

Donald N France

Review of Rental for Domestic Waterfront Tenancies in NSW
Independent Pricing & Regulatory Tribunal

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Dear Sir

**RE Review into Rentals for Waterfront Tenancies on Crown Land in NSW
Community Slipway in Woodford Bay, Longueville leased from
Waterways Authority for use by small boats**

I represent the Boat Owners Association of NSW Inc (BOA) and have been a director of it since its inception in 1989.

On a voluntary basis I have run the above community slipway for the past 11 years.

Recently the Waterways authority and Lane Cove Council agreed to transfer the lease from private hands to the BOA to formalize the community use and operation of it.

Most users of the slipway cannot afford to use commercial slipways. The latter do not permit owners to work on their boats and do routine maintenance for insurance and commercial reasons.

The average profile of boats using our community slipway is a modest 7m sailboat with keel, valued at less than a second family car. The vast majority of moored vessels on our waterways fit this profile.

Indeed the Waterways Authority have supported the formalisation of the community slipway as a template for other slipways. This will be part of the ongoing process to MAINTAIN WORKING HARBOUR.

However if the proposed rental formula is applied to our leasehold, then the rental will be a function of surrounding residential land values. Yet the community slipway has no commercial element and has no connection with residential use.

All of the activities on our community slipway are conducted by volunteers. Contract or employed work is prohibited.

If the proposed rental formula is applied to our leasehold, the community slipway will be unable to sustain the 500% estimated increase, and I believe that our cooperative

Will close down and over time, low cost family boating in our area will slowly but most certainly, be priced off the water.

Our community slipway provides benefits to the local community.

To demonstrate the COMMUNITY NET BENEFIT of our community slipway's activities, may I suggest that as a lessee we qualify for a concessional rent, (ie. lease administration fee (\$300 plus GST pa, plus CPI annually adjusted), and we

should be required to keep records and lodge annually with the lessor:-

- (a) a record of the number of person hours involved and attach a \$ value to same including the commercial value
- (b) a record of the number of boats which have used the facility

This recording and reporting requirement can be incorporated in the lease conditions and required to be emailed to the lessor within a month of the end of the financial year. The Waterways Authority can then report in its Annual Report the statistics of community activities it has supported during that reporting period in return for granting concessional rental.

In this way the Waterways Authority can quantify the social benefits and the notional cost of its support of the community.

I am informed that a Sydney metropolitan council already conducts such a community net benefit program and an associated reporting regime which applies to its leases to

- (a) surf lifesaving clubs
- (b) sporting clubs
- (c) community clubs
- (d) bushfire fighting facilities operated by volunteers

I draw to your attention the outcomes of a review of waterfront rentals undertaken by the Waterways Authority ("Waterways") during November and December 1991.

The review demonstrated that clubs providing learn to sail or row and youth training and development programs and other community programs could not exist, or could not support their current services if a commercial or market rent were applied to the wetland leases for their waterfront facilities.

The outcomes from the 1991 review still pertain today.

My comments on the proposal put forward by Waterways and Lands as applicable to wetlands leased appurtenant to residences :-

1. It involves Double Counting and Double Dipping

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.

However the proposal before IPART would factor in adjoining waterfront values to rentals.

This is double counting and would result in double dipping.

2. is contrary to prudent management and stewardship of public land

The lease and licence fees per sq metre charged by Waterways, and the permissive occupancy fees per sq metre charged by Lands have been unchanged for between 10 and 12 years. CPI has not been applied.

Now, Waterways propose to increase those fees by an average of 500% in one hit.

Is this prudent management and stewardship of public land?

What would be IPART'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 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 unchanged for 10 years and then increased 5 fold in the 11th year? What would tenants say?

3. 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 \$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 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."*

No evidence is provided.

6% pa is unrealistic and unattainable.

CONCLUSION

Our community slipway be required to pay a lease administration fee and record and report annually to the lessee on the COMMUNITY NET BENEFITS of concessional rental.

Yours faithfully

DONALD FRANCE 4 December 2003