Review of Rental for Domestic Waterfront Tenancies in NSW
Professor T. Parry
Independent Pricing & Regulatory Tribunal
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QVB Post Office NSW 1230

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Dear Sir

SUBMISSION
to the
Review into Rentals for Waterfront Tenancies on Crown Land in NSW

I am the lessee of waterfront facilities from the Crown at (address deleted.
The lease reference is (number deleted) covering an area of 126sqm - Boatshed, Ramp and Slipway.

Background.
This family has resided at the above address for some 55 years, in fact since it was virgin land, and there has been a lease of an area adjoining this property for close to 50 of those years.

There has been very little change to the size of the lease although the rental charged, by firstly the MSB and then the Waterways Authority, has increased considerably. These increases occurred although there were no services provided, except those charged separately at non-negotiable rates, no maintenance carried out by either body and no reimbursement of costs for any improvement or for maintenance carried out on the landlord's behalf.

If this had been a lease under the Landlords and Tenants Act, where a "market value" related to land values by district was set by the landlord according to demand, there would have been a significant proportion of normal maintenance and wear and tear costs, payable by the landlord.
But "Wet leases", which are only available in Sydney from one source and at non-negotiable terms, were never included under that Act and had their own rules and regulations drawn up and applied.

Past Valuation and Leases.
It was widely recognized then, as early as the 1950s, that a method of valuing any "wet" area adjoining a privately owned property, had to be devised that would be equitable with the use by the lessee, the only possible tenant, and give a return to the Government Department to cover necessary costs of administration and foreseeable development as is the case with the Office of State Revenue and various other Government bodies. That method was established and accepted by both the majority of the leaseholders and the Government body responsible, the MSB.
Harsh and non-negotiable terms of compliance were introduced in these MSB leases, such as 3 year tenure, removal of all structures at lessees' cost at end of lease, exorbitant cost of establishing lease, all payable by the lessee … those draconic terms filled the equivalent of a 20 page book!
And still people, wishing to enjoy the access to the water with no right of exclusivity of use, agreed to those terms, drawn up by a dictatorial monopoly!

Revisions and Reviews.
There have been attempts to address some of the known anomalies, primarily in the area of reassessment to gain more revenue.
One of the most recent reassessment attempts, in fact the last, was effected 1991/2. The findings that came from that investigation included that "utility of the lease area" was a valuing factor. Depth of water was shown to affect the value, deep water raising the value, shallow or "mudflat" lowering the value and this was where the 1992 investigation came up with a correct method of scaling.
However, although increased leasing costs came in around this time, the area/precinct classification was not implemented by the Minister responsible for the Waterways. I have attached copy of letter received by my father, as I believe record of this correspondence is no longer available from the Waterways.
Instead of continuing with the implementation, this Waterways Authority has bumbled along with static revenue and rising expenses. And even then, all they had to do was apply CPI each year and maintain their costs within. They couldn't even get that right.

So now they put forward a scheme where they think this will be easier to charge more than their current system provides.

Rental.
But this is about valuing market-rentable property.
Any economist knows that market rental of a livable property doesn't rise directly in proportion to the valuation or estimated unimproved sale value of that property.
If it did, and we can quote an actual case in Hinkler Crescent, Lane Cove in our same land-based "precinct" of 2066,

> a property worth $200,000 (SLV $140,000) in 1990, rented at $200/week,
> should now be returning $1000/week as it and many around it have sold recently for well over $1,000,000 and the SLVs were over $400,000.
> The agents employed were unable to achieve better than $400 in weekly rental or 5.2%p.a.gross, even up to 2002 when the property was sold.

Now when the proposed scheme is related to a waterfront property, the shortfall on the Ministers' 6% is an indication that it hasn't come from a person in business, it hasn't come from a person with any knowledge of economics and it hasn't come from a person with any understanding of real estate valuations. Even 50% of the 6% is completely unachievable!

This proposed plan for better "bed-feathers" is seriously flawed and debatably court-challengeable! The Ministers are suggesting that IPART agree to their departure from a tried and partially accepted method of rent-fixing with no appeal, to some flawed "pie-in-the-sky" scheme that will spend years in the court being challenged and still with no relaxation of appeal process, which will in time be recognized as unlawful in this society.

And I can see no suggestion of a "cap" or "ceiling" in the proposal!

Community Involvement Over Time On Waterfront.
You would no doubt be aware, although I'm quite sure the Government Ministers would not be prepared to admit, that many waterfront owners spend a great deal of their time involved in community activity with various non-profit organizations, in my case a local sailing club, which provides youth training and development, courses for learn-to-sail at a fraction of the cost of commercial enterprises … all on a voluntary basis. Our facilities may not be used directly but those facilities do provide housing or storage for our own boats (as Rescue boats) that are out every weekend in Summer, and often during fine, warmer weather in Winter.
Clubs also have leases and may well be "under fire", however their submissions will be forwarded separately and with their own logical arguments.

An issue that is rarely recognised is that many people other than waterfront owners/lease holders have the use of the rivers and harbours controlled by the Waterways. With the exception of trailer-borne boats, most of these are kept on some type of mooring, usually in a relatively protected bay. Due to wind not always coming from the same direction, it is common for these moored vessels to be exposed to quite violent windstorms periodically.

Anyone, and I include the Waterways personnel, with any experience on the waterfront, would know that a vessel that may break away from its "secure" location in these circumstances. Or they may be inundated during heavy rain, and begin to sink.
It is very common for neighbouring waterfront property owners to either undertake rescue operations themselves or to call in either the Waterways or the Water Police. I might add here that it is rarely that these emergencies occur in the hours of "8 till 5" (Waterways hours) and the Water Police get most of the load, after receiving the SOS from, generally, a leaseholder.

Conclusions
I recommend a similar charging/taxing system that is already in place. The Local Council Rating system could be looked at as a practical system if the "precinct" principle of the 1991/2 findings could be incorporated to adjust in terms of waterfront lease area usability.

Councils can set their own charge per dollar of valuation of freehold land. And it is linked to the SLV. For this, of course, they have to provide services. They are answerable to the constituents, well the elected Councillors are, and they are also conduct-accountable indirectly to Parliament.

The big difference is the regulation controlling their annual total rate revenue!
Ratepayers have the right to move if the rates get too high but they don't have to remove their improvements on departure and the Council can't evict at will, and ….. I could include almost every Waterway Lease condition in the negative comparison!
Granted, it is not a rental situation with Council but I fail to see why it can't be applied to Crown land in the hands of a currently unregulated but dictatorial body such as Waterways.

I reserve the right to put further submissions to IPART if and when other relevant material becomes available.

Yours faithfully,

Richard Griffin.

(attachment withheld)

ATTACHMENT

MSB Waterways

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17 March 1992

Dear Customer,

RE: REVIEW OF RENTAL POLICY - PRIVATE FORESHORE LEASES

Last year I wrote to you about the MSB Waterways Authority's review of the Foreshore Leasing Policy for private leases and invited your comments on the proposal.

Following this consultative process - which also included two public meetings - the Authority has decided **not** to introduce the proposed changes. I am writing to advise you that rentals for private foreshore leases will continue to be determined under the existing policy.

Thank you for your participation in this process which I believe benefits all lessees.

Yours sincerely,

Michael Chapman
MICHAEL CHAPMAN
Managing Director

JM/SC0188