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IPART REVIEW OF LOCAL GOVERNMENT RATING SYSTEM.

SUBMISSIONS TO IPART ON THE UNFAIR RATING SYSTEM CURRENTLY BEING APPLIED TO JOINT DOMESTIC MARITIME LEASES.

SUBMISSION 1.

For the past 20 years I have been a joint lessee of a domestic maritime lease of 110 square metres of wetland in Middle Harbour. The lease services [redacted]. The joint lessees are the registered owners of those properties. The initial lease was created in 1996. I had initially made application for a single lease of wetland adjacent to my freehold property at [redacted] but due to a then Government Policy to minimise the number of waterfront structures on Sydney Harbour the Authority (then MSB) advised that my application would be refused unless I applied for a joint lease together with my adjoining neighbour at [redacted] Somewhat reluctantly I complied.

Over 20 years and a number of renewals the lease was always valued together with my freehold land in a single valuation. Willoughby Council rated the overall land as *residential* based on the single valuation, and until last year I paid an annual rates levy of $5,011.00. In 2015 however the Department of the Valuer General applied a different method of valuation to the lease, issuing a stand alone valuation for the lease at $20,000 (value as at 01/07/2012). A second and separate valuation for my freehold land was issued and the V. G. advised that the removal of the lease value made no difference to the value of the freehold as at 01/07/2012. I was already in possession of an aggregate valuation from 2012 which on its face confirmed that advice.

That change in valuation method has triggered an unfair and unjust Council rating levy of $1096.65 p.a. on the leased wetland in addition to the $5011.00 p.a. I pay for my residential freehold. For rating purposes the lease has been categorised by Council as "*business*" and the levy is a minimum

fee. There are no services provided or intended to be provided to this leased wetland by Council. If levied on the ad valorem residential rate the amount would be $25. I am led to believe that all joint lessees of domestic maritime leases have been treated in similar fashion and, like me, have suffered financial detriment. There is s substantial number of joint lessees affected. In contrast, all single domestic maritime leases (leased wetland attached to a single freehold property owned by the lessee(s)) which make up the vast majority of leases on Sydney waterways, are valued as before; together with their residential freehold blocks in a single valuation. They do not suffer this additional and unfair rating imposition. And yet in all significant material aspects — term, benefits, obligations, restrictions on use, essential ownership of the adjacent property, use of the lease in association with and as part of the adjoining freehold land — a joint lease is identical to a single lease except for the paperwork, which encompasses two attached and adjoining residential freeholds and not a single attached residential freehold. There is no practical or indeed sensible reason for the different rating treatment of these leases and this consequent rating discrimination against joint lessees. It is a current situation regarded by joint lessees, Councils and the Valuer General's Department alike as unfair and undesirable. I feel particularly aggrieved as I was "forced" into a joint lease by the Government and now the Government has adopted a valuation procedure that has caused and will continue to cause me financial detriment for being a joint lessee. I am advised there has been recent communication between the Valuer General's Department, the Department of Roads and Maritime Services (the Lessor) and various Councils regarding this issue. It is a live issue in need of urgent resolution.

The unwanted situation is caused by the wording of section 27(2) of the Valuation of Land Act 1915, which describes when lands are to be separately valued. Since 2015 that section is now interpreted by the V. G's Department as precluding the aggregation of the joint lease value with the values of the lessees' adjoining residential freehold lands. The words *"**Lands which** do not adjoin or which are separated by a road, or **are separately owned**"* have been interpreted to include a joint maritime lease where the leased wetland is attached to two freeholds (and not the usual single freehold) notwithstanding the only lessees are the sole registered owners of those freeholds. It is my understanding that because the name(s) on *each* freehold title is not identical to the *joint* names on the lease, the freehold and lease are regarded as "separately owned". This notwithstanding that the names on the lease are identical with the combined names of the registered owners of the attached freeholds named in the lease. It is an interpretation with which I disagree.

No one suggests there is any significant difference between the two types of lease in terms of the availability or use of waterfront facilities as essentially connected to and as part of the adjacent freehold land. No one suggests any practical reason for distinguishing in valuation method between the two types of maritime lease; it is simply a matter of legislative interpretation that has now caused the problem. For 20 years my joint lease was valued together with my land in a single valuation. Only in 2015 was this interpretation applied and a separate valuation for the lease issued.

A simple remedy is available. It is my submission that the wording of the Section should be amended so that Its meaning is clear to everyone; a meaning that does not cause rating discrimination between maritime lease holders.

I submit that IPART should recommend:
That the Valuation of Land Act 1916 be amended to introduce fairness and consistency in valuing domestic maritime leases.
By amending Section 27(2) of the Act which currently reads:
"27 Where lands are to be separately valued
(2) Lands which do not adjoin or which are separated by a road, or ***are separately owned****, shall be separately valued: Provided that the Valuer-General shall, subject to section 28, include in one valuation lands owned by the same person if worked as one holding for agricultural or pastoral purposes."*

to read: (amendment as highlighted addition)
"27 Where lands are to be separately valued
(2) Lands which do not adjoin or which are separated by a road, or are separately owned ***(but not including a joint domestic maritime lease where the joint lessees are the registered owners of the freehold lands adjoining the lease)****, shall be separately valued: Provided that the Valuer-General shall, subject to section 28, include in one valuation lands owned by the same person if worked as one holding for agricultural or pastoral purposes."*

Or by some other amendment that will allow joint leases of this particular kind to be valued together with the adjoining freehold lands of the lessees in single aggregate valuations.

Provision should also be made in the Act or in the V. G's Guidelines to apportion the value of a joint lease between the joint lessees and then aggregate that apportioned value with the value of the lessee's adjoining freehold land in a single valuation.

SUBMISSION 2.
Should an amendment be made to the Valuations of Land Act 1916 to permit a joint maritime lease to be valued together with the adjoining freehold land in a single valuation then my particular issue with Council rating of the lease will be resolved. However, given that IPART is specifically tasked to review the Local Government rating system, and the possibility that a joint domestic maritime lease is again before Council as a separately rateable parcel of land, I make the following submission:

Presently, a domestic maritime lease is for rating purposes categorised "*business*" even though the leased wetland cannot be used for business purposes and is attached to and used exclusively with "residential" freehold land. This categorisation of "*business*" is made notwithstanding Council's knowledge that no business is or can be conducted under the lease, and that the vast majority of domestic maritime leases in Sydney Harbour (and I assume on other inland waterways), being of a single and not joint nature, are considered "*residential*" as their values are aggregated with the values of the adjoining residential freehold lands and rated accordingly. As I have submitted above a joint maritime lease is identical to the single lease in all but the paperwork. At present the "*business*" category of my own joint lease attracts an annual minimum rate of $1096.65 notwithstanding no services are provided or intended to be provided to this leased wetland by Council. For 20 years and until 2015 my joint lease attracted no additional rates charge to the $5,011 annual charge on my freehold property. It is my understanding that is still the position with the vast majority of maritime lessees.

The "*business*" category is imposed by default (section 518 of the Local Government Act 1993) because, Council claims, the lease does not fall within any other available category and in particular not the "residential" category (section 516). For the latter category to apply to the leased land it must be evident that "*its dominant use is for residential accommodation"* (section 516(1)(a)). Notwithstanding the wetland and jetty structures are used exclusively as part of the residential accommodation and occupancy of the freehold land to which they are attached, Council applies the restrictive interpretation that the leased wetland must *itself* be available for residential accommodation. Council takes this stand even though it has acknowledged the unfairness of the consequences

To achieve fairness and consistency in rating domestic maritime leases I suggest an amendment to section 516 of the Act to permit such leases, if valued separately, to be categorised as "*residential*". This could be achieved by simply amending section 516(1).

I submit that IPART should recommend:
That the Local Government Act 1993 be amended to introduce fairness and consistency in rating domestic maritime leases.
By inserting an additional clause (d) to Section 516 to read:
"516 Categorisation as residential
(1) Land is to be categorised as
"residential" *if it is a parcel of rateable land valued as one assessment and:*
(a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, backpacker hostel or nursing home or any other form of residential accommodation (not being a boarding house or a lodging house) prescribed by the regulations), or
(b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes, or
(c) it is rural residential land.
(d) in the case of a domestic maritime lease, it adjoins and is used in conjunction with land that is zoned residential."

Even in that circumstance there will be still be an unfair rates imposition, albeit slightly less, on the joint lessee if the maritime lease is valued on a stand alone basis and comes before Council for rating. Because some Councils, including my own Willoughby City Council, apply a minimum residential rate to all rateable "residential" parcels. At present it is $777.90 p.a. This in contrast to the $25 p.a. ad valorem residential rate calculation for a $20,000 valued maritime lease which one assumes is the cost to a lessee whose lease value is aggregated with his freehold land value, in a single valuation.

There needs to be a general section that gives a relatively wide discretion to Council to take appropriate action to remedy a rating situation that Council considers to be unfair to the resident. Under section 548A of the Act, where a minimum rate would apply unfairly (as here) Council can aggregate the value of the lease with the value of the adjoining freehold land and rate accordingly as a single valuation. This would serve to remove the additional minimum fee on the lease and would

culminate in a fair result for all. I, as a joint lessee, would then be treated by Council as the vast majority of maritime leaseholders are presently treated and as I was treated for 20 years. However, section 548A has certain prerequisites that severely restrict its application and all but exclude domestic maritime leases. One: a minimum rate must already have been applied to the freehold land (section 548A(1)(b)). Freehold land associated with a maritime lease is necessarily a waterfront block. The unimproved capital value of such land is such that Council has no need to apply a minimum rate as an ad valorem calculation together with service charges produces a rating levy far in excess of the minimum rate; in my case $5011 as at 01/07/2012. My situation and I would assume the situation of all joint lessees are therefore excluded from section 548A. Two: The application of section 548A is discretionary and requires that Council is of the opinion that the minimum rate would not only apply unfairly, but "could cause hardship" to the rateable person (section 548A(1)(b)).

As a general Section intended to ensure fairness in rating and to correct situations where Council finds Itself compelled by legislation to issue an "unfair" levy, this Section is far too restrictive in its application to be useful to Council or residents.

To give usefulness to the section it is my submission that both prerequisites be removed. When considering whether it is fair to impose a minimum rate on a property there should be no requirement that a minimum rate has been imposed on a second property. The overall circumstances of each case will clearly dictate whether the imposition of a minimum rate on a property will be unfair. As in my case: The imposition of a minimum rate of $1096.65 on 110 square metres of wetland to which there are to be no Council services and which is attached to and used with a freehold on which there is already a $5011.00 levy, may well be considered "unfair".

It is also my submission that the requirement "could cause hardship to a rateable person" is unnecessary and, in the context of the section, offensive to the proper rating obligations of Council. Taken literally, a Council cannot apply section 548A to correct what It properly regards as an unfair imposition on a resident unless the unfair imposition "*could cause hardship*" to the resident. What does "hardship" in this context mean? I would have thought the suffering of any unfair financial imposition would be a "hardship" to the resident. Whatever it means, Council's mandate in rating is to be "fair" at all times and not only when an unfair rating could cause hardship.

I submit both qualifications be removed from the Section in order to give the Section wider scope and greater usefulness to Council to ensure fairness in rating. Nor should Council be restricted to levying only a minimum rate when the land values are aggregated. For clarity I have highlighted in the current section below those words that should be omitted or altered.

I submit that IPART should recommend:
Section 548A, Sub-section (1) should be amended to give the Section wider scope and greater usefulness to Council to ensure fairness in rating.
By amending Section 548A(1) of the Local Government Act 1993 which currently reads:

"548A Aggregation of values of certain parcels subject to rates containing base amounts
(1) If the council is of the opinion that the levying of a minimum rate or of a rate containing a base amount:

*(a) would apply unfairly**, and***
(b) could cause hardship** to a rateable person who is rateable in respect of two or more separate parcels of land **subject to the rate,
*it may aggregate the land values of such of the parcels as it determines and levy **the rate** on the aggregated land values."*

to read:

"(1) If the council is of the opinion that the levying of a minimum rate or of a rate containing a base amount would apply unfairly to a rateable person who is rateable in respect of two or more separate parcels of land it may aggregate the land values of such of the parcels as it determines and levy rates on the aggregated land values."

I wish to make the point that the simpler and more effective way of avoiding the imposition of unfair and discriminatory rates levies on joint lessees is to amend the Valuations of Land Act 1916 as suggested above, to have joint leases valued together with their adjoining freehold properties in single valuations. This would give certainty to the valuation/rating position of joint domestic maritime leases and consistency with the valuation/rating position of single domestic maritime leases. It would also avoid the uncertainty of Council's discretionary functions.

These submissions are not confidential.

Yours faithfully

[redacted]