

Domestic Leasing Arrangements for Sydney Harbour and its Tributaries

Introduction

Roads and Maritime Services own the bed of Sydney Harbour. When an individual or business builds a structure on or over the harbour, Roads and Maritime Services issues and manages leases.

In 2004 the Independent Pricing and Regulatory Tribunal (IPART) recommended a new formula for calculating rents for domestic waterfront facilities such as private jetties and mooring pens. The IPART noted that the land covered by domestic waterfront facilities was a valuable community asset and the NSW Government was entitled to a return on that asset on behalf of the community.

The IPART formula aims to deliver a fair market return by linking wetland rents with the Statutory Land Value (SLV), which is set by the State's Valuer General, of the adjoining dry land.

Roads and Maritime Services began applying the IPART formula from December 2004. With more than two years' experience of the new arrangements, Roads and Maritime Services has reviewed its domestic leasing arrangements in the interests of all stakeholders.

1. Twenty-year leases

Most current leases are for three year terms followed by an annual holdover. There

are concerns that these short-term leases do not provide security of tenure, do not encourage good maintenance of structures, and are not transferred to the new owner when the adjoining property is sold.

From January 2008 Roads and Maritime Services will offer all domestic lessees the option of a new twenty-year registered lease.

These new leases will be transferable on the sale of the adjoining property.

The *Conveyancing Act 1919* requires a subdivision of land for leases longer than five years. Lessees taking up the option of a twenty year lease will be required to obtain a survey by a registered surveyor and to lodge the Subdivision Plan with the Department of Lands.

The one-off expense is likely to be around \$4,500 but this is subject to the fees charged by your private surveyor. Roads and Maritime Services does not set survey fees and you will need to make your own enquiries on this point.

Stamp duty will not apply to the registration of these twenty-year leases. Stamp duty on lease registration will be abolished in New South Wales from 1 January 2008.

If you do not wish to take up a twenty-year lease, Roads and Maritime Services will offer you a new three-year lease instead.

Three-year leases do not require a registered Plan of Subdivision. If you enter a three-year lease for your facility now, you may convert this to a twenty-year lease at a later time if you prefer.

In either case, pensioner concessions and agreed hardship provisions will be carried over to new leases issued to an existing lessee.

New three-year or twenty-year leases will contain holdover provisions, but Roads and Maritime Services will generally renew leases rather than holding over existing ones. This will be subject to the lease terms having been complied with.

Some current leases require the mandatory removal of structures at the end of the lease or upon the sale of the adjoining property. Subject to the removals policy in section 8 of this document, Roads and Maritime Services will not enforce these provisions in the changeover to new domestic leases from 2008.

2. Leases versus licences

The IPART also recommended that Roads and Maritime Services consider issuing licences instead of leases for domestic waterfront facilities.

However, unlike licences, leases offer exclusive possession for the lessee and may assist lessees in securing public liability insurance and finance for repairs and improvements. Roads and Maritime Services also believe that lessees would prefer a lease rather than a licence.

Roads and Maritime Services will continue to issue leases for domestic waterfront tenancies.

3. Precinct Boundaries

The IPART review introduced a formula to determine domestic waterfront rents, based partly on the Statutory Land Value (SLV) of similar and adjoining properties. A grouping of properties is referred to as a Precinct. Currently there are 120 Precincts, each containing a small number of leases.

The consequence of this is that there are some unusually high and low rentals in immediately adjacent areas. This is because the SLV is divided by the block size to create the rental rate per square metre.

Following comments from lessees on this issue Roads and Maritime Services has reviewed the current 120 Precinct boundaries and their impact on domestic rents, particularly with reference to rents payable by lessees with small adjoining lot sizes.

A way to remove these discrepancies and make it fairer for everyone is to have a smaller number of Precincts covering larger areas. This will improve certainty for lessees regarding future rental rates, and smooth the rental formula by averaging it across a relevant and representative area.

For the purposes of calculating the IPART rent for domestic waterfront facilities, from 1 January 2008 Roads and Maritime Services will reduce the number of Precincts on Sydney Harbour and its tributaries to 6.

The effect of this is that for some people there will be rent increases, for others there will be decreases. Overall though the total rent generated from waterfront leases will not increase, and the system will be fairer. Essentially, almost all lessees will be paying the same rate per square metre for their lease, as their neighbours.

A map of the new Precinct boundaries is available at www.rms.nsw.gov.au. Precinct SLVs will continue to be derived using the IPART formula.

For leases issued after 1 January 2008, general rent will be calculated in accordance with the formula in this document:

<p>General Rent (\$) = "Precinct SLV" (\$/m²) x Discount Factor (50%)* x Rate of Return (3.05%) x Leased Area (m²)</p>

Example:

Mr Smith leases 60m² from Roads and Maritime Services for a private jetty.

The Precinct SLV for the year is \$2032.94 (derived by dividing the sum of the SLVs of applicable properties in the precinct by the area of their freehold and relevant occupancies).

Using the above formula, Mr Smith's General Rent is therefore:

2,032.94		("Precinct SLV")
x 50%		(discount
factor) x 3.05%		(Rate of
Return)	x	60
(Leased Area)		m2
= \$1,860.14 (plus GST).		

* Discount factor is not applicable to rental calculations for residential houseboats.

** At Roads and Maritime Services's discretion, leases for temporary swimming enclosures may be issued on a recurring short-term basis to cover only those periods for which the enclosure is in place.

4. Three Year Rolling Average of Statutory Land Values (SLVs)

From 1 January 2008 Roads and Maritime Services will adopt a three year rolling average of the most recent Statutory Land Valuations for general rent calculations.

This will smooth rent changes created by revaluations of land.

5. Hardship provisions

If you are suffering from temporary financial hardship and cannot pay your rent, you may be eligible for hardship assistance.

Hardship assistance is negotiated on an individual basis with Roads and Maritime Services. Types of assistance can include extensions of time, payment by instalments or other options acceptable to both parties.

Hardship applications are assessed by a three-person panel, and are generally determined within 14 days. You may be asked to provide details of your financial position to support your request.

Hardship assistance will be available for a maximum of twelve months per application, but lessees may reapply at the expiry of any twelve-month period.

Information provided as part of a hardship application is protected by the *Privacy and Personal Information Protection Act 1998*.

6. Recreational Berthing

Commercial activities undertaken from, on or related to a domestic facility are prohibited.

However, lessees will be able to make their domestic berth available for reasonable use by vessels owned by others (for example, friends or neighbours) providing there is no commercial arrangement or sub lease of any kind.

Leases issued after 1 January 2008 will permit the berthing or storage of other recreational vessels at a domestic waterfront facility, subject to any restrictions on vessel size, or other conditions contained in the development consent or the lease.

7. Cap on rent increases

From 1 January 2008, any annual rent increases for the existing lease area will be capped at \$2500 (including GST) plus CPI each year until the new rental has been reached.

Any excess rent increases will be transferred to the following year. The cap will be available until the first year in which an annual rent increase falls below \$2,500. From that point forward, the cap will cease to apply for that facility.

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8. Removal of structures

Roads and Maritime Services has clarified its policies regarding both the removal of structures from and existing use rights attached to its land.

Subject to the points below, existing use rights will be retained for all current domestic waterfront structures unless specifically relinquished by Roads and Maritime Services.

In general, structures will only be required to be removed if:

They do not have development approval;

They are in such disrepair as to pose a danger and the lessee has refused reasonable requests to remedy the problem;

The lease is to be terminated after consistent breaches of lease terms (eg persistent non-payment of rent or failing to maintain the structures);

An incoming purchaser declines to lease the current structures; or

Removal is necessary to achieve a long-term strategic objective of the NSW Government.

9. Policy Review

While these domestic leasing arrangements may be reviewed at any time, the next formal review of Roads and Maritime Services Domestic Leasing Policy will be in 2012.