support the current rental arrangements being continued with future CPI increases.

## **Considerations**

1. I believe that self-funded retirees and pensioners should be required to pay only a fee to cover lease administration (\$300 pa plus GST) unless of course they apply to change or modify the leasehold
2. Genuine not for profit organizations which provide education and youth training and development programs should only pay the lease administration fee. Examples are sea scouts and rowing and sailing clubs provided they do not have entertainment, bar or gambling facilities.
3. Properties which have access by boat only, should have the lease administration fee applied to the jetty and boat mooring facility because safe access is a necessity of life. The fee should apply irrespective of whether the jetty is 2 metres or 20 metres in length. Shallow water access properties requiring a longer jetty should not be disadvantaged.

Yours faithfully,

