Michael Chapman

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

Dear Sir

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

I am the lessee or licensee of waterfront facilities from the Crown at the above address.

The Background and the Formula proposed by the Department of Lands ("Lands") and the Waterways Authority (,'Waterways") is fbndamentally flawed because:-

1. <u>It omits the public review (and outcomes) of domestic waterfront rentals conducted by Waterways December 1992</u>
   The 1992 review proposed linking waterfront rentals to a percentage of the value added to an appurtenant freehold by the lease of waterfront facility. The review entailed a mail-out to all customers, invitation to comment and a number of public meetings. The review resulted in the proposal being dropped. The 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 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

   (I can assure you that this is correct because I was the Managing Director of Waterways at the time and conducted the review)

2. <u>It involves Double Counting and Double Dipping</u>
   The rental formula proposed in the Attachment to Terms of Reference includes "Valuer General's Stafhtory Land Value (of adjoining waterfront precinct)".
   Section **6A** of the Valuation of Land Act 191**6** (as amended) provides that **land below the high-water mark held under licence (or lease) from the Crown is <u>deemed eauivalent to freehold land and is included in the</u>**

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<u>valuation of the adjoining. land</u>. 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.

3. <u>It is contrarv to prudent management and stewardshk of public land</u>
The Lease and Licencefeesper sq metre charged by Watefways,and the permissive occupancyfees per sq metre charged by Lands have been unchangedfor between I0 and I2 years. CPI has not been applied.
Now, Waterways and Lands pr 'pose to increase those fees by an average of 500% in one hit.
Is this prudent management and stewardship of public land?
What would be PART'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 providors 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 1I* year? What would tenants say?

4. <u>There is no tenure and there is no market</u>
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. <u>Unsustainable assumption on rate of return on residential waterfront properties</u>
Page 3 of the Review states that *"theDepartment (Lands) and Wateiways indicate a six percent rate of return* ***is*** *consistent with analysis of investment returnsfrom residentialproperties rented throughout* ***NS*** *Wand court decisions."*
No evidence is provided.
I assure you that 6% pa 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.

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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.

Alternative Proaosals
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 would probably agree to the proposed rental arrangement. That would be fair and equitable
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. However in fairness, I would consider CPI being applied fi-om next rental year **and** to the existing rental base being increased by CPI (Commonwealth) for the past 10 years as a "catch-up'' caused by apparent mismanagement.

Other issues
1. I believe that self-funded retirees and pensioners should be required to pay only a fee to cover lease adininistration ($300 pa plus GST) unless of course they apply to change or modifL 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

MICHAEL CHAPMAN
23 November 2003