

December 4th, 2003

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

Dear Sirs

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

My name is Anthony Curtin , I am the lessee or licensee of waterfront facilities from the Crown at (address deleted).

I would like to make the following observations in addition to those submitted with a submission by various residents of Longueville and Northwood which I have participated in..

1 Natural Justice

I have recently been granted a new lease dated 19th October2002 and incurred a capital expenditure of close to \$80,000 to create a facility able to be used by myself and my family. Although I am aware of the terms of the lease it has been common practice that leases have been granted to new occupants of adjoining properties and that leases have continued on roughly the same terms. The new facility included my doing remediation work in removing an old asbestos boatshed and an undesirable tidal river pool.

In my particular case, compared to my neighbors who have properties where land has been reclaimed and the bulk of there waterfront facilities are on reclaimed land, my lease covers a substantially larger square meterage in order to access the deep water.

2. Commercial Rent

To suggest that a commercial rental applies when there is nothing commercial about the lease is the most grossly inequitable part of the proposal, especially when the proposed benchmark of 6% bears no resemblance whatsoever to current rentals in this area.

In particular the lack of tenure, lack of ability to assign and lack of ability to sublet are extremely uncommercial.

3. Waterfront Structures are more efficient

In addition, waterfront structures, ie pens reduce the total water area required to keep a boat. A typical pen is about 60sq m ., easily accommodating a 10 m boat. The same boat on a swing mooring, which are still the most common in this area, would require a circular area with a radius of at least 12m (10m for the boat and 2m slack). This

equates to an area of approximately 450 sq m. The mooring fee for a 10m boat is approximately \$250.

I reiterate some of the points which are important contained in the general submission referred to above.

1. The proposal by the Department of Lands (Lands) and Waterways Authority (WA) 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 \$80,000 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 goal posts*” --- 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 IPART 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 IPART’s response to an application for 500% across the board increase on public transport fares or water, power and electricity charges? What would IPART 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 IPART (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 \$80,000 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.*”

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.

6. 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.

7. 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. The most appropriate solution is to continue the current rental arrangements perhaps with future CPI increases.

Other Considerations

1. 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..
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

Anthony Curtin