



Department of  
Primary Industries

# Review of method for determining rents for domestic waterfront tenancies in NSW

Submission Paper  
Response to IPART Draft Report

Prepared by NSW Department of Primary Industries, Catchments and Lands

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# 1. Executive Summary

The Department agrees with many of the IPART recommendations within the draft report; however the recommendations relating to how the rate of return is calculated, the retention of the 50% discount factor, the abolition of the minimum rent and recovery of administration costs are points of disagreement.

The cumulative impact of IPART proposing a series of 'conservative' options in recommending how the rental formula operates and the amount of administration costs that are recovered appears to deliver a significant below-market return to the community.

While IPART has retained all the elements of the rental formula introduced in 2004, the method for determining rates of return and defining precincts have been overhauled while the discount factor remains unchanged.

It is important that any changes to the method of determining key variables are verified by market evidence to ensure that both the theoretical assumptions and statistical analysis reflects an assessment of 'real' market conditions.

IPART commissioned the Valuation Services of the Land and Property Information (LPI) to undertake a range of tasks including market assessments. The Department will use this LPI report to demonstrate that the formula as proposed by IPART appears to deliver significant across the board below-market returns to the community.

The LPI market assessment is the only 'first principles' market evidence available as part of the review. The findings of the LPI market review indicate significant differences between market values and formula generated rents. The extent of the gap between formula generated rents and first principle market values raises questions about the veracity of IPART's proposed approach.

The Department also understands that separately analyzing and redefining individual components of the formula impacts on the balance between market return, equity and operational efficiency. The Department is of the view that outputs from any formula need to be tested against market evidence to verify that the theoretical assumptions and statistical constructs reflect 'real world' conditions. This test has not been undertaken therefore the basis for accepting the formula is unsound.

The IPART report does not propose future market based assessments using specialist valuation expertise. This raises a further risk that below-market returns may be locked in, without adequate review mechanisms that would identify when formula-based rents diverged from market rents.

The Department will contend that the IPART report based on the available evidence may not have adequately satisfied the TOR in ensuring that the NSW Government on behalf of the community receives a proper commercial return on publicly- owned assets occupied by DWF occupants.

In light of the available market evidence, the Department is concerned that the application of some elements of the draft IPART report would have the effect of depriving the community of NSW of a fair return on public assets.

To improve confidence in the outcomes of the IPART review and to provide market evidence that the TOR have been adequately addressed the Department requests that a more extensive comparative assessment be undertaken by LPI. This proposed assessment would compare formula generated rents with market evidence and provide expert valuation advice regarding the discount factors and yields.

The Department will explore these arguments in more detail within the relevant sections of this submission. For a summary of the Department's position for each draft recommendation refer to Appendix 1.

## 2. Valuing occupancies for the purpose of calculating rent

### Draft recommendations

1. Rent for each precinct continue to be set using the following formula, subject to IPART recommendations in the Draft Report;  
General Rent (\$) = [PSLV (\$/m<sup>2</sup>)]x[Occupancy area (m<sup>2</sup>)]x[Discount factor (50%)]x[Rate of return]
2. Both CLD and Maritime determine PSLVs on financial year basis, using a 3-year rolling average of SLVs with a 12-month lag. This means, for example, that for the financial year 2012/13, both agencies would use the average SLV for each waterfront freehold property and its adjoining occupancy over 1 July 2011, 1 July 2010, and 1 July 2009 to calculate that property's SLV. This is in order to determine the PSLV as per Recommendation 3 below.
3. PSLVs should be calculated as the median SLV (\$/m<sup>2</sup>) of residential waterfront properties with occupancies within each precinct. The SLV (\$/m<sup>2</sup>) of each property is calculated by dividing the 3-year average SLV of the freehold property and its adjoining occupancy, by the area of the freehold property and its adjoining occupancy.
4. CLD and Maritime work with LPI to ensure that they are using consistent and correct data on the SLV and area of each waterfront property and its associated occupancy in their calculations of PSLVs.
5. The agencies reduce the number of precincts to 20 regional precincts, as per the recommended regional precincts in Table 3.2 of the Draft Report.
6. The current 50% discount multiplier be maintained.

While the Department is not opposed to the retention of the formula as per recommendation 1, it is the Department's view that redefining individual components of the formula has adversely impacted on the balance between market return, equity and operational efficiency.

The Department agrees with draft recommendations 2 to 5 as proposed by IPART for calculating the wetland component of DWF occupancies.

The Department does not agree with the retention of the 50% discount factor. On the basis of the LPI report, it should be substituted with a multiplier for wetland occupancies and reclamations should be calculated using LPIs identified discount factor of the adjoining SLV.

The Department does not agree with an across the board 50% discount factor based on the market evidence provided by LPI. The Department supports the recommendations by LPI for different methodologies for calculating 'wetland' and 'dryland' occupancies.

### Replacement of the 50% discount factor with a multiplier

The IPART report uses the market analysis performed by LPI to inform their decision to retain a single discount factor of 50%. To determine the land value of the wetland, LPI undertook market analysis by gathering rental evidence from commercial marinas and private rental arrangements across the state for wet and dry storage areas for boats. The rental evidence consisted of rentals from established facilities (jetties, marina berths, and boatsheds). To determine the value of wetland the rental evidence sourced in the market was used to inform an improved value. The improved value was determined by capitalisation of rental at 4.5% (NSW Treasury Bond rate) with the land value determined by deducting the added value of improvements. This was then compared back to the PSLV to determine the discount factor for that use in that location.

The market analysis performed by LPI was based on a capitalisation of rental at 4.5% (NSW Treasury Bond rate). The rate of return currently applied within the formula is 3.05% and the weighted average proposed by IPART is 1.5% for the rental formula based on 2011/12 data. These lower rates of return result in higher land value. The effect of LPI using a rate of return of 4.5% in their analysis is that the capital values assigned to each sample property are grossly understated.

The land value is determined by dividing the net rental by the % yield. For example a \$5000 rental divided by 4.5% = \$111,111 of capitalised land value and \$5,000 divided by 1.5% = \$333,333 land value. These figures can be compared with the PSLV to get approximate discounts or multipliers.

It is the Department's view that LPI should have undertaken their analysis with IPART's recommended figure of 1.5% rate of return and based the calculations on the new recommended precincts. The Department has reviewed and recalculated the LPI figures using the 3.05% and 1.5% RoR, using current precinct values. The summary table illustrates the impact of using differing rates of return on the calculation of discount factors for wetland occupancies. The effect of this analysis is that a discount multiplier of the range between 3.8 and 5.5 should be adopted.

Region	Use	4.5 RoR		3.05 RoR		1.5 RoR	
		Discount %	Discount Multiplier %	Discount %	Discount Multiplier %	Discount %	Discount Multiplier %
Sydney Harbour	Wetland	57	43	26	74	-72	172
	Reclaimed Land	41	59				
	Overall Combined	52	48				
Outer Metro	Wetland	50	50	-29	129	-283	383
	Reclaimed Land	37	63				
	Overall Combined	44	56				
Rest of State	Wetland	31	69	-80	180	-450	550
	Reclaimed Land	30	70				
	Overall Combined	31	69				

Further analysis undertaken by the Department, using the proposed precincts, indicates that a discount multiplier would be in the range of 6.5 to 7.5 times the PSLV (650% to 750% of the PSLV).

Pages 44-46 of the IPART report use the LPI analysis to support retention of a single 50% discount factor based on an annual yield of 4.5%. The IPART report made no reference to the impact that different yields have in valuing lands. This is a material omission as the above table illustrates that factoring in lower yields significantly changes discounts into multipliers.

This analysis is only as strong or reliable as the rental assessments undertaken by LPI, which forms the basis of the analysis. It is however relevant to note that the LPI assessments of "market rent" are the only "first principles" assessments of market rent which have been undertaken and considered by IPART in relation to this matter.

On the basis that the LPI assessment of market rentals is valid and that the market would perceive a rate of 1.5% as being an appropriate rate of return for an investment in the location of the DWF occupancy the remodelled LPI analysis demonstrates that the discount factor of 50% is not warranted. It should be abolished and substituted with a multiplier rather than a discount factor.

### Reclamation methodology

The LPI report stated that "reclaimed land shows a direct relationship with immediately adjacent land and can be valued by way of applying a discount factor directly to that land (this alters from that derived by applying a discount factor to a Precinct Statutory Land Value)".

As a consequence of this, LPI recommended that “a discount factor specific to reclaimed land would most accurately be applied against the value of directly adjacent land which benefits from it, as opposed to values derived from precincts of any nature”, and that “the appropriate discount factor for application to the Land Value per square metre of the adjoining land which benefits from the reclaimed land would be 40% for occupancies within Sydney Harbour and a 50% discount rate for all other reclaimed lands outside Sydney Harbour”.

The Department broadly agrees with the findings of LPI and considers that rent for reclaimed land should be based on the Statutory Land Value (SLV) of the adjoining freehold land. This was recommended by LPI in recommendation 3 of its report to IPART. A key fact which supports LPI's recommendation is that reclaimed land provides a valuable adjunct to the adjoining freehold land, and the quantum of the value of the reclaimed land bears a direct relationship with both the SLV and size of the freehold.

This finding is supported by IPART in section 3.2.3 of its draft report in which it acknowledges that “there is clearly a close relationship (between waterfront freehold land and adjoining occupancies) where an occupancy is comprised of reclaimed land”

However, IPART also points out that the option of valuing occupancies with reference to the SLV(\$/m<sup>2</sup>) of the adjoining freehold property would result in significant variations between adjacent and like occupations due to differences in the physical area of neighbouring properties. This is because it is generally accepted that, when compared to nearby properties, the SLV(\$/m<sup>2</sup>) of a property decreases as the size of the land parcel increases, and conversely the SLV(\$/m<sup>2</sup>) of a property increases as the size of the land parcel decreases.

This concern raised by IPART has some merit when valuing wetland. However because the addition of public reclaimed land (through an occupancy agreement) to a freehold property is of greater value to the freehold property owner when the freehold property is comparatively small, reference to the SLV(\$/m<sup>2</sup>) of the adjoining freehold property when valuing reclaimed land is considered to be justified.

The Department therefore considers that rent for reclaimed land be set using the following formula:

Reclaimed Land Rent (\$) = [Statutory Land Value of adjoining property (\$/m<sup>2</sup>)] x [Occupancy area of reclaimed land (m<sup>2</sup>)] x [Discount Multiplier \*] x [Rate of Return].

\* Discount multiplier = 40% in Sydney Harbour and 50% for rest of state as recommended by LPI.

It should be noted that approximately 90% of the data for reclaimed land is already available within the Department's account management system; it would therefore be administratively efficient to calculate rents for reclaimed land in this way. Accordingly, it is considered that there is no impediment to implementing different formulas for reclaimed land and wetland.

## Implementation

In regards to recommendation 2, the PSLV changes will also impact on rents due between April and June 2012. This is due to the fact that the rental year for the Department has always begun in April of each year. In order for the Department to bring rentals into line with IPART draft recommendations, we propose to apply the new recommendations for PSLVs and the rental formula from April 2012 based on the 2011/12 financial year figures which IPART have already calculated. This will be done with the accounts that fall due from 1 April 2012 to the end of 30 June 2012. From 1 July 2012 the new PSLVs and rates of return for 2012/13 financial year will apply.



The Department, Maritime and NSW LPI are currently discussing recommendations 3 and 4 on data sharing and consistency issues. NSW LPI has indicated that may be able to provide PSLV data to ensure consistency across the agencies.

### 3. The rate of return

#### Draft recommendations

7. The gross rate of return (RoR) be calculated:
  - using rental rates of return for residential non-strata properties
  - using sales and rent data from Land and Property Information (LPI) and Housing NSW
  - as a rolling 3-year average, updated for each financial year, to match the time period used to calculate PSLVs
  - for each precinct, using the median rate of return for each postcode in the precinct (ie, median postcode sales price divided by median postcode rent), and then determining a weighted-average of these values by weighting each postcode's median rate of return according to the postcode's share of occupancies within the precinct
8. The net RoR for each precinct be calculated by subtracting outgoings from the gross RoR, with:
  - each precinct's outgoings calculated as a percentage of the gross RoR, using the ATO's Taxation statistics for relevant postcodes for the latest financial year available, weighted accordingly
  - the percentage share of precinct outgoings be calculated by dividing total precinct Rental property Expenses, excluding Interest on loan(s) and Borrowing expenses, by total precinct Rental Income, as advised by the ATO
  - this percentage share updated for each financial year, as part of the annual update of the RoR.
9. IPART carry out the annual update to the net RoRs under a standing terms of reference (under section 9 of the IPART Act). The terms of reference should require IPART to calculate the annual update to the net RoRs in accordance with the methodology proposed by IPART in this report and to advise CLD and Maritime of the updated RoRs. The next annual update should take effect from 1 July 2012.

#### Recommendation 7 – precinct based rates of return

The Department does not agree with the concept of using precinct based rates of return derived from a weighted average by postcode and applied across the portfolio. The approach is based on theoretical and statistical assumptions using data for purposes that were not intended. The approach relies heavily on inputs into the process without benchmarking the outputs against 'real world' examples. A key issue in this argument remains unanswered which is "does the market perceive the rate of 1.5% as an appropriate yield for a DWF occupancy in that particular location?".

LPI used a RoR OF 4.5% (NSW Treasury Bond rate), the current formula uses a 3.05% RoR based on the residential property market within the Sydney Statistical Division. The Departments view is that the use of a benchmark RoR index that is comparable to other market indices is a more sound and robust approach. The adoption of precinct based rates of return is subjective, dependent on the validity of how precinct boundaries are defined, integrity of data samples for rental and sales and consistency of approach to measuring outgoings. The precinct boundaries are arbitrary, the data used for rental and sales are not for the same sample and the inclusion of outgoings is based on access to relevant ATO datasets. The net weighted average RoR of 1.5% proposed by IPART appears low compared with other market indices and it is difficult to accept this as true market return.

The Department does not believe that there is enough evidence to support the position by IPART that the revised formula will deliver a fair market return to the Community. The proposed approach increases the complexity of the process by relying on IPART to source, model and manipulate the data and to generate 20 rates of return that are subsequently weighted into an average. When the projected yield of 1.5% is modeled against the LPI market assessment of 'wetland' values it generates results that transform a 50% discount factor into multipliers of between 6.5 and 7.5 (refer to section 2 for more information). What this implies is that the 1.5%

yield is inconsistent with a discount factor for 'wetland' occupancies and introduces a RoR not related to market evidence, indices or examples.

The manner in which the outgoings are determined again appears to be based on the availability of data from the ATO without due consideration of what factors an 'informed investor' considers in making decisions. The proposition that an 'informed investor' would accept a yield of 1.5% is considered highly unlikely.

Conversely the LPI market evidence indicated that a rate of return of 3.05% and a discount factor of 50% were a conservative reflection of the market.

The proposition that the reduction in rentals of 51% due to redefining precincts, introducing a 1.5% rate of return and retention of a 50% discount factor delivers a market return is not supported by any market evidence. The conclusion of the LPI report provides a quote from the NSW Boat Ownership and Storage report July 2010 that *"predicts continued growth in boat ownership and with many operators advising of limited available berths demand for storage will not decrease and consequently there should not be any downward pressure on storage rentals for the foreseeable future."*

This appears incongruous with a market rental formula that predicts a reduction of 51% in rents for 2012/13.

The Department's view is that there should be a single rate of return established by reference to a recognised market benchmark. The use of the property market confuses the issue of yield and has resulted in an intense theoretical and technical debate regarding the relationship between rates of return and property values. In 2004 IPART used rates of return from the residential property market as potential counterbalance to potential rises in property values. Another benchmark index could have been chosen and in hindsight should have been.

The concept of precinct based rates of return operating with PSLV's and a 50% discount factor is flawed and is unsupported by market evidence. The current 3.05% rate of return based on market evidence provided by LPI is considered to be conservative when applied with a 50% discount factor.

### **Recommendation 8 - outgoings**

IPART has recommended the use of Australian Taxation Office (ATO) data on rental income and expenses to determine the difference between 'gross' and 'net' rate of return for residential investment property. The Department considers that depreciation, capital works deductions and should also be excluded for the reasons provided below.

The agencies in their original submission to IPART noted that they did not consider depreciation of buildings and contents as outgoings because these are not actual cash outgoings incurred by a landowner. IPART suggests that by using the ATO data on actual expenses they have solved the agencies concerns regarding depreciation. However, even though landowners may claim depreciation as an annual rent deduction, it is still contended that depreciation is not a cash outgoing and should therefore be excluded as a rent outgoing. Depreciation will almost always be used for tax purposes, since this offers an immediate tax benefit even when considering the future increase in capital gain. When it is used as an immediate deduction (for tax purposes), the cost base of the asset is reduced by an equal amount, and thus the rate of return on the adjusted cost base is higher for future years. IPART's analysis ignores this aspect of deducting depreciation from the cost base when calculating the net return.

It is also considered that capital works deductions should not be categorised as an outgoing incurred by the property owner. This is because any capital investment by a property owner will

invariably lead to an increase in the capital value of the property which will be realised by the property owner on sale of the property.

This highlights that the proposed method for determining gross and net rates of return by IPART will be unique to the DWF portfolio and unrelated to real world investment choices. Of greatest concern is that as each variable of the formula is separately analysed and altered it's relationship as part of the whole is not tested or fully explained. Again the Department considers the process as unsound.

## 4. Recovering administration costs

### Draft recommendations

10. The minimum rent for domestic waterfront occupancies, which is currently set at around \$432 per annum (excluding GST), be abolished.
11. CLD and Maritime levy a uniform administration fee on occupants to recover costs of administering domestic waterfront occupancies. The administration fee should be in addition to the rental charge, so that together the rental charge and the administration fee form a 2-part tariff.
12. The administration fee initially be set at \$200 (2011/12, excluding GST) per occupancy, to reflect our assessment of CLD's efficient costs of administering domestic waterfront occupancies.
13. This fee be increased on 1 July each year by the Government's annual cap on increases in NSW public sector wages, currently set at 2.5%.
14. The uniform administration fee be reviewed and updated every 4 years to reflect the lower 'per occupancy' efficient cost of the 2 agencies. The review and update of the administration fee should be based on a review of the agencies' efficient administration costs by a suitably qualified and independent entity, such as the Internal Audit Bureau (IAB).
15. The findings of these periodic reviews should be published on the agencies' websites, with the first review taking place in 2015. The reviews should consider the performance of comparable organisations and benchmarks in calculating the efficient costs of administration activities, along with the scope for continuing efficiency gains. Any increase in the administration fee as a result of the review should be fully justified and explained.

The Department agrees in principle with IPART's recommendation 11 that a uniform administration fee should be charged to recover costs of administering DWF occupancies forming a 2-part tariff with the rental charge.

The Department is not in favour of the abolition of the minimum rent in recommendation 10, however, the Department is in favour of the waiving the requirement for minimum rent for this class of tenure, subject to the efficient administration fee being based on full cost recovery. The Department can seek the Minister's consent to waive the statutory minimum rent for this class of tenure.

IPART recognises in its draft report that both agencies "need to recover their outgoings in administering DWF occupancies". Yet, IPART recommends \$200 for administration costs, well below what is determined to be efficient across both agencies. This fee does not reflect the efficient administration costs of the Department and would have major ramifications on services and administration of these tenures into the future. In setting the administration charge as recommended, IPART is not allowing the agencies to fully recover their costs through the administration fee.

In 2004, the minimum rent of \$350 per year was introduced for all Crown land tenures under the *Crown Lands Act 1989* to cover administration costs. This was also supported by IPART in their 2004 report for DWF occupancies. The 2011 indexed minimum rent for all Crown land tenures is currently at \$432.00 (excl GST).

The Department has identified in its April 2011 submission that the efficient administration costs are \$330.00 per annum. This represents a significant reduction of 24% from the current 2011 minimum rent. The Department considers \$330.00 to be an efficient administration cost for this particular class of tenure, more efficient than the statutory minimum rent, already recognising that there have already been efficiencies created for DWF tenure.

The Department also acknowledges that there may be potential savings made into the future, particularly through a compliance program, identifying existing unauthorised structures and through improvements to the management and administration of DWF tenures.

The IAB report states that “over the last 6 years there has been a less than optimal focus on DWF compliance activity”. Given this, it was identified that to provide an efficient level of compliance, additional compliance resources of 6.5 FTEs were required. However, IPART have been critical of this inclusion in the Department’s administrative costs. As stated by some stakeholders, this work is essential to ensure that all those people enjoying the waterways are being charged the appropriate rent for this use and occupation. Stakeholders have indicated to the Department that a level of compliance is expected from the Department and the adoption of the \$330.00 efficient administration costs would allow the Department to meet these needs. The Department is confident that the administration costs are reasonable and efficient and is willing to have this tested by external review. This portfolio is dispersed, diverse and complex involving multiple agencies and significant policy changes.

The Department has also identified a number of other components that have not been included as costs resulting from the IPART draft recommendations and should form part of the administration costs. These are described in more detail below. Each IPART review requires significant operational changes and stakeholder management.

### **Recommendation 3 - LPI providing PSLV data**

Where LPI are to provide the PSLV data, there will be a cost and this needs to be included in the efficient administration cost. This cost is to be confirmed with LPI.

### **Recommendation 17 - pensioner concession applied to administration fee**

The Department does not consider it appropriate to apply pensioner concessions to the administration fees, fees that are designed to cover the cost of administering these accounts. There is no basis for the pensioner concessions to be applied to the administration fee. Please refer to section 5 for more on this recommendation.

It is the Department’s view that if a concession is applied to the administration fee for pensioners, this cost would need to be recouped across the rest of the DWF occupancy accounts. The Department currently has 456 pensioner DWF accounts and a total of 6910 DWF accounts (27 October 2011 figures). If the pensioner concession is applied to the administration fee and then spread over the rest of the occupancies, this would equate to an extra \$11.66/occupancy each year (based on 2011/12 figures) for all non-pensioner accounts.

### **Recommendation 22 - hardship review panel**

Whilst the Department does not agree with the recommendations to establish a hardship review panel, if this is to remain as a recommendation its implementation and maintenance will need to be factored into the administration cost. There will be costs associated with processing appeals, providing appropriate senior delegated representation on the panel, as well as the cost of a third representative from another organisation or agency. The cost of 1.5 EFT to administer these appeals as part of the panel has been calculated out at as an extra cost of \$9.37 per occupancy each year.

Please refer to section 5 for the Department’s position on the hardship review panel.

### **Recommendations 25-28 - WAO administration**

The Department also requires the costs of administering the changes to the WAO occupancies be included in the efficient administration costs, and recommends these be spread over the first 4 years of its implementation.

Administration of WAO recommendations by IPART includes development and maintenance of policy, criteria for discretionary and non-discretionary structures, managing enquiries, confirming and verifying areas with tenants, possible surveys, updating systems and accounts, communications material. With 770 existing WAO accounts identified and 103 of these accounts requiring further investigation to determine the structure areas for accounting purposes, the

Department has calculated this extra cost of \$11.15 per occupancy spread over the first four years of implementation. After the four years, this cost would be removed from the administration fee.

### Summary of additional administration costs

Summary of additional costs for “efficient administration” of DWF tenancies based on IPART draft recommendations:

Description of cost	\$/occupancy
Base efficient administration fee for the Department	\$330.00
Recommendation 3 LPI cost for providing PSLV data	To be confirmed
Recommendation 17 (recommendation not supported) Pensioner concession applied to administration fee (recouped across all non-pensioner accounts and recalculated each year)	\$11.66
Recommendation 22 Hardship review panel	\$9.37
Recommendations 25-28 WAO administration (first 4 years of implementation)	\$2.79
<b>New total efficient administration fee</b>	<b>\$353.82</b>

This new administration fee would then be reviewed after the first four years, in line with IPART’s recommendations.

## 5. Pensioner concessions and cases of hardship

### Draft recommendations

16. Current pensioner concessions be maintained – ie:
  - for occupants who are pensioners or existing occupants who become pensioners, annual rents should be 50% of that calculated using the recommended formula
  - for existing occupancies where the occupant has been a pensioner since 2004, the annual rent should be limited to 50% of the rent calculated using the recommended formula or a maximum of \$1,221 per year in 2011/12 dollars (to be indexed by CPI each year), whichever is lower.
17. Current pensioner concessions be applied to both the rental charge and the proposed separate administration fee.
18. Current pensioner eligibility requirements be maintained.
19. Information on pensioner concessions, eligibility requirements and hardship provisions be:
  - made available to occupants at the time the occupancy is entered into
  - provided on rental bills issued to occupants
  - published on the agencies' websites.
20. The agencies give consideration to any case of demonstrated hardship on a case by case basis and write to applicants to inform them of the reasons for a decision on a hardship application.
21. The agencies provide information, both on their websites and upon request by occupants, on occupants' rights to sub-licence or sub-lease or transfer or terminate their occupancy.
22. There be a right of appeal for hardship decisions to a review panel, comprised of representatives from CLD, Maritime and at least one independent organisation, and that this should be in addition to any current rights of appeal.
23. Any hardship applicant who is rejected by the agencies be provided with information on how to appeal their hardship decision.
24. The agencies write to applicants to inform them of the reasons for a decision on a hardship appeal following review by the panel.

The Department agrees with recommendation 16 and will be able to implement. However, the Department does not agree with recommendation 17 in particular that the pensioner concession should be applied to the separate administration fee. The current Departmental practice is to apply pensioner concessions to rental charges and this is common practice across all Crown land tenures. However, pensioner concessions are not applied to any administration fees by the Department and this would be an inconsistent practice across the Department's entire tenure portfolio.

Refer to section 4 for information on administration costs for the implementation of Recommendation 17.

The Department agrees with recommendations 18 to 21 as proposed by IPART. It is the Department's view that generally these recommendations are currently being met.

The Department does not agree with the establishment of a hardship review panel as recommended by IPART in recommendations 22 to 24. Establishment of an appeal panel is considered to be an unnecessary administration expense for licence holders. Hardship applications are currently managed by a discrete unit to ensure consistency in decision making with recommendations being reviewed and approved under delegation within the Department. Approximately 500 hardship applications are received from DWF tenants each year (including requests for payment plans and extensions). The Department works with tenants to develop workable solutions to these requests and currently has no record of rejecting DWF hardship cases. Implementation of a review panel for DWF licences will create an inconsistency in the management of hardship applications compared with other Crown tenure portfolios. It is the Department's view that this panel will be a costly, unsustainable process with little or no extra benefits to DWF applicants.



## 6. Concessions for other circumstances

### Draft recommendations

25. Occupancies or those portions of occupancies that are used as the sole means of accessing adjoining water access only (WAO) properties (as assessed by an officer of CLD) be exempt from rental charges, but be subject to CLD's administration fee (as specified in recommendation 11).
26. Portions of occupancies that adjoin WAO properties but which are used for discretionary, non-access purposes (as assessed by an officer of CLD) be subject to the full rental charge.
27. CLD establish clear criteria that it will use to determine which structures are 'nondiscretionary' and which are 'discretionary' for WAO purposes, and publish these criteria on its website.
28. Given the above recommendations, CLD abolish the current rebate of \$306 for WAO properties.

The Department agrees with recommendations 25 to 28 as proposed by IPART.

In regards to the above recommendations the Department has determined the criteria for essential and non discretionary structures for water access only purposes. See table below for the criteria.

Infrastructure	Essential	Recreational and discretionary
Jetty (inc. solid fill and stone jetties)	✓	
Jetty ramp	✓	
Pontoon	✓	
Berthing Area	✓	
Slip ways	✓	
	* only applicable where other essential infrastructure is not attached to the property	
Boat ramps	✓	
	* only applicable where other essential infrastructure is not attached to the property	
Boat lift		✓
Boatshed/ boat storage area		✓
Reclamation/ sea wall		✓
Swimming pool/ enclosure		✓
Residences		✓

While IPART recommended that the Department should determine the criteria, IPART did suggest what types of structures could be considered essential being jetties, slipways and boat ramps. The Department does not agree with boat ramps and slip ways being essential if a jetty, ramp or pontoon is present as they do not provide the primary means of access to the property. The exception to this would be when a boat ramp or slipway is the primary means of access which would entitle these structures to the rent free concession.

Consideration has also been given to applying maximum area limits for certain types of essential infrastructure eg berthing areas and pontoons. However given the many site variables this is not considered as being efficient administration.

It is proposed that the Department will use existing data to determine the areas and will advise WAO clients and prior to implementation. WAO licence holders will be provided with the opportunity to verify determined areas and be provided with a process to seek amendment.

## 7. Other matters

### Draft recommendations

29. For new leases, clause 3.7 of the Maritime lease read as follows:
  - The Lessor may vary the Rent Formula to implement a recommendation of the Independent Pricing and Regulatory Tribunal in relation to the rent for such a lease. The Lessor must notify the Lessee in writing of the new Rent Formula varied in accordance with this Clause 3.7(a) at least sixty (60) days before the commencement of the new Rent Formula.
  - The Lessor must vary the Rate of Return each year in accordance with the Rate of Return (if any) specified by the Independent Pricing and Regulatory Tribunal which is applicable to this lease. The Lessor must notify the Lessee in writing of the new Rate of Return varied in accordance with this Clause 3.7(b) at least sixty (60) days before the commencement of the new Rate of Return.
  - The new Rent Formula stated in a notice given by the Lessor pursuant to Clause 3.7(a) of this Lease or the new Rate of Return stated in a notice given by the Lessor pursuant to Clause 3.7(b) of this Lease is deemed to have been agreed to and accepted by the Lessee unless the Lessee gives the Lessor a notice in writing terminating this Lease on the basis that it does not accept the new Rent Formula or the new Rate of Return within sixty (60) days of the date of the Lessor's notice.
30. For existing leases, Maritime seek to vary clause 3.7 of the lease, with the agreement of the lessee, so that clause 3.7 is replaced with the clause set out in recommendation 29 above.
31. There be no additional right of appeal beyond the current appeal rights, as a consequence of our recommendation to improve the wording of Maritime's lease.
32. Wherever possible, the agencies take measures to encourage and facilitate the sharing of occupancies, including allowing occupants to share rental charges.
33. The agencies seek a ruling from ATO on whether GST should be applied to the rental charge and the recommended administration fee.

The Department agrees with recommendations 31 and 32 as proposed by IPART.

The Department does not agree with recommendation 33, as proposed by IPART, that a ruling from ATO should be sought on whether GST should be applied to the rental charge and the recommended administration fee. It is the Department's view that the supply of a domestic waterfront structure does not meet the criteria for 'residential premises' as identified in section 195 of *A New Tax System (Goods and Services Tax) Act 1999* and that the public ruling GSTR 2000/20 which provides more detail on what a residential premises is, supports this position. As such a DWF rental charge and administration fee is considered to be taxable. The draft GSTR 2011/D2 would not have any bearing on this issue as the licence to use the land is not the supply of residential premises and there is no long-term lease (over 50 years). The Department believes that ATO would decline to issue any such ruling due to the evidence.

## Appendix 1

Summary of the Department's position to each draft recommendation:

Draft Recommendation	Submission response
<b>Valuing occupancies for the purpose of calculating rent</b>	
<p>1 Rent for each precinct continue to be set using the following formula, subject to IPART recommendations in the Draft Report:</p> <p>General Rent (\$) = [Precinct Statutory Land Value (\$/m2)] x [Occupancy area (m2)] x [Discount Multiplier (50%)] x [Rate of Return].</p>	<p>Partially agreed.</p> <p>The rate of return and the discount multiplier are not supported.</p>
<p>2 PSLVs determined on a financial year basis, using a 3-year rolling average of SLVs with a 12-month lag. This means, for example, that for the financial year 2012/13, both agencies would use the average SLV for each waterfront freehold property and its adjoining occupancy over 1 July 2011, 1 July 2010, and 1 July 2009 to calculate that property's SLV. This is in order to determine the PSLV as per Recommendation 3 below.</p>	<p>Agree</p> <p>PSLV changes will also impact on rents due between April and June 2012.</p>
<p>3 PSLVs should be calculated as the median SLV (\$/m2) of residential waterfront properties with occupancies within each precinct. The SLV (\$/m2) of each property is calculated by dividing the 3-year average SLV of the freehold property and its adjoining occupancy, by the area of the freehold property and its adjoining occupancy.</p>	<p>Agree</p> <p>Discussions underway with LPI on the possibility of them calculating the PSLV for DPI and Maritime to ensure consistency.</p>
<p>4 CLD and Maritime work with LPI to ensure that they are using consistent and correct data on the SLV and area of each waterfront property and its associated occupancy in their calculations of PSLVs.</p>	<p>Agree</p> <p>Discussions between agencies to share data where precincts overlap.</p>
<p>5 The agencies reduce the number of precincts to 20 regional precincts, as per the recommended regional precincts in Table 3.2 of the Draft Report.</p>	<p>Agree</p>
<p>6 The current 50% discount multiplier be maintained.</p>	<p>Not agreed</p>
<b>The Rate of Return</b>	
<p>7 The gross rate of return (RoR) be calculated:</p> <ul style="list-style-type: none"> <li>- using rental rates of return for residential non-strata properties</li> <li>- using sales and rent data from Land and Property Information (LPI) and Housing NSW</li> <li>- as a rolling 3-year average, updated for each financial year, to match the time period used to calculate PSLVs</li> <li>- for each precinct, using the median rate of return for each postcode in the precinct (ie, median postcode sales price divided by median postcode rent), and then determining a weighted-average of these values by weighting each postcode's median rate of return according to the postcode's share of occupancies within the precinct</li> </ul>	<p>Not agreed</p>
<p>8 The net RoR for each precinct be calculated by subtracting outgoings from the gross RoR, with:</p> <ul style="list-style-type: none"> <li>- each precinct's outgoings calculated as a percentage of the gross RoR, using the ATO's Taxation statistics for relevant postcodes for the latest financial year available, weighted accordingly</li> <li>- the percentage share of precinct outgoings be calculated by dividing total precinct Rental property Expenses, excluding Interest on loan(s) and Borrowing expenses, by total precinct Rental Income, as advised by the ATO</li> </ul>	<p>Not agreed</p>

	<ul style="list-style-type: none"> <li>– this percentage share updated for each financial year, as part of the annual update of the RoR.</li> </ul>	
9	IPART carry out the annual update to the net RoRs under a standing terms of reference (under section 9 of the IPART Act). The terms of reference should require IPART to calculate the annual update to the net RoRs in accordance with the methodology proposed by IPART in this report and to advise CLD and Maritime of the updated RoRs. The next annual update should take effect from 1 July 2012.	Agree

### Recovering administration costs

10	The minimum rent for domestic waterfront occupancies, which is currently set at around \$430 per annum (excluding GST), be abolished.	Not agreed
11	CLD and Maritime levy a uniform administration fee on occupants to recover costs of administering domestic waterfront occupancies. The administration fee should be in addition to the rental charge, so that together the rental charge and the administration fee form a 2-part tariff.	Agree
12	The administration fee initially be set at \$200 (\$2011/12, excluding GST) per occupancy, to reflect our assessment of CLD's efficient costs of administering domestic waterfront occupancies.	Not agreed Certain costs have not been adequately included in the administration fee.
13	This fee be increased on 1 July each year by the Government's annual cap on increases in NSW public sector wages, currently set at 2.5%.	Agree
14	The uniform administration fee be reviewed and updated every 4 years to reflect the lower 'per occupancy' efficient cost of the 2 agencies. The review and update of the administration fee should be based on a review of the agencies' efficient administration costs by a suitably qualified and independent entity, such as the Internal Audit Bureau (IAB).	Agree
15	The findings of these periodic reviews should be published on the agencies' websites, with the first review taking place in 2015. The reviews should consider the performance of comparable organisations and benchmarks in calculating the efficient costs of administration activities, along with the scope for continuing efficiency gains. Any increase in the administration fee as a result of the review should be fully justified and explained.	Agree

### Pensioner concessions and cases of hardship

16	<p>Current pensioner concessions be maintained – ie:</p> <ul style="list-style-type: none"> <li>– for occupants who are pensioners or existing occupants who become pensioners, annual rents should be 50% of that calculated using the recommended formula</li> <li>– for existing occupancies where the occupant has been a pensioner since 2004, the annual rent should be limited to 50% of the rent calculated using the recommended formula or a maximum of \$1,221 per year in 2011/12 dollars (to be indexed by CPI each year), whichever is lower.</li> </ul>	Agree
17	Current pensioner concessions be applied to both the rental charge and the proposed separate administration fee.	Partially agree Concession should be applied to the rental charge. Pensioner concessions should not be applied to the administration fee.

18	Current pensioner eligibility requirements be maintained.	Agree
19	Information on pensioner concessions, eligibility requirements and hardship provisions be: <ul style="list-style-type: none"> <li>- made available to occupants at the time the occupancy is entered into</li> <li>- provided on rental bills issued to occupants</li> <li>- published on the agencies' websites.</li> </ul>	Agree
20	The agencies give consideration to any case of demonstrated hardship on a case by case basis and write to applicants to inform them of the reasons for a decision on a hardship application.	Agree
21	The agencies provide information, both on their websites and upon request by occupants, on occupants' rights to sub-licence or sub-lease or transfer or terminate their occupancy.	Agree
22	There be a right of appeal for hardship decisions to a review panel, comprised of representatives from CLD, Maritime and at least one independent organisation, and that this should be in addition to any current rights of appeal.	Not agreed
23	Any hardship applicant who is rejected by the agencies be provided with information on how to appeal their hardship decision.	Not agreed
24	The agencies write to applicants to inform them of the reasons for a decision on a hardship appeal following review by the panel.	Not agreed
<b>Concessions for other circumstances</b>		
25	Occupancies or those portions of occupancies that are used as the sole means of accessing adjoining water access only (WAO) properties (as assessed by an officer of CLD) be exempt from rental charges, but be subject to CLD's administration fee (as specified in recommendation 11).	Agree
26	Portions of occupancies that adjoin WAO properties but which are used for discretionary, non-access purposes (as assessed by an officer of CLD) be subject to the full rental charge.	Agree
27	CLD establish clear criteria that it will use to determine which structures are 'non-discretionary' and which are 'discretionary' for WAO purposes, and publish these criteria on its website.	Agree
28	Given the above recommendations, CLD abolish the current rebate of \$306 for WAO properties.	Agree
<b>Other matters</b>		
29	For new leases, clause 3.7 of the Maritime lease read as follows: <ul style="list-style-type: none"> <li>- The Lessor may vary the Rent Formula to implement a recommendation of the Independent Pricing and Regulatory Tribunal in relation to the rent for such a lease. The Lessor must notify the Lessee in writing of the new Rent Formula varied in accordance with this Clause 3.7(a) at least sixty (60) days before the commencement of the new Rent Formula.</li> <li>- The Lessor must vary the Rate of Return each year in accordance with the Rate of Return (if any) specified by the Independent Pricing and Regulatory Tribunal which is applicable to this lease. The Lessor must notify the Lessee in writing of the new Rate of Return varied in accordance with this Clause 3.7(b) at least sixty (60) days before the commencement of the new Rate of Return.</li> <li>- The new Rent Formula stated in a notice given by the Lessor pursuant to Clause 3.7(a) of this Lease or the new Rate of Return stated in a notice given by the Lessor pursuant to Clause 3.7(b) of this Lease is deemed to have been agreed to and accepted by the Lessee unless the Lessee gives the Lessor a notice in writing terminating this Lease on the basis that it does</li> </ul>	N/A

	not accept the new Rent Formula or the new Rate of Return within sixty (60) days of the date of the Lessor's notice.	
30	For existing leases, Maritime seek to vary clause 3.7 of the lease, with the agreement of the lessee, so that clause 3.7 is replaced with the clause set out in recommendation 29 above.	N/A
31	There be no additional right of appeal beyond the current appeal rights, as a consequence of our recommendation to improve the wording of Maritime's lease.	N/A
32	Wherever possible, the agencies take measures to encourage and facilitate the sharing of occupancies, including allowing occupants to share rental charges.	Agree
33	The agencies seek a ruling from the Australian Taxation Office (ATO) on whether GST should be applied to the rental charge and the recommended administration fee.	Not agreed
<b>Impact of IPART recommendations</b>		
34	As a transitional arrangement, bill increases be capped at \$200 per annum (\$2011/12, excluding GST) for the first 12 months following implementation of our recommendations.	Agree