

# Lindsay Parker

Monday, November 24, 2003

The Review of Rental for Domestic Waterfront  
Tenancies In NSW  
Independent Pricing and Regulatory Tribunal  
P.O. Box **Q290**  
**QVB** post office  
NSW **1230**

Re: Re-valuation of Waterfront

Structures on  
public land

Dear Sir \ Madam,

I am writing as an owner with my wife of a waterfront property in Church Point. I wish to make some submissions against any proposal to revalue yearly fees in line with market rent

My submissions fall into two categories, firstly there are six points and a summary which are my own personal thoughts and secondly are five technical points which are based on legal advice we have received. We hope **you** will consider **all** these points as **the** human issues are just as important and often ignored by governments in making decisions on such matters.

My first submission relates to the fact that some owners have struggled to acquire their property **or** quite often it has been in their family for many years. Often in those cases they would never have the ability to acquire such a property on the open market and so like ourselves would find it a struggle to afford to maintain their properties in the face of rising costs.

Secondly, whilst we are very grateful to be living in a beautiful area, our land values already cause us to contribute very high rate instalments to the local council and these are already a significant **burden**.

Thirdly, there is already the disastrous spectre of land tax on the family home once it reaches a certain value. Fortunately this is indexed each year, however, it is always a fear that we may one day reach that threshold and simply not be able to afford to keep the property

Fourthly, there is the historical argument, where as is the case with our property and with many other owners it has been acquired knowing that the yearly fees are relatively nominal and hence not a disincentive to buy the property. This point is relying on the importance of governments as a matter of good faith allowing people to know where they stand and to not change the rules or laws retrospectively to the detriment of people who have relied on the existence of a certain situation.

Fifthly, many of these properties including our own are not alienating land from the public. Our site is steep, with deep water at the lower end so the general public could not gain access to it in any case. As well there is a public right of way only a few doors away. Perhaps there would be an argument if a jetty runs across a public beach and prevents or reduces access to land the public could use. These properties, however, are more in the minority.

Sixthly, the waterfront improvements although not only providing necessary access, are an integral part of the land. Owners, should not therefore be penalised for having those structures that allow them to easily use and enjoy access to the property. These structures themselves are expensive to maintain, therefore the whole idea seems to be to create such a burden on people with such property that only the rich can afford to remain there .

In summary, people should be encouraged to work hard in our society to acquire property to provide themselves and their family with a form of security for the future without having to fear that governments can change the rules behind their backs to price the holding charges of their precious achievements beyond their reach.

The five technical points which establish that the background and the formula proposed by the Department of Lands and the

Waterways Authority are fundamentally flawed for the following reasons

**:1. It omits 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 entailed a mail-out to all customers, invitation to comment and a number of public meetings. The review resulted in the proposal being dropped. The findings were

- (a) leases were limited to 1 or 3 years (maximum) which is insufficient to mortise the cost of a \$50,000 jetty with an average life of 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 goalposts*” --- changing the rules without a phase-in, and changing the reasonable expectations of property purchasers

**2. 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.** 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.

3. It 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 and Lands 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 11<sup>th</sup> year? 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 \$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.

I assure you that 6% pa is unrealistic and unattainable.

For example, in Sydney, a residential waterfront property valued at **\$2.5** million would need to be rented at \$150,000 pa or **\$2,884** 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.

I understand that a registered valuer's figures and research data will be submitted to **PART**, but after the closing date for submissions, due to need to collect data

#### Alternative Proposals

1. If I could have a 50 year lease, and if I had the right to transfer the lease on sale of my home, then I would probably agree to the proposed rental arrangement. That would be **fair** and equitable

2. Because I have no tenure and no right to transfer and no opportunity to amortise my structure, I can only support the current rental arrangements being continued. However in fairness, I would consider CPI being applied from next rental year and to the existing rental base being increased by CPI (Commonwealth) for the past 10 years as a "catch-up" caused by apparent mismanagement.

The **only** fair alternative ,is a simple **CPI** arrangement which is similar to to the formula for increases in council and water rates and is somewhat inevitable but also manageable and provides the predictability that these radical proposals totally lack. We are hopefull ow submissions **will be fairly** considered and taken into account in reaching a reasonable and fair decision in all the circumstances.

Yours Faithfully,  
Lindsay Parker.

A handwritten signature in black ink, appearing to be 'Lindsay Parker', with a long horizontal line extending to the right.