In order to consider an appropriate pricing level for domestic wetland leaseholds, whether in Sydney Harbour or across the State, the leaseholds must be divided into categories similar to the following. Obviously, this grouping includes leases outside the current terms of reference, but in order to apply considerations of consistency and fairness across these groups, either as part of the current enquiry or subsequently, the relationship of domestic wetland leaseholds to other wetland leaseholds must be part of the discussion.

A. Community/Member groups. Groups which are engaged entirely in providing a community benefit, whether simply through association (such as Sea Scouts) or through actually providing a service using a community asset, whether for charge or not (such as a community jetty, boatshed or slipway)
B. Clubs and associations run as commercial enterprises on behalf of the members. Most boating, yachting and rowing clubs.
C. Commercial enterprise that must have waterfront facilities in order to provide the customer service that they are there for (whether or not other services are also included). Marinas, repair sheds, slipways, fuel depots, charter, ferry and water taxi operations.
D. Commercial enterprises that do not have a requirement for waterfront access, such as restaurants.
E. Private residences (including residential communities) where the waterfront facility provides additional non-essential facilities, such as a jetty or berthing piles.
F. Private residences (including residential communities) where the waterfront facility is part of an essential access facility, such as where there is no street access at all, or where the street access is only local, such as an island.

Group A leaseholds should be priced at an administration fee only, dependant on an annual return setting out the community benefit provided by the association. This benefit calculation should be supplied to the local council as well as the lessor. Note that the approval of the lease and the lease renewal are based on a wide variety of issues similar to that applied to any community group seeking to apply community assets to its own use, but this process has no impact on pricing of the lease.

Group B leaseholds should be priced at a level that reflects the benefits that the group is able to apply to its members. Like group A, these groups should be obliged to submit a community benefit statement. Pricing is higher than an administrative fee, but there is a significant allowance for the community benefit provided and the fact that the group is a non-profit organisation. Provided that the community benefit depends on the facilities subject to leasehold, the pricing should be based on the same type of calculation that is used for Council leases of public land to other groups - in other words, there is no premium for the fact that the leasehold covers an unusually valuable piece of real estate.

Group C lessees are subject to a very broad range of special considerations. A service station or truck stop is typically not charged a premium for facilities based on the fact that it has to be near a highway, nor are aircraft repair or refuelling facilities charged a premium for their location on an airport or at the boundary. Similarly, boating industries that must be located at the waterfront should not be paying a premium for the fact that their business requires a certain facility to be available and accessible to their customers. Comparisons to other waterfront land prices, such as residential property, are simply inappropriate.

Group D requires additional consideration. It is arguable that the facility, such as a jetty, is essential to the business as it provides the specific form of access that sets the business apart from its competition. However, that distinction is what makes the business valuable. Pricing at commercial rates is appropriate, but comparisons to adjacent residential land values is not appropriate for reasons similar to those for group E.

Group E is the Tribunal's current consideration. By definition, the facility is not essential, so considerations used for group C are not relevant. There is a measure of community benefit, in that the leaseholder does not have exclusive use and cannot prevent access to the facility, for instance in an emergency. However the level of benefit does not justify providing an annual return or allowing significant impact on pricing considerations. There are no commercial activities involved, so questions such as standard rates of return or similar are not applicable. On the other hand, pricing at commercial residential levels is clearly inappropriate, as the leasehold has significant differences to other forms of ownership or usage.

Group F. Leaseholders in this group are obliged to enter into the lease and to install the facilities in order to obtain access that is equivalent to the access that a suburban residential block has with its driveway and footpath crossing. In these circumstances the lease charge should be no more than an administrative fee. Note that the considerations that apply to the group E leaseholders, such as non-transferability, short lease periods, and obligations to maintain or remove improvements also apply to this group.

With the above distinctions in mind, the following comments are applicable to the Group E leases only.

1. The Tribunal must consider that a leasehold is completely different than ownership. The land subject to the leasehold is not available for purchase, and the lease agreement is not a substitute for purchase. Valuation of leases by comparison with freehold ownership is therefore not appropriate. Some differences include:
- No ability to transfer the lease
- No guarantee of transferability of the lease on disposal of the adjoining property
- Ability of the lessor to change lease conditions or to cancel the lease
- Significant obligations on the leaseholder with respect to how the lease can be used
- An obligation to properly maintain the improvements, and to remove improvements when the lease terminates.

2. The Tribunal should consider the assumption that market prices have any relevance at all in the issue. There is ample circumstances to support the claim that the availability of a lease at nominal rates is a right that the owner has for no other reason than that they are the owner of a property adjacent to this sort of public facility. The situation is similar in principle to an owner with property adjacent to a national park being allowed to insert a gate in their back fence to access the park. There are three differences in the analogy. Firstly, that the waterfront owner needs a lease covering part of the public facility in order to build that access.

This would be the case with a ramp, jetty or pontoon. Secondly, the owner might need a storage facility for the vessel that he uses to access the facility, and it may be impractical or impossible to arrange for that to be on the freehold. Thirdly, the facility might encompass more than simple access - for instance a swimming pool. These differences make comparison with other situations more complex, but they do not automatically generate a presumption that market prices are relevant to the pricing of such facilities.

3. There have been claims that the existence of the lease adds to the value of the property, and that the Government is entitled to a proportion of this value. The problem with this claim is:
- No evidence has been provided that the existence of the lease adds to the value of the property. It is likely that any premium in property value is actually attached to the property being on the waterfront, and the existence or otherwise of the lease is not relevant. What may be relevant is the opportunity to apply for a lease. In other words, waterfront properties have benefits that make them more valuable than other properties, and one of these benefits is the possibility or leasing adjacent wetlands. If this is so, it is an argument for how the value of a waterfront property should be assessed (for instance, for rates or land tax purposes), not for pricing a lease if the owner chooses to take up the possibility.
- If a prospective purchaser is actually prepared to pay a premium for a waterfront property, with no guarantee that the lease can be transferred, then it must be the option to take up a lease that has value, not the lease itself. This option is not a separately identifiable part of the property value any more than the view is. It applies equally to all similar properties, and it is indistinguishable from the other significant feature of the property - it's waterfront location.
- If the owner does take up the opportunity to apply for a lease, there is considerable cost involved in taking advantage of it, there is a very short lease period over which the improvements must be amortized, and there is the risk of being required to remove the facility. It is far from clear that there is any net value identifiable with the lease or the improvements.
- The government already collects revenue due to the leasehold, in rates and land tax.

4. The Tribunal must consider whether the Government is using an issue of pricing of domestic wetland leases as part of the process of implementing Government policy. If this appears to be the case, the Tribunal must consider whether in fact there is a need for any changes, and whether the Government arguments in favour of change should be given any weight at all. For instance:
- Recent actions to force waterfront residents to share facilities are part of a program of defining the character of the Sydney waterfront. The Government may be using

pricing of domestic wetland leases to increase the rate of this consolidation and the conformance to its vision for the harbour foreshore.
- Recent announcements about a Traffic Management Plan for Sydney harbour included claims by the Government that the harbour is overcrowded. The Government may be trying to raise prices of domestic wetland leases so that boats are forced to move to cheaper locations. There is no basis for the claim that the harbour is overcrowded.

- The program to remove large-scale commercial boating activity from Sydney Harbour will involve the Government is significant issues of waterfront amenities. The Government may be using the issue of domestic wetland leases on the Harbour to ensure that one segment of the community is removed from involvement with issues of waterfront management.
- The current ban on commercial marina development, pressure being applied by Government on smaller commercial marinas (in areas such as leasing rates and environmental compliance) and the highly selective manner in which large marinas are removed from planning and environmental controls may be part of a program to concentrate power in a small number of large commercial operators. It is possible that the Government is using the issue of pricing of domestic wetland leases to further increase the pressures on boat storage in the harbour, thereby raising the costs of boat storage, and increasing the returns available to the remaining commercial operators. A small number of highly profitable operators is much more manageable from a Government point of view in further implementing a reduction in total vessel numbers on the harbour and therefore shaping the character of the harbour to its predetermined view.