The Chairman
IPART

Review into Rentals for Waterfront Tenancies on Crown Land in NSW

Most tenants affected by the above Review would support the view that the Government, in the general public interest, is entitled in principle to collect rent and to set conditions in relation to waterfront tenancies of Crown land. As a tenant, however, I wish to raise equity concerns in relation to two matters to be considered by this Review concerning the way in which the above principles are to be implemented.

A. The method of determining the amount of rental

I note that the Review has been prompted by a proposal by Waterways / Lands to adopt a formula for calculating rent for waterfront tenancies of Crown land based on the market value of the land adjoining the tenanted area. I would direct the Review's attention to a similar proposal by Waterways in 1992 and its rejection following public consultation.

I have serious methodological concerns as to the validity of the formula proposed by Lands /Waterways as a base method of determining market value rental . I understand, however, that the review has sought appropriate independent expert opinion which should ensure that a sound valuation methodology for market rental is adopted.

I would like to make the following points relating not to the methodology but to the fairness of any general formula which forms the basis of rental calculations.

1) the increased return to waterways / Lands should not be excessive / unreasonable.

Under the formula which Waterways / Lands are proposing and have already selectively applied to leases of reclaimed land greater than fifty square meters, the rental which I pay for sixty nine square meters of reclaimed land has increased from $470.00 in November 2002 to $4322.00 in November 2003. I would hope that whatever method of rent determination is adopted will not result in an increase in one year of 920% which by any conceivable equity criteria is excessive.

2) the return to Waterways / Lands should not be based on the assumption that it represents the sole return to the owner of the tenanted land. namely the Government

As the value of the tenanted land currently is a component of the Statutory Land Value and of the market value of the adjoining property at point of sale, Local and State Governments already receive a return on the tenanted land as part of Council Rates, Land Tax and Stamp Duty at point of sale.

3) the return to Waterways / Lands should be based on consideration of *net* rental return. not *uross* rental return.

Gross rental return includes costs such as Council Rates,, Land Tax, insurance, maintenance and depreciation which are normally born by the owner of any property being rented. Waterways /Lands, as a condition of the tenancy, require all these costs to be paid by the tenant, not the owner. It would be unfair if Waterways / Lands received a premium, namely the above cost savings, over the net market rental achieved by all other owners of rental property.

4) any method of establishing market value rental needs to be appropriate to the use of the tenanted land.

The use of the tenanted remnant land parcels below the high water mark is recreational. They are not used to earn income from commerce or residential investment or to construct a primary residence / family home and as such it is only fair that the method of determining rent adopted takes account of this lesser purpose.

5) the method of determining rent needs to recoanise that the tenanted land is beina used in the course of the owner of the adjoining land exercising their access riahts.

I would ask the review to consider waiving entirely any rental where the tenancy relates to properties whose sole access to their land is by water. To charge rent in such circumstances is akin to charging rent for Crown land road reserve which is used to build a driveway across the nature strip to a landowner's house.

Furthermore, all waterfront owners, even if they have road access, have a riparian right, recognised in law, of access between their property and the water. It would seem fair therefore that any method of determining rent in relation to waterfront tenancies in general includes a discount where the tenanted land is used for a structure the purpose of which is to facilitate the exercise of this riparian access right.

6) the method of determinina rent should not be based on the Statutory Land Value of the adioining property ***per square meter.***

Information sheets published by the NSW Department of Lands indicate that the Statutory Land Value (SLV) of a property is determined by a consideration of the size of the land, the location of the land, the services available to it, the purpose for which it is being used, any constraints on its use, surrounding developments, views and outlook, and public amenities (Understanding Your Land Valuation, published by Land and Property Information Division, NSW Department of Lands). Thus, size of the land is only one of many factors which determine the total SLV of a block of land. Thus, it would be quite possible for two blocks of land of quite different size to have very similar total SLVs if they were similar in all of the other factors on which the total SLV is based. They would however have very different SLVs ***per square meter.*** If for example the areas of the two blocks of similar total SLV were 400 square meters and 800 square meters, the 400 square meter block would have a SLV per square meter nearly double that of the 800 square meter block and would therefore pay nearly double the rent on their adjoining Lands / Waterways tenancies, even though their total SLVs were nearly the same. Thus owners of smaller adjoining properties would be unfairly charged greater rent for their Waterways / Lands tenancies in relation not to the value but to the size of their adjoining properties. I suspect that this is a factor contributing to the extreme increase in rent in relation to my Waterways lease mentioned in 1) above.

B The conditions of tenure

In its consideration of appropriate conditions of tenure, I would ask the Review to address a number of shortcomings in the Lease instrument currently used by Waterways.

1) there is no security of tenure

Waterways issues leases for three years with the option of annual renewal thereafter. This provides little security for the considerable cost of the improvements required to exercise water access rights and to realise the lease's recreational purpose. It provides little recognition of the fact that many tenancies date back many years to the original occupation of the adjoining land.

I ask the Review to consider longer occupation periods in the tenancy instrument (ten years initial, five years on renewal). In relation to tenancies for reclaimed land, I ask the review to authorise and encourage Waterways to sell the reclaimed land to adjoining land owners at a price consistent with the valuation implied in the Review's method of determining rent for the reclaimed land. This has the advantage of providing owners of

adjoining land with the most secure form of tenure available over the reclaimed land, namely freehold title, and of reducing the cost to Waterways associated with administering numerous leases for small remnant land parcels.

2) there is no protection from arbitrarv and excessive imposition of rental increases by the landlord

Waterways recently increased the rent payable in relation to my lease by 920%. They did so without any consultation or any attempt to explain or justify an increase so substantial. I would ask the Review to prevent such arbitrary action in future by including in the conditions of tenure a fair method for conducting rent reviews and determining annual rent increases. I would also ask the Review to include an appeals mechanism to resolve any disputes over rental determination with broad powers to consider inequities arising from the application of a general formula for setting rent to a diversity of situations.

3) there is no compensation for owners of adjoinina land in the event of waterways enforcinu termination of the lease.

Under the current lease agreements, it appears that Waterways has the power to increase rent in an arbitrary fashion to a point where the owner of the adjacent land cannot afford the rent (see 2) above) and therefore is obliged to terminate the lease. If the owner of the adjoining land terminates the lease, he is obliged to pay the cost of removal of all improvements on the leased land or to surrender ownership of these improvements to Waterways without compensation.

Under the current lease agreement, Waterways quite rightly has the power to terminate the lease should the leased land "be required for public wharves, railways or roads or for any other public purpose". Unlike other situations where land is resumed for the public good, the cost of advancing the public good in this case is not born by the general public in the form of compensation from the government for the property resumed. Rather it is born by the tenant of the Waterways lease who not only is denied any compensation whatsoever for the costs of the improvements for which he has paid but also must further pay for the cost of removing those improvements.

I ask the Review to ensure that the recommended instrument for Waterfront tenancies addresses the issue of fair compensation for tenants in relation to the cost of improvements on tenanted land in the above circumstances.

In conclusion, I thank the review for its consideration not only of the wider public interest but also of the rights of tenants to fair and reasonable determination of rent and conditions of tenure.

John Rabbitts