Review into Rentals for Waterfront Tenancies on Crown Land in NSW

INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES

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1 INTRODUCTION

New South Wales has many beautiful waterways. Because of this, much waterfront land above the mean high water mark has been sold and developed, often for residential purposes. However, the land below the mean high water mark—that is, the seabed in harbours and estuaries—has traditionally been maintained by the NSW Government as public land.

To make better use of their waterfront situation, many owners of waterfront residences have obtained permission from Government to occupy an area of this public land, and have used it to build structures for their private use—including jetties, swimming pools and enclosures, and boatsheds and boating facilities such as slipways. In some cases, owners have reclaimed parts of the seabed—for example, by building a seawall and filling the area enclosed by the wall so that the new land level is above the mean high water mark.

In October, 2003, the Premier asked the Independent Pricing and Regulatory Tribunal of NSW (the Tribunal) to review and report on the rent that the Government should charge for this use of public land.

1.1 Tribunal's terms of reference

The terms of reference for the review required the Tribunal to determine a suitable approach for setting rentals for domestic waterfront tenancies over land owned or administered by the Waterways Authority and the Department of Lands.

In determining this approach, it was to:

- align rental returns to reflect and maintain market value
- ensure that rents cover, at a minimum, administration costs
- consider tenants' ability to pay, including the situation of pensioners
- consider appropriate equity arrangements for tenants in special circumstances (such as those who have only water-based access to their properties).

In addressing these issues, the Terms of Reference specifically draw the Tribunal's attention to a formula developed by the Department of Lands and employed by the Department for domestic occupancies in its North Coast region and by the Waterways Authority for the calculation of rentals for domestic occupancies which included large reclamations.

In addition, the Tribunal was asked to review and report on mechanisms to streamline the administration of domestic waterfront tenancies. In so doing, it was to consider:

- the different legislative requirements in the administration of licences, leases or other instruments by the two agencies
- the most appropriate basis of term and conditions associated with these instruments (for example, lease, licence or any other instrument).

While the term 'domestic' waterfront tenancies may apply to all non-commercial occupancies, the Tribunal has focussed its attention on occupancies adjacent to individually titled freehold land and used for typical residential purposes. However, other non-commercial occupancies include community organisations, schools and sailing clubs. This latter group includes groups with widely divergent aims and requirements.

Where pertinent, the Tribunal has specified the principles that it applied in its deliberations. Rather than specific recommendations for the rental of these other non-commercial occupancies, the Tribunal believes that rental for these occupancies would be better determined by the agencies on a case by case basis, using the principles in this report and the policies outlined in the recent Mini-Budget as a guide. In this way, the merits of individual cases may be better evaluated.

Definitions of other important terms used throughout this report are provided in Box 1.1. The full terms of reference are set out in Attachment 1.

1.2 Overview of main findings and recommendations

The Tribunal found that any approach for setting rentals for domestic waterfront occupancies should recognise that the land affected by these occupancies is a valuable community asset, and the NSW Government, on behalf of the community, is entitled to a reasonable return on this asset. It also found that it is appropriate that such an approach aims to align rentals with the market value of the occupancy. It recommends that this be achieved through the use of the following formula for calculating rentals:

$$\text{General Rent (\$)} = [\text{Precinct Statutory Land Value (\$/m}^2\text{)}] \times [\text{Occupancy area (m}^2\text{)}] \times [\text{Rate of return (3.05\%)}] \times [\text{Discount Factor (50\%)}]$$

In addition, the Tribunal found that the rental, occupancy instrument, occupancy term and other conditions should be considered as an integrated package of rights and obligations. This package should take into account Government policy and principles for the use and management of public land and waterfront areas, as well as the value of the occupancy to the rights holder.

On this basis, it recommends that licences generally be used as the occupancy instrument for all future occupancies, and that these new licences specify a longer occupancy term, and allow the rights holder to transfer the occupancy to the new owner when he or she sell the adjoining freehold land. In addition, it recommends existing occupancy instruments be replaced with these new instruments as soon as possible, to enable rights holders to benefit from these recommended changes to the term and transferability of occupancies.

In relation to equity, and rights holders' ability to pay, the Tribunal recommends that for most existing rights holders, rentals calculated using the recommended formula should be phased-in over two to six years (depending on the size of the resulting rental increase). For pensioners who are currently rights holders, the new rentals should be phased in over up to seven years, and the rental payable after this time should be capped at 50 per cent of the rent or a maximum of $1,000, as calculated from the formula. Pensioners who become rights holders or existing rights holders who become pensioners should pay the higher of the minimum rent or 50 per cent of the rent calculated under the formula.

For rights holders who have water access only to their freehold properties, the general rental formula should be modified to include a rebate of $250.

In relation to streamlining the administration of occupancies, the Tribunal recommends that administration costs should be recovered by charging a minimum rental of $350 per year (to be indexed annually).

In reaching its findings and recommendations, the Tribunal has taken into account several relevant changes announced in the recent State Mini-Budget that are relevant to this review. These include the transfer of the property management sections of the Waterways Authority to the Department of Lands, the abolition of the Premium Property Tax, and the substantial changes to the management of public land.

1.3 Overview of report

The rest of this report explains the Tribunal's findings and recommendations in detail:

- Chapter 2 outlines its process in undertaking the review, including seeking comments from a wide range of stakeholders and expert advice
- Chapter 3 summarises the current approach to providing domestic waterfront occupancy rights and setting rentals
- Chapter 4 explores the value of waterfront public land to rights holders and the broader community
- Chapter 5 explains the rationale for setting rentals so they reflect the market value of the occupancy
- Chapter 6 proposes a general formula for setting such market-based rentals
- Chapter 7 discusses the occupancy instrument, occupancy term and other conditions that should be associated with market-based rentals
- Chapter 8 examines issues of equity and how rights holders' ability to pay should be taken into account when implementing the new rental regime
- Chapter 9 considers equity arrangements for rights holders who have special circumstances, including water access only properties
- Chapter 10 looks at streamlining the administration of waterfront occupancies and recovering the costs involved.

The full list of the Tribunal's recommendations has been set out in Attachment 2.

Box 1.1 Definition of important terms used in this report

Throughout this report, the Tribunal has used a range of terms in a specific way. These terms are defined below.

Public land. The terms of reference refer to domestic waterfront rentals for land owned by the Department of Lands and the Waterways Authority. Technically, the land in question is either Crown Land, (within the meaning of the Crown Lands Act 1989) administered by the Department of Lands, or freehold land owned by the NSW Government and administered by the Waterways Authority. For ease of reference, both of these categories are referred to in this report as public land.

Occupancy and occupancy rights holder. The area for which a domestic waterfront rental is charged is referred to as an occupancy (rather than a tenancy), and the individual who has been given permission to occupy this area is referred to as the occupancy rights holder or rights holder. These terms are used because 'tenancy' usually implies having a lease over a property, while some current rights holders have a licence.

Occupancy instrument. As noted above, various instruments are currently used to permit occupancy of waterfront public land. The Waterways Authority issues leases, and the Department of Lands issues a variety of licences. In this report, the term occupancy instrument is used to refer to all these instruments.

Occupancy term. This term refers to the length of time that the rights holder is permitted to occupy the waterfront public land, as specified in the occupancy instrument.

Rental. This term refers to the annual fee that rights holders are charged for domestic waterfront occupancies.

General Rent. This term refers to the annual fee calculated through use of the formula, before the application of any discounts or rebates.

Reclamation. This term refers to an area within an occupancy that was originally part of the seabed, but has been 'reclaimed' by the rights holder by raising the level of the land so it is above the high water mark.

Discretionary, recreational and exclusive use. Many rights holders obtain waterfront occupancies for the purpose of building structures on public land, such as jetties, slipways, boatsheds and swimming pools. Some rights holders use these structures only for discretionary, recreational purposes. Discretionary use refers to use that is non-essential (such as facilitating boating). An example of non-discretionary use is where a structure provides the only way of accessing the rights holder's freehold property. Recreational use refers to use that is not associated with public use, (such as access for fire and other emergency services). The conditions of some occupancies enable the rights holder to exclude third parties from using these structures—this is referred to as exclusive use.

2 REVIEW PROCESS

In undertaking this review, the Tribunal sought to take into account as wide a range of views as possible. It invited public submissions to this review on 27 October 2003, with a closing date of 5 December 2003. In some cases, those making submissions asked for extra time so they could provide further details for their submission. Where the Tribunal received these requests before the closing date, it agreed to receive supplementary submissions up until 20 February 2004.

More than 350 submissions were received, covering a wide variety of issues. The key points raised in submissions are summarised in Attachment 3; a list of those who made submissions is provided in Attachment 4.

In recognition of the importance of fully considering all the views expressed in these submissions, the Premier extended the Tribunal's deadline for reporting its findings and recommendations to 23 April 2004.

The Tribunal also consulted closely with a range of relevant stakeholders, including:

- the Waterways Authority
- the Department of Lands
- the Valuer-General
- NSW Treasury.

The Tribunal also liaised with various representatives of the financial and property industries.

3 CURRENT ARRANGEMENTS FOR PROVIDING OCCUPANCY RIGHTS AND SETTING RENTALS

Currently, both the Waterways Authority and the Department of Lands administer domestic waterfront occupancies in NSW. The Waterways Authority administers some 1,400 occupancies in Sydney Harbour. The Department of Lands administers Crown land in other estuaries and coastal waterways, including Pittwater and Port Hacking.

While historically both agencies set rentals based on valuations of land provided by the Valuer General, the current arrangements for providing occupancy rights and setting the associated rentals have developed over time, often in an ad hoc way.

More recently, both agencies have taken steps to rationalise and modernise their administration of waterfront occupancies. However, to date, these steps have fallen short of developing a consistent occupancy instrument, and a consistent approach for setting and reviewing the associated rental, occupancy term and other conditions.

As a result, the current arrangements differ widely, with occupancy rights holders paying a variety of rentals, in return for a variety of entitlements. The Tribunal believes this situation is not fair or appropriate for the rights holders themselves, nor for the people of NSW, who are the collective owners of the land in question. The current arrangements for each agency, and Government policy and principles in relation to waterfront and public land are outlined below.

3.1 Rentals administered by the Department of Lands

Until the late 1980s, the Department of Lands used permissive occupancies as its occupancy instrument. This instrument provided rights holders with the right to occupy a specific waterfront area, but specified few other rights.

With the introduction of the *Crown Lands Act 1989*, the Department replaced permissive occupancies with a general class of licence. Under the provisions of this Act, occupancy licences can be revoked at will or on such terms as specified in the licence, and cannot be transferred. The Act also specifies that 'market rentals' should apply.

However, because of the way the arrangements for occupancies have evolved over many years, rights holders with similar occupancies are still charged a wide range rentals, many of which are well below the market value. In addition, the Department uses a variety of mechanisms for increasing rentals. Some rentals have not been increased for many years; some are increased each year by the Consumer Price Index (CPI); while others have been increased to and are maintained at a level that sought to reflect their market value.

In 2002/03, the Department developed a formula for establishing market rentals for waterfront occupancies, with advice from the State Valuation Office and a private valuation company. This formula is:

Rent (per m^2) = 50% x Valuer-General's Statutory Land Value (of the adjoining waterfront precinct) (per m^2) x 6%

It currently uses this formula for occupancies on the North Coast only. (The Tribunal examined this formula as part of it review—see Chapter 6).

3.2 Rentals administered by the Waterways Authority

The Waterways Authority currently uses leases as its occupancy instrument. The level of rental, occupancy term and other conditions associated with these leases has varied considerably over time. Its current policy also includes a requirement that structures built on occupancies must not impede access to the land they cover.

At present, most rental levels have been set to reflect the benefits that the occupancy provides to the rights holder as boating facility. Around 100 different waterfront localities have been rated for their fitness for boating, and these ratings are used as a factor in the calculation of rentals for occupancies in those localities. For occupancies that involve large reclamations, however, the Waterways Authority uses the formula developed by the Department of Lands (see 3.1).

In 1991-92, the Waterways Authority[1] conducted a review aimed at introducing market rentals based on the value of the adjoining land. The Tribunal understands that the final recommendations of this review were that rentals for reclamations and jetties be set at 2.0 per cent of adjoining indicative land value; that rentals for tidal and buoyed pools be set at 1.0 per cent of adjoining land value; and that concessions be extended to existing fixed-income tenants.[2]

However, these recommendations were not approved by the then Minister. As a consequence, the Board reverted to the previous rental arrangements which are based on the Valuer General's valuations of property one street removed from the foreshore. From these valuations, 8 wetland rates were established, which were then applied to approximately 100 precincts around the harbour foreshore.

The Tribunal has been advised that after 1988, some reclamations larger than 50 square metres were being charged rent at 7 per cent of the value calculated by the Valuer-General/State Valuation Office for rental purposes. However, since March 2002 the new formula has been applied to such large reclamations.

3.3 Policies and principles in relation to public waterfront land

As noted previously, the waterfront land for which domestic occupancies can be provided is either Crown land (owned by the NSW Government and administered by the Department of Lands) or freehold land (owned by the NSW Government and administered by the Waterways Authority).

1 At this time the Waterways Authority was part of the Maritime Services Board of NSW.

2 The original recommendations included rental for reclamations and jetties to be 2.5 per cent of adjoining indicative land value; rental for tidal and buoyed pools to be 1.5 per cent of adjoining land value; concessions for hardship and non-commercial groups; and a 3-year phase-in period. Following consultation, the Tribunal understands that these recommendations were revised to those set out above.

Since 1997, it has been Government policy to improve public access to this waterfront land. For example, in its submission, the Sydney Harbour and Foreshores Committee refers to several policy statements that emphasise the right of the community to access public foreshore land and the need to improve and protect the unique visual qualities of Sydney Harbour. These include the 1997 Statement by the Premier on the planning needs for Sydney Harbour; 1998 State Environmental Planning Policy number 56 (which includes Sydney Harbour foreshores and tributaries); the Regional Environmental Plans 22 and 23 (which covers the Government's aims and objectives for Sydney Harbour and its tributaries); and the 2003 document *Sharing Sydney Harbour – Access Plan*.

In addition, the *Crown Lands Act 1989* provides for the NSW Government to manage Crown land to maximise the benefits of this resource for the people of NSW. It sets out six principles for doing this, which are that:[3]

- public use and enjoyment of appropriate Crown land must be encouraged
- where appropriate, multiple use of Crown land must be encouraged
- where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
- environmental protection principles must be observed in relation to the management and administration of Crown land
- the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) must be conserved wherever possible
- Crown land must be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

The principles for the management of public land require that community use and enjoyment of public land must be encouraged and that such land should be 'multi-use', where appropriate. Both agencies have published policies that explicitly support these principles.

Conclusion

The Tribunal finds that any approach for setting rentals and other conditions for domestic waterfront occupancies should recognise that the land in question is public land, and therefore reflect Government policies and principles for the management of this land, particularly the principles of public use, sharing and environment protection as set out in the *Crown Lands Act 1989*.

The Tribunal is of the view that rent should be payable by rights holders to compensate the public for the use of public land. In the general case, this use will involve erecting structures on this land. The use of these structures is generally for exclusive, discretionary, recreational purposes for a defined group of individuals.

3 Section 11, *Crown Lands Act 1989*.

4 THE VALUE OF WATERFRONT PUBLIC LAND

In considering a suitable approach for setting rentals for occupancies over public waterfront land, the Tribunal first considered the value of this public land—both to the rights holders themselves and to the NSW community as a whole. Most of the submissions it received provided the perspective of rights holders. For many of these individuals, the value of the public land they occupy is based on its usefulness to them for a specific purpose, often boating. However, as other submissions pointed out, this land also has a much broader value to the NSW community. Further, the structures that rights holders build on this land for their private use can reduce the value to the community.

The Tribunal concluded that waterfront public land is a valuable asset, both to rights holders and the community, and that any approach for setting occupancy rentals should take into account its full value.

4.1 Value of waterfront land to rights holders

From the perspective of rights holders, the value of waterfront public land depends largely on the use they wish to make of this land. Most rights holders use the land to build structures that enhance their enjoyment of the waterfront position of their home, and their convenience and ease in keeping a boat and gaining access to waterways. (These structures include swimming pools, jetties, boatsheds and slipways.)

Thus the value to them of the area of public land they occupy depends partly on its usefulness for a particular purpose. For example, several submissions argued that occupancies with deep-water frontages have a higher value because they enable the rights holders to moor vessels close to the adjoining waterfront freehold land, whereas those with water frontages that slope more gently to deep water so that land is exposed at low tide have a lower value since they provide reduced access to deep, more navigable water.

Some submissions also argued that that waterfront public land is generally of little value in itself—that for a rights holder, the value of an occupancy is in the usefulness of the structures built on it. However, the Tribunal does not accept this argument. Many rights holders commit significant resources to building structures on occupancies with terms limited to between one and three years with holdover provisions from year to year thereafter. (For example, the cost of establishing a jetty can range between $25,000 and $100,000.) This suggests that they value these structures highly. Given that the structures could not be built without using the land, they must also value the land.

The Tribunal notes that some rights holders use their waterfront occupancy for essential, non-recreational purposes—for example, to build structures that provide the only access to their freehold property, or provide fire and other emergency service crews with access to nearby public land. However, most rights holders use their occupancy for exclusive, discretionary and recreational purposes[4], and so are free to abandon it if they believe its costs (in terms of the rental they must pay) outweigh its value for them.

[4] The specific meaning of the terms exclusive, discretionary and recreational use are provided in Box 1.1, pp 3-4.

4.2 Value of waterfront land to the community

From the community's point of view, waterfront public land provides several broad benefits, including environmental, social and economic benefits. In addition, the value of these benefits may be reduced by structures associated with private occupancies over this land.

Several submissions pointed out the environmental value of waterfront public land. This land supports estuarine ecosystems that comprise water, rock, sand, soil and communities of flora and fauna. The Metropolitan Land Council submission also argues that waterfront land and its associated ecology should be maintained and protected. The Department of Infrastructure, Planning and Natural Resources (DIPNR) submission stated that:

> Waterfront areas are extremely important in maintaining coastal, estuarine and riverine function and biodiversity. Within estuaries, inter-tidal areas and near-shore areas are highly productive areas that are essential for the maintenance of vegetation, invertebrates, fish (both commercial and non-commercial species) and bird communities.[5]

Waterfront public land is also of high social and economic value to the community. This land can provide access to water-based recreation, including swimming, boating and walking along the waterfront. In addition, the ecological values mentioned above provide important educational opportunities. Further, the scenic beauty of Sydney Harbour and other NSW estuaries is recognised throughout the world, and forms a substantial component of the state's attraction for tourists.

Several submissions[6] commented that the structures built on waterfront occupancies can diminish many of these ecological, social and economic values by:

- damaging foreshore habitats and fragmenting the marine ecology
- obstructing public passage along the foreshore, and creating uncertainty about the public's access rights in these areas
- reducing the visual amenity of these areas
- increasing boat traffic in these areas.

It can also be argued that the increase in value to rights holders from their occupancy over areas of waterfront public land correlates to the loss of value to the community as a whole from reduced access to these areas. Some submissions put the view that it is important that the price of occupancy (the rent) fully take account of the value of these community impacts.[7]

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5 Department of Infrastructure, Planning and Natural Resources submission, 5 December 2003, pp 1-2.

6 Including the DIPNR submission, the Sydney Harbour and Foreshores Committee submission, the Coastal Council of NSW submission, the Southern Rivers Catchment Management Authority Establishment team submission.

7 For example, the Sydney Harbour and Foreshores Committee submission, previously cited.

Conclusion

The Tribunal concludes that any approach for setting rentals for domestic waterfront occupancies should recognise that the land affected by these occupancies is a valuable community asset, and that the NSW Government, on behalf of the community, is entitled to a return on this asset.

Further, it finds that this approach should take into account the extent to which the rights holder's use of the public land is for exclusive, discretionary and recreation purposes, but not the land's suitability for any specific use.

5 RATIONALE FOR MARKET-BASED RENTALS

In line with its terms of reference, the Tribunal has considered whether, in setting rentals for domestic waterfront occupancies, it is appropriate to align these rentals with the market value of these occupancies. After taking into account the views expressed in submissions and the Tribunal's consultation process, it has found that:

- it is appropriate to align rentals with the market value of occupancies
- this should be achieved by calculating rentals as a rate of return on the value of the occupancy
- the value of the occupancy should be determined using the Statutory Land Value (SLV) of the adjoining freehold land, discounted to account for specific differences in the characteristics between freehold land and public land
- rentals should form part of a 'package' of rights and obligations that also includes a suitable occupancy instrument, specified tenure and conditions, and the capacity to transfer the occupancy.

These findings are discussed in more detail below.

5.1 Market-based rentals are appropriate

The Tribunal received several submissions that argued that market rentals are not appropriate on the grounds that there is no market for waterfront occupancies. Reasons cited for this position include that:

- The rights holder is the only person who has an interest in the public land.
- The rights holder is prohibited from sub-letting the public land to third parties.
- The rights holder has no tenure over the occupancy, nor the ability to transfer the occupancy, indicating that occupancy rights cannot be traded. For example, clause 11 of the current NSW Waterways lease states 'the lessee shall not assign, transfer, sub-let, mortgage or share possession' with any individual.

Similar views were advanced in some submissions to the Waterways Authority's 1991-92 review (see section 3.2).

The Tribunal considered these arguments carefully, and concluded that they are not valid. The definition of a market does not require a third party or the ability to trade a good or service in a secondary market. A market is an arrangement that allows a consumer and producer of a product to engage in voluntary exchange, usually at an agreed price. There are no minimum requirements in relation to the number of buyers and sellers (that is, market depth).

As consumers are free to choose whether or not they buy a good (in this case, occupancy rights), they will only buy it if it provides them with 'value for money'. While occupancy rights may be restricted, rights holders still derive value from these rights—for example, amenity and recreational benefits associated with access to their freehold property from the water (via structures on public land).

To obtain this value, the rights holder currently acquires the right to use a specific area of land from the NSW Government for a certain period of time, usually between one and three years, and then continues the occupancy, conditional on meeting contractual requirements, including payment of rent. Hence, a primary market transaction has taken place, whereby a private good (the right to use public land) has exchanged hands between a buyer (the rights holder) and a seller (the NSW Government) at a pre-determined price.

The Tribunal does note, however, that while a market for domestic waterfront occupancy rights does exist, it is not a competitive market.

The Terms of Reference for the Tribunal's review specifically require it to recommend a market rental for waterfront occupancies.

The Crown Lands Act[8] also provides a set of principles that are to apply in redetermining the rent of public land. These provide guidance when determining rent for all public land. They are that :

a) the rent shall be the market rent for the land comprised in the tenancy having regard to any restrictions, conditions or terms to which it is subject,

b) any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded,

c) regard may be had to any additional value which, because of the lease, licence or enclosure permit, has accrued, or may reasonably be expected to accrue, to other land held by the holder,

d) regard may be had to the duration of the time for which the rent determined will be payable.

5.2 Rentals calculated as a rate of return on value of occupancy

The Tribunal believes that the appropriate way to align rentals for domestic waterfront occupancies with the market value of these occupancies is to calculate them as an appropriate rate of return on the value of the occupancy.

As discussed in Chapter 4, the waterfront public land over which domestic occupancy rights are provided is a valuable asset owned the NSW community. Even in a non-competitive market, the owner of an asset usually only allows others to use that asset if they provide the owner with a suitable return on the asset. It is therefore reasonable that rentals be calculated so that the NSW Government, on behalf of the community, receives a suitable return on the waterfront public land that it allows rights holders to occupy.

5.3 Value of occupancy based on SLV of adjoining freehold land

Because rentals for domestic waterfront occupancies are currently pre-determined rather than set by the market, market price cannot be used to determine their market value. Rather, a suitable proxy must be found.

8 Section 143, *Crown Lands Act 1989.*

The most reliable indication of the value of a parcel of land is the value of land in the adjoining parcel. The Tribunal believes this approach, known as adjunct valuation, provides a reasonable basis for determining the value of an occupancy. Moreover, in the Tribunal's judgement, it provides a more reasonable basis than others proposed in submissions, such as the utility of the land for boating.

There is only a perfect alignment between the value of a parcel of land and the adjoining parcel of land if the land in both parcels has similar characteristics. Clearly, there are significant differences between the land over which waterfront occupancies are provided and the adjoining freehold land, because the former is below the mean high water mark. The Tribunal considers that these differences should be taken into account by applying a discount factor to the value of the adjoining land.

The NSW Valuer-General's valuations report the unimproved capital value of freehold land, known as the Statutory Land Value (SLV). This value is the relevant measure, because the *Crown Lands Act 1989*, requires that any rentals for Crown land must be determined for valuations which disregard improvements to the land. In addition, SLV valuations are already widely used, and regularly updated.

The Government reviewed the operations of the Valuer-General's Office in 1998/99 and again in 2003. These reviews resulted in increased rigour and timeliness of SLV valuations, better Parliamentary oversight, and a better definition of responsibility within the Office. Further, before the Premium Property Tax framework was abolished, this framework allowed specific valuation issues to be incorporated into the SLV through a process known as 'hand-crafting'. Properties subject to Premium Property Tax and Land Tax were also valued annually. These measures have increased confidence in the work of the Valuer-General, as confirmed by the downward trend in the rate of valuation appeals.[9]

The specific formula for calculating rentals is discussed in Chapter 6.

5.4 Rentals should form part of a 'package'

The Tribunal is of the view that rentals for waterfront occupancies should be seen as part of a 'package' of rights and obligations that also includes the occupancy instrument, occupancy term, and other conditions such as whether or not the occupancy can be transferred. In general, it believes that if rentals are to be set so they align with the market value of the occupancy, the other parts of the package should maximise the value of the occupancy for the rights holder insofar as this is consistent with Government policies and principles for the use of public and waterfront land.

This issue is explored in detail in Chapter 7.

9 The rate of valuation appeal has been less than 1 per cent since 2000.

Recommendations

The Tribunal recommends that:

- *Rentals for domestic waterfront occupancies be calculated as an appropriate rate of return on the value of the occupancy.*
- *The Statutory Land Value (SLV) of the adjoining freehold land, provided by the Valuer-General, should be used as the basis for determining the value of the occupancy.*

6 GENERAL FORMULA FOR CALCULATING RENTALS

The Tribunal has developed a general formula for calculating rentals to align rentals with the market value of the occupancy, and maintain this alignment over time. This formula is:

$$\text{General Rent (\$)} = [\text{Precinct SLV (\$/m}^2\text{)}] \times [\text{Occupancy area (m}^2\text{)}] \times [\text{Rate of return (3.05\%)}] \times [\text{Discount Factor (50\%)}]$$

The Tribunal's formula is similar to the one the Department of Lands uses to set rentals for occupancies on the North Coast, and the Waterways Authority uses to set rentals for occupancies involving large reclamations. However, it includes a lower rate of return (3.05 per cent compared to 6 per cent) and adopts different reasons for the use of a discount factor. The Tribunal believes it should be used as the basis for establishing the level of rental for all current and future rights holders. It recognises that, for some rights holders, this will result in increased rentals. For others, rentals may be reduced. The Tribunal's consideration of the ability of rights holders to meet increased rentals is discussed in Chapter 8.

Each component of the general formula is discussed below, together with several matters arising from the application of this methodology. The Tribunal's consideration of equity arrangements for rights holders in special circumstances, such as those who only have water-based access to their freehold property, is discussed in Chapter 9.

6.1 Precinct SLV

Like the Department of Lands' formula, the Tribunal's recommended formula uses the 'precinct Statutory Land Value (SLV)' as a proxy for the market value of an occupancy. The precinct SLV is an amount (expressed as dollars per square metre) that is calculated by dividing the total SLV of all freehold properties in the precinct where the occupancy is located (based on the Valuer-General's SLVs for these properties) by the sum of the total area of the freehold properties in the precinct plus the total area of occupancies in the precinct:

$$\text{Precinct SLV (\$/m}^2\text{)} = \frac{\text{Total SLV of all properties in precinct}}{\text{Total area of freehold properties in precinct + Total area of occupancies in precinct}}$$

Many submissions misinterpreted the precinct SLV concept. In this context, it averages (or smooths) the value of waterfront land in a defined area in which the occupancy and the adjoining freehold land are situated (the precinct), where the individual blocks in this precinct have similar characteristics. By including the area of occupancies in the denominator, the formula for determining the precinct SLV provides an accurate estimate of the value per square metre of the area occupied.

It can be shown that this formula is equivalent to the mean value divided by the mean total (freehold plus occupancy) area. In some rural areas, residential blocks are intermingled with much larger rural holdings. In such cases, it may be preferable to either remove these larger holdings from the precinct SLV calculation, or to use median (rather than mean) values in the calculation, thereby eliminating the distorting influence of extreme outlying values.

The Valuer-General's Office undertakes regular reviews of the SLVs it provides (see Chapter 5). These reviews involve a mass appraisal valuation process, which aggregates like (or reasonably like) properties in a defined area, identifies benchmark or representative properties in this area, compares the benchmark properties with properties that have been recently sold, and determines an appropriate adjustment factor to be applied to all the properties in the area. It can also involve handcrafting and physical inspection of some properties.

The Tribunal believes the use of regularly updated SLVs (typically reviewed between 1 and 3 years) to determine the precinct SLV component of the general rental formula means that these rentals will maintain their alignment with the market value of occupancies as this value changes over time. Precincts should be defined as homogenous waterfront areas.

6.2 Discount factor of 50 per cent

Like the Department of Lands formula, the Tribunal's recommended formula includes a discount factor of 50 per cent. According to the Department, it took into account the price discrepancies between waterfront freehold and remnant land sales when determining its discount factor. However, the Tribunal does not see the logic of this. It believes that the relevant considerations when setting the discount factor include the following:

- Much of the land in question is partially or totally submerged.
- While theoretically, the public land could be developed to complement the adjoining freehold land and thereby achieve a value which was similar to that adjoining land, there are substantial limitations on how it can be used. Currently, as many submissions pointed out, it may only be used for access to the waterway and associated activities.
- The general policy for this type of public land is that it should not be sold. Indeed, the present policy is that the use of public land for public purposes should be maximised. Waterfront occupancy rights holders, therefore, have no reasonable expectation that they may own the land in the future.
- Statutory planning and current policy has reinforced the requirement in the *Crown Lands Act 1989* that, where practicable, access across the land (as opposed to access to any development of the land, such as structures built on the land) must be available to the community.

Taking these factors into account, the Tribunal recommends that an appropriate value for the discount factor is 50 per cent.

6.3 Rate of return of 3.05 per cent

The agencies have suggested a rate of return of 6 per cent, based upon SVO and land board precedents and advice. This is determined on the basis of a number of factors, including:

- the value of the public land to the rights holder
- the income return recognises that public land cannot be sold in order to realise a capital gains as is possible for private freehold development
- the only outgoing is the statutory rate charges to Local Council.

The Tribunal investigated the appropriate rate of return to the community on waterfront occupancies. As discussed in Chapter 5, it believes that a market for occupancies exists. However, the market price is not easy to observe and so we need to rely on surrogates. The Tribunal has used the long-term net return from residential rentals as a proxy for this return. As many submissions pointed out, the net return is the appropriate measure because the owner of a residential rental property is responsible for many of the outgoing costs and therefore the gross returns must recover these costs. Similarly, the rights holder is responsible for all establishment and operating costs associated with a domestic waterfront occupancy.

The Tribunal understands that the difference between gross and net residential rental returns is in the range of two to three percentage points.

The Tribunal notes that returns from residential rentals fluctuate over time. As many submissions noted, these returns are currently much lower than the 6 per cent rate of return used in the Department of Lands formula. Given this, the long-term 'rolling average' rate of return on rental properties probably provides a better indicator, as it 'smooths' year-to-year market fluctuations, providing greater certainty to rights holders. The rolling average gross return over the last 10 years was 5.55 per cent. Therefore, given an estimated difference between gross and net returns of between 2 and 3 percentage points, as above, the Tribunal accepts a net return in the range of 2.55 to 3.55 per cent. The mid point of this range is 3.05 per cent.

The Tribunal believes a 3.05 per cent rate of rate of return is appropriate. However, this rate of return will need to be reviewed regularly.

6.4 Application of other taxes and charges to occupancy rentals

The Tribunal received many submissions that argued that the rentals for domestic waterfront occupancies represent a 'double-dip' when the various other rates and taxes that rights holders pay are considered—particularly the Premium Property Tax, Land Tax and council rates. The abolition of the Premium Property Tax was announced in the recent Mini-Budget. However, in relation to Land Tax, the Tribunal notes that clause 21C of the *Land Tax Management Act 1956* provides that:

> . . . a lessee of land or part of land owned by the Crown, a local council or a county council is for land tax purposes deemed to be the owner of a parcel of land ("the notional parcel") consisting of the land or part leased. The Crown, local council or county council is then not to be considered owner of the notional parcel.

In addition, Clause 9 of this Act provides that:

> (1) Land tax is payable by the owner of land on the taxable value of all the land owned by that owner which is not exempt from taxation under this Act.
>
> (2) The taxable value of that land is the total sum of the land value of each parcel of that land.

This indicates that where an occupancy over public land abuts a freehold property that is subject to Land Tax, the rights holder will be required to pay both the relevant tax, rates and the occupancy rental.

In relation to council rates, Section 560 of the *Local Government Act 1993* provides that if land owned by the Crown is leased, the lessee is liable to pay these rates.

The Tribunal believes it is up to the rights holder to factor these implications into his or her decision to establish or continue a domestic waterfront occupancy.

6.5 Application of GST to occupancy rentals

Some submissions queried the application of GST to occupancy rentals. A ruling from the Australian Taxation Office requires that GST be charged on occupancy rentals.

Recommendations

The Tribunal recommends that:

- ***A general formula be used to set occupancy rentals that reflect the market value of the occupancy. This formula incorporates a 3.05 per cent rate of return and a 50 per cent discount factor. The rate of return will need to be regularly reviewed. Thus:***

General Rent ($)= [Precinct SLV ($/m²)] x [Occupancy area (m²)] x [Rate of return (3.05%)] x [Discount Factor (50%)]

- ***To maintain currency, rentals should be calculated annually using latest SLV available and precincts should be defined as homogeneous water front areas.***

7 OCCUPANCY INSTRUMENT, OCCUPANCY TERM AND OTHER CONDITIONS

The Tribunal has considered the appropriateness of alternative occupancy instruments, and the length of the occupancy term and other conditions that are attached to these instruments. As discussed in Chapter 3, a variety of occupancy instruments are currently used. The most common are leases (which imply the right to exclusive use of a parcel of public land) and licences (which essentially provide permission to occupy a parcel of public land).

As noted in Chapter 5, the Tribunal believes that, in general, the rental, occupancy instrument, occupancy term and other conditions should be considered together, as they form a 'package' of rights and obligations. This package should take into account Government policy and principles for the use and management of waterfront areas and public land, as well as the value of the occupancy to the rights holder. In general, it believes this can best be achieved by using an appropriately structured licence as the occupancy instrument.

In addition, it believes that if rentals are set to reflect and maintain the market value of the occupancy, the term and other conditions should maximise this value, insofar as this accords with Government policy and principles. This can be achieved by providing longer occupancy terms, and the capacity to transfer the occupancy when the adjoining freehold property is sold. Each of these issues, together with a range of other related matters, is discussed below.

7.1 Licences are the appropriate occupancy instrument

The Tribunal believes that licences are the more appropriate occupancy instrument for domestic waterfront occupancies. The main reason for this is that licences do not necessarily imply the right to exclusive use of the occupancy, whereas a lease implies a degree of exclusive use. Thus, the use of licences is more consistent with Government policy and principles in relation to the use and management of waterfront and public land, which emphasise that these areas should be available for all citizens to use, and that structures built on them should be shared where possible.

For example, the Tribunal notes that the principles set out in the *Crown Lands Act 1989* require that public use and multiple use of Crown land be encouraged where appropriate, and that public land be managed to encourage public use and enjoyment. It also notes that the Waterways Authority's policy is to encourage the shared use of structures to reduce the number of intrusions into Sydney Harbour.

The Tribunal believes existing occupancy instruments should be replaced by licences as soon as possible, to enable rights owners to benefit from the recommended changes to the occupancy term and other conditions, discussed in sections 7.2 and 7.3 below. As far as the Tribunal is aware, this should not present legal problems. In most cases, the existing licences administered by the Department of Lands may be terminated by the Minister. The leases administered by the Waterways Authority may also be terminated by the Minister. While clause 11 of the current Waterways lease states that "the lessee shall not assign, transfer, sub-let, mortgage or share possession" with any individual, these are current provisions that may be altered by the Waterways Authority.

However, some licences issued by the Department of Lands may not be changed until the expiry of the current instrument. Fairness demands that these licences continue until their expiry—although the licensees should be entitled to ask for a new licence if they want to take advantage of recommended changes discussed below.

The Tribunal acknowledges that, in some cases, the use of leases may provide benefits unavailable with licences and so be the preferred occupancy instrument. The Tribunal recommends that the agencies should have discretion in regard to the occupancy instrument in particular circumstances.

7.2 Term of occupancy should be longer

The Tribunal believes that the occupancy term provided under the new licence should be longer than current occupancy terms, and that this term should be linked with the engineering life of structures built on the occupancy. Its reasons are as follows:

- Many submissions argued that occupancy terms should be substantially longer than they are at present, on the ground that waterfront structures were essentially long-lived. The Tribunal supports this position.
- A longer term will enable the capital cost of the structure to be amortised more appropriately, thereby maximising the value of the occupancy to the rights holder. Considering the engineering life of typical waterfront structures (jetties, piers etc.), a minimum term of fifteen years would be reasonable. While not directly related to the current review, the Tribunal notes that Australian Tax Office provides that the capital cost of jetties and similar waterfront structures may be depreciated over 20 years.
- The Tribunal has recommended that rentals should be calculated to include a suitable long-term rate of return. Consistency would suggest that the occupancy term should similarly have a long-term basis.

However, the Tribunal believes that there should be no expectation that the occupancy will be renewed at the end of the term, given the recommendation for a longer term. Indeed, it suggests that the occupancy should be extinguished at the conclusion of the occupancy term. If the existing rights holder wants to continue the occupancy, he or she should be required to apply for a new occupancy. In addition, the occupancy instrument should provide that the relevant agency will not provide a new occupancy automatically, but will reappraise its basic consent for the occupancy before making its decision.

The Waterways Authority and the Department of Lands have the ability to establish a longer term for occupancies, and to link this term with requirements concerning the economic and structural life of any proposed structure. The Waterways Authority is the freehold owner of the seabed and submerged land in its area of operation. The Department of Lands is the administrator of estuarine Crown land. As owner or owner's representative respectively, these agencies have substantial influence over any development on waterfront land. The Waterways Authority's position is even stronger in this respect, since it is also the delegate of the Minister for Transport Services as an approval authority for some forms of development for waterfront properties.

7.3 Rights holders should be able to transfer the occupancy

The Tribunal received many submissions that argued that when rights holders sell the freehold land adjoining their occupancy, they should be able to transfer the occupancy to the new owner. The Tribunal agrees with this argument, especially in light of its recommendations that rentals be set and maintained to reflect the market value of the occupancy, and that occupancy terms be extended.

The ability to transfer the occupancy would mean that new owners could confidently expect to gain the right to use the area covered by the occupancy and any structures on it for the remainder of the occupancy term (subject to any requirements that may be imposed by the agencies in their capacity of administrators of the public land). This would increase the value of the occupancy to the rights holder.

The Tribunal would like to clarify that it refers only to transfers within the term of the occupancy. The incoming rights holder would be bound by the original terms of the occupancy. For example, if the occupancy term was set at 20 years and the adjoining property was sold on the eleventh anniversary of the original occupancy, the new freehold owner would have the option to become the rights holder for the balance of the occupancy ie; 9 years.

The Crown Lands Act 1989 clearly provides that licences over Crown land are not transferable. If the recommendation to implement transferability of licences is accepted by the Government, either the Crown Lands Act will need to be amended or a mechanism be established that permits the effective reassignment of the licence, subject to the approval of the owner of the public land.

7.4 Other matters

The Tribunal also considered a range of other matters in relation to the conditions that should be attached to the occupancy instrument, including liability, registration of occupancy licences on related land titles, and other conditions. Its conclusions on these matters are discussed below.

7.4.1 Liability

Currently, occupancies administered by both agencies require that liability for damages to be assumed by the rights holder. This requirement could continue to be specified in new occupancy licenses.

7.4.2 Registration of occupancy licences on related land titles

The Tribunal understands that the Department of Lands is working to amend legislation so that occupancy instruments may be recorded on related land titles. It strongly supports this provision. In addition, it believes it should be extended to occupancy instruments currently administered by the Waterways Authority, particularly as this agency intends to reduce the number of occupancies. This would enable better information to be made available to the market.

However, the Tribunal understands that if the occupancy instrument is recorded against the title of the rights holder's freehold land, a carefully crafted notation that clearly explains the occupancy conditions would be required. For example, this notation would need to clearly state the term of the occupancy; that the occupancy will be terminated at the end of that term; and that renewal of the occupancy is solely at the discretion of the Minister.

7.4.3 Other conditions

Existing occupancies have a range of other conditions. These include restrictions on the use of the occupancy, maintenance requirements and the need for a security deposit. The Tribunal believes that such specific occupancy conditions should be decided by the agencies.

Recommendations

The Tribunal recommends that:

- ***Licences generally be used as the occupancy instrument for domestic waterfront occupancies. However, the Tribunal acknowledges that leases may be more suitable in particular circumstances.***
- ***These licences should require that the occupancy area is available for shared use with right holders wherever this is practicable.***
- ***The term of these licences should be established or extended to link to the reasonable economic and structural life of existing and any proposed structures.***
- ***Steps be taken to permit these licences to be transferred to the new owner when the adjoining freehold land is sold, for the remaining term of the licence.***
- ***Steps be taken to permit these licences and their associated conditions to be noted on the title of the adjoining freehold land.***

8 EQUITY AND ABILITY TO PAY

In line with its terms of reference, the Tribunal has carefully considered the equity of its recommended approach for setting rentals for domestic waterfront occupancies. It recognises that the use of the general formula to calculate rentals is likely result in higher rentals for some rights holders, some of whom may not be able to pay these higher rents. It was particularly mindful of the impact of this formula on two groups of existing rights holders—pensioners, who currently pay concession rentals; and those who are likely to face substantially higher than average rental increases.

Based on these considerations, the Tribunal believes that:

- For existing rights holders, annual rentals should be calculated using the recommended formula but payment of the full rental should be phased in over two to six years.
- For existing rights holders who are pensioners, annual rentals should be calculated using the recommended formula but payment of the full rental should be phased in over seven years, and a 50 per cent discount or caps be applied to annual rental increases during this period and to the annual rental after this period. For all other pensioners, the higher of the minimum rent or 50 per cent of the rent calculated under the formula should apply.

These equity arrangements are described in more detail below.

8.1 Phase-in arrangements for existing rights holders

The Tribunal believes that rentals calculated using its recommended formula should be phased in for existing rights holders, to give those facing higher rentals reasonable notice of the increase and an opportunity to adjust their budget accordingly. It considered the length of the phase-in period, and whether the annual increase should be capped during this period. It decided that these provisions should depend on the size of the total increase in annual rental due to the application of the general rent formula:

- Where the increase is $1,000 or less, the new rental should be phased in over two years.
- Where the increase is between $1,000 and $10,000, the new rental should be phased in over four years, in equal instalments with a maximum increase of $2,500 per year.
- Where the increase is above $10,000, the new rental should be phased in over six years in equal instalments with a maximum increase of $2,500 per year.

The above amounts have been expressed in 2004 dollars and should be indexed annually, based on the CPI.

After the relevant phase-in period is complete, the full new rental (as calculated by the formula) should apply. If the rights holder sells the adjoining freehold property before the phase-in period is complete, the full new rental will apply as soon as the occupancy is transferred. Arrangements for occupancies with shared facilities are discussed in Chapter 9.

In addition to the phase-in arrangements, the Tribunal recommends that the agencies should provide rights holders with the option to pay their new rentals in instalments, to help them manage their cash flow. Further, where the annual rental calculated using the general formula is less than $350, the Tribunal believes a minimum rent of $350 should apply to cover administrative costs. This issue is discussed in more detail in Chapter 10.

Apart from providing a gradual introduction of the new rentals, the Tribunal's implementation proposals are designed to provide rights holders with a reasonable 'notice period' of the new rental arrangements. There are occupancies which will not reach the rental as calculated from the formula within phase-in period. The Tribunal recommends that, at the completion of the phase-in period, these occupancies will pay the full rental as calculated by the formula.

The Tribunal notes that even with these equity arrangements, some rights holders may decide that the new annual rental is more than the value of the occupancy to them. In most cases, the occupancy is used for discretionary and recreational purposes, and so can be abandoned in accordance with current tenure conditions where this is practical to do so. Where it is not practical, for example, where the occupancy was established a long time ago under very different rules and dwellings have been built on reclaimed land—the Tribunal suggests that the agencies should determine an appropriate solution on a case-by-case basis.

8.2 Phase-in arrangements for pensioners

Currently, most existing rights holders who are pensioners pay rentals that incorporate very substantial concessions. For example, those whose occupancy is administered by the Department of Lands pay just $70 per year. The Tribunal received a number of submissions that proposed that pensioners and self-funded retirees should be exempt from paying rentals based on the market value of their occupancy. Some submissions argued that increased rents could force some people in these groups to sell the family home.

Given that most waterfront occupancies are used for discretionary purposes, and that it has recommended that rights holders be able to abandon the occupancy without undue financial burden (see section 8.1), the Tribunal does not accept this argument. In addition, given the nature and value of the land covered by occupancies, the Tribunal does not accept that it is reasonable for even this class of rights holder to pay only nominal rents.

The Tribunal has examined the current rentals paid by pensioners and the rentals that will apply under the new regime. From this analysis, it believes that the rentals for these rights holders should be calculated using the general rental formula and should be phased in over a period of up to 7 years with the following provisions:

- Over the first three years, all existing pensioner rights holders should move to the minimum rental of $350 per year. This is consistent with the recent Mini Budget review of Crown Lands management in NSW. Minimum rents for all Crown Lands will be increased from $70 per year to $100 per year from July 2004. This will rise over three years to a new minimum of $350.
- Where the new rental as calculated using the formula is above $350, a 50 per cent discount will apply, with a cap on the rent of $1,000 (in 2004 dollars) and further phasing-in arrangements.

- For the following four years (that is, after the minimum rent has been phased-in), the maximum annual increase should be limited to $162.50 until the rent reaches the lower of 50 per cent of the rental calculated from the formula and $1,000. The annual increase of $162.50 is equivalent to around $3 per week. This compares with a typical single pension of $464.20 per fortnight ($232.10 per week).
- These concessions should be provided as a rebate.
- All amounts should be indexed by CPI each year.

Pensioners who become rights holders in the future (after purchasing freehold land adjoining an existing occupancy) or existing right holders who become pensioners should only pay 50 per cent of the rental as calculated under the formula, or the minimum rent, whichever is the higher.

The Tribunal recommends that the agencies give consideration to any case of demonstrated hardship arising from increased rentals on a case by case basis. This will enable the agencies to consider the circumstances of other persons with low incomes who face substantial rent increases.

8.3 Rights of appeal

The Tribunal recommends that no new right of appeal be provided in relation to the application of the recommended general formula for calculating annual rentals, beyond those that already exist:

- *The Valuation of Land Act 1916* provides a right of objection to a Statutory Land Value (SLV) provided by the Valuer-General.
- *The Crown Land Act* provides that the rental determination on Department of Lands occupancies may be appealed. These appeals may be taken to the Land and Environment Court if the annual rental is above $10,000, or to a Lands Board if the annual rental is less than $10,000.

At present, there is no specific right of appeal in relation to Waterways licences, other than the right to appeal to the Administrative Decisions Tribunal in relation to certain administration processes.

Recommendations

For new occupancies, the Tribunal recommends that annual rentals be calculated using its recommended formula and that the full rental should apply immediately. However, where this rental is less that $350, a minimum rental of $350 should apply to cover administration costs.

For existing occupancies, the Tribunal recommends that annual rentals be calculated using its recommended formula as soon as possible, with the following provisions:

- ***Where the rental is less than $350, a minimum rental of $350 should apply to cover administrative costs.***
- ***Where the rental increase is $1,000 or less, the full rental should be phased in over two years.***

- *Where the rental increase is between $1,000 and $10,000, the full rental should be phased in over four years, with a maximum increase of $2,500 per year.*
- *Where the rental increase is more than $10,000, the full rental should be phased in over six years, with a maximum increase of $2,500 per year.*
- *Once the relevant phase-in period is completed, the full rental should apply.*
- *Once the rights holder transfers the occupancy, the full rental should apply.*
- *To assist cash-flow, the agencies should provide rights holder with the option to pay annual rental by instalments.*
- *All amounts in the above points have been expressed in 2004 dollars and are to be indexed annually by the CPI from 30 June 2004.*

For existing occupancies where the rights holder is a pensioner, the Tribunal recommends that the annual rental be calculated using its recommended formula, with the following provisions:

- *The rental calculated using the formula should be phased in over a period of up to 7 years.*
- *In the first 3 years, the rental should increase to the minimum rental level of $350 per year.*
- *In the following 4 years, the rental increase should be limited to a maximum $162.50 per year.*
- *From the 7th year on, the annual rental should be limited to 50 per cent of the full rental calculated using the recommended formula or a maximum of $1,000 per year in 2004 dollars (to be indexed by CPI each year), whichever is lower.*
- *These provisions should apply only to existing pensioners and should be provided in the form of a rebate.*

For new rights holders who are pensioners or existing rights holders who become pensioners, the Tribunal recommends that annual rentals should be 50 per cent of that calculated using the recommended formula or the minimum rent, whichever is the higher.

The Tribunal recommends that the agencies give consideration to any case of demonstrated hardship arising from increased rentals on a case by case basis.

The Tribunal recommends that there be no additional right of appeal beyond the right to appeal to:

- *The Valuer-General concerning Statutory Land Values.*
- *The Land and Environment Court or the Lands Board concerning Department of Lands licences.*
- *The Administrative Decisions Tribunal concerning certain administrative processes.*

9 EQUITY ARRANGEMENTS FOR SPECIAL CIRCUMSTANCES

In considering equity arrangements for rights holders with special circumstances, the Tribunal believes the following general principles should be used as a guide:

- Rentals should compensate the community for the use of public land for exclusive, discretionary, and recreational purposes.
- The rate of the rental should reflect the degree to which occupancy structures are used for exclusive purposes (for example, whether they are for the sole use of an individual rights holder, shared between one or two neighbours, shared between a small group, or shared with the public).
- The rate of the rental should reflect the degree to which the structures are used for purely discretionary and recreational purposes (for example, whether they used solely for boating, or provide the only access to the rights holder's freehold property, or provide emergency services access to nearby land).

Mindful of the need for an administratively simple approach to minimise costs, the Tribunal has applied these principles in considering the equity arrangements for a range of special circumstances raised in submissions, including where:

- the structures on the occupancy are shared
- the structures on the occupancy may be needed to protect waterfront land
- the construction of an especially long jetty is required to access deep water
- the structures on the occupancy provides the only access to the rights holder's freehold property
- where the agency administering the occupancy has decided not to renew the occupancy at the end of the occupancy term
- where the occupancy is not a domestic waterfront property but is used for non-commercial purposes, such as those held by schools, community organisations and sailing clubs.

Its recommended arrangements for each of these circumstances are discussed below.

9.1 Where structures are shared

As Chapter 7 discussed, the Government's policy is to promote the sharing of waterfront facilities. Where this occurs on domestic waterfront occupancies, the Tribunal believes the rate of the rental for those occupancies should reflect the extent to which the facilities are shared:

- Where the structures on an occupancy are shared between users, the Tribunal believes that the rent should be shared between these users. Thus, if two neighbours share a structure, the rental for the occupancy should be shared so each neighbour pays 50 per cent.
- Where a block of home units or town-houses has a large jetty which incorporates many berths (known as multi-berth facilities), the Tribunal believes these facilities should be treated as shared facilities. Hence, each occupant would pay a share of the overall rent.

- For the purposes of determining the appropriate phase-in period, rights holders who use shared facilities, including multi-berth facilities, should be considered individually rather than as a group.
- Where neighbours share a structure, such as a jetty, but each neighbour has exclusive use of a mooring pen or berth, the Tribunal believes the areas which are for the exclusive use of one party should be subject to the general rent. Only areas that are shared should be subject to shared rent. That is, each occupant would pay full rent for their berth and their share of the rent for the shared jetty.
- Where freehold land abuts a reserve, and the rights holder shares the structure with the public, the Tribunal believes that the rights holder should pay 50 per cent of the rental.

9.2 Where structures protect waterfront land

Some submissions noted that in some cases, the structures built on an occupancy provide some public good, such as protecting the waterfront land from erosion (for example, this may include seawalls that protect the foreshore against boat wash).

The Tribunal understands that the provisions of the *Rivers and Foreshores Improvement Act 1948* may require landowners to undertake certain remedial works to protect the foreshore.

In addition, it believes that the protection of the foreshore should not be used as a reason to construct a reclamation.

9.3 Where a long jetty is required

Some submissions noted that in some cases, where the land below the high water mark slopes gently, the rights owner may need to construct a 'long jetty' to access deep water. Given that this means that the occupancy must be a larger than average, special consideration should be given when setting the rental, since the water close to shore was not navigable.

The Tribunal does not accept this argument unless the 'long jetty' is the only means of access to the property, or is the only means of access for emergency services. Where this is not the case, the general rent should apply. This position is consistent with the Tribunal's view that rent should compensate for the use of public land for discretionary and recreational purposes.

9.4 Where structures provide the only access to the property

The Tribunal recognises that special arrangements should apply in relation to occupancies adjoining water access only (WAO) properties. As many submissions noted:

- The use of structures on these occupancies is not predominantly recreational or discretionary—they provide necessary access.
- WAO rights holders cannot easily abandon their occupancies, and have far fewer options than other rights holders.
- The structures on these occupancies often also provide public access, including access for essential services.

However the Tribunal considers that several further considerations need to be taken into account. These include that:

- The owners of WAO properties bought these properties with full knowledge of these aspects of the property.
- These aspects mean that WAO properties generally are of lower value than similar properties with road access.
- This reduced land value provides an automatic concession when the general rent is calculated.

The Tribunal has analysed data for a sample of rights holders with WAO properties, calculating rentals and comparing these with administration costs. Based on this analysis, it considered a range of options for the treatment of occupancies adjoining WAO properties, including:

- Charging full rental as calculated by the general rental formula on the grounds that the rights holders bought the WAO property with full knowledge of the limitations of the property.
- Increasing the discount factor in the general rental formula when calculating the rental for these occupancies. Providing such a proportional discount will disadvantage rights holders in those areas where property values are relatively low.
- Using the general rental formula to calculate rentals then deduct a fixed dollar amount, thus providing a uniform benefit to all rights holders with WAO properties. This will acknowledge that structures on these occupancies are not used for predominantly recreational or discretionary purposes.
- Charging only a minimum rent for all WAO properties.

The Tribunal believes the most appropriate option is to provide a rebate of $250 after the rental has been calculated using the formula. This reflects the fact that the structures built on these occupancies are not purely discretional and recreational.

However, the Tribunal believes that for those cases where this arrangement results in an annual rental of less than $350, a minimum rent of $350 should apply.

9.5 Where the agency has decided not to renew the occupancy

As discussed in Chapter 7, Government policy to reduce the number of waterfront occupancies in Sydney Harbour. The Tribunal believes that this process should be as transparent as possible. It recommends that any rights holder whose occupancy is to be abolished be informed as soon as practicable after this decision has been taken.

The Tribunal considered whether this situation should be taken into account when setting the rental for these occupancies. However, it decided that this was not appropriate. Rather, the rights holder should be informed of the Government's intention not to renew the occupancy, and this decision should be noted on the title of the adjoining freehold property. If possible, long-term notice should be provided—the existing rights holder should be informed that the occupancy will be renewed when the adjoining freehold property is next sold, but will be abolished on the subsequent sale of this freehold property. It is understood that this is consistent with current practice of the Waterways Authority.

9.6 Where the occupancy is not for residential purposes, but is used for non-commercial purposes

As indicated earlier in this report, the Tribunal has focused its review on waterfront occupancies held by owners of adjoining residential properties, not other non-commercial occupancies such as those held by schools, community organisations and sailing clubs. However, it believes that the general principles it has expressed in this report should be applied to determine rentals for these other non-commercial occupancies. It notes that these occupancies would generally involve a Community Service Obligation or subsidy.

The Tribunal recommends that the agencies should also apply the policies outlined in the recent Mini-Budget. Under this policy a 50 per cent rebate would apply to organisations of a community or sporting nature. This rebate may be increased to 75 per cent in exceptional circumstances.

9.7 Recommendations

The Tribunal recommends that the following principles should be applied when considering equity arrangements for rights holders with special circumstances:

- ***Where the structures on an occupancy are shared by a number of users, the occupancy rental should be equally apportioned between these users.***
- ***Where the occupancy provides shared facilities, including multi-berth facilities, that are used by a number of individual rights holders, the rental increase should be calculated per rights holder for the purposes of determining the phase-in provisions.***
- ***Where the structures on an occupancy are used for purposes that are not solely exclusive, discretionary and recreational, the occupancy rental should reflect the extent that this is the case as outlined in section 9.1.***

For occupancies adjoining water access only properties, the Tribunal recommends that a rebate of $250 should be applied after calculating the rental for the area of the occupancy covered by the structure used to access this property, subject to the maintenance of the minimum rent.

The Tribunal recommends that the Government's intention not to renew an occupancy be noted on the title of the adjoining freehold property and the rights holder be informed of this decision.

The Tribunal recommends that the agencies review the category of other non-commercial occupancies and apply the policies outlined in the recent Mini-Budget. This involves a 50 per cent rebate to apply to organisations of a community or sporting nature. The policy also provides that this rebate may be increased to 75 per cent in exceptional circumstances.

10 STREAMLINING ADMINISTRATION AND RECOVERING ADMINISTRATION COSTS

In line with the terms of reference, the Tribunal has considered how the administration of occupancies can be streamlined, and how occupancy rentals can recover the costs associated with this administration. In doing so, it looked at the processes associated with the administration of waterfront occupancies to determine administration costs. These processes include:

- one-time occupancy establishment
- on-going annual occupancy administration
- occupancy transfer or termination.

Both the Department of Lands and the Waterways Authority are sizeable agencies with extensive responsibilities. Occupancy administration represents only one component of the overall workload for these agencies.

The Tribunal believes administration costs should be structured to achieve the following:

- meet the requirements of the *Crown Lands Act 1989* for a single annual fee
- administrative simplicity
- a uniform approach across both agencies.

The Tribunal notes that a minimum rent of $350, to be indexed, to apply generally to all Crown land occupancies, was announced in the recent Mini-Budget. It understands that this figure was derived from a more complete analysis of administration costs across the entire Department, an exercise beyond the scope of this review.

The Tribunal feels that this minimum rent more accurately reflects the costs of administration of occupancies. This minimum rent is also in line with the Tribunal's approach and its terms of reference to promote streamlined administration.

The Tribunal, therefore, recommends that:

- A minimum rent should be payable where the rental calculated using the general rental formula is below the minimum rent level.
- This minimum rent should be set at $350 per year and be indexed by the CPI each year.

In making these recommendations, the Tribunal is mindful of the fact that many Department of Lands occupancies are in remote or rural areas where land values are not high. The rights holders for these occupancies currently pay quite low minimum charges ($100 per year, or $70 for pensioners), which have been set for reasons other than cost recovery. The Tribunal has addressed ability to pay matters in Chapter 8.

The terms of reference asked the Tribunal to consider mechanisms to streamline the administration of occupancies. The recently announced merger of the property management functions of the Waterways Authority and the Department of Lands is likely to achieve this streamlining.

The Tribunal notes that the Waterways Authority is regarded as a Government Trading Enterprise. From 1 July 2004, the current Crown Lands division of the Department of Lands will also be so designated. As such, all revenues will be retained by these agencies and dividends will be paid to the budget.

The submission from the Metropolitan Land Council suggested that funds excess to administrative requirements should be set aside into a separate fund for estuarine environmental works. While supporting diligent stewardship of these areas, the Tribunal believes that applying all rental income for these remediation purposes would be excessive.

Recommendations

The Tribunal recommends that the minimum rental be set at $350 per year, and indexed each year using the CPI as an escalation factor. This minimum rent will be payable where the rent calculated from the formula is less than $350.

ATTACHMENT 1 TERMS OF REFERENCE

Review of rentals for domestic waterfront tenancies in NSW

The Independent Pricing and Regulatory Tribunal of NSW is requested under section 9 of the IPART Act 1992 to undertake a review of rentals for domestic waterfront tenancies in NSW.

Background

The Department of Lands and the Waterways Authority administer domestic waterfront tenancies in NSW. The Waterways Authority administers domestic waterfront tenancies within Sydney Harbour, Botany Bay, Newcastle and Port Kembla. The Department of Lands administers tenancies in other areas of NSW, including parts of the Sydney Metropolitan area.

The Waterways Authority leases parts of the bed of Sydney Harbour bed (wetland) to around 2,050 tenure-holders. Some 1,400 of the wetland leases are held by residential owners of waterfront property. These leases are used by waterfront property owners for such purposes as boatsheds, jetties, ramps, pontoons and reclamations.

The Department of Lands administers a total of approximately 4,250 domestic wetland licences in NSW.

The Department of Lands and the Waterways Authority have developed a rental formula for domestic waterfront tenancies based on the valuation of land in the adjoining waterfront precinct. A formula for the valuation of wetland tenancies has been derived from advice provided by the State Valuation Office and a private valuation company (Preston Rowe Paterson):

$$\text{Rent (per } m^2\text{)} = 50\ \% \times \text{Valuer General's Statutory Land Value (of adjoining waterfront precinct) (per } m^2\text{)} \times 6\%$$

This formula is used by the Department of Lands for licences and leases on the far North Coast, and has been adopted by the Waterways Authority for reclamations larger than 50 square metres.

The Department of Lands and the Waterways Authority wish to develop a market formula for rental returns to reflect market value at each rental review.

Matters for Consideration

The Tribunal is requested to review and report on:

1. A suitable approach for setting domestic waterfront rentals for land owned by the Department of Lands and Waterways Authority. In determining this approach, the Tribunal is to consider:
   - Aligning rental returns to reflect and maintain their market value.
   - Ensuring that rents cover, at a minimum, administration costs.
   - Equity and owners' ability to pay including the situation of pensioners.
   - Appropriate equity arrangements for special circumstances (such as, where owners only have water-based access to their properties).

2. Mechanisms for streamlining the administration of licences, leases or other instruments administered by the Department of Lands and Waterways Authority. The Tribunal should consider:
   - The different legislative requirements in the administration of licences, leases or other instruments, by the two agencies.
   - The most appropriate basis of tenure and conditions on these instruments of waterfront tenancies in NSW (eg. lease, licence or any other instrument).

Consultation

In conducting the review the Tribunal should consider submissions from relevant stakeholders.

Timing

The Tribunal is to present its Final Report to the Minister for Transport Services and the Minister Assisting the Minister for Natural Resources (Lands) by 8 April 2004. The Tribunal should make available its Final Report to the public after it has been presented to the Ministers.

ATTACHMENT 2 LIST OF RECOMMENDATIONS

Rationale for market-based rentals

The Tribunal recommends that:

- *Rentals for domestic waterfront occupancies be calculated as an appropriate rate of return on the value of the occupancy.*
- *The Statutory Land Value (SLV) of the adjoining freehold land, provided by the Valuer-General, should be used as the basis for determining the value of the occupancy.*

General formula for calculating rentals

The Tribunal recommends that:

- *A general formula be used to set occupancy rentals that reflect the market value of the occupancy. This formula incorporates a 3.05 per cent rate of return and a 50 per cent discount factor. The rate of return will need to be regularly reviewed. Thus:*

General Rent ($)= [Precinct SLV ($/m²)] x [Occupancy area (m²)] x [Rate of return (3.05%)] x [Discount Factor (50%)]

- *To maintain currency, rentals should be calculated annually using latest SLV available and precincts should be defined as be homogeneous water front areas.*

Occupancy instrument, term and other conditions

The Tribunal recommends that:

- *Licences generally be used as the occupancy instrument for domestic waterfront occupancies. However, the Tribunal acknowledges that leases may be more suitable in particular circumstances.*
- *These licences should require that the occupancy area is available for shared use with right holders wherever this is practicable.*
- *The term of these licences should be established or extended to link to the reasonable economic and structural life of existing and any proposed structures.*
- *Steps be taken to permit these licences to be transferred to the new owner when the adjoining freehold land is sold, for the remaining term of the licence.*
- *Steps be taken to permit these licences and their associated conditions to be noted on the title of the adjoining freehold land.*

Equity and ability to pay

For new occupancies, the Tribunal recommends that annual rentals be calculated using its recommended formula and that the full rental should apply immediately. However, where this rental is less that $350, a minimum rental of $350 should apply to cover administration costs.

For existing occupancies, the Tribunal recommends that annual rentals be calculated using its recommended formula as soon as possible, with the following provisions:

- *Where the rental is less than $350, a minimum rental of $350 should apply to cover administrative costs.*
- *Where the rental increase is $1,000 or less, the full rental should be phased in over two years.*
- *Where the rental increase is between $1,000 and $10,000, the full rental should be phased in over four years, with a maximum increase of $2,500 per year.*
- *Where the rental increase is more than $10,000, the full rental should be phased in over six years, with a maximum increase of $2,500 per year.*
- *Once the relevant phase-in period is completed, the full rental should apply.*
- *Once the rights holder transfers the occupancy, the full rental should apply.*
- *To assist cash-flow, the agencies should provide rights holder with the option to pay annual rental by instalments.*
- *All amounts in the above points have been expressed in 2004 dollars and are to be indexed annually by the CPI from 30 June 2004.*

For existing occupancies where the rights holder is a pensioner, the Tribunal recommends that the annual rental be calculated using its recommended formula, with the following provisions:

- *The rental calculated using the formula should be phased in over a period of up to 7 years.*
- *In the first 3 years, the rental should increase to the minimum rental level of $350 per year.*
- *In the following 4 years, the rental increase should be limited to a maximum $162.50 per year.*
- *From the 7th year on, the annual rental should be limited to 50 per cent of the full rental calculated using the recommended formula or a maximum of $1,000 per year in 2004 dollars (to be indexed by CPI each year), whichever is lower.*
- *These provisions should apply only to existing pensioners and should be provided in the form of a rebate.*

For new rights holders who are pensioners or existing rights holders who become pensioners, the Tribunal recommends that annual rentals should be 50 per cent of that calculated using the recommended formula or the minimum rent, whichever is the higher.

The Tribunal recommends that the agencies give consideration to any case of demonstrated hardship arising from increased rentals on a case by case basis.

The Tribunal recommends that there be no additional right of appeal beyond the right to appeal to:

- *The Valuer-General concerning Statutory Land Values.*
- *The Land and Environment Court or the Lands Board concerning Department of Lands licences.*
- *The Administrative Decisions Tribunal concerning certain administrative processes.*

Equity arrangements for special circumstances

The Tribunal recommends that the following principles should be applied when considering equity arrangements for rights holders with special circumstances:

- *Where the structures on an occupancy are shared by a number of users, the occupancy rental should be equally apportioned between these users.*
- *Where the occupancy provides shared facilities, including multi-berth facilities, that are used by a number of individual rights holders, the rental increase should be calculated per rights holder for the purposes of determining the phase-in provisions.*
- *Where the structures on an occupancy are used for purposes that are not solely exclusive, discretionary and recreational, the occupancy rental should reflect the extent that this is the case as outlined in section 9.1.*

For occupancies adjoining water access only properties, the Tribunal recommends that a rebate of $250 should be applied after calculating the rental for the area of the occupancy covered by the structure used to access this property, subject to the maintenance of the minimum rent.

The Tribunal recommends that the Government's intention not to renew an occupancy be noted on the title of the adjoining freehold property and the rights holder be informed of this decision.

The Tribunal recommends that the agencies review the category of other non-commercial occupancies and apply the policies outlined in the recent Mini-Budget. This involves a 50 per cent rebate applying to organisations of a community or sporting nature. The policy also provides that this rebate may be increased to 75 per cent in exceptional circumstances.

Recovery of administration costs

The Tribunal recommends that the minimum rental be set at $350 per year, and indexed each year using the CPI as an escalation factor. This minimum rent will be payable where the rent calculated from the formula is less than $350.

ATTACHMENT 3 KEY POINTS RAISED IN SUBMISSIONS

Term of Reference	Key points raised
1(a)	**Aligning rental returns to reflect and maintain their market value**
	Environmental costs are incurred by altering intertidal areas
	No market exists: – only one potential customer, no subletting, sale or transfer possible – monopoly owner and only one potential buyer
	Inadequate tenure to justify market rent
	Maintenance and other costs are borne by the lessee, not the lessor
	The formula proposed is flawed: - 50% is an inadequate discount - 6% yield is too high; - SLV is not a reasonable basis for valuation
	Levying land tax and premium property tax on the leasehold is double dipping
	One size fits all approach (applying a formula) is problematic: - a jetty is unlike a seawall - some councils limit construction options
	Value is in the utility of a jetty, seawall, pool etc, not in the area of land occupied
	Environmental and social costs of waterfront land alienation
1(b)	**Ensuring that rents cover, at a minimum, administration costs**
	Administration costs should be shared among all leases/licences (as the maximum level of rent)
	Cost of administration should be very low – it is only sending out invoices
1(c)	**Equity and owners' ability to pay including the situation of pensioners**
	The proposed increase is very large (eg. 500%-1,000%)
	Significant number of self-funded retirees
	Purchase of waterfront property was made in expectation of low lease costs into future
1(d)	**Appropriate equity arrangements for special circumstances**
	Water Access Only (WAO) - No other infrastructure for access - There are many other charges that they face - WAO jetties provide public access for fire fighting, emergency services etc
	Non-exclusive use (public access to part/all of occupancy)
	Public interest of protecting seashore (sea walls)
	Need to access navigable waters (longer jetty required in shallow water)
	Shared facilities between neighbours

Term of Reference	Key points raised
2	**Mechanisms for streamlining administration**
	Administrative inefficiency, inconsistency commented upon
	Administration “heavy handed”
	The NSW Waterways Authority should administer all occupancies
	Local council should administer and collect revenue on behalf of State
2(a)	**Different legislative requirements in the administration of licences, leases or other instruments**
	Very little input from submissions
	Appeal rights sought
	GST exemption sought
	Proposal precludes 1992 Waterways Authority inquiry findings
	Formula is inconsistent with the current lease
2(b)	**Most appropriate basis of tenure and conditions on these instruments (eg. lease, licence or any other instrument)**
	Longer term sought
	Ability to transfer with adjoining freehold title sought
	Less onerous conditions sought

ATTACHMENT 4 PARTIES THAT MADE SUBMISSIONS

Mr Piers Akerman
Mr Warwick Akhurst
Mr Charles Alma
Mr John Andersen
Mr Stephen Andrews
Ms Angeline Antony
Mr/Mrs Elda Argenti
Mr/Mrs K J Baily
Mr Warren Barber
Mr Ray Bardwell
Mr Philip Bart
Mr/Mrs WE & DM Barton
Mr Peter Bates
Mr Colin Batt
Mr Peter Baulch
Mr/Mrs Marco & Angela Belgiorno-Zegna
Mr David Bell
Mr Kevin Bell
Mr Klaas Berkeley
Mr John Beville
Mr John Bezinovic
Mr Alex Bijkerk
Mr Brian Bird
Mr Peter Blackwell
Mr Anthony Bloch
Mr Chris Boffa
Mr Robert Bolton
PA Bond
Mr Paul Boocock
Mr Jim Booth
Mr/Mrs B & Y Boyle
Mr Kevin Boyle
Mr Ron Boys
Ms Helen Bradley
Mr P Bradley
Ms Joanna Bramma
Mr Anthony Bray
Mr David Brown
Mr Simon Brown
Mr/Mrs B & F Brownrigg
Mr Stephen Bruggeman
Mr Norman K Brunsdon
Mr/Mrs R Bryden
Mr Robert Bryne
Mr Graham Buckeridge
E K Bullough
Mr/Mrs R G Burrows
Ms Melinda Byrne
Mr Chris Cahill
Mr David Caldwell
Mr Dugald Cameron
Ms Christine R Campbell
Mr Keith Campbell
Mr Murdoch Campbell
Mr John Canfield
RA & L Cansdale
Ms Emily Carnemolla
Mr Michael Carr
Mr Gary Chandler
Mr Michael Chapman
Ms Norma A Chapman
Mr/Mrs T & A Chapman
GR & E Citer
Mr Philip Collins
Ms Carol Connolly
Mr Kevin Cooper
Mr/Mrs R M Cooper
Mr Louis Cordony
Mr Nicholas Cowdery
Mr Michael Coxon
Mr Ian Craig
Mr Ken Craig
AM & BL Cross
EA Crutch
Mr Anthony Curtin
Mr John Dailly
Ms Blanche D'Alpuget
Ms J Davidson
Mr Chris Davies
Mr Gordon Davies
Mr David B Dickson
Mr Philip Doggett
Mr Clem Doherty
Mr Bob Donato
Mr Anthony Donnan
Mr Terry Dorrough
Mr M Douglas
G & M Drivas
Ms Sheridan Dudley
Mr/Mrs P & M Dundon
Mr John Dunphy
Ms Hazel Durkin
Mr Laurence Eastwood
Mr Stephen Ellean
Mr Jonathan Empson
Mr Barry Evans
Mr Ronald Ewen
Mr Ian Fahy
Ms Sheila Fahy
G & E Fairburn
Mr William Farrands
Ms Shelley Farriss
Mr Harold Finger
Mr Tim Flannery

Mr Colin J Flynn
Mr Bruce Foot
Mr Tom Ford
Mrs P M J Foulsham
Mr David Fowler
Mr Donald France
HA Fraser
Mr Ernest Fraser-Hills
Ms Janice Friend
H Fronzek
Mr Colin Fullagar
Gaal & Vokins
Mr Frank Ganis
Ms Jane Gardner
Mr Peter Garnett
Mr/Mrs D & FM Garsden
Mr Rex Gilmour
Mr Jeff Glen
Ms Alison Glover
Mr Lionel Goldberg
Mr Richard Griffin
Ms B Griffith
Mr David Griffith
Mr Brian Gulliver
Mr Brian Hallett
Mr Doug Halley
Mr David Hall-Johnston
Mr Brady Halls
Mr D Hancock
Mr Richard Harper
Mr Jeff Harrison
D & S Harvey
I R Hay
Mr Gary Hendler
Mr David Henry
Mr W H Hickson
Mr John Hindman
Mr Harry Hodge
Mr John Hoffmann
Mr Paul Holland
Mr Ian Holmes
Mr/Mrs GD & VV Howe
Mr Lindsay Hughes
Mr Graham Hyde
Mr Graham Irwin
Mr Greg Johnson
RS & VM Johnson
Mr Howard Jones
Mrs Janet Jones
RH & SJ Jones
Mr Carl Joy
Ms Carol Joy
Mr John Kalazieh
Mr Andrew Kaldor
Mr John Karen
Ms Alana Kennedy
Mr Geoffrey Kennedy
Ms Kate Kilpatrick
Mr David Kinch
Ms Kirk
Mr Hugh Knox
Mr Barney Koo
Ms Yvonne Kower
Ms June Lahm
Mr David Laurence
Mr Brian Law
E Le Couteur
Mr Temura Lee
Mr Jerry Lees
Mr Patrick Leung
Mr Roy Lewis
Mr Leong Lim
GT Lingard
Mr Peter Lubrano
Mr/Mrs A R Luxton
Mr David Lyall
Ms Patricia Lyall
Ms Sonia Lyneham
Mr Alasdair MacDonald
Mr Don MacDougall
Mr John Madden
Madsen & San Roque-Prichard
Mrs Frances Malzard
Mr Peter Markinsons
Mr Elias Maroun
Mr Paul Martin
Ms Deborah Mason
Ms Deidre Mason
Mr Tony Maurici
Mr Roger Maynard
JM McCurrich
Ms Annmaree McGrath
Ms Dianne McGrath
Ms Jo-An McKay
Mr Paul McKinnon
Mr David McLean
CJ & JP McMahon
Mr/Mrs McWilliam
Mr/Mrs IL & EM Meakin
Mr David Miles
J & D Milosavljevic
Mr/Mrs R & H Moll
N Moodie
Ms Elaine Mary Moore
Mrs Jacqueline Morgan
Mr John Morgan
Mr Barri Morland
Mr Mick Morris

MG Moxey
Mr John Moxham
Ms Fiona Mullen
Ms Anne Muller
R & M Muller
Mr Angus Murhaghan
AJ Muston
Mr John Nemcich
Mr Len New
Mr Victor Newman
WJ & J Nicholls
Mr Brian Noad
Mr Dennis Nobbs
R Nock
Mr Peter North
Mr David Nott
Ms Mavis O'Connor
Mr Michael O'Dea
Mr Rodney O'Neil
Mr Mark Orchard
Mr Tony O'Rourke
Mr/Mrs Oxley
Mr/Mrs AP & RM Oxley
Mr Lindsay Parker
RB & RR Parker
Mr Neil Paterson
Ms Margaret Patterson
Ms Loretta Pearson
Mr Colin Peek
Mr Gordon Peglar
Ms Kelly Phelan
Mr Russell Phillips
Mr Leo Pinczewski
Mr John Pischetsrieder
Mr Paul Purvis
Ms Rhonda Purvis
Mr David Quay
Mr John Rabbitts
JC & BL Ramon
WJ Ramsey
Mr Stephen Ranft
Mr Jim Rannard
Ms Shirley Rawlings
Mr Steve Rawlins
Professor Harry Recher
A L Reed
Mr John Reed
Mr Chris Reilly
Mr / Mrs B M G Remond
Mr Barney Remond
Mr Neil Renfree
Mr Michael Rice
Mr Jeff Richards
Mr Stephen Richmond
Mr Alan Ridley
GB& LR Roberts
Mrs Majorie Roche
Mr Michael Rolfe
Mr Greg Ross
Mr Colin Ryan
Mr Bill Ryder
Mr/Mrs B & J Scarsbrick
Mr Joe Screnci
Ms Lyn Shaddock
Ms Vivienne Sharpe
Mr George Shirling
Mr Malcolm Short
A N & M J Sinclair
Mr Robert Skinner
Ms Lucette Slarke-Rutherford
Mr George Sloan
Mr Jeff Smith
Ms Margaret A Smith
Mr/Mrs M & D Spiers
Mrs Robin Spiers
Mr Neville Stanford
Mr Kell Steinmann
Ms Jennifer Steley
Mr/Mrs FRN & NR Stephens
Mr Lesley Stevens
Ms Susan Stokes
Mr Steve Stuart
Mr RJ Sturrock
Mr John Sutton
Mr Frank Talbot
Mr/Mrs Jui-Meng Tan
JHG Tankard
Ms Joanne Taylor
Professor Bruce Thom
Mr Murray Thompson
Mr David K Thurlow
Mr Peter Tomasetti
Mr William Tonge
Mr Paolo Totaro
Mr John Turnbull
Sir William Tyree
Mr/Mrs GPT & LR Van Brugge
Mr Graham Wackett
Ms Anne Waks
Ms Liz Walden
Mr Barry Walker
Mr Barry Walsh
Mr James Walter
Mr John Ward
Mr Martin Ward
Mr John Waring
FH & JL Wegenaar
Ms A D Weinstock

Mr/Mrs V & J Wellington
Mr Rob Welsh
T & R Weston
Ms Helen White
Mr Warren Wieckmann
Mr Bob Williams
Ms Helen Wilson
Dr Tim Wilson
Mr Gordon R Wing
Mr A Winklmayr
R W Winn
Mr Jack Winning
Mr/Mrs G & A Wirth
Ms Sue Woolfe
Mr Richard Wright
J R Wulff
Ms Lilla Wylie
Ms Yvonne Wylie
Ms Sharon Wyzenbeek
Mr Ronald C Yip
Mr Henry Zylmans

ATTACHMENT 5 CUSTOMER IMPACT AND PHASE-IN

Current Rent Range ($/year)	$1 to $250	$251 to $1000	$1001 to $2500	$2501 to $5000	$5001 to $10000	> $10000	All Single Occupancies [2]	Multi-berths	Overall [3]
No. of Properties	3,430	3,724	712	80	34	20	8,000	407	8,407
Percentage of rights holders	40.8%	44.3%	8.5%	1.0%	0.4%	0.2%	95.2%	4.8%	100.0%
Ave current rent	$174	$453	$1,469	$3,346	$6,701	$14,860	$515	$1,454	$561
Ave new rent	$399	$870	$2,769	$5,641	$9,528	$15,928	$956	$2,847	$1,047
Ave increase in rent	$225	$417	$1,299	$2,295	$2,827	$1,068	$440	$1,393	$487

Phase-in of the average increases:	$1 to $250	$251 to $1000	$1001 to $2500	$2501 to $5000	$5001 to $10000	> $10000	Multi-berths
Current Year	$174	$453	$1,469	$3,346	$6,701	$16,648 [1]	$1,454
Year 1	$350	$662	$1,794	$3,920	$7,408	$19,148	$1,802
Year 2	$399	$870	$2,119	$4,494	$8,114	$21,648	$2,151
Year 3			$2,444	$5,067	$8,821	$24,148	$2,499
Year 4			$2,769	$5,641	$9,528	$26,648	$2,847
Year 7						$40,200	

Notes:
1. In the ">$10,000" segment, the phase-in shows current rent/increase for the maximum increase rather than an average.
2. "All Single Occupancies" summarises the columns to the left of that column.
3. "Overall" summarises All Single Occupancies and rights holders in Multi-berth arrangements.