Peter and Marion Dundon

3 December **2003**

Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office, NSW 1230

Attention: Mr Bob Burford

Dear Sir,

Submission: Review of Rental for Domestic Waterfront Tenancies in NSW

We own a waterfront property on the Hawkesbury River at (address deleted), NSW. It is a water access only (WAO) property.

We respectfully make the following submission in regard to the review.

1 Special consideration for Water Access Only properties.

We request that the following matters be taken into account-

- For owners of water access only properties, the river or waterway represents the only possible means of access to the property. In this respect, it is equivalent to the road adjacent to a typical land-based property.
- The waterway is the only means of access for the initial construction of our houses, for bringing in furniture and other goods, for daily commuting from home to work/school, and the only means of evacuation in times of emergency (sickness, injury, bushfire, etc).
- The facilities we need for access (jetties, ramps, pontoons, boatsheds, reclamations, etc) must by their nature be constructed partly or totally below high water mark.
- These facilities are essential, and in many cases are required separately by each property, as there are practical limitations to sharing of facilities (eg the terrain, lack of right of way across or around neighbouring properties, etc).
- These facilities are a "necessity" for our day to day living, and are not a "recreational" benefit, as they may be for people who have land access to their properties as well as water access.

Accordingly, we consider that use of Crown Land by owners of Water Access Only properties should be treated as being equivalent to the use of roadways and road-verges by owners of land-access properties for driveways, ramps, parking, etc. Charges for use of Crown Land below high water mark for essential access should be commensurate with the equivalent costs for essential access structures on roadways and road-verges for owners of land-based properties.

We wish to make special mention of "wet berthing areas". Our current licence includes an area designated as "berthing area", and forms part of the total area licenced, which is used as the basis for calculating the rental charge. We consider this to be unfair for owners of Water Access Only properties, as it discriminates us from land-based users of roadways for parking. We use our berthing area for parking our boat, in the same way that a land-based property owner uses the road for parking his car. Even in suburbs where parking meters are installed, residents are able to claim exemption from parking meter fees.

2. Basis of Tenure

We consider licences to be inappropriate as a basis for tenure, for the following reasons:

- There is no continuity of licence when the holder of the licence sells the adjoining property. The licence thus provides no security for the substantial capital investment in structures (jetties, ramps, pontoons, reclamation, etc).
- The lack of continuity of licence upon sale of the adjoining property constitutes a handicap to the marketability of the property, as no assurance can be given to an interested purchaser that a licence will be granted.
- The licence currently also terminates when an owner or co-owner dies, causing the dead owner's partner to have to apply for a new licence.
- A licence provides insufficient legal protection for a licence holder in the event of damage being caused to a jetty or other structure by someone else using the structures. [In 2000, our jetty was damaged by a builder carrying out work on a nearby property, and the repairs cost over $7,000. Faced with legal advice that our entitlement to recover the repair costs from the builder or the neighbour was questionable because our tenure over the facilities was by way of a licence, we had to settle for a voluntary payment of just $500 from the neighbour.]

It is our view that a lease, preferably a long-term lease, would provide better security over the capital investments involved in structures, would eliminate the uncertainty faced by a pending purchaser of waterfront land which currently adversely affects the marketability of waterfront properties, and would provide continuity and certainty to the partner or descendent of a deceased licence-holder. We believe also that it would provide better legal protection for a licence-holder in the event of damage caused to structures by a third party.

3. The extent to which access to leased property should be shared with others or aflowed for exclusive use.

We have no fundamental objection to sharing access to leased property, but wish to bring to your attention a number of practical difficulties-

* In some instances, land access between or around properties is difficult or impossible, due to the terrain. In these instances, each property may need its own access from the waterway.
- There are occasions when land access between properties is inappropriate, such as when large furniture items need to be brought ashore. Pedestrian access may be

available between properties, but not sufficient access to allow bulky items to be carried from property to property.

- The land titles provide no legal right of way across properties. Land access between or across properties therefore depends on the goodwill of neighbours. Shared access to jetties, pontoons, etc may only be legally assured when the facilities are located adjacent to the common boundary between neighbouring properties.
- Shared use of facilities which are located adjacent to one property only, and were paid for by the owner of that property, introduces an inequity, unless the others sharing use of those facilities can be persuaded to provide a capital contribution and ongoing maintenance costs. This may not be possible legally or practically.
- When access to facilities located on leased or licenced property is shared, damage and wear and tear would be much more difficult to control than where the facilities are for exclusive use.

Accordingly, we believe that shared access to leased or licenced property should be assessed on a case by case basis, and determined on the merits of each individual case. It may be practicable and equitable in cases where the terrain allows reasonable access from all properties involved, where the shared facilities are constructed jointly by all the licence holders (ie not previously paid for by one of the owners). However, in many cases it will not be a practicable or equitable arrangement.

We trust this submission assists you with the review.

We would be happy to provide further information or comment if required.

Yours faithfully,

Peter and Marion Dundon