CLAYMORE

CAPITAL PARTNERS PTY LTD

Review of the Pitcher Partners Reports 2008 & 2010

for the

Boating Industry Association

22 February 2022

Claymore

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22 February 2022

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The Board of Directors
Boating Industry Association Ltd
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Dear Sirs

Review of Pitcher Partners Reports 2008 & 2010
Report for Concession Lease Policy Negotiation

In accordance with our brief from Boating Industry Association Ltd (**BIA**), this letter is a review by Claymore Capital Partners Pty Ltd (**Claymore**) of two reports prepared by Pitcher Partners NSW Corporate Pty Limited (**Pitcher Partners**) as follows:

1. An untitled report to BIA NSW dated 4 September 2008 (**2008 Pitcher Partners Report** or **2008 Report**); and,
2. A report to Marine Queensland titled "REPORT ON SUSTAINABLE RENT LEVELS AND LEASE TERMS" dated 15 March 2010 (**2010 Pitcher Partners Report** or **2010 Report**).

Together these two reports have since been referred to by the marina industry as the "**Pitcher Partners Reports**".

For the record it is noted that since the date of those reports, BIA NSW and Marine Queensland have been merged with the South Australian boating industry association to form Boating Industry Association Ltd ("**BIA**").

In dealing with the review of both Pitcher Partners Reports findings, recommendations and the history of various attempts to implement those recommendations, and in researching and advising on further responses to developments in the marina industry, this report is necessarily lengthy. To assist readability, this cover letter provides an Executive Summary which contains a Summary of Findings and sets out the Recommendations arising from our review of the Pitcher Partners Reports. Detailed narrative on our analysis and research is provided in the body of the report and set out in the Appendices.

EXECUTIVE SUMMARY

The focus of this review is the same triple bottom line focus of the Pitcher Partners Reports, that is, optimal outcomes for the community, for marina businesses and for government as landlords and regulators.

The Pitcher Partners Reports identified structural problems in the marina industry in Queensland and NSW, and made recommendations for adoption of ‘world best practice’ by the marina industry. This review has found that all Queensland and NSW marina Authorities have since adopted Pitcher Partners recommendations to some degree, with benefits commensurate with the degree of adoption.

The only Authority which developed a policy which adopted most of the recommendations of the Pitcher Partners Reports has seen the most benefits, in higher investment levels, less disputes and a less costly policy to administer. A significant market failure we identify is that some essential elements of that policy are not documented in concession lease agreements. This leaves concession holders exposed to future policy change, undermining the Investment Grade of the marina business.

This report also examines developments in the industry over the intervening decade, including issues not extant at the time of writing of the Pitcher Partners Reports.

The central finding of this review is that the marina industry will optimise the triple bottom line through structural reforms which enhance the Investment Grade of marina businesses and marina properties (whether owned by government Authorities, NFPs or private sector investors). Optimal performance derives from both structural efficiencies and from access to cheaper equity capital, lower interest rates and higher gearing potential for Investment Grade debt finance.

The main market failures of current administration of marina concession leases are:

- Uncertainty in concession rental setting mechanisms resulting in some marinas paying double the site rental rate of competitor marinas, while inflation adjusted rentals can vary by over 50% from review to review for the same marina. Concession rentals linked to marina economic performance has resolved this market failure for many NSW based marina concession holders;
- Concession lease terms which are too short. This market failure has been resolved for many Queensland based marina concession holders through lease terms of 40 to 99 years, but these terms are not codified in policy or regulation;
- Construction and refurbishment of marinas not occurring in a timely and efficient manner due to long lead times in lease term extension applications and inadequate lease duration. Policy and administration of marinas should encourage investment in assets rather than seeing marinas in a run down condition in the final 10 years of a lease concession term.

This report makes 11 Recommendations. These are grouped into 4 categories:

1. Uniform adoption of best practice policy across Australia (see A, B, C);
2. Sustainable Land tenure through lease terms and covenants which encourage development and maintenance of high grade marina facilities at all phases of the investment and lease renewal cycle; (see D, E, F)
3. Sustainable rental policies to optimise economic benefits and share those benefits fairly between operators and landowners (see G, H, I, J)
4. Administration and Regulation policy and practice to allow reasonable planning and development timing (see Recommendation K)

Economic Importance of the Boating Industry to Australia

When addressing best practice in the marina industry, it is necessary to focus on the importance of the boating industry to the Australian economy. This industry is a core contributor to the Tourism and Leisure industries.

Marinas make a significant contribution to maintaining infrastructure and lifestyle in regional areas, by helping to sustain a base level of patronage for accommodation, cafes and restaurants in regions which often rely on cyclical industries such as agriculture and mining.

Almost all of the 27,630 employees and 10,000 contractors involved in the Australian marine industry operate through marinas or interact with marinas.

The Marina industry is composed principally of small & medium sized enterprises (SME) and not-for-profit (NFP) clubs and associations. Boating industry turnover and construction contribute around 0.5% to Australian GDP and there are more than 925,000 registered boats in Australia, with more than 2.5 million Australians holding a boating license.

Marinas are an important access and service point for many government and non-government essential services, including water safety, fire and rescue services.

High quality marina infrastructure will contribute to the quality of life for all Australians and for international visitors who use the facilities or at some point will benefit from the services and water access provided by marinas.

Findings of this Report

- Current economic climate[1] in Australia is markedly different to prevailing conditions at the time of the Pitcher Partners Reports. Lower inflation rates and interest rates have coincided with falling property yields across all classes of property. However, there has not been a commensurate reduction in marina site rentals rates, resulting in a marked increase in the government monopoly premium extracted from mostly small and medium sized businesses which operate Australia's marinas.

- The marina industry is changing but the regulatory environment has not kept pace.

- Land tenure has become a more complex issue in the past decade. At the time of the Pitcher Partners Reports a threat to tender a marina lease extension was met with shock by the industry and that Authority quickly backed away. Regulatory developments have exposed marina owners to loss of goodwill and this has contributed to marina upgrades being delayed subject to lease extensions.

- Where Authorities have implemented Pitcher Partners recommendations on lease tenure and sustainable rentals as a percentage of turnover, disputes have been reduced and capital investment in marinas has proceeded.

[1] This does not refer to the economic uncertainty due to the global COVID-19 pandemic. Pitcher Partners Reports were prepared during the GFC with similar heightened economic uncertainty. The major difference is the material fall in market yields, inflation and interest rates over the decade since those Reports.

- In the absence of such policy, strained negotiation processes have prolonged agreement and delayed investment unreasonably.

- Periodic review of existing lease documentation, policy and guidelines is required to align to commercial and regulatory developments.

- Where published lease policy is available, lease agreements do not include key provisions of the policy, especially in regard to rights to a lease extension pursuant to material additional Capex. Policy can change, so unless documented, investors and lenders cannot rely on even a published Public Marina Leasing Policy (**PMLP**),

- Lease tenure and concession rental terms and conditions vary materially between marinas. Review to market clauses in some leases, but not others, and which are not subject to published policy, have resulted in large fluctuations both between marinas with the same landlord, and within States. Inconsistent processes and the absence of settled valuation methodology for marina sites, have also resulted in large fluctuations in concession rentals for marinas at the time of 3 or 5 year market rental reviews.

- The lack of consistent policy and threat to loss of business goodwill[2] are major reasons why marina owners do not have the incentive to maintain high quality marina facilities in the last 10 years of a concession lease term. The lack of certainty has a negative impact on credit standing and makes it difficult to obtain bank finance late in the lease term. This all impacts negatively on the industry resulting in loss of income, delays in capital expenditure on improvements and reduction in client service levels.

- Where published lease policy is available, there has been an improvement in approval times. However, the planning timeframe is inordinately long, with greater than 5 years being the norm from start of an application for lease extension and redevelopment until a DA, BA and lease extension are agreed with the Authority and documented.

Recommendations of this Report

Uniform adoption of best practice policy Recommendations

A. Claymore recommends that each marina Authority in Australia develop, publish and regularly review against performance and international best practice a PMLP;

B. Template leasing guidelines and lease documentation – transparency through

[2] Goodwill in this case refers to the difference between Market Value of the marina and the asset value in the Balance Sheet. Note the use of the term 'Goodwill' in the analysis section of the report and in Appendix 4. The MV rises in the early years after a marina investment is incurred, and the investment is only recouped in the final few years of the 20-25 year life. A significant amount of the Market Return to marina investors in contingent upon extensions to the initial concession lease, as rebuild costs are significantly lower than the original capital cost.

making available to all concession holders standardised lease terms and conditions to match published PMLP;

C. In order to support competitive neutrality, State governments coordinate policy development and review internally (between all Authorities within their State). Further that consultation with other States be conducted through COAG to support the industry nationally.

Sustainable Land tenure

It is essential to the continuum of quality marina services supply to the community that there is no 'window' of time during which it is not commercial for marina operators to upgrade, replace or expand marina infrastructure. Under current policy and lease duration settings, this window occurs in the final 10 to 15 years of a concession lease.

Because of the 20-25 year life cycle[3] for marina infrastructure, there will need to be substantial reinvestment within each lease term. With expected changes in market factors, climate change potential impact (rising sea levels, greater wind and wave action), client expectations, technology and changes in the industry, such as non-fossil fuel powered alternatives, there is an expectation that the life cycle of marina infrastructure may decrease.

Capital upgrades are subject to continuous review of major drivers including the physical condition and functionality of legacy infrastructure and also changes in demand for marina services and facilities. Given the historic time taken to negotiate and execute concession lease extensions (5 years typical), and the fact that some Authorities have no policy or lease terms which guarantee an extension, the Authority and concession holder can spend a large portion of a 25 year lease negotiating extensions.

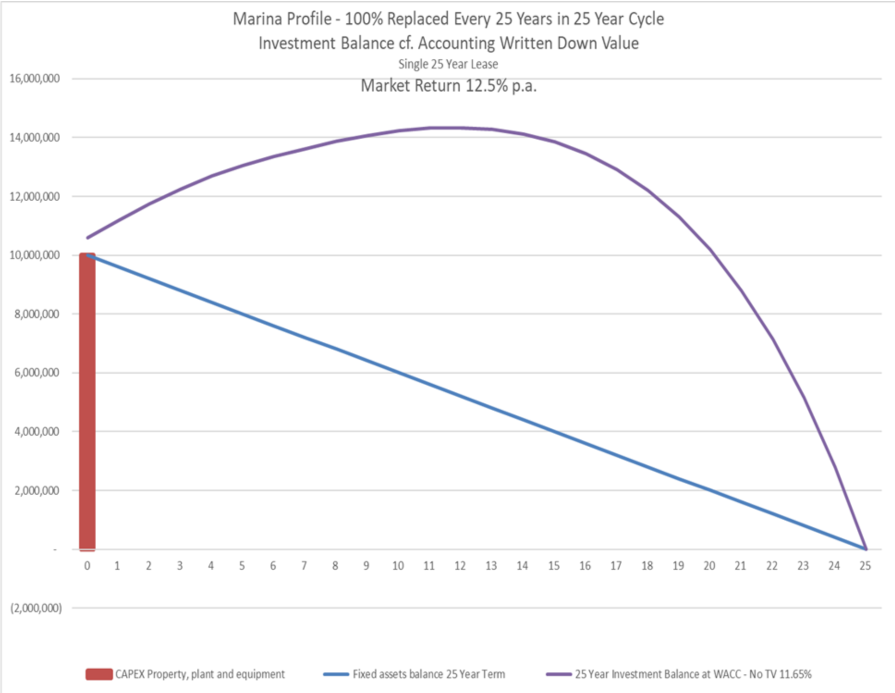
This is inefficient for the Authorities and the industry.

Some authorities have offered a series of lease extensions linked to immediate and future Capex commitments[4]. In our experience, this is a poor substitute for an adequate lease term of at least 50 years from the date of any major Capex. It is a market failure that can easily be remedied by policy and through documenting commensurate terms and conditions in the lease agreements.

An investment in marina infrastructure with a useful life of 25 years has the following investment profile:

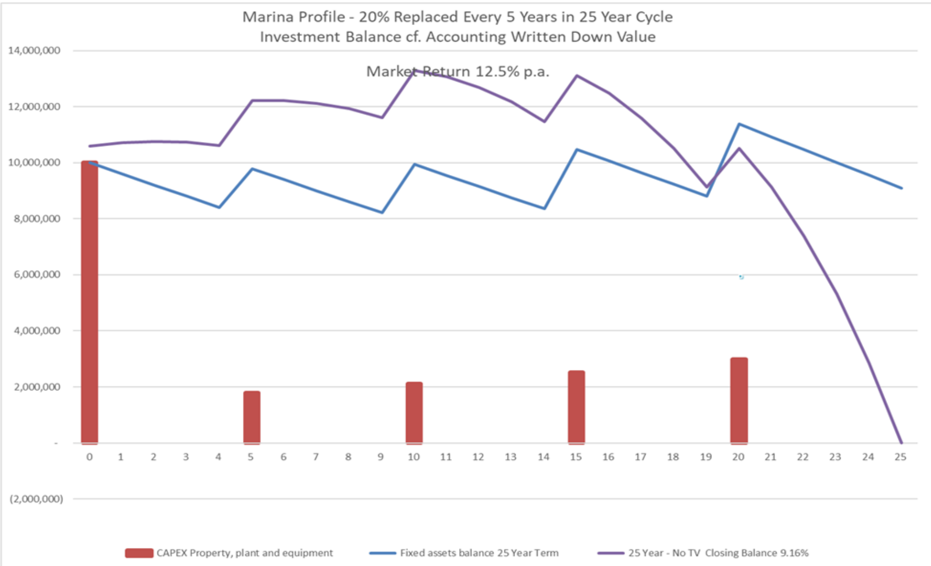
[3] Marina design engineers sometimes advise 'heavy duty' engineering for core structural elements of a marina. This may have an effective life of 40 to 50 years. However, periodic maintenance is higher on pontoons and other fitout. For this engineering option to be selected, a lease term lease than 50 years is not commercially viable for marina concession holders.

[4] The CMRP of Transport NSW provides a table linking lease extensions to Capex as a percentage of turnover. We have not seen this policy documented into any concession leases. We do recommend revisiting the formula in the table to make a sliding scale which is more commercially viable (such as 1 year extension for every 5% of turnover). However this is not consistent with a true Investment Grade business. It is also unacceptable to bankers and professional investors unless documented in the concession lease. The remedy for this market failure is adequate lease terms of 50 years or more.



Because revenue rises over time, the investment balance rises even as the accounting value is amortised. If an investor purchases the marina during the term, the difference between the assets in the Balance Sheet and the amount paid will be attributed to Goodwill, or other intangible assets.

In the typical marina business developed in stages over time, and subject to replacement as each stage reaches its 20-25 year useful life, the investment balance and Balance Sheet values will have the following profile:



Any rational investor will not invest in expanded facilities, or replace aging facilities to top quality, in the final 10 years of a concession lease term. In addition, banks will not lend against such an investment due to lack of tenure. The clear conclusion is that tenure close to freehold, or a very long lease term or rolling lease structure is appropriate for marinas.

A well planned marina development, maintenance, refurbishment and management program will take into account the fact that the initial investment will require site works and development costs which are not incurred on a rebuild. Pitcher Partners Reports assumed this to be typically 25% of the initial investment construction cost. Our financial modelling supports the finding that to obtain Market Returns on investment, investors will need to hold the marina through at least two life cycles. This underpins Pitcher Partners Reports recommendation for minimum 50 year concession leases.

Sustainable Land tenure Recommendations

D. Land Tenure – that on any major development or redevelopment over a term of 5 years, that the basic lease term should be extended to 50 years from practical completion of development;

E. That Dry Lease and Wet Lease sites concession leases include terms and conditions with rights afforded to freehold sites.

F. That in the event that the Authority resumes the Site at the end of a Lease, or conducts a tender for a marina lease renewal, that the Lease Document provide for compensation to the operator for any unamortised capital cost and for goodwill generated by owner operators (competing tenderers to pay out owner as part of the terms of tender);

Sustainable Rentals

Marina site concession rentals are a significant head of expense which has a direct impact on the investment return achieved by equity investors. Any other financial input which enhances the financial performance of a marina will impact on the amount of site rental the investors are able to pay. It will also impact on the business owner's ability to pay rental during difficult economic or trading conditions.

Our review has found widely different approaches to market rent calculations in marina concession leases across Australia. Policies and practices vary between Authorities, but application within some Authorities is inconsistent over time and between different marinas.

In almost all cases, marina concession rentals include a government monopoly premium – that is, the rental on unimproved value of land is higher than market rates, as illustrated by the ratio of rent to turnover being higher than most business pay for fully developed property leases.

The lack of competitive neutrality and of a link to economic performance of each marina means some marinas are paying 250% of the rentals they would pay if the Pitcher Partners Reports recommendations were followed, but also double the rental other competing marinas are charged.

Different mechanisms for assessing 'market rent' have resulted in some rentals for the same marina vary by up to 50% in real terms after a 3 or 5 year rent review to market. The result is often dependent on the arbiter, with the rent assessments by the marina and the Authority's valuers even further apart.

These uncertainties undermine the Investment Grade of the marina, meaning investors require a higher risk rated Market Return, and banks are not willing to lend at all in some circumstances without collateral security.

Sustainable Rental Recommendations

G. That Sustainable Rentals be linked to economic performance, reflecting Permitted Use and Development Approvals for each marina site.

H. That Pitcher Partners recommendation for Sustainable Rentals from their 2008 and 2010 Reports be adopted as policy by all Authorities pending an independent review of market yields. Pitcher Partners recommendation was 2% of Gross Revenue from Fuel facilities, and 6% of other marina revenues.

I. Claymore recommends that an independent review of sustainable rent as a percentage of turnover be jointly commissioned by BIA and the Authorities. This review should revisit the financial modelling assumptions used in 2008 and 2010, and take into account current market rental yields on unimproved sites, current financial and economic assumptions, including risk free interest rates, risk premiums and inflation assumptions.

J. That in any case where an Authority continues with the practice of charging a fixed rate applied to market value, that the rate used be reviewed to reflect current market yields on unimproved real property.

Administration and Regulation policy and practice

Over the past decade, we have observed many applications for lease extension in order to justify major Capex have taken 5 years or more to resolve. For other property developments, 12 months is a typical timeframe. Prior to the Pitcher Partners Reports being implemented, development and lease extension negotiations were taking even longer.

A PMLP outlining the terms for an extension will assist marina concession holders to apply for extensions with clear knowledge of what is required and the likely outcome.

For management and staff at the Authorities, a clear policy, template lease agreements and precedents for approving applications will increase consistency, competitive neutrality and optimise timeframes for granting approvals for the Capex and the lease extension.

Administration and Regulation policy and practice Recommendation

K. That development approval processes be streamlined to allow application and documentation of Authority approval as landlord, plus DA and BA to be completed within a maximum of 12 months of application for development or re-construction.

Conclusion

Failure of marina Authorities to develop, publish and implement a PMLP have resulted in uncertainty in the marina industry. This uncertainty demonstrably has led to:

- under-development in the marina industry;
- facilities older and in poorer condition than necessary;
- unduly complex administration of the industry;
- excessive administration and regulatory costs;
- inconsistency in treatment of lessees; and,
- a lack of competitive neutrality.

Where Pitcher Partners' recommendations have been followed this lack of fairness between marinas with the same landlord Authority has been reduced this market failure.

Where marina concession holders have been able to reference published policy in a PMLP, it appears that the level of fairness and competitive neutrality has been improved. Further, costly disputes have been mitigated.

Different approaches to policy and marina regulation have resulted in a lack of competitive neutrality between Lessees with a different landlord Authority both within States and nationally.

The lack of consistency in policy and practice regarding site tenure has led to difficulties in marinas accessing equity and debt finance. This is a market failure which needs to be addressed.

As the prior common practice of rolling over or extending lease terms to existing marina operators has come under threat from regulatory review, marina owners face new problems related to loss of goodwill and unamortised investment. Policy review is needed to protect investors and enhance industry growth and community facilities.

Claymore is of the opinion that Pitched Partners recommendation for concession rentals to be set at a maximum of 6% of turnover (2% Gross Profit on Fuel) was a correct assessment of the Australian market conditions at the time. However in our opinion these rates need to be independently reviewed in the light of current economic parameters – especially lower interest rates and inflation rates.

Pitcher Partners criticised rentals based on market values of alternative use properties. Our review demonstrates that this approach is unduly costly and results in wildly varying assessments of market rentals which have little relevance to the Permitted Uses and site restrictions on a marina concession site.

The absence of a PMLP not only produces uncertainty for marina businesses, but the lack of transparency and of competitive neutrality, reflected in wide variations in lease rentals and tenure, subjects the Authorities to accusations of preferential treatment of one marina concessionaire over others.

At worst, it provides the opportunity for perception of corruption.

A PMLP needs to satisfy the triple bottom line test of optimal outcomes for all stakeholders including the government, the community and marina industry participants. As with all such policy and regulation, it should be subject to sunset provisions and periodic RIS review[5] against this triple bottom line benchmark.

Disclaimer

We understand that you require this report for use in your negotiations with the Authorities in relation to marina policy development and review. This report is provided on the basis that it is provided for the exclusive use of BIA and is not to be relied upon by any other person without the express consent of Claymore Capital Partners Pty Limited, such consent not to be unreasonably withheld.

This report has been prepared by Claymore Capital Partners Pty Limited based on material, representations and information provided to us. We have not performed an audit or independent review of the information provided to us.

We reserve the right to review all calculations included or referred to in this opinion, and, if we consider it necessary, to revise our opinion in light of any additional information which becomes known to us after the date of this report.

Should you require any assistance or have any queries in relation to our report, please contact me on +61 414 604 326.

Yours sincerely

ERROL STEVENSON
Director
Encl.

[5] RIS review – most jurisdictions in Australia have sunset clauses, with a Regulatory Impact Statement (RIS) required before the sunset date; 10 years is probably a relevant time frame, and the new RIS should include consultation processes with stakeholders, including the Authorities, marina operators and owners, and community groups representing users.

COVID-19 Global Pandemic Impact on this Report

BIA provided the brief for this report, and Claymore researched and planned this report prior to the emergence of public knowledge in Australia of the Coronavirus pandemic now known as COVID-19.

The health regulation and economic restrictions in Australia and globally have had a severe adverse impact on leisure and tourism activities unprecedented outside of wartime. As a leisure and tourism industry, the marina industry and the leisure and tourism sector in which the marina industry is integrated have experienced economically challenging conditions.

This report, and the Pitcher Partners Reports which are the subject of review, note the impact of both minor and major disruptions to marina businesses. One or two years of adverse trading conditions will affect the economic return on investment more severely at various points in the investment cycle. This is true for all business investment, but especially in the early years of long payback investments like marina infrastructure.

In economic theory, the risk of major business disrupters is built into the risk premium which investors build into their required rate of return on investment. American investment data firm Duff and Phelps have in recent years published the implicit risk premium derived from the New York Stock Exchange. This premium increased rapidly in the early months of 2020. It is fair to assume the risk premium also rose in Australia over FY2021 for investors in both listed and unlisted assets.

The marina industry in Australia is made up of not-for-profit clubs and private sector unlisted investments. The clubs did suffer severely under COVID-19 lockdowns as they were closed for business for periods and then re-opened progressively, with continuing uncertainty over future trading setbacks.

As a result of COVID-19, we are aware that the marina industry faces immediate financial challenges and an uncertain recovery period. All sectors of the industry have suffered, including the design and construction of rebuilds, extensions and new facilities.

The various levels of government in Australia have taken extreme measures to support industry and employment. This report does not deal with the specific support governments may need to give to the marina industry to recover from the current economic crisis. In addition to generally available support measures, these may include lease term extensions and rental abatement.

Pitcher Partners reported on some basic sensitivity analysis and noted the impact of a downturn early in the investment cycle. This was done to demonstrate the risk to investors and landlords. They did not deal specially with the GFC, which emerged in the period between the 2008 and 2010 Reports. Our financial model (**Model**) does allow for such analytics.

Our report does deal with economic forecasts and policy positions in what might be referred to as ordinary economic and commercial conditions. We do not attempt to deal with the specific impacts of COVID-19 on the industry.

INTRODUCTION

The core recommendation of the Pitcher Partners Reports is that each marina Authority[6] in Australia should prepare, publish and regularly update a commercial marina lease policy which ensures:

- competitive neutrality; and,
- sustainable development for the industry.

Pitcher Partners benchmark for policy setting and review was the *triple bottom line*, that is, optimal outcomes for all stakeholders including the government, the community and marina industry participants.

We note the BIA concerns that there have not been published policies by all marina Authorities within States. It follows that the national coordination required to achieve competitive neutrality and sustainable development has not occurred. As a result of this uncertainty and inconsistency, this economically important industry has not seen the timely investment and job creation to match the industry's potential.

The big picture is that policy and practice which enhance marina properties (wet and dry sites) and marina businesses standing as Investment Grade assets will optimise the triple bottom line. The intended outcome of this report's recommendations is marina properties and businesses having optimal Investment Grade standing with investors and banks.

Marina businesses are a material contributor to the $8.835 billion marine industry in Australia. Almost all of the 27,630 employees and 10,000 contractors involved in the Australian marine industry operate through marinas or interact with marinas.

Recreational boating is a popular leisure activity for Australians and tourists.

Marinas are an important focus for environmental initiatives for oceans and estuaries. Boating industry and water safety regulation and initiatives have an important focus through marinas.

Commercial marinas are privately funded and operated, but many must compete with some government owned facilities and government subsidised not-for-profit marinas. As all water based facilities and most dry land marina facilities are on government owned sites, the Wet Lease and Dry Lease terms and conditions are vitally important as to tenure and lease rental cost.

Pitcher Partners Reports found that in order to maintain quality marina services in a highly corrosive physical environment, marina infrastructure and equipment needed to be completely re-built or refurbished every 25 years. Industry experience is that this life cycle is now 20-25 years. Claymore's own experience is that marina owners will try to spread

[6] There are a number of government departments of GBEs which own marina sites and lease Wet and Dry sites to concession holders. Depending on the context, the concession lessor is referred to as the Authority or Authorities

this capital expenditure requirement over a number of years, in order to limit extremes in capital investment and to maintain all important occupancy levels.

A number of factors are acting to shorten this 25 year cycle and increase the total capital expenditure required by marina investors. These factors include technology changes, climate and environmental changes, regulatory changes and changes in client preferences for boating experience over boat ownership.

Claymore also observes that the process of Authority approval for major capital works is usually coupled with an application for lease term extension. This process typically takes 5 years and, in some cases, has taken much longer. Experienced marina operators now recognise the need to commence the negotiation process 15 years before termination of the existing Wet and Dry Lease term.

In order for marinas to attract investment from equity investors and banks at competitive rates, the marina business requires certainty of tenure and major heads of expenditure, including site rentals.

REVIEW OF PITCHER PARTNERS REPORTS 2008 & 2010

At the request of Boating Industry Association Ltd (**BIA**), Claymore Capital Partners Pty Ltd (**Claymore**) has prepared this report as a review of two reports prepared by Pitcher Partners NSW Corporate Pty Limited (**Pitcher Partners**) as follows:

1. An untitled report to BIA NSW dated 4 September 2008 (**2008 Pitcher Partners Report** or **2008 Report**); and,
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Together these two reports have since been referred to by the industry as the "**Pitcher Partners Reports**".

The purpose of this review is:

- to examine the response of the industry and the Marina lease Authorities to the Pitcher Partners Reports over the decade since they were published:
- to report on the impacts of policy and practice changes in that period; and,
- to make recommendations for future policy development and review.

Economic Importance of the Boating Industry to Australia

The Marina industry is composed principally of small & medium sized enterprises (SME) and not-for-profit (NFP) clubs and associations. Boating industry turnover and construction contribute around 0.5% to Australian GDP and is an integral part of Australia's tourism industry and to regional coastal economies.

The BIA compile industry statistics and make them available to members. An overview is available to the public on its website. Their principal sources of information are member surveys and research, plus published statistics for boating licences, recreational vessel registrations and ABS statistics[7].

Claymore from time to time provide industry research and analysis for individual marina clients, including analysis of trends in States and their regions. The results of this research and analysis demonstrate the importance of marinas to tourism and regional development.

The contribution of marinas and boating to the leisure, lifestyle and tourism industry in major populated harbours and estuaries is readily apparent and is newsworthy in major events such as the Sydney to Hobart and Melbourne to Hobart yacht races. Australia is a destination for major ocean going vessels, attracting wealthy visitors as high spending tourists and as investors, and providing a focus on Australia for business and tourism.

[7] See Appendix 1 for Sources of Information

Less apparent is the steadying economic influence on regional economies subject to major economic cycles. In times of agriculture and mining industry downturns, employment and activity in marinas make a significant contribution to maintaining infrastructure and lifestyle in regional areas, by helping to sustain a base level of patronage for accommodation, cafes and restaurants.

Marina businesses provide infrastructure which is an important channel for government initiatives and delivery of services not only in water access and fuel depots, but also in the all-important areas of water and boating safety, rescue services and in protection of the marine environment.

BIA 2021 Industry Data is a high-level overview of industry statistics published by the BIA. From 2019 to 2021, there were more than 900,000 registered boats in Australia, growing at 18,000 per year (1.7%). Over 2.5 million Australians have a boating licence, more than 10% of the adult population. Queensland had the highest level of boating registrations (272,000) and boating licences, followed by NSW (240,000). Queensland and NSW represent 55% of recreational vessels.

Over a 25 year time frame, boating registrations and boating licences have grown at an average rate of 2% across Australia. The industry has shown resilience in the high unemployment period of the 1990s and during the global financial crisis which emerged in 2008.

Marina businesses are a material contributor to the $8.835 billion marine industry in Australia. Marinas are central to almost all sectors of the marine industry. A significant majority of the boating industry's 2,000 businesses rely heavily or entirely on marinas for their business activity.

Almost all of the 27,630 employees and 10,000 contractors involved in the Australian marine industry operate through marinas or interact with marinas.

Community services and marina infrastructure in Australia are self-funding activities funded by private sector SMEs and NFP clubs. The government has minimal capital expenditure commitments for marinas and has not been called upon to subsidise or financially support the industry through economic downturns over recent decades. For this to continue indefinitely, it is important that a sustainable rental and levy policy be maintained, to avoid financial failure in any cyclical economic downturn.

A risk factor in the marina industry is the long tail economic impact after a cyclical downturn in the local economy. Once marinas lose patronage, recovery to full occupancy can take many years. Stability in the industry is therefore paramount for marina businesses and for maintaining the level of government revenue derived directly and indirectly from the industry[8].

Historically governments have subsidised some new marina development through rental holidays or a period of low rent. This has been true mainly in regional developments of tourism facilities, where other government contributions to site reclamation and

[8] Government revenues direct effect in a downturn is through loss of rents and levies, financial support to struggling SMEs, bad debts to be written off, need to subsidise or provide community access and facilities usually provided by marinas and indirectly through employment support, loss of business taxes and personal income taxes. This affects all levels of government. Australia's marina industry has been resilient over decades, but other countries suffered significant downturns a decade ago during the GFC.

breakwaters have been central to attracting private investment. There is little government support of this kind in Australia at the present time.

Background

Pitcher Partners Reports were commissioned by the industry at a time when the industry was facing the threat of extraordinary concession rental hikes, which marina concessionaires believed were being imposed on them without adequate reference to economic factors such as inflation, market competition and the market requirements for the raising of private sector funding through equity and debt.

The 2010 Report cites a Queensland government Minister who observed that marina facilities always seemed to be run down. According to many BIA members, the reason for this run down condition was that re-development and expansion of marinas could not proceed until a sustainable policy framework provided the industry and their banks with sufficient certainty to invest in and lend to marinas.

Most marina investors at that time were SMEs. The marina industry remains characterised by a predominance of SMEs and NFPs owning and operating the marinas and services provided through those marinas.

SMEs continue to have difficulty in directly negotiating with their government landlords. Advocacy through BIA as their industry representative body remains as important for the members as it was at the time of the Pitcher Partners Reports.

Our records show that in 2010 the BIA had been informed by some of their members that in Sydney Harbour alone, some $35 million in marina construction was held back pending resolution of certainty in sustainable rents and adequate duration for lease renewals or extensions. In one case, the time frame was 11 years from start of negotiations with the Authority to completion of construction for a redevelopment plan and lease rebuild of an older marina facility.

The triggers for the 2008 report were the uncertainty of tenure, coupled with the then Maritime NSW issuing rental review notices in the order of between 250% and 300% of the prior year rental. NSW Maritime referred to a high value sale of a marina which appeared to the government to be out of all proportion to the rentals they received on the unimproved marina sites. The reason for the excessive price, not reflected in later marina business sales, was not known, but suspected to be a buyer hoping to redevelop the waterfront site for non-marina purposes.

The trigger for the 2010 Report was the pending privatisation of the largest Queensland marina Authority, the Port of Brisbane Authority (**POBA**). Ahead of privatisation the POBA had been issuing concession rental "market" reviews which raised concession rentals to between 250% and 300% of the prior year rental. Pitcher Partners noted:

"We have prepared this paper to assist Marine Queensland in participating in the development of a policy which supports sustainable development for the recreational boating industry in Queensland."

Pitcher Partners approach was to develop a financial model (the **Report Model**) which was then used to forecast financial performance and capital expenditure over a 50 year period. 10 marina businesses were analysed using their model – 5 in NSW and 5 in Queensland. Pitcher Partners research calculated the market rate of return on investment at that time to attract investment in Australian marina was 15% p.a. (**WACC** or **Market Yield**). The Model used this as a discount rate in order to calculate the maximum rental, expressed as a percentage of turnover, which was sustainable.

The results of the case studies attached to their 2008 and 2010 Reports lead Pitcher Partners to conclude that a 50 year term and a maximum concession rent of 6% of marina turnover (2% of Fuel Gross Profit) would be needed by all the marinas to approach the 15% p.a. hurdle rate, under a normal range of economic and commercial conditions.

The purpose of this report is to review the experience in both NSW and Queensland with the implementation of policy in the period since the dates of the Pitcher Partners Reports, and to make recommendations on future policy development and review. Before dealing with policy, we turn now to the underlying analysis of commercial and financial issues which are pivotal to understanding the marina concession system. To do this, we will revisit the Pitcher Partners Report Model.

A review of the Model will set the scene for an understanding of what is sustainable for a marina business. We can then add commercial complexities typical in Australian marina business investment structures.

Review of the Pitcher Partners Model

To support our recommendations, we now turn to an explanation of how the Pitcher Partners Model had simplifying assumptions which allowed for direct comparison of 10 case studies in two different States. The simplifying assumptions standardised the financial modelling of marinas with different profiles in size, facility mix, age of existing infrastructure, further development potential, redevelopment timetables and remaining lease terms.

It has become apparent that some Authorities have interpreted the simplifying assumptions to conclude that all marinas concession holders will be able to walk away from the marina having fully recovered their investment at the end of a 20-25 year life cycle of the marina infrastructure. We have completed more complex financial modelling to demonstrate the more typical investment cycle, and demonstrate the need for lease terms much longer than 25 years.

Appendix 4 - Financial Model and Analysis sets out the Pitcher Partners Reports Model assumptions and charts the simplified investment balance over a 25 year lease. Appendix 4 then analyses and charts a scenario which most marina investors would see as more ideal, and which gives a better indication of the usual investment balance and capital reinvestment profile.

As the Model charts and narrative are quite extensive, we have provided Appendix 4 as a separate paper so that this report does not bog down the reader in the detail. For anyone who needs to review and debate the findings and recommendations of this report, it is imperative that you read and comprehend the scenario analysis in Appendix 4.

Our modelling for this report demonstrates the continuum in investment in a marina, which supports the conclusion that a marina concession lease needs to be closer to a freehold or rolling lease structure than to the typical terminating lease structure currently offered by Authorities in Queensland and NSW.

Lease Tenure in the Pitcher Partners Model

The 2008 Report describes the process for providing directly comparable analysis for the case studies:

"As each analysis starts at the beginning of the assumed 25 year cycle, the investment is the original cost (or total cost after restoring to 'as new' status) of developing the marina."

This simplifying assumption allows each case study to be treated as if the entire marina development was completed on the common Model start date. This simplifying assumption is necessary for comparisons between marinas, but appears to have led to some wrong conclusions as to the adequacy of a 25 year lease term.

In real life marinas, it is rare to find an example of construction of the entire marina berths and Dry Lease infrastructure at a single point in time. It is even rarer to find an example of a rebuild of the entire berths and infrastructure. Many Australian marinas were developed, or are in the process of being developed, in stages in order to meet growing demand.

A marina developed in stages will also be rebuilt or refurbished in stages as the various components reach their useful life expectancy, and as demand for changes in the marina structure and service levels justify redevelopment.

Marina owners will attempt to rebuild or refurbish in stages for a number of reasons, including:

- Optimising occupancy levels – if a marina is re-developed in stages, the number of boats which will need to find a temporary alternate berth will be minimised. Some of the clientele will not return. Staged re-development is a strategy to limit the number of clients lost, and optimise the time taken to return to maximum occupancy;

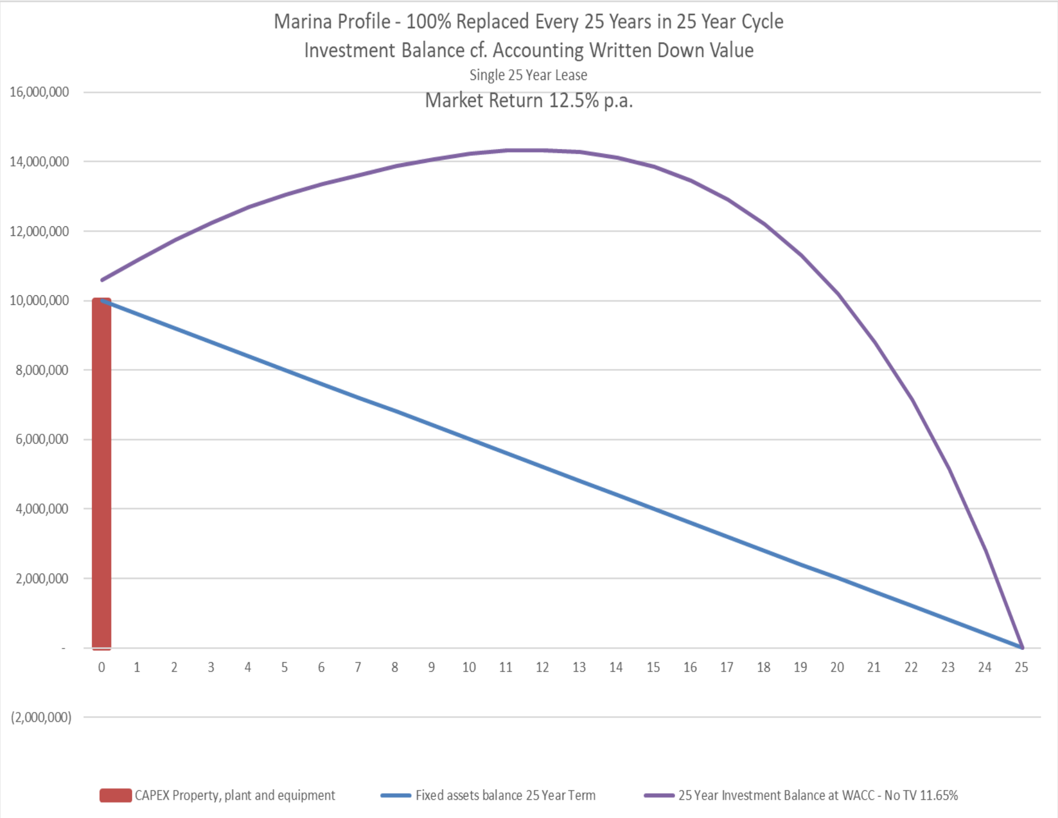
- Optimising the level of investment and minimising debt – the analysis to follow will demonstrate the impact on the fluctuation in the total investment in a marina through two scenarios – a single re-build every 20-25 years, compared to a scenario under which the marina is re-developed in 5 equal stages every 5 years. The staging of redevelopment is a strategy to optimise both the debt level and flatten the capital commitment by equity investors;

- Keeping most of the berths available for occupancy at all times will allow the associated services to continue operations at all times, optimising the efficiency and return on investment in land based services, equipment and infrastructure.

25 year Rebuild Scenario

Using the assumptions in Appendix 4, the Accounting balance and Investment balance profile for a simple one-time investment and a 25 year lease term, where the investor is assumed to simply walk away at the end of the lease is set out in Chart 25.1:

Chart 25.1



The red bar in each of the charts in this report and Appendix 4 is Capex. In Chart 25.1 there is a single investment of $10 million plus an allowance for working capital. As the lease terminates at the end of Year 25, the investors will not rebuild the marina.

The blue line represents the Accounting Written Down Value of the investment, using the Pitcher Partners assumption that you will restore the entire marina to ‘as new’ condition at the start of the 25 year lease. As the marina infrastructure is almost entirely leasehold improvements, we assume straight line write-off for the initial investment over 25 years - the straight line decline resulting from prime cost depreciation method.

The purple line is the value of the investment in the marina using the DCF method. Unless otherwise indicated, the investment balance is calculated using the IRR for the forecast cash flow, rather than the Market Yield. In this example, the Market Yield is achieved over 50 years, but falls short of that target Market Return over 25 years by 0.85% p.a. The yield in the legend is 11.65% p.a..

Why does the actual investment rise initially, when the Balance Sheet shows a declining balance?

The reason is that the investors achieve their return of capital, and a return on their investment, through rising revenues over time. Revenues rise initially through both Occupancy growth, the impact of inflation, and real price increases for services and berth tariffs. Net cash flow rises at a faster rate overall as expenses are assumed to be controlled to increase no faster than the assumed inflation rate.

In Year 1, EBITDA in the Chart 25.1 scenario is just 6% of the Initial Investment.

Free Cash Flow does not exceed the Return on Investment until Year 13. From that point the investment balance falls at an increasing rate. The two tables below show the movement in the forecast investment balance in the first and last 5 years of the 25 year scenario.

Scenario: 25 Year Term; No Termination Value

	Model timeline label Forecast period counter		Actuals 0	Forecast 1	Forecast 2	Forecast 3	Forecast 4	Forecast 5
	25 Year - No TV Opening Balance	**AUD**	**-**	**10,600,000**	**11,190,149**	**11,744,162**	**12,248,883**	**12,689,037**
plus	**Return on Investment**	**AUD**	**-**	**1,235,280**	**1,304,053**	**1,368,616**	**1,427,434**	**1,478,728**
less	**Free Cash Flow - 25 year No TV**	**AUD**	**(10,600,000)**	**645,131**	**750,040**	**863,894**	**987,280**	**1,120,817**
	25 Year - No TV Closing Balance	**AUD**	**10,600,000**	**11,190,149**	**11,744,162**	**12,248,883**	**12,689,037**	**13,046,948**
	EBITDA : Initial Investment ratio	%		6.09%	7.08%	8.15%	9.31%	10.57%

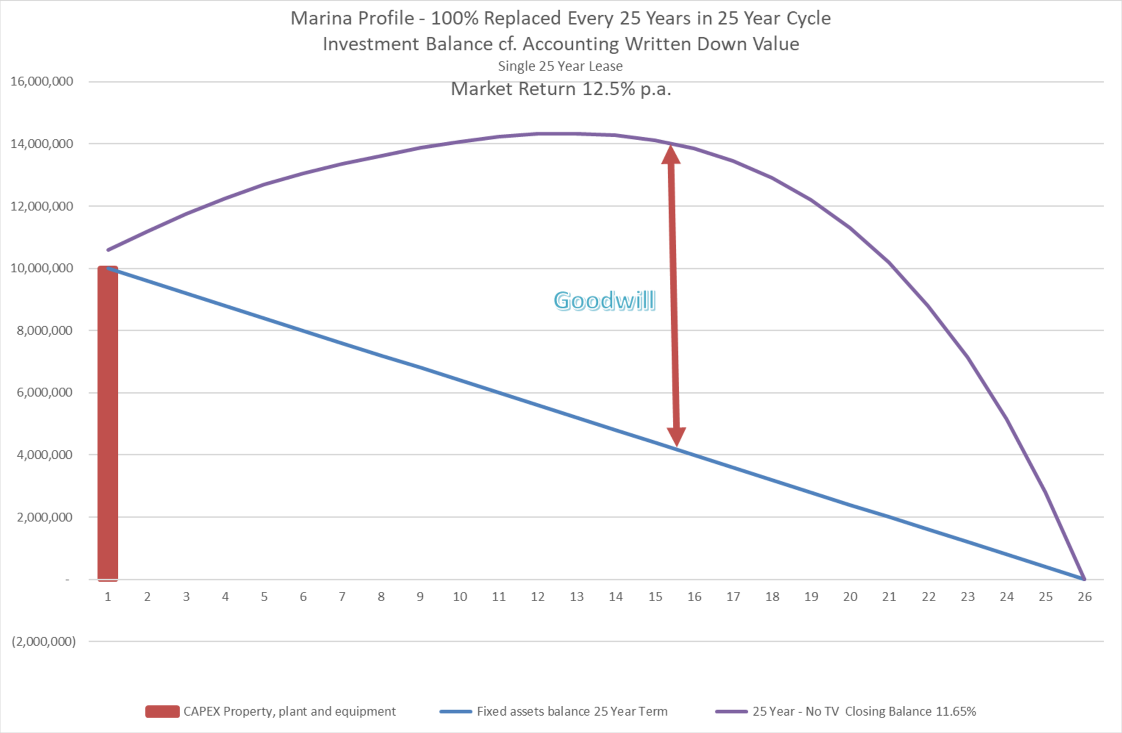
Scenario: 25 Year Term; No Termination Value Final 5 years

	Model timeline label Forecast period counter		Forecast 21	Forecast 22	Forecast 23	Forecast 24	Forecast 25
	25 Year - No TV Opening Balance	**AUD**	**10,179,285**	**8,801,530**	**7,136,473**	**5,144,837**	**2,782,517**
plus	**Return on Investment**	**AUD**	**1,186,251**	**1,025,694**	**831,655**	**599,558**	**324,263**
less	**Free Cash Flow - 25 year No TV**	**AUD**	**2,564,007**	**2,690,751**	**2,823,290**	**2,961,878**	**3,106,780**
	25 Year - No TV Closing Balance	**AUD**	**8,801,530**	**7,136,473**	**5,144,837**	**2,782,517**	**(0)**
	EBITDA : Initial Investment ratio	%	24.19%	25.38%	26.63%	27.94%	29.31%

What is the difference between the Investment Balance and the Accounting Balance?

The Investment Balance is the theoretical price at which the Marina concession would sell in an arm's length sale between a willing buyer and a willing seller. If you were to buy the marina business at any point in time, the difference between the purchase price and the Balance Sheet asset value is an intangible asset, which for simplicity we will call Goodwill -as in Chart 25.2.

Chart 25.2



Pitcher Partners Reports used the assumption in all their Case Studies that there was no Termination Value available to the marina Concession Holders. This is because the Government landlords always exclude any compensation to, or from, the lessee on termination of the marina concession lease.

The marina concessionaire is not compensated for either Goodwill or for the remainder value of any improvements. Neither is the concessionaire subject to any make good provisions. These terms are entirely consistent with the long held practice of extending the concession lease term to the concessionaire, and the intention that the site will remain as an operating marina in perpetuity.

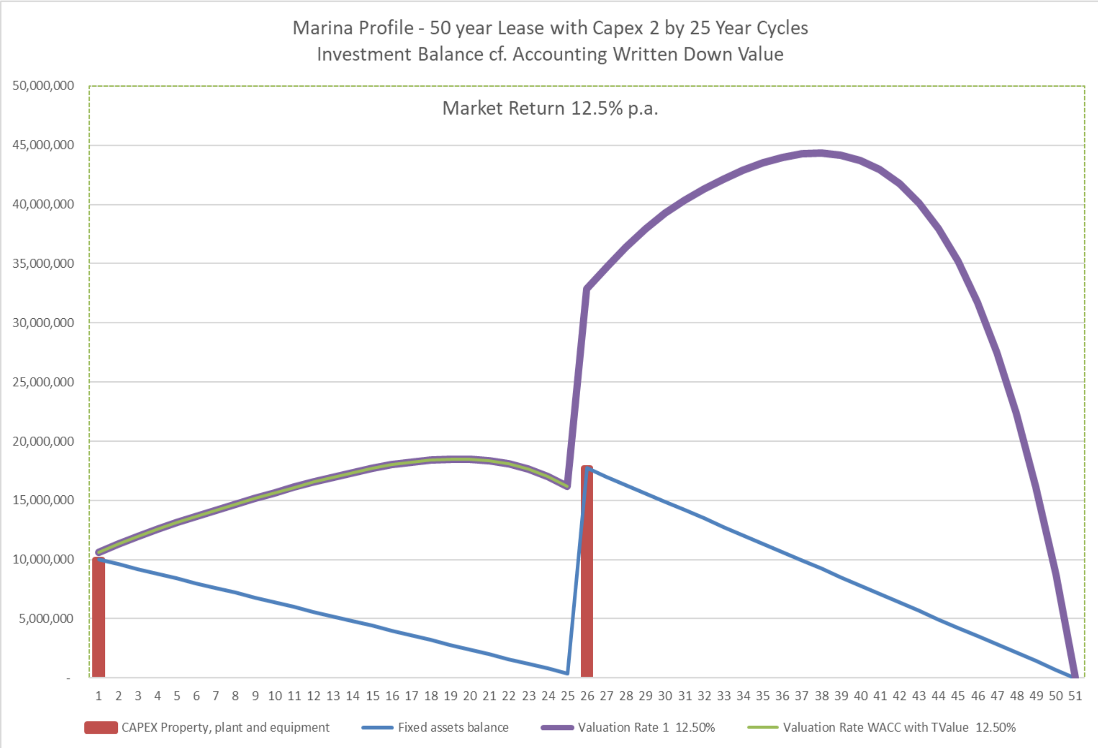
This being the case, despite the drop dead assumption in the Pitcher Partners Case Studies, there remains the prospect of the concessionaire obtaining a future benefit from the business Goodwill and the remainder value in the infrastructure. This would require a 25 year lease extension, with a complete rebuild in year 25.

What Termination Value (TV) will the investors need to achieve the Market Yield?

In the scenario we are examining, the forecast IRR is 11.65%, or 0.85% below the Market Yield of 12.5% p.a. after 25 years.

In addition to the marina cash flows over 25 years, the investors would require a $16 million TV in order to achieve the market WACC. A 50 year lease term would achieve the market WACC with nil TV.

Chart 25.4



Note that in this case the Green Line for the 25 Year plus TV scenario overlaps the first 25 years of the 50 year purple line – which is the 50 year investment profile.

Three disadvantages to an investor immediately apparent from Chart 25.4 are:

1. The investment in Capex is very large and a long way out for the second development at the end of Year 25;
2. The amount invested is "lumpy", with great differences in the capital commitment over the lease term; and,
3. The Payback period is very long, meaning capital is committed for a very long term. While this is attractive to Superannuation Funds, while ever the structure is not of an Investment Grade asset attractive to institutional investors, marinas will remain the domain of family businesses and NFPs, with an investment profile not suited to issues such as succession planning, spreading of investment risk and liquidity.

The Model presented in this analysis is ungeared. If debt funding is built into the model, the Free Cash Flow is even more restricted, Payback is even longer, and the profile of the equity investment is even more 'Lumpy'.

If we were to introduce debt at say, 50% of construction cost, with level repayments, the Debt line would begin reducing from the first period. The net equity would have a steeper rise and a later date before any repayment of capital. For a small family company, this means an increasing amount of their savings are tied up in the marina for most of each investment cycle (assumed to be the 25 years between each rebuild in the Pitcher Partners Reports, but now estimated to be 20-25 years).

Rebuild in 5 year Stages Scenario

What happens when an ideal redevelopment in stages is analysed?

So how will this profile look when we introduce one or more refurbishments of part of the marina at various stages during a 25 year life cycle?

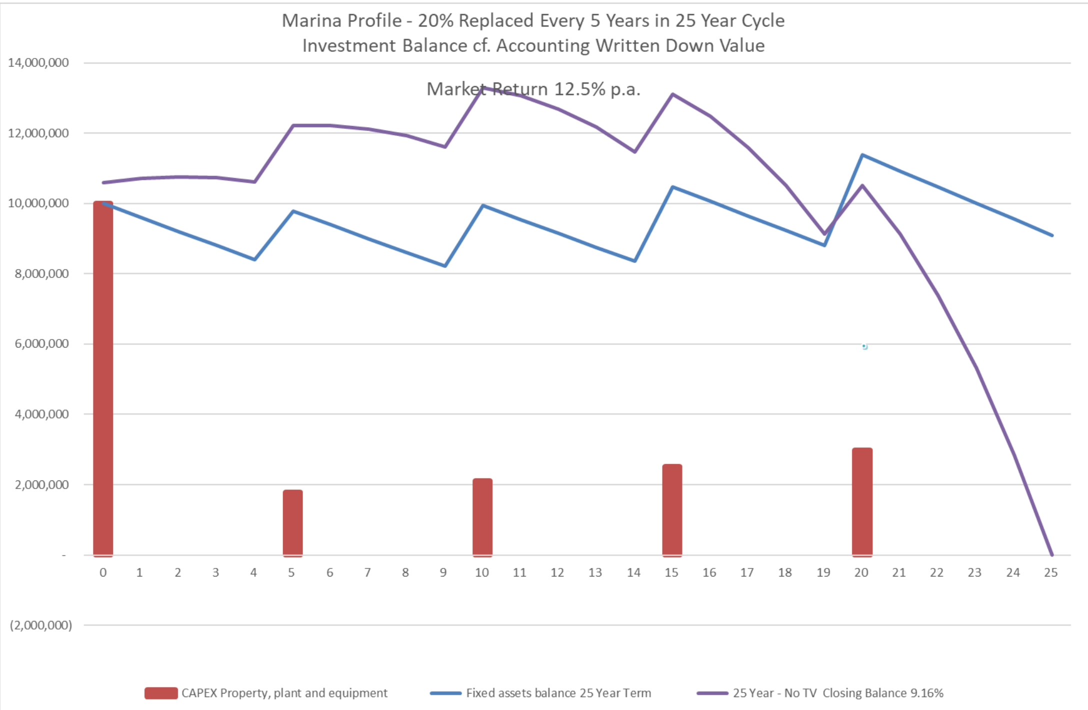
It is unlikely that the ideal will ever be achieved in an actual live case. However, the scenario presented below is closer to the investment and redevelopment profile of most marina businesses which both Claymore and Pitcher Partners have advised over the decade since the Pitcher Partners Reports were published in 2008 and 2010.

When we Model any Marina with mid-term investments, the greater the frequency of reinvestment in upgraded leasehold improvements, the more stable your investment profile. Both market value and accounting balance sheet stay at a more constant level. Debt levels are also more constant.

For a normal marina investment strategy, where investors / operators do try to spread the re-development for both optimal occupancy and to minimise / flatten the amount of capital invested at any one time, there is a problem whenever the remaining lease term drops below 20 years. This is especially true unless there is compensation in the lease for any unamortised investment at the end of the lease, including for goodwill.

The more attractive investment profile is a scenario with a 50 year lease term, with equal cost (in current dollars) Capex commitments every 5 years.

Chart 5.5.1



The first thing to note is the level capital commitment and accordingly a fairly flat curve representing the investment commitment.

However, if the concession lease terminates without compensation for Goodwill and remainder value in the infrastructure, the return on investment drops to an unacceptable level – after a 25 year lease term, just above debt interest at 9.16% p.a.[9]

It is no surprise that the TV after 25 years will be much higher than in the 2 by 25 scenario, as the remaining useful life of each development stage ranges from zero to 20 years of the 25 year useful life.

No rational investor would be willing to commit to any new stage of development without some certainty that the new or refurbished infrastructure will be in service long enough to recoup the investment and a market return on that incremental investment. This means the ideal capital expenditure profile to progressively develop the marina in stages and then replace aging infrastructure in stages is not practical to an investor without assurance of tenure each time material Capex is advisable.

Chart 5.5.1 and the other charts in Appendix 4 illustrate that this is difficult to achieve without a rolling lease structure, or a very long lease with policy support for lease extensions automatically provided with Capex approvals.

When combined with more frequent Capex commitments but at a much more acceptable level compared to the total \investment, this scenario is a far more attractive investment profile for both the current owners of Australian marinas (SMEs) and for professional investors.

As mentioned above, to understand the commercial realities of this essential requirement of freehold, or close to freehold, interest in the wet and dry lease sites, please work your way through the analysis in Appendix 4.

Findings from Review of Pitcher Partners Model

The Pitcher Partners Model provided support for their recommendations regarding setting of sustainable rentals and sustainable lease terms. More sophisticated modelling we have used in advising marina operators in negotiations for lease extensions, lease renewals and development approvals have reinforced the Pitcher Partners findings, but have also highlighted the need for termination provisions which are fair and support sustainable development in the marina industry.

Conclusions to be drawn from the technical analysis above and in Appendix 4 are set out under three headings:

1. Impact on Lease Term
2. Impact on Termination Value
3. Impact on Sustainable Rental

[9] This rate of interest on debt is only available using the marina as security, with collateral security provided by the investors to the bank.

1. Impact on Lease Term

It is important to emphasize that, because of the 20-25 year life cycle for marina infrastructure, there will need to be substantial reinvestment within each lease term. With expected changes in market factors, climate change potential impact (rising sea levels, greater wind and wave action), client expectations, technology and changes in the industry, such as non-fossil fuel powered alternatives, there is an expectation that the life cycle of marina infrastructure may decrease[10].

Secondly, if a term of only 25 or 35 years is granted for a lease extension, the concessionaires will need to be constantly coming back to the Authorities for lease extensions. Given the historic time taken to process applications, and the fact that some Authorities have no policy or lease terms which guarantee an extension, this is inefficient for the Authorities and the industry.

Thirdly, committing to specified and documented capital outlays is non-sensical 5 years out or more. However, a constant 20-25 year reinvestment cycle is known to be necessary in the marina industry to maintain quality facilities and services. Capital upgrades are subject to continuous review of major drivers including the physical condition and functionality of legacy infrastructure and also changes in demand for marina services and facilities.

Fourthly, it is essential to the continuum of quality marina serves supply to the community that there is no ‘window’ of time during which it is not commercial for marina operators to upgrade, replace or expand marina infrastructure. Under current policy and lease duration settings, this window occurs in the final 10 to 15 years of a concession lease.

2. Impact on Termination Value

There are good policy reasons why marina concession leases typically do not contain make good provisions when the lease term expires, but also exclude any liability on the Authority to compensate for Goodwill or remainder value in the infrastructure.

It has always been government practice in Australia to treat goodwill and remainder value as assets of the concession holder, with an expectation that leases will be extended and improvements and refurbishment will be paid for by the concession holder, so that the community will have continuing quality facilities and services.

The ideal marina management strategy will have new or refurbished berths and land based infrastructure constructed every 10 years or less. The optimal position for the community, the operators and the Authorities would therefore see considerable unrecovered investment at the end of any lease term.

3. Impact on Sustainable Rental

Any significant head of expense will have a direct impact on the investment return

[10] BIA has expressed concerns that the terms and conditions in marina leases need to have the flexibility to deal with emerging issues which threaten the 25 year traditional life cycle. Since the PP reports were prepared there has been significant downward pressure on yields and a significant reduction in the access to debt for marinas. The marina industry faces significant challenges over the next 10-20 years with the adaption to Climate change and infrastructure requirements for increased extreme weather events, the electrification of propulsion and the changing needs and behaviours of consumers (the rise of shared boat ownership and clubs) which will increase re-investment requirements and shorten investment cycles.

achieved by equity investors. Any other financial input which enhances the financial performance of a marina will impact on the amount of site rental the investors are able to pay. It will also impact on the business owner's ability to pay rental during difficult economic or trading conditions.

Since higher return on investment coincides with the greater certainty of tenure, the Model analysis supports the Pitcher Partners conclusion that sustainable rent requires a sustainable lease term. We add that certainty of tenure combined with adequate TV compensation if the tenure is not extended is also a factor in optimising the level of sustainable rent for any particular marina business.

Essential Elements of a Public Marina Lease Policy

The core recommendation of the Pitcher Partners Reports is that each marina Authority[11] in Australia should prepare, publish and regularly update a commercial marina lease policy which ensures competitive neutrality and sustainable development for the industry.

The 2010 Report recommends the essential elements for policy as follows:

> "Pitcher Partners recommends that authorities prepare and publish a commercial marina policy to be adopted consistently across Queensland. The essential elements of such a commercial marina policy involves the adoption of a formula for the calculation of marina rents which provides:
>
> 1. Certainty to marina concession holders;
> 2. Compliance with the Government's waterways access policy and public amenity objectives;
> 3. Returns based on marina turnover payable to the authorities, with exposure to upside earnings of such facilities, whilst providing adequate returns to the concession holders, including sufficient funds to cover the maintenance, refurbishment and rebuilding of marina facilities over the investment life cycle;
> 4. A system which is simple to administer for the authorities, has low compliance costs for the concession holders and minimises disputes between all parties;
> 5. A system which recognises the various wet and dry lease area ownership structures and encourages complimentary development on contiguous freehold land through a policy of sharing the concession rental with other government or private sector investors who commit freehold land for wet or dry lease marina activities; and,
> 6. The ability for concession holders to raise finance using only the marina business as security."

[11] There are a number of government departments or GBEs which own marina sites and lease Wet and Dry sites to concession holders. Depending on the context, the concession lessor is referred to as the Authority or Authorities

Pitcher Partners go on to note that sustainability of the marina operations relies on certainty of contract terms, particularly land / seabed tenure and the level of major heads of expenditure, including concession rent levied by the Authorities.

The benchmark for policy setting and regulation should be the triple bottom line, that is, optimal outcomes for all stakeholders including the government, the community and marina industry participants. All regulations and policy setting should be subject to periodic review against the *triple bottom line* benchmark.

In this review, we are focused on the triple bottom line issues and outcomes for the governments, the industry and the community of this failure to provide a national or even State based standard, which Pitcher Partners called a "a 'triple win' scenario".

We do this with anecdotal experience of marinas and the BIA arising from the different approaches to policy and administration by the various Authorities for their portfolio of marina sites. We complement Pitcher Partners' Model with further analysis of the investment commitment and of real world[12] staged capital investment in new and refurbished marina infrastructure.

Publication by Governments of National or State-wide Marina Policies

In each of their Reports, Pitcher Partners recommended the development and publication of a commercial marina policy by the Authorities in Australia. While the focus was on the then NSW Maritime and the POBA in Queensland, the recommendation was for a PMLP to be adopted for all marina Authorities, both within States, and consistent nationally.

There appears to have been limited, if any, cooperation between these two States or with other States not covered in the Pitcher Partners Reports.

Policy History in New South Wales

The NSW Maritime, which has since been merged into the Roads and Maritime Service (RMS) which in turn has been folded into NSW Department of Transport (hereafter referred to as **Transport NSW**) substantially adopted the Pitcher Partners recommendations in developing the CMRP[13]. This policy has been through a number of versions including interaction with the CLP and the Sydney Harbour Destination Plan (**SHDP**).

[12] Pitcher Partners Model had simplifying assumptions in order to facilitate comparison of marinas with different investment profiles. We strip away some of these simplifying assumptions to analyse the impact on an investment profile of marinas which do not have a single investment and a single rebuild after each 25 year life cycle.

[13] The RMS had the Commercial Lease Policy (CLP), the Commercial Marina Rents Policy (CMRP) and the Sydney Harbour Destination Plan (SHDP). The CMRP and the SHDP are now published on the Transport NSW website as a single document last modified 1/8/2017 and headed
Information Guide - Maritime Property
Establishing Commercial Marina Leases

Transport NSW released its first draft CMRP in late 2009. A number of updated versions of the CMRP followed. The CMRP was modified in 2013 through its interrelationship with the SHDP for RMS owned marina sites affected by that policy.

This policy was not adopted by other Authorities in NSW. However, elements of the policy seem to have been adopted through the Crown Lands application process. The Crown Lands feasibility model calculates the rent to turnover ratio, but there is nothing in their application guidelines which link this ratio to the tables in the CMRP. Crown Lands link lease extension approvals to capital expenditure commitments, but appear to do independent assessments on a case by case basis – again, with without the CMRP's policy of linking Capex to lease extensions.

As recently as 2019, Crown Lands advised their intention to develop a template marina concession lease document. One objective was to apply consistency in commercial terms and conditions between competing marinas. This has not been published as a template nor presented to marina concession holders as a document outlining commercial marina lease policy.

In June 2020, Crown Lands released a State Strategic Plan[14]. The strategic plan sets out the intention to consult and develop policies and processes to expedite approvals and enhance tenure for government land tenants, including marinas. At Page 5 of the State Strategic Plan, Melinda Pavey, Minister for Water, Property and Housing, says this:

"Community and volunteer organisations are the beating heart of our regional towns. This plan contains ideas for how we can better support our showgrounds, racecourses, **boating and marine assets**, youth groups and clubs. **These include improving security and duration of tenure over Crown land**, so that the organisations who add so much to our communities **have a stable base from which to grow and thrive**." (emphasis added)

At page 60, paragraph 4.2.1 says:

> We will produce standard templates for leases and licences for common activities across the state. The department will consult with interested organisations and Crown land managers as it develops this reform. Once adopted, standardised approaches should reduce the time and cost required for processing.

This public commitment of their willingness and intention to consult on standardising leases is encouraging for the BIA and the marina industry. Among the Short Term timelines for achievement within 2 years are:

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- Assist with infrastructure project approvals

- Increase security of tenure for leaseholders to promote investment

- Create a framework to assess and prioritise proposals

- Ensure we realise and reinvest a fair return for commercial activities upon Crown land

[14] State Strategic Plan – A Vision for Crown Land Where we come together - June 2020

- Standardise leases and licensing for common activities

At the time of writing, certain aspects of the administration of commercial marinas in NSW are being centralised in Transport NSW. This is part of the process under which RMS is being subsumed into Transport NSW. Crown Lands will continue to manage the marina leases on NSW Lands Department properties. Other marina Authorities in NSW are Local Government bodies and National Parks.

There is no announced plan for a coordinated PMLP policy to be adopted state-wide, or to replace the CMRP.

Critically the CMRP provided a formula for calculating site rental linked to the economic performance of each marina. The CMRP also provides for minimum 25 year lease terms, with automatic extensions based on a formula range of Capex commitments.

Policy History in Queensland

Pitcher Partners Report 2010 summed up the status of a Queensland policy as follows:

"QT[15] have informed Marine Queensland that the department is preparing its policy position for marinas in readiness for the takeover of POB[16] concession sites. Marina owners and operators across the State are concerned that the aggressive position taken by the POB ahead of privatisation will impact on the QT policy, and in turn, will eventually be reflected in the rent review and methodology adopted by other Queensland authorities and by QT for their existing 5 boat harbours."

Pitcher Partners added:

"We have prepared this paper to assist Marine Queensland in participating in the development of a policy which supports sustainable development for the recreational boating industry in Queensland. To this end we set out the key elements which need to be addressed by a commercial marina policy …"

Two years after the Pitcher Partners Report 2010 the incoming Campbell Newman government gave assurances to the Queensland marina industry that a State policy would be implemented. We are informed that BIA has continued to make representations to the Queensland government on the development and adoption of such a policy.

As at the time of writing, there has been no PMLP policy published by any arm of the Queensland Government. Marina sites in Queensland are owned by two government departments, QTMR and DNRME[17], and by four regional bulk port authorities.

[15] Pitcher Partners 2010 referred to the Queensland Department of Transport and Main Roads as QT. This report uses the acronym QTMR.
[16] The former the Port of Brisbane Authority, referred to in this report as POBA.
[17] Department of Natural Resources, Mines and Energy. Pitcher Partners 2010 referred to DERM.

We note the BIA concerns that there have not been published policies by all marina Authorities within States. It follows that the national coordination required to achieve competitive neutrality and sustainable development has not occurred. As a result of the uncertainty, this economically important industry has not seen the timely investment and job creation to match the industry's potential.

Transparency through Public Policy

In February 2020, the Minister for QTMR was called upon by a local member of parliament and constituents to intervene in a marina lease dispute. The marina has a number of live-aboard clients. When the marina concession holder advised the marina would close due to the lease dispute, the live-aboard clients raised concerns that they would lose their place of residence. The Minister explained some issues to parliament.

The marina concession holder may have other issues, but the issue of relevance to this report is the claim that they thought they were paying a market rent to the government, but discovered later that their rent was much higher than their competitor in the same boat harbour.

The issue in this case, as with other marina leases, is the lack of transparency. Although the Authorities are separate government departments, authorities or GBEs, there is one ultimate owner of all marina sites within each State. The two attached Queensland Case Studies each had a similar problem with lack of transparency which in each case created very large discrepancies in the lease rental on a market review.

The two Queensland marina case studies (Appendix 3) had serious problems obtaining a suitable lease term. Although we are recommending changes and periodic review of the CMRP, it has the benefit of transparency on rental setting and lease term which provides confidence to the industry that their lease is compatible with competitors, and provides confidence to investors and banks regarding the essential commercial terms of the lease and likelihood of a lease extension or renewal to support further capital investment in the marina.

As a Government owner with a responsibility to not only collect a fair return on government assets, but also to support community access and service levels plus fairness and equity for the industry, transparency is paramount for all Authorities.

Without the transparency offered by a PMLP, there will be the perception and opportunity for favoured treatment and even corruption.

Recommendation A - PMLP

A. Claymore recommends that each marina Authority in Australia develop, publish and regularly review against performance and international best practice a Public Marina Leasing Policy (PMLP)

In order to promote efficiency and fairness for marina concession holders, a number of Australian marina Authorities have told Claymore that they intend to, or have commenced a process, or developing template marina lease documentation.

This approach to documentation will assist in providing confidence to the government of the day, and to the industry, that the Authority is conducting its obligations in a fair and transparent manner.

Claymore believes all Authorities should prepare template documentation for marina concession leases.

Due to the complexities of the different ownership structures of marina businesses in Australia (especially for Dry leases), there will need to be provisions which will not apply to all other leases.

Template lease documentation will need to incorporate the policy published in each Authority's PMLP.

For this reason, the lease documentation should be subject to regular review in concert with review of the PMLP. This review should include consultation between Authorities to coordinate policy. The PMLP and standardised documentation should be reviewed against regulatory and commercial developments. Each should be benchmarked against international best practice.

Recommendation B – Template Lease Documentation

B. Template leasing guidelines and lease documentation – transparency through making available to all concession holders standardised lease terms and conditions to match published PMLP;

Recommendation C – State and National Policy Consistency

C. In order to support competitive neutrality, State governments coordinate policy development and review internally (between all Authorities within their State). Further that consultation with other States be conducted through COAG to support the industry nationally.

Sustainable Land Tenure

Land tenure continues to be a problem for concession holders 13 years after the Pitcher Partners Reports were published.

Specific problems identified in preparing this review of the Pitcher Partners Reports are:

1. Tenure is rarely adequate in duration and certainty of tenure for marina businesses to qualify as Investment Grade assets;
2. Wide disparity in lease tenure by each Authority, both within States and between States;
3. Wide disparity in lease tenure by most Authorities to competing marinas within their portfolios;
4. Wide disparity in terms of lease offered to the same marina concession holder at each extension of term;
5. Time taken to negotiate a lease renewal or an extension of term;

In their 2010 Report[18], Pitcher Partners commented:

> "Lease concession terms - are generally inadequate to support optimal, sustainable development for Queensland marinas as commercial service enterprises recognising the considerable public benefit and community amenity provided by the marinas.
>
> A standard term for a new marina concession or major re-development needs to be flexible, but the investors would require 40 to 50 years. If no change is to be made to the current common policy, under which no capital compensation is provided on cessation of the lease for the unrecovered value of improvements, then shorter terms than 40 years are just not viable.
>
> Where there is no immediate re-development planned, we are recommending minimum 25 year renewal terms, with extensions to at least 40 years to encourage mid-term major upgrades, re-building or refurbishment of marinas."

Key reasons Pitcher Partners provided for the recommended minimum concession lease terms were:

- High level of capital commitment including mid-term redevelopment or expansion of facilities;
- Long payback period for investment;
- No compensation for unrecovered investment at lease termination; and,

[18] Page 3

- the need to recover from a slow growth period or economic downturn through cashflow, as there was no capital compensation available on automatic termination.

History of Marina Lease Tenure

Generally, private ownership of land below mean high water has never been allowed in Australia[19]. Where it was desirable to have privately owned structures over the harbours and estuaries, tenure has been provided by means of a lease.

Marina businesses by necessity need water and dry land components. In most dry land Titles, the property boundaries are set at the high water mark.[20] Where the Authority owns both the freehold and the submerged site, the usual practice is to have a Wet Lease and a Dry Lease.

In our experience, it is usual to have the Wet Lease and Dry Lease cross referenced, with common and interdependent start and termination dates. It is common but not always the case that rental setting and reviews are linked. The same is true of any option periods and whenever lease extensions are granted.

Marina capital improvements to Wet Lease and Dry Lease sites become the property of the site owner. Most common lease terms and conditions require the marina improvements to be handed over to the Authority in sound condition, allowing for fair wear and tear, on termination of the leases. There are usually no ‘make good’ provisions[21] but nor are there any provisions for compensation for goodwill attached to the marina business nor for the unamortised value of improvements.

History Since Pitcher Partners Reports

In the decades prior to the Pitcher Partners Reports, it was common practice for the marina concessions leases to be rolled over for the concessionaire[22]. Some leases were being rolled over for periods as short as 3 years.

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[19] An exception is canals dredged on freehold properties

[20] Wet and Dry lease sites can change through human intervention or natural causes. Human intervention includes land reclamation and dredging activities; natural changes such as ocean high tide changes through such causes as Climate Change or Seismic activity are risk factors to marinas, but are not dealt with in any detail in this report except to note some risk factors to the Authorities and concessionaires.

[21] Make good provisions are common in mining and quarrying concession leases. It is not usually expected at the start of a marina concession lease that the site will ever be returned to pristine condition. If the Site is resumed for other purposes, such as resort or ferry terminal, then the Site would simply be subject to redevelopment – any value remaining in the improvements use as a marina would be lost, along with the goodwill of the marina business.

[22] In Queensland certain leases of government owned land can be a *rolling term lease*. Under the Land Act 1994, a rolling term lease is a lease issued either for tourism purposes on a declared island, or land for agricultural, grazing or pastoral purposes, including leases on state forests and timber reserves. Presumably Marinas on tourism focused islands would qualify. It is not known why other marinas or tourist facilities do not qualify for rolling term leases. However, the Queensland legislation and regulations may well provide a useful precedent for marina tenure.

However, whenever a major upgrade or expansion was required, bank finance would rarely be available at competitive rates on such inadequate tenure.

BIA members faced with this dilemma were mostly too small to negotiate with the government, and turned to BIA as their industry association to negotiate on behalf of the industry. A concern of the BIA which lead to the commissioning of the Pitcher Partners 2008 and 2010 reports was various government entities expressed willingness to charge monopoly premium rentals 250% to 300% of the prior year rental.

A particular concern of the BIA at the time was the inconsistent and generally inadequate lease terms for investors to recover their investment, repay debt and make a reasonable return on their investment.

When one BIA member complained about the uncommercial monopoly rent hike as a condition in obtaining a lease rollover, their Authority threatened to put out to tender the lease extension for the marina business they had developed. Although the Authority backed down when challenged by the BIA, and various Authorities in NSW and Queensland denied this was ever government policy, the risk had been highlighted for investors and their banks.

Since the Pitcher Partners Reports were published, we are not aware of any marina concession holder who sought a lease term extension being denied an extension, and certainly no case has come to our attention of a marina concession holder being forced to tender on their own marina business site.

There are many instances of the lease extension being contested, as 20 or 25 year offers without an option period are not long enough.

We observe that Authorities have consistently granted lease terms of 40 to 50 years where the concessionaire are committing to material capital expenditure on expansion or redevelopment of the marina site. So how does the industry resolve the market failures of:

- typically more than 5 years of negotiations to obtain approval for a development and lease extension application;

- the risk of current or future regulations leading to concessionaires tendering unfairly on their own marina;

- lack of competitive neutrality between marinas with the same landlord, or within their State boundary;

- lack of competitive neutrality between Australian States and Territories.

Before providing an analysis of the economic reasons supporting our recommendation for enhanced tenure to a more secure level than recommended in the Pitcher Partners Reports of 2008 and 2010, we turn now to a consideration of the historical official and indicative policy of State and Territory governments to tenure.

What Type of Concession are Marina Infrastructure?

Marina businesses are privatised infrastructure facilities which operate under a concession arrangement fundamentally different to most other privatised infrastructure. Infrastructure assets not installed on easements over private and government land[23] operate under one of two main types of concession agreement – known as BOO or BOOT.

BOOT is an acronym for Build Own Operate Transfer. It is common for toll roads, stadiums, power generators and ports. The intention to transfer the asset back to the government at the end of the concession lease term is explicit in the project agreements.

BOO is an acronym for Build Own Operate. There is no intention for the facility to be transferred back to the government at the end of a concession lease term. The government may retain some land title in perpetuity, subject at times to conversion to freehold at a future time, such as to facilitate an IPO / public listing.

Commercial Marina lease concessions have always been BOO in Australia with submerged site always retained by the Authority. Foreshore dry land sites are sometimes held by multiple parties, with at least part of the dry land often owned by the Authority which owns the seabed.

In a 2010 published report to AAT Limited as ACCC appointed pricing expert,[24] Pitcher Partners noted that the then Port of Brisbane Authority (**POBA**) in interviews with Pitcher Partners made "clear statements by *POBA* that the new owners following the imminent privatisation will be under no obligation to offer a lease extension to AAT". It is common for the ports to be made available for a fixed period. Port concession holders therefore need to recover all of their investment and required returns within the concession term or option periods. However, his has never been the case for marina concession leases in Australia, even for those whose landlord is, or was at one time, a Port Authority.

Negotiations on marina lease tenure after the Pitcher Partners Reports has resulted in minimum lease terms of 25 years. All cases Pitcher Partners and Claymore have been involved in have resulted in a minimum lease term of 40 or 50 years from completion of a material redevelopment or further development of a marina site. We are aware of some concession leases executed over the past decade with shorter lease duration – which highlights a flaw in competitive neutrality where there is no transparency or PMLP.

NSW experience on Tenure since 2008

For Crown Lands marina concession sites, the enabling legislation and regulations empowers the department to grant a lease of up to 25 years. Any lease from 25 years up to a maximum of 99 years (including any Options) requires approval from the responsible Minister.

[23] An example being 'Poles and Wires' infrastructure in the Electricity Industry', which are installed on government and private properties and on easements.
[24] This report dated 18 August 2010 was published on AAT's website as part of the ACCC approval to operate as a monopoly port facility.

Only one of Pitcher Partners' case studies in the 2008 Report was on a Crown Lands marina concession site. Claymore has been involved in the application process for the lease extensions for a number of Crown Lands marina concession sites. The positive for the Crown Lands marina concession leases we have seen in recent years is that the department and the Minister have been prepared to support the industry with 50 year lease terms, including option periods in some cases.

The negative is that Crown Lands has no published policy on marina concession lease tenure. We are aware of cases with less than 50 year terms, and there is reason to believe that the marina concession holders were unaware of the lease term granted to their competitors with the same landlord.

This lack of published policy places undue pressure on Crown Lands executives to perform a detailed appraisal of each development to support a lease term greater than 25 years for:

- each marina business seeking a lease extension; and,
- for each individual capital project proposal by that marina, where a lease extension is required to justify the investment and to support bank funding.

The time taken from commencement of application until execution of lease extension documents has typically been 5 to 6 years. We note that this was a major issue for Transport NSW prior to the CMRP, with one marina taking 11 years from commencement of application until execution of lease extension documents.

Our consultation with marina concession holders and other advisors in the marina industry has indicated that 5 or 6 years is common in NSW and Queensland. We note that the application and negotiations cover environmental, service levels, commercial terms and public consultation, not just the term of the extension. However, negotiations over lease term and other commercial matters, including concession starting rental and market rate reviews, have been a key factor in the time it takes to move from application to completion of development.

Transport NSW adopted the CLP and CMRP in 2009. Despite the fact that the CMRP was updated a number of times, including through integration with the SHDP, the CMRP has established transparent guidelines for all marina concession holders on the minimum lease term and on lease term extensions when a material capital upgrade is planned. This policy avoids the need for a costly and time consuming case by case assessment of an appropriate lease term.

The existence of this published policy is particularly important for staff within any Authority when tasked with assessing an application for lease extension or renewal.

Where such a published policy is not extant, and timeframes for obtaining approval from the Authority extend to over 5 years, it is likely that both senior executives and functional staff will change over the period of an approval process. In the interests of efficiency, transparency and fairness, the decision making process for new staff will be enhanced by:

- a clear policy on how the lease term is to be determined;
- a financial model template applied consistently to determine basic lease terms and conditions, including rental and tenure; and,

- template lease documentation which reflects the published policy.

Claymore notes that within 3 years of the first publication of the CMRP, the $35 million in marina development in the Sydney region which had been held back pending agreement of sustainable lease tenure and commercial terms had all been completed. In each case a key factor in these projects proceeding was a lease extension to 40 years.

Queensland experience on Tenure since 2010

Soon after the 2010 Report, the Queensland government decided that community facilities such as marinas did not belong in a commercial port authority, and transferred 5 boat harbours from POBA to QTMR.

In the 2010 Report, Pitcher Partners noted that Queensland government authorities are empowered under existing legislation[25] to grant 50 year lease terms, with the ability to extend the overall lease term to up to 100 years where warranted by major investment in capital costs.

There is no published policy by any Queensland Authority which provides a policy on initial lease term or lease extension term for marinas. There is therefore no marina specific policy setting out the grounds required to obtain a lease term extension.

Our consultation with BIA and members who operate Queensland marinas has identified some leases granted over 20 years ago with lease terms between 50 and up to 100 years duration.

In the years following the 2010 report, Claymore and Pitcher Partners have been involved in applications for lease extensions to support significant capital improvements. In each case the applicant sought an extension to 50 years, but was granted a 40 year lease on surrendering the existing lease.

Case Study 1 is a Queensland marina. After an extended negotiation period of approximately 5 years, a new 40 year lease term was granted. We have been told by another Queensland concession holder that soon after they were granted a 40 year lease, a competitor in the same boat harbour was only granted a 25 year lease on a higher rental formula. There is some evidence that the competitor’s tenure and concession rental are not sustainable and they are seeking to renegotiate the lease terms.

Emerging Issues on Tenure

A number of practical administration issues arose for the Authorities in the years following the Pitcher Partners Reports.

[25] Section 155 of Queensland’s Land Act 1994

1. Lease extension subject to public tender

In the event that real property owned by a government entity is subject to a new lease or a lease extension application, there is potential for the future government to require a public tender process.

Of major concern to a concession holder seeking to further develop or refurbish a marina is the possibility of having to tender on their own concession lease and on their development concepts. As the marina site reverts to the Authority at the end of the lease with no compensation for either the residual value of the improvements or for goodwill developed over decades, a concession holder may be faced with submitting that residual and goodwill to a competing tenderer for no value.

2. Capital and Debt markets

Many of the small-medium business owners of marina businesses will face succession issues over the next decade. Marinas are a high cost entry business for a new SME entrant, so the availability of investors with a similar profile are limited. There has been one publicly listed entity in Australia which invested in a portfolio of marinas some years ago, but sold to private investors as they found that marinas were not a suitable Investment Grade asset for a listed entity.

For the industry to produce optimal facilities for the community and returns to government, every effort is needed to raise the Investment Grade of marinas as an asset class.

Superannuation Funds are suffering from a shortage of Investment Grade opportunities in Australia and are investing an increasing amount of their funds outside Australia. However, while lease tenure remains uncertain, marinas will not be of a sufficient Investment Grade for professional fund managers such as Superannuation Funds, nor for listed entities.

Marinas will also continue to be subject to premium debt rates reflecting the higher risk profile due to uncertainty over tenure.

It is not in the industry's economic interests for marinas to fail to qualify as Investment Grade assets. The result is higher interest costs and investor market yield thresholds.

As the prior common practice of rolling over or extending lease terms to existing marina operators has come under threat from regulatory review, marina owners face a market failure related to loss of goodwill and unamortised investment. Policy review is needed to protect investors and enhance industry growth and community facilities.

One remedy is to offer stronger title, including rights afforded to freehold sites.

Another protection is to include, in each lease, terms and conditions which provide for compensation to be paid by the competing tenderers for the Goodwill, other intangible assets[26] and for the remainder value of the marina infrastructure.

Pitcher Partners financial assumption was that a complete re-build or refurbishment of an existing marina would require 75% of the original development and construction capital costs. The reasoning being that site preparation works, repairs and upgrades over a marina life cycle, less demolition, would mean that 25% of the cost of the original site works Capex would not be needed again. We recommend that the Residual Value compensation should be 25% of the estimated total redevelopment cost – the difference between developing from scratch and the re-build cost.

We also recommend that the Authorities consult with the industry on standard practice for valuing the business, so that clear guidelines are written into policy and incorporated in template marina lease documentation to establish minimum valuations of marina businesses as a going concern.

In this way, the concession holder would not be at a competitive disadvantage for maintaining both the marina infrastructure and developing the business goodwill.

Further, in a competitive tender, the concession holder would not be required to gift existing goodwill and marina infrastructure to a competitor.

Recommendation D – 50 Year basic Lease Terms

D. Land Tenure – that on any major development or redevelopment over a term of 5 years, that the basic lease term should be extend to 50 years from practical completion of development.

Recommendation E –Freehold Equivalent

E. That Dry Lease and Wet Lease sites to contain terms and conditions with rights afforded to freehold sites,

Recommendation F – Tenderers to Pay Out Goodwill

F. That in the event that the Authority resumes the Site at the end of a Lease, or conducts a tender for a marina lease renewal, that the Lease Document provide for compensation to the operator for any unamortised capital cost and for goodwill generated by owner operators (competing tenderers to pay out owner as part of the terms of tender).

[26] Intangible Assets typically include booking and marketing technologies, client lists, business names and business goodwill.

Sustainable Rentals

As with Land tenure, sustainable marina concession rental continues to be a problem for concession holders 13 years after the Pitcher Partners Reports were published.

Specific problems with sustainable rental identified in preparing this review of the Pitcher Partners Reports are:

1. Marina concession rentals rarely provide sufficient certainty for marina businesses to qualify as Investment Grade assets;
2. Rental rates contain a government monopoly premium as the policy and/or market reference mechanism often grossly exceeds sustainable rental levels;
3. In combination with other uncertainties (land tenure, TV, et al), rental uncertainty undermines the ability of marinas to be adequate as security for banks;
4. Wide disparity in rental rates and reset to market provisions by each Authority, both within States and between states;
5. Costly and lengthy disputes over the interpretation of market review clauses and in the process of review to market rentals;
6. Referral to inexperienced marina valuation arbiters to determine market rental disputes;
7. Lack of accepted marina site lease valuation process or methodology;
8. Use of statutory or regulation based rental yields out of kilter with property market yields;
9. Differential treatment of Wet Lease and Dry Lease rentals.

Pitcher Partners recommendations on Sustainable Rent

Marina facilities are community services provided on public or private land and seabed. The 2008 Pitcher Partners Report Executive Summary[27] referred to marinas as supplying

> " … public amenity to the State's waterways by way of access to the foreshores, quality marina and waterway facilities and general public facilities."

The 2008 Report added[28]:

> "Alternative uses of the marina sites may generate greater rents for the authorities, but would not provide public amenities. As such, no further reference to alternative uses to which the sites could be put is made in this respect."

[27] 2008 Pitcher Partners Report see page 1
[28] 2008 Pitcher Partners Report see page 1

All marina concession leases we have seen adopt this concept by reference to the marina concession site being subject to defined Permitted Use and site restrictions. However, when disputes arise between concession holders and the marina authorities, the failure to treat marinas as community facilities on sites subject to restricted use and community service obligations goes to the heart of those disputes.

In particular, concession rentals calculated by reference to valuations or market rentals on a "best use" and non-marina basis results in rentals which do not reflect the potential economic performance of an exclusive marina site use.

Competitive Neutrality and Sustainable Rent Policy and Practice

In background information provided by BIA, they expressed their concern in relation to competitive neutrality as follows:

> "Lease fees and renewal (or in some cases non-renewal arrangements) vary from both site to site, government agency to agency. And as well, the costs associated with negotiating fees and renewals vary considerably. Hence some commercial operators may have a financial advantage over others because of their landlord."

The Pitcher Partners 2008 Report addressed the issues of certainty and competitive neutrality.

> "We note that sustainability relies on certainty of contract terms, tenure and the level of major heads of expenditure. This is particularly relevant to marina concession rentals where,
>
> a) The authorities are monopoly suppliers of marina sites;
>
> b) Investors or financiers do not want this major head of expenditure to be uncertain in relation to;
>
> - o the calculation method
> - o term of tenure
> - o potential for rent expense to increase faster than the financial performance of the marina can sustain.
>
> In our opinion the rent should be related to the actual operating performance of the marina concession, and not to market values based on alternate use, or unauthorised use, of the site."

The Pitcher Partners 2008 Report went on to find that world best practice is to relate concession rentals to the economic performance of each marina. This is typically achieved through rentals set as a percentage of turnover.

History of Marina Lease Rental Setting

In the decades prior to the Pitcher Partners Reports, rental setting and review terms and conditions across the Australian States and Territories were not governed by regulation or policy which mandated market conditions or competitive neutrality. Overarching regulations were often overridden by incentives such as start-up incentives, regional development priorities and tourism strategies.

While many had a 'review to market' provision, Pitcher Partners found that

> "A common element in the recent reviews appears to be a move towards setting rentals based on 'market value' of the unimproved concession site based on the highest alternative use value, rather than on existing use with restrictions".

In relation to historic rental setting and review, the 2010 Report findings were:

> "We found that there was no published policy or consistently applied policy for setting concession rentals between authorities or even within the authorities we reviewed. Concession lease terms and conditions, including the formula for setting and reviewing concession rentals, had developed spasmodically over decades. The result appears to be a piecemeal approach to concession approvals, lease terms and rental reset mechanisms administered by different bodies."

The CMRP is an attempt to put the Pitcher Partners recommendations into policy. By setting concession rentals as a formula based on Turnover of the marina, rentals on CMRP leases relate directly to marina performance.

This allows for directly comparable price setting for all competing marinas subject to the CMRP. This policy also sets marinas subject to the CMRP at a competitive advantage over other marinas which do not have performance related rentals, including through:

- Cost savings for rent reviews – 3 and 5 year reset to market resets have proved to be very costly;

- Reduced legal costs – as CMRP policy based lease terms and conditions are simplified based on the policy rental formula.

As noted earlier, no other Authority in NSW or Queensland have adopted the Pitcher Partners recommendations on rentals linked to financial performance of the marina. Crown lands NSW does include a calculation of the rent to turnover ratio in their financial model for marinas, but there is no published policy on the matter.

Our major concern with the CMRP is that the scale of rental percentages was not initially set at sustainable levels. Pitcher Partners drew the conclusion from their analysis that:

> "The crucial outcome is that the model consistently shows that concession holders with licence fees at 6% of revenue and a 25 year term would find the return on

investment marginal at best. However, over the shorter concession terms of 15 or 20 years this level of rent is definitely not sustainable.

Licence fees at 8% are not sustainable on any of the concession terms analysed."

The CMRP reviews by Transport NSW eventually settled on the following rates which were grossly excessive, but allowed Sydney Harbour marinas who participated in the Destinations Plan to use the second, lower scale:

Table 1: Indicative rentals for commercial marina berthing

Gross Berthing Revenue (ex. GST)	Percentage of Gross Revenue (%)	Indicative Rent p.a. (rounded $) (ex. GST)
$290,000	8.00%	$23,200
$570,000	8.00%	$45,600
$860,000	8.00%	$68,800
$1,140,000	8.25%	$94,050
$1,710,000	8.75%	$149,625
$2,280,000	9.25%	$210,900
$2,850,000	9.75%	$277,875
$3,420,000	10.25%	$350,550
$4,280,000	11.00%	$470,800
$4,280,001 plus	11.00%	N/A

[1] **Noting:** revenue = actual gross revenue, or imputed market rates including service or utility charges if applicable

Table AI: Indicative rentals for commercial marina berthing under Sydney Harbour Destination Plan

Gross Berthing Revenue (ex. GST)	Percentage of Gross Revenue (%)	Indicative Rent p.a. (rounded $) (ex. GST)
Up to $750,000	6.00%	$45,000
$750,001 to $1,000,000	6.25%	$62,500
$1,000,001 to $1,500,000	6.75%	$101,250
$1,500,001 to $2,000,000	7.25%	$145,000
$2,000,001 to $2,500,000	7.75%	$193,750
Over $2,500,000	8.00%	N/A

[3] **Noting:** revenue = actual gross revenue, or imputed market rates including service or utility charges if applicable

The Table1 above appears to us to be an anachronism, which we recommend should be dropped from any review of the CMRP or an PMLP.

Under the CMRP, the only marinas to be levied at the rates recommended by Pitcher Partners in their Reports are small marinas who participate in the SHDP. Any other case has been levied at a rate which includes a government monopoly premium. We have recommended below a review of the sustainable rental percentages due to changed economic settings in Australia.

Not-for-profit (NFP) clubs which operate marinas compete for clients with commercial marinas. Most Authorities provide a discounted site rental to NFP marinas on the grounds that their profits must be returned to the community in terms of benefits to members. It appears incongruous to charge higher rentals to commercial marinas, especially when they are located in the same boat harbour as the NFP. Commercial marinas offer more open community services to the public as they are not restricted to preferencing their members when offering berthing and community amenity.

Recommendation G – Rent linked to Economic Performance & Site Restrictions

G. That Sustainable Rentals be linked to economic performance, reflecting Permitted Use and Development Approvals for each marina site.;

Recommendation H – Concession Rent maximum 6% of Turnover

H. That Pitcher Partners recommendation for Sustainable Rentals from their 2008 and 2010 Reports be adopted as policy by all Authorities pending an independent review of market yields. Pitcher Partners recommendation was 2% of Gross Revenue from Fuel facilities, and 6% of other marina revenues.

In their 2010 Report, Pitcher Partners provided the following justification for recommending a higher ratio of rental to revenue than the rate set internationally:

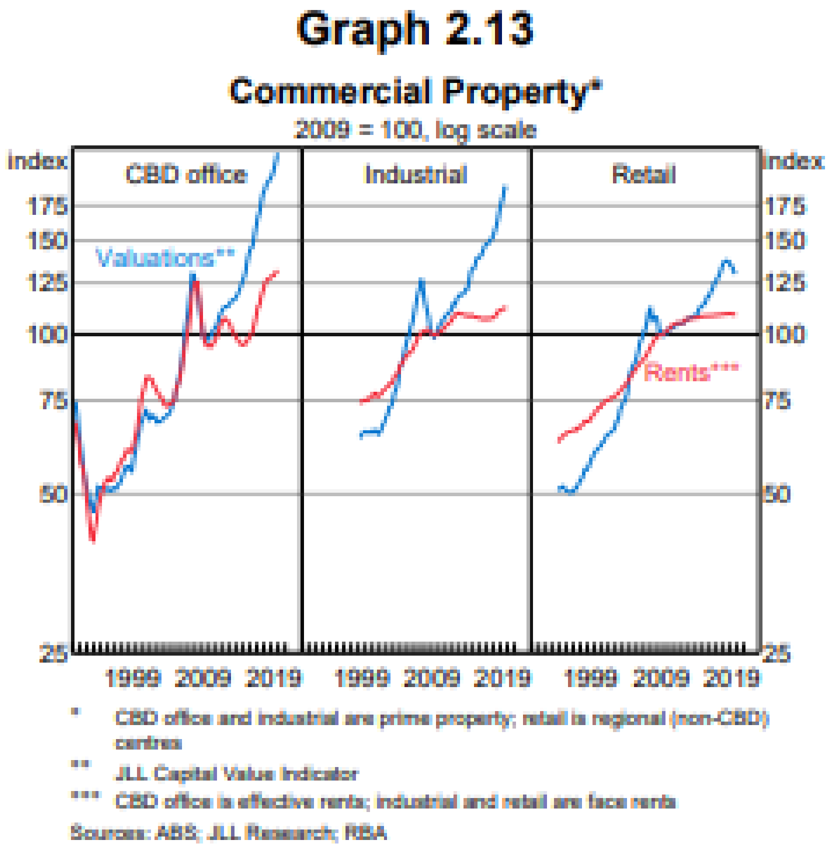
> “In the current economic settings, Australia has historic and forecast interest rates and inflation rates higher than other comparable jurisdictions, justifying rentals set at a higher percentage of revenue (up to 6% of water revenues, 2% on retail/fuel) than is charged by comparable jurisdictions. Any higher rate would require reinvestment by the authorities of part of the revenue to support concession holders through economic downturns, and in the years immediately following start-up or any major capital expenditure.”

By comparison, site rentals quoted from Canada were 4% of revenue and the USA ranged from 2% for small marinas to a maximum of 4.6%.

However, Australia is now in the lowest inflation environment in over 50 years, with average CPI over the past 5 years remaining below 2% p.a.[29] By contrast in September 2008, CPI at 5% was well above the RBA target range for inflation of 2-3%. Pitcher Partners 2010 Report quoted the average interest rate for Australian Government 10-year bonds as 5.75%. The average over the last 5 years was 2.2% p.a. and at June 2020 was 0.92%[30]. These greatly reduced rates are evident in all the RBA published interest rates.

[29] RBA 1 July 2020 Statistics F2.1 CAPITAL MARKET YIELDS – GOVERNMENT BONDS f02hist
[30] RBA 14 July 2020 Statistics G1 CONSUMER PRICE INFLATION g01hist

The RBA does not publish statistics on rental yields on commercial properties, so there is no official data from which to extract trends on unimproved land rental yields. The following charts are extracted from the RBA's Financial Stability Review dated April 2020[31]. The chart indicates that for the past decade rental growth for CBD office, Industrial and Retail properties has been flat, while valuations have increased at a much higher rate for each Australian property class. Anecdotal evidence in market valuations reviewed by Claymore as part of our project finance and economic advisory services supports this significant fall in market yields on properties.



We note that the economic settings in Australia are now similar to the economic settings a decade ago in the USA and Canada. Australian property yields, interest rates and inflation rates are now on a par with, or lower than, the economic settings when the marina Authorities in those countries set rentals at 2% to 4.6% of marina turnover.

This would indicate that where Australian marina rentals are set by reference to economic performance, the 6% rate recommended in the Pitcher Partners Reports is higher than the rate an independent economic assessment would recommend in 2022.

It also indicates that where marina rentals are set as a percentage of market value of the site, unimproved rentals should be in the 2% to 3% of valuation range. Claymore's opinion is that the difference between rentals set against regulation of 6% to 8% of valuation and current property yields of 2% to 3% represents a government monopoly premium, and is equivalent to an additional tax or levy.

[31] RBA [April 2020](#) Financial Stability Review

Recommendation I – Independent Review of Market Rate of Rent to Turnover Ratio

I. Claymore recommends that an independent review of sustainable rent as a percentage of turnover be commissioned by BIA and the Authorities. This review should revisit the financial modelling assumptions used in 2008 and 2010, and take into account current market yields on unimproved sites, current financial and economic assumptions, including risk free interest rates, risk premiums and inflation assumptions;

The attached case studies for two Queensland based marinas reveal a costly, prolonged and tortuous process for setting market related rentals based on a Market Valuation for the site, to which a contracted percentage drawn from regulations is applied.

In addition to being time consuming and costly for the Authority and the concessionaire, this method clearly fails all the tests of a good policy and process set down in the Pitcher Partners Reports.

In the Case Studies to this report, as in most Queensland cases which Claymore and Pitcher Partners have had an involvement since the 2008 and 2010 reports were being prepared, the main problem is that there is no agreement on Market valuation methodology or on how a limited purpose lease can be properly market assessed to reflect site restrictions and Permitted Use as defined in the lease deeds.

This would not be such a problem if the rent and valuation assessment by the Authorities advisors did not consistently come up with market rentals at double the rate, and at times much higher, than the advisors relied upon by marina concession holders.

Arbiters or Determining Valuers appointed under the dispute provisions are a lottery for both parties. The usual tendency is for an arbiter to assess market value somewhere towards the middle of the two valuations or rent assessments provided to them by the disputing parties. Very rarely do the appointed arbiters have marina valuation experience.

All valuers have trouble with using their preferred valuation methodology, which is comparable sales. This is because the only sales of marina sites that have occurred since 2008 have been between different arms of the same State Government. The sale compensation is an agreement between Ministers, and by no means can be considered evidence of an arm's length market price.

Valuers looking for comparable market sales therefore look to totally different property classes and then select an arbitrary discount rate to value the marina Wet and Dry Lease sites. This arbitrariness is a recipe for widely varying rent assessments and for disputes. It also leads to the kind of uncompetitive differential treatment of competing marinas highlighted by Pitcher Partners.

We have seen Valuers use waterfront residential, unimproved industrial and commercial land and even outer suburban residential land bank properties as comparators. This results in tables of valuation per square meter with the highest group of sales histories being more than 10 times higher than the lowest group. It defies logic to try and make a proper value judgement on such disparities.

Marina expertise is required in applying a market value per square meter. This is because the usable water area as a percentage of the total site under lease varies from one marina to another. Sometime part of the Dry Lease area is not able to be employed commercially under current lease restrictions and Permitted Uses, for a variety of reasons including height restrictions, open space, community access to waterfront and environmental conditions. We have seen two valuers and the arbiter arrive at very different treatments in such cases.

The current rental rate for Queensland marinas under Regulation 37A is 7% of market valuation. Arm's length transactions for unimproved site rentals are not common, but on any method, we would expect valuers to come up with a rental net yield in the range of 1%-3%. This means that even if the market valuation of the marina site were accurate, the government would be charging a monopoly premium at 7% rental yield which more than doubles the levy on the concessionaries.

If comparable sales are used, the market rent or valuation should be cross checked against the alternate sustainable rental level proposed by Pitcher Partners. Business owners and professional advisors (including other valuers) are shocked by market rent assessments which are 20% of turnover for a marina fully developed under existing Permitted Uses, community service obligations and site restrictions. Claymore has seen arbiters acknowledge that rent based on economic performance is appropriate, but then fail to reconcile their market related assessment to economic performance.

We therefore recommend that this approach to 'market related' rentals be scrapped in favour of rentals as a percentage of turnover, which is superior for all of the reasons outlined in the Pitcher Partners Reports and reinforced in this report.

Queensland Only – Rental Rate set in Regulations

From our consultation with marina owners and the BIA, there was apparently no approach made to the industry regarding the 2019 review[32] of the Queensland government land terms of lease, which affects all marinas, including commercial, clubs and other NFP.

The review was advertised by LGAQ as "Proposed amendments to the Land Regulation 2009 - Have your say". The Local Government website is not likely to be frequented by the marina industry.

Rates are set in Reg 37A of the Land Regulation Act 2009 – QLD. Consultation on Review closed 6 December 2019. The consultation papers are no longer available online.

Commercial Marinas are regarded as a Category 16 lease. Under regulation Reg 37A the rental is 7% of market valuation, up from 6% before 2009.

Given the fall in property yields for all classes of property over the last decade, any rate higher than a market yield of 3% for unimproved property is a government monopoly levy.

[32] This regulation is currently subject to a 10 year sunset provision and submissions have closed on 6 December 2019.

The Queensland Case Studies in Appendix 3.1 and Appendix 3.2 have rentals calculated under this method which range from 16% to 21% of turnover. A natural outcome of this variance is costly disputes at each market rent review. If the regulation reflected market yields on unimproved land value, the rent at 21% of turnover would be reduced by a factor of 3/7 – 9% of turnover as an absolute maximum would be far less controversial.

In email correspondence with the Department of Natural Resources, Mines and Energy (DNRME) the Land Policy division advised that "Given the administrative nature of the review and that the proposed changes do not alter the application of the Land Regulation, direct engagement with tenure holders was not undertaken."

It is therefore clear that the matter of the regulatory percentage applied to market valuation has not been reviewed, and that representations to the Minister would be required in order for this anomaly to be addressed.

Recommendation J– Independent Review of Capitalisation Rate Restricted Use Property

J. That in any case where an Authority continues with the practice of charging a fixed rate applied to market value, that the rate used be reviewed to reflect current market yields on unimproved real property.

In the interests of transparency, we recommend that the imposition of any government monopoly premium be charged as a levy applicable equally to all competitors. This would obviate the excess as a charge additional to fair market rental.

Administration and Regulation

Pitcher Partners noted the delays in obtaining lease extensions or renewals on sustainable terms in both the 2008 and 2010 Reports. Where their recommendation for a PMLP has not provided Authorities with a clear and consistent guide on tenure, in our experience the Authorities have tended to deal with each case as a stand-alone assessment process. This approach necessarily impairs procedural fairness or competitive neutrality for the industry in general, or for their own portfolio of marina lessees.

For one NSW marina operator, it appears that the 2008 Report and negotiation process were influential in bringing to a close an 11-year application process. The new lease provided a basic lease term, sufficient certainty on rental setting and market review, plus the approval for site works which allowed the marina and their banks to fund the rebuild.

In case studies attached as Appendix 3.1 and 3.2 plus other cases referred to us for advice or as part of our consultation with the marina industry, the negotiation process covered a period of 5 years or more. These marinas signed lease extensions in the years following the Pitcher Partners Reports. In each case their Authority did not have a PMLP.

Pitcher Partners envisioned a quick and non-controversial approval process where an Authority could rely on a published policy governing term of extension and the criteria to qualify for an extension. With that certainty, marina concession holders could have confidence to proceed to planning, costing and application knowing that they met financial requirements in the same way as they meet DA, BA and safety criteria before submitting an application.

A common problem our research and advisory activities have encountered is the change in personnel representing the Authorities over extended application and negotiation processes. This extends to change of Minister and often a change of government in any 5 year period, both of which can see a restructure of the Authority and its department. The new officials with approval powers often have little if any marina experience and inevitable delays to the process will at times be experienced.

Published policy should assist in the streamlining of the application process. For other types of commercial or community project developments, a 12 month DA and BA process is deemed excessive and a threat to sustainable development. Marinas should be no different.

Recommendation K– Streamlining of Approval and Lease Application Process

K. That development approval processes be streamlined to allow application and documentation of Authority approval as landlord, plus DA and BA to be completed within a maximum of 12 months of application for development or re-construction.

Appendix 1 - Sources of Information

Abbreviations Used

ABS	Australian Bureau of Statistics	
DNRME	Queensland Government	Department of Natural Resources, Mines and Energy
QTMR	Queensland Government	Department of Transport and Main Roads
RBA	Reserve Bank of Australia	
RMS NSW	NSW Government	Roads and Maritime Service
TEQ	Queensland Government	Tourism & Events Queensland

1. Population and Economy

   ABS

   ABS population by State at 20180228 ref: 310104 ABS Statistics
   1.12 ABS 20200202 5204001_key_national_aggregates ABS Statistics

   RBA

   RBA 1 July 2020 Statistics F2.1 CAPITAL MARKET YIELDS – GOVERNMENT BONDS f02hist

   RBA 14 July 2020 Statistics G1 CONSUMER PRICE INFLATION g01hist

   1.4 RBA April 2020 Financial Stability Review

   Tourism Research Australia, International Visitor Survey 2005–06 to 2017–18

   International Tourism 2006-07 to 2016-17 - Statistician's Office (Queensland)

   International Visitor Survey Web Publication - YE Dec 2017-1

2. Boating Industry Statistics and Research

   2..11 BIA 2021 Industry Data – Boating Industry Association

   2.21 Club Marine – 2011, 2013, 2015, 2017 and 2019
   Health of the Australian Marina Industry Survey

   2.3 Marina Industries Association of Australia – November 2010
   Size and Characteristics of the Australian Marina Sector

   Queensland Regulated Ship Census, June 2019 – QTMR
   Recreational Ship Census June 2019 – QTMR
   Recreational Ship Census June 2016 – QTMR
   Recreational Marine Licence Census June 2012– QTMR
   Recreational vessels in Queensland: 2005 to 2014 - QTMR
   - A Compendium of Statistics
   – Appendices A to C

Queensland Recreational Boating Facilities-Demand Forecasting Study-2017 -
Mackay Regional Council

Recreational Boating Survey 2006 – Maritime Safety Queensland

RMS NSW Annual Report 2017 – RMS NSW
Appendix 3 Driver, Vehicle and Maritime statistics 2013-2017

3. Pitcher Partners Reports
To:
BIA NSW "Sustainable Rent Report" dated 4 September 2008

BIA QLD "Sustainable Rent Levels and Lease Terms Report" dated 15 March 2010

4. BIA

4..1 BIA Position Paper on Sustainable Rent – Mark Hewitt dated August 2008

4.2 Policy Guide - BIA - Economic Benefit - 2019 - issued 4 Nov 2019

4.3 Policy Guide - BIA - Economic Benefit - 2019 - issued 4 Nov 2019

4.4 Policy Guide - BIA - Social Benefit - 2019 - issued 4 Nov 2019

5. ICOMIA

International Council of Marina Industry Associations

Marina Concession/Lease Renewal Policy	1 April 2019
ICOMIA Marinas Group (IMG) Policy on Marina Leases	June 2018
See attached to BIA submission to Crown Lands download 23/11/2021	February 2020

6. Annual Reports

WOW	Woolworths Limited	2019 Annual Report
COL	Coles Group Limited	2019 Annual Report
RFG	Retail Food Group Limited	2019 Annual Report

Multiple Marina operators – names confidential

7. Government Policy and Regulations

7.11 Land Regulation Act 2009 – QLD
Consultation on Review closed 6 December 2019 – papers no longer on line

7.12 Explanatory Notes Land Regulation Act 2009 QLD

NSW Department of Planning, Industry and Environment

7.31 State Strategic Plan – A Vision for Crown Land Where we come together - June 2020
7.32 Guideline—allocation of Crown land leases - NSW August 2018
7.33 Leasing of Crown Land 2019 POLICY NUMBER IND-O-253 Sep 2018
7.34 POLICY - NSW Sale and Lease of Crown Land by Direct Negotiation 2019

NSW Transport

7.41 CMRP Commercial Marina Rents Policy
7.42 CLP Commercial Lease Policy
7.43 Establishing-commercial-marina-leases
7.44 SHDP Sydney Harbour Boating Destinations Plan -

International

7.51 Canada MOU - Rental rates and Tenure for Commercial Marina Operators between
Boating Ontario Association; and
The Ontario Ministry of Natural Resources
extension of MOU 2009 for the period 2016 to 2020

7.61 USA U.S. Army Corps of Engineers
Application - Commercial Marina Concession 29 June 2015
Lease terms and RGRS rental rate chart

7.71 United Nations
TRANSPORT AND TRADE FACILITATION Series 12 Climate Change coastal infrastructure UNCTAD 2020

Appendix 2 - Qualifications

Errol Stevenson CTA is a Director of Claymore Capital Partners Pty Ltd. He has worked as an economic advisor and project finance director for over 30 years, advising on banking, financial and tax aspects of major project debt and equity raising, mergers and acquisitions, restructuring and greenfields projects.

Errol has specialist experience in infrastructure economics, valuations, project finance and policy development in Australia and internationally. His clients include government departments and GBEs, Banks, Superannuation Funds, Listed and Unlisted major corporations plus SMEs.

Claymore Capital Partners Limited provides advisory services in its own right. Errol is an experienced financial modeller who has responsibility with Claymore in their role as Australian representative for international financial model build and training company, F1F9 UK Ltd. All F1F9 and Claymore financial models comply with the FAST international financial modelling Standard.

Errol has had maritime experience since the 1980s. He has financed and advised on major fleets of bulkers and oil tankers, port facilities development and privatization, maritime policy development and the marina industry.

He brings experience in a wide range of infrastructure transactions in Australia and Overseas to his marina advisory work, including in rail, hydro and thermal power generation, distribution networks, and in policy development for valuations for unlisted assets of Superannuation Funds.

Marina Industry Experience

In 2007, Errol was engaged by BTI Pitcher Partners in Sydney to develop a financial model and draft a report to BIA NSW on sustainable economic development in the marina industry. This led to the preparation of a number of consultation papers and presentations used in negotiations with government owned marina owners and regulators. The initial advisory activity was in NSW, and in 2009 to 2011 after being engaged by Marine Queensland, was involved negotiations with marina authorities in Queensland. The publicly available reports to BIA NSW in 2008 and to Marina Queensland in 2010 came to be known in the marina industry as the Pitcher Partners Reports.

The Pitcher Partners Reports set out the findings and recommendations derived from a professional investigation into the marina industry involving high level financial modelling, economic analysis, commercial analysis, accounting practice and business management practices by way of:

- Examination of international best practice in the marina industry;
- Economic and commercial analysis of demand for, and supply of, marina services and facilities across a range of market segments in the Australian marina industry;
- Review of accounting practices and marina financial performance, including 10 case studies of marinas in various regions and of various sizes (5 in Queensland, 5 in NSW);

- Consultation with the industry bodies on issues faced by their members and on their dealings and negotiations with Governments and the government owned marina Authorities;
- Consultation and negotiations with government owned marina Authorities on the issues affecting their leasing policy and procedures, their regulation of the marina industry and wider marine industry and their environmental, commercial and economic imperatives;
- Representation to Ministers and other members of parliament on policy requirements and development of policy and initiatives for the marina industry;
- Consultation with marina owners and operators on all of the above matters as they affect them in long term and day-to-day management of their marina businesses;
- Research into long term industry trends in construction, design, growth in supply and demand for marina services and facilities, including examination of the impacts of economic cycles on demand, supply and financial performance of marina businesses;
- Market analysis of the supply and cost of equity investment in the marina industry;
- Market analysis of the supply, security and collateral guarantee requirements, and the interest rate cost of debt to marina industry businesses;
- Financial analysis utilising the customised financial model in order to analyse the impact of the above research, consultation, economic, commercial and financial information on sustainable development in the marina industry. The focus came down to the key financial drivers of marina sites and businesses, being the sustainable lease rentals and sustainable site tenure.

Since 2007, Errol has been regarded as an industry expert in the matters covered by the Pitcher Partners Reports. As a result, he has been engaged as an advisor to the industry associations and individual members in the following advisory activities:

1. Rental reviews
2. Lease extension submissions and negotiations;
3. Economic and financial analysis for marina property valuers and land economists;
4. Due diligence process for new developments and expansion of existing marinas;
5. Advice to potential purchasers of marina assets;
6. Advice to intending sellers of marina facilities;
7. Advice on the tax implications of holding structures, lease terms and conditions, and other income tax matters, including commercial and financial advice to other tax specialists advising on marina related matters;
8. Credit submissions to lenders to marinas.

Appendix 3 Case Studies

Case Study 1 – Marina QLD01

Case Study 2 – Marina QLD02

Appendix 3.1 Case Study 1

Marina QLD01

The following case study is provided as it illustrates the problems caused by the Queensland Government failing to develop, publish and implement a commercial marina leasing policy as recommended in the Pitcher Partners Report 2010. That report was based on case studies and financial analysis of Queensland marinas. The issues illustrated by this case study include:

- the costs to the Authorities, the community and the commercial marina operator of market reviews and disputes processes based on a Statutory percentage applied to a Site Value;
- the delays likely to occur in the provision and upgrading of community marina facilities where lease tenure and rental calculations are uncertain;
- the related delays in generating employment during construction and operational phase of new and improved marina facilities;
- the potential for competing marinas to be placed at a competitive disadvantage based purely on the random chance of obtaining a favourable versus unfavourable arbiter's land valuation decision.

Case history

Ahead of the privatisation of the Port of Brisbane Authority (**POBA**), the Queensland Government had attempted to hike rentals of lessees of the POBA, including commercial marinas. In 2008. Marina QLD01 was notified their concession site rental would increase to between 250% and 300% of the then concession site rental.

Marina QLD01 approached Marine Queensland (BIA) for negotiation assistance. The BIA approached Pitcher Partners who provided the Pitcher Partners Report 2010 and other supporting analysis to BIA. In that report, Pitcher Partners recommended that commercial marina site rentals should be set as a fixed percentage of turnover. The recommended rent was 6% of turnover, with differential rates for fuel and sub-lease turnover.

In the period since that initial engagement, the management at Marine QLD01 have engaged professional and industry advisors in negotiations with the successive landlords, POBA and QTMR. That professional advice has been provided cooperatively by BIA, Pitcher Partners, Claymore Capital Partners Ltd, F1F9 UK Ltd and professional real estate valuers and land economists over the period from 2008 to 2019.

Marina QLD01 had two main issues in 2008:

1. Lease Term – a Term of 50 years was sought. After an extended negotiation stage of approximately 5 years, a new 40 year lease term was granted. The delay meant that the construction of additional marina facilities was delayed for at least 5 years. This delay in turn set back the redevelopment of older facilities by at least a further 5 years. This means that a further lease extension is desirable before substantial further construction and refurbishment is commenced on the concession site.

2. Concession Rental based on Economic Performance of the marina – with market rent assessed with due regard for the Permitted Use and Site Restrictions.

Lease Tenure

The Authority agreed to a 40 year lease term which was sufficient to allow the investors to commit to and construct expanded marina facilities on the concession site. Construction was commenced about 1 year into the new lease term. Completion date was 7 years ago.

Substantial redevelopment of the pre-existing marina facilities needs to be started soon. Assume for the sake of this case study that this can be completed in three phases over a 5 year rebuild program. This is a redevelopment timetable that would allow the majority of existing berths to remain operational at any time, so that minimum losses of clients would be experienced. This is a necessary approach to redevelopment to ensure optimal occupancy is reached in quick time, in any economic conditions.

Under the concession lease, redevelopment plans must be approved by the Lessor. Given a remaining lease term of 32 years, it would still be prudent to allow 2 years to obtain formal approvals, given the usual timeframes for processes to occur. By the end of the 5 year Capex program, there would be a maximum of 25 years left on the concession lease.

This would mean that the next 25 year redevelopment and refurbishment program would be just 11 years away. If automatic extensions are not granted under the Authority's policy at that time, a further application for lease extension is recommended with each development approval request.

Sustainable Rental Issues

In the period from 2008 to 2013, Marina QLD01 engaged with the Authority in a costly market rental dispute process. The initial rental built into the new 40 year Lease was of a similar order of magnitude to the prior period rental, after adjusting for CPI as defined in the old and new lease agreement.

The Authority's valuer's valuation was the reason the rental would have increased to between 250% and 300% of the then concession site rental. The arbiter's decision resulted in a rental of around 7% of turnover, not 16% to 20% without a dispute process. The arbiter noted that the Authority's valuer had failed to take into account the site's Permitted Uses.

At each 5 year point a review to market is required under the concession lease. The first 5 year market review resulted in another costly dispute process, which Claymore estimates cost the Authority and Marina QLD01 the equivalent of 18 months concession rental for a 5 year review.

This cost includes executive time, the cost of three valuers plus the arbiter, plus other professional advisors, including a legal opinion purporting to instruct the arbiter on how the arbiter's valuation should be performed.

The concession lease included a limit on the amount of any single year lease increase or decrease. The dispute costs were a significant multiple of the actual increase.

The Authority engaged the Queensland State Valuation Service to perform the initial site valuation for the first 5 year review. This raises an issue of perceived independence. This was apparent to the Concession Holder when the SVS came up with a rental which equated to 21% of turnover. Claymore notes that this is a rental for the unimproved site. Our research indicates that this is a high rent to turnover for a property lease where the capital improvements are paid for and maintained by the landlord.[33]

SVS valuation was 3 times the arbiter's valuation 5 years earlier. This escalation was out of all proportion to movements in the CPI or property values in South East Queensland. The concession holder's valuer was about 12% higher than the arbiter's valuation 5 years earlier.

The Authority refused to agree to an arbiter who had marina valuation experience in Queensland, as they perceived a bias. They also would not agree to an experienced valuer from outside Queensland. This raises an issue of how to find a truly independent valuer.

Under the lease dispute provisions, if the parties do not agree on an arbiter, they are appointed by the head of a named property valuers institute. This is a typical provision in leases, not just marinas.

The concession holder complained to the appointer at appointing a valuer who admitted not having marina valuation experience.

The arbiter did not provide an explanation of how they took account of Permitted Uses and site restrictions, and came up with a market rental review of 16% of turnover.

Claymore, Pitcher Partners and other valuers agree the arbiter's valuation lacks intellectual rigour. They raise many issues, but fail to provide any analysis to support the findings and conclusion. There is a strong argument that they did not fulfill the role as determining valuer under the Lease.

The arbiter had two valuations from SVS prepared some months apart – one valuation, prepared for Statutory purposes such as Council Rates, was very close to the Concession Holder's valuer. The other valuation by SVS was nearly three times higher.

The arbiter also fails to make any attempt to reconcile their valuation to historic valuations, or explain why they believe the site value has more than doubled in 5 years in a slow economy.

The supplementary information provided to the arbiter by the Authority included another valuer opinion and a legal opinion (briefed by the Authority, no input by concession holder). Both of those noted that comparable sales method is best unless there are no comparable sales, but that the capitalisation of rent method is a check method.

The arbiter states "I believe that this method of assessing Site Value, at best to be a check assessment in support of a more traditional Direct Comparison approach."

[33] For examples, Coles and Woolworths Occupancy expenses are about 4% of turnover. Adjusting for the percentage of properties owned versus rented, the occupancy cost for fully developed properties is in the range of 8-10%. Gloria Jeans (RFG) which rents most properties had occupancy cost of 8% of turnover in 2019. In each case these tenants are renting floorspace and paying for leasehold improvements only, not for the underlying structure.

The legal opinion failed to note that a "check method" valuation should not vary materially from your primary assessment method. This is true of any economic analysis whether valuing real estate, businesses, choses in action or even chattels.

Conclusion to Case Study Marina QLD01

The SVS has recently updated their valuation for Statutory purposes. They have adopted their own valuation which is 35% higher than the arbiter's valuation. The concession holder is disputing the Rating and valuation which values the site at 4 times the per metre SVS valuation of the adjacent properties which are also marinas.

The Authority applies the 7% of market value for unimproved government land leases set in Regulations. This regulation is currently subject to a 10 year sunset provision and submissions have closed in late 2019. Given the fall in property yields for all classes of property over the last decade, any rate higher than a market yield of 3% for unimproved property is a government monopoly levy.

This case study illustrates the random outcomes that can occur by setting market rentals as a fixed percentage of valuation. There are no sales of unimproved marinas, except occasionally between governments entities as part of a restructure. Reliance on sales of other types of properties is flawed in logic, and will always result in disputes.

The same dispute process will inevitably result in competing marinas with materially different concession rentals. This is especially true in a government monopoly market.

The cost of market reviews and the inevitable dispute process will always be out of all proportion to the rentals and increase in rentals. This will continue to be accentuated while Queensland government entities are prepared to spend time and professional costs greatly in excess of their tenants' financial capacity.

Appendix 3.2 Case Study 2

Case Study 2 – Marina QLD02

The Marina QLD02 case study is provided as it illustrates the problems caused by the Queensland Government failing to develop, publish and implement a commercial marina leasing policy as recommended in the Pitcher Partners Report 2010 based on case studies and financial analysis of Queensland marinas. The issues illustrated by this case study include:

- the costs to the Authorities, the community and the commercial marina operator of market reviews and disputes processes based on a Statutory percentage applied to a Site Value;
- the increased risks to the Authority and the concession holder if concession rentals are not linked to economic performance of the marina during changed economic or operating conditions;
- the problems of obtaining a true market value which reflects the Permitted Use and Site restrictions which apply to a marina concession site;
- the related problems where short term revenue generation drives a government agency to ‘valuation shop’ and the extremities in valuation and concession site rentals can be produced when inexperienced marina site valuers or land economists are engaged and a non-market yield is applied;
- the potential for competing marinas to be placed at a competitive disadvantage based purely on the random chance of obtaining a favourable versus unfavourable arbiter’s decision.

Case history

Marina QLD02 is a regional marina with one of the four regional port authorities as landlord.

As a tourism and regional development incentive, MarinaQLD02 had been granted a long term (>49 years) concession lease with a rental which reflected the progressive development of the concession site over a protracted period.

At the date of the first rental review, the concession holder was yet to fully develop the marina to its potential. A rental of two or three times the original rental was expected and in line with the rental levels using the Pitcher Partners Report recommendations. Pitcher Partners were engaged by the concession holder and had provided calculations of sustainable rent levels utilising a version of their financial model developed for the analysis in the Pitcher Partners Reports.

In contravention of the principals of independence of a property valuer, the Port Authority had engaged a valuer and:

- Methodology - provided ‘instructions’ to the valuer on how they were to calculate a valuation;
- Market Assumption - provided the valuer with the assumptions to be used as market assumptions for the region;
- Provided guidance on the market valuation they expected the independent valuer to provide for the site;

- Failed to instruct the valuer that the concession lease requires the valuers to be directed to make an assessment of ‘fair market rent’ by reference to the current permitted use being the “highest and best use”;
- The danger in having rentals set under a lease which cannot be reduced at a subsequent market review and which are not linked to the economic performance of the marina.

The site is essentially a Wet Lease. Being in a regional area, there is no economically viable use for the submerged lands other than as a marina.

The landlord’s valuer was not briefed by the marina owners or management.

Rather than prepare an independent market valuation based on the Permitted Use and site restrictions, the valuer followed the landlord’s instructions. The valuer attempted to justify the site valuation by reference to unrelated industrial land, with an arbitrarily selected adjustment factor which provided a number close to the landlord’s required valuation.

The resultant fair market rent assessed by the landlord’s valuer would have been an increase from 2.3% up to 30.9% of turnover – Pitcher Partners Reports at the time had recommended 6% of turnover.

On receiving notice of this proposed rental, the concession holder commenced the dispute resolution process. An independent valuer was engaged, whose assessment of ‘fair market rent’ was 5.9% of turnover, based on a land economics analysis. The implied unimproved site value was therefore less than 20% of that assessed by the landlord’s valuer.

In 2009, the concession holder engaged Marine Queensland / BIA and Pitcher Partners to assist in negotiations of fair market rental. The landlord engaged another Sydney based professional firm with experience in marina fair market rental assessment and disputes. Based on an argument over the CAPM market yield requirement for investors in marinas with the investment profile of Marina QLD02, this advisor to the landlord was seeking a rental of the order of 8 to 9% of turnover.

Despite this advice, the port authority as landlord would not reach an agreement over the fair market rental, and continued to valuation shop. In frustration the MD escalated the dispute resolution process to arbitration.

Unfortunately for the concession holder, the arbiter was a property valuer appointed by the head of the Property Institute and had no experience in the marina industry. In a very poorly argued arbitration valuation, that valuer did what is common in such disputes – came up with a number somewhere in the middle of the two parties’ views.

As the Marina QLD02 has failed to keep pace with CPI adjustments due to a mining related economic slowdown in the region, the rents in the intervening period have been between 15% and 18% of turnover.

Not surprisingly, when the next review to market fell due, the landlord advised that they will not be seeking an increase in the concession rental. However the operator / concession holder are contesting this position under the dispute resolution process in the concession lease.

‘What if’ the Concession Holders were not financially strong in s downturn

The marina suffered a downturn in revenues over the past 5 years due to factors not relevant to this case study, but which nevertheless impacted revenues in a manner equivalent to a major economic downturn.

Marina QLD02 was fortunate to have financially strong investors and operators. However if it had been a small family business (typical in the industry) the excess rentals were a sufficient monopoly government premium to have caused cash flow problems. The Authority may have been forced to drop the rental or bring in another operator, who would not have been prepared to pay excess concession rentals, and may have used the poor trading conditions to secure below sustainable rentals for a longer term.

Pitcher Partners Reports had foreseen this potential issue. They advised that it is better to get sustainable rentals and support small and medium size typical investors, rather than levy monopoly premium rentals in the good times only to then be forced to subsidise operators at times in the economic cycle.

Appendix 4 Financial Model and Analysis Appendix

The objective of this Appendix 4 is to provide detailed results of our Financial Model analysis and narrative to explain why a simple 25 year lease term is inappropriate for the usual re-investment profile of a marina.

For simplicity, we will examine the Capex commitment, investment balance and implied Termination Value for the Pitcher Partners 25 year scenario, and then add some analytical complexities to highlight the ideal, and more usual, scenario of continuous redevelopment and renewal.

25 year Rebuild Scenario

In each of the scenarios modelled for this section, we are using the following assumptions:

Assumed Market Yield to Investors

Australian Market Yields on all types of investment have fallen over the 10 years since the Pitcher Partners Reports were published, following down interest rates and inflation rates. Pitcher Partners used the CAPM to assess market investor yield requirements and came up with a WACC of 15% per annum. In order to reflect current economic conditions and the risk profile of the Australian marina industry, we have the same methodology as Pitcher Partners to calculate a WACC of 12.5% and used this in our Modelling.

Capex Assumption

We have assumed the entire marina investment in current dollars is $10 million. In the 5 by 5 years scenario, we have assumed Capex on infrastructure of $2 million every 5 years. In each scenario, we have assumed the construction cost will escalate at 0.5% per annum higher than the inflation rate (same as Pitcher Partners Reports).

Inflation Assumption

We have Assumed the top end of the Reserve Bank's target range for the CPI, being 3% per annum. (same as Pitcher Partners Reports).

Revenue and Expenses

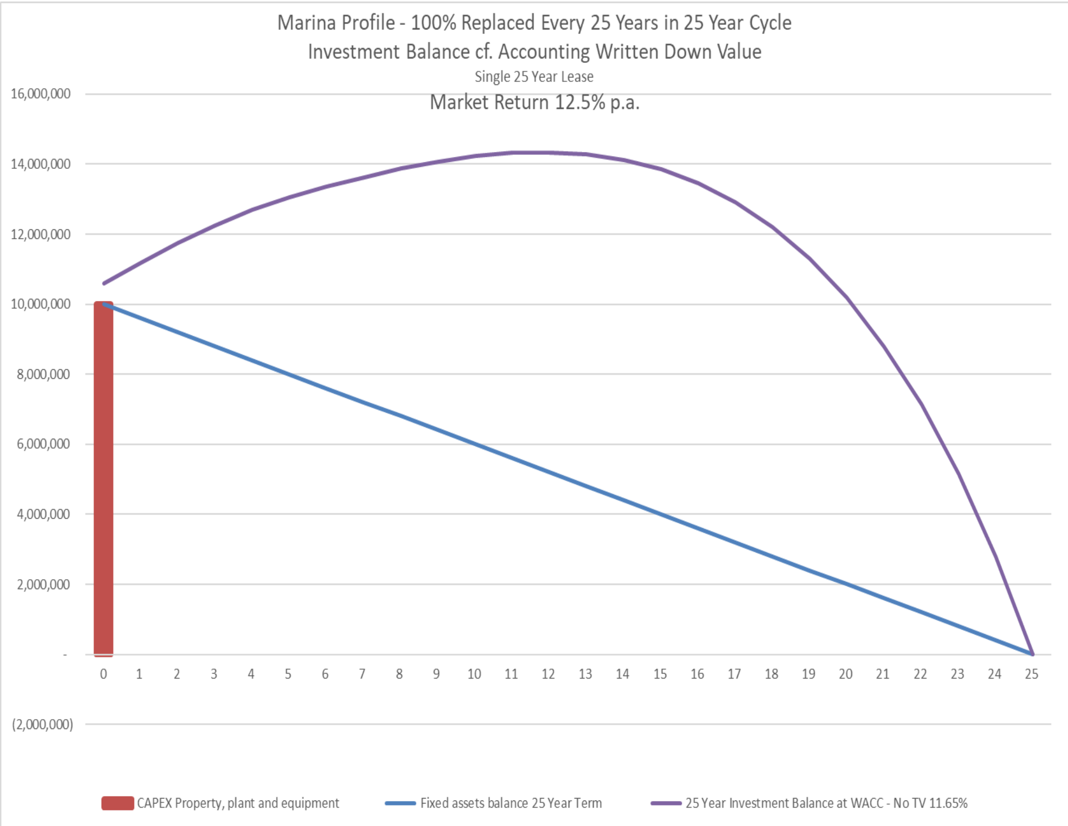
Expenses are assumed to escalate in line with the CPI, while Revenues are assumed to grow at 1.0% above the CPI. Pitcher Partners Reports assumed Revenues would grow at 1.0% faster than the CPI, but in our experience most marinas have not been able to achieve this rate of growth in tariffs.

Growth in Occupancy Rates

Growth in Occupancy Rates is a separate set of assumptions in our marina financial models. Pitcher Partners modelling appears to assume there is no let up period after initial construction or in the period following re-development or major refurbishment. This was a simplifying assumption which would have shaved a few points off the investor rate of return on investment.

On the basis of these assumptions, the Accounting balance and Investment balance over a single 25 year term are represented below.

Chart 25.1



The red bar in each of the charts is Capex. In Chart 25.1 there is a single investment of $10 million plus an allowance for working capital. As the lease terminates at the end of Year 25, the investors will not rebuild the marina.

The blue line represents the Accounting Written Down Value of the investment, using the Pitcher Partners assumption that you will restore the entire marina to 'as new' condition at the start of the 25 year lease. As the marina infrastructure is almost entirely leasehold improvements, we assume straight line write-off for the initial investment over 25 years - the straight line decline resulting from prime cost depreciation method.

The purple line is the value of the investment in the marina using the DCF method. Unless otherwise indicated, the investment balance is calculated using the IRR for the forecast cash flow, rather than the Market Yield. In this example, the Market Yield is achieved over 50 years, but falls short of that target over 25 years by 0.85% p.a. The yield in the legend is 11.65% p.a.

Why does the actual investment rise initially, when the Balance Sheet shows a declining balance?

The reason is that the investors achieve their return of capital, and a return on their investment, through rising revenues over time. Revenues rise initially through both Occupancy growth, the impact of inflation, and real price increases for services and berth tariffs. Net cash flow rises at a faster rate overall as expenses are assumed to be controlled to increase no faster than the assumed inflation rate.

In Year 1, EBITDA in the Chart 25.1 scenario is just 6% of the Initial Investment.

Free Cash Flow does not exceed the Return on Investment until Year 13. From that point the investment balance falls at an increasing rate. The two tables below show the movement in the forecast investment balance in the first and last 5 years of the 25 year scenario.

Scenario: 25 Year Term; No Termination Value

	Model timeline label Forecast period counter		Actuals 0	Forecast 1	Forecast 2	Forecast 3	Forecast 4	Forecast 5
	25 Year - No TV Opening Balance	AUD	-	10,600,000	11,190,149	11,744,162	12,248,883	12,689,037
plus	Return on Investment	AUD	-	1,235,280	1,304,053	1,368,616	1,427,434	1,478,728
less	Free Cash Flow - 25 year No TV	AUD	(10,600,000)	645,131	750,040	863,894	987,280	1,120,817
	25 Year - No TV Closing Balance	AUD	10,600,000	11,190,149	11,744,162	12,248,883	12,689,037	13,046,948
	EBITDA : Initial Investment ratio	%		6.09%	7.08%	8.15%	9.31%	10.57%

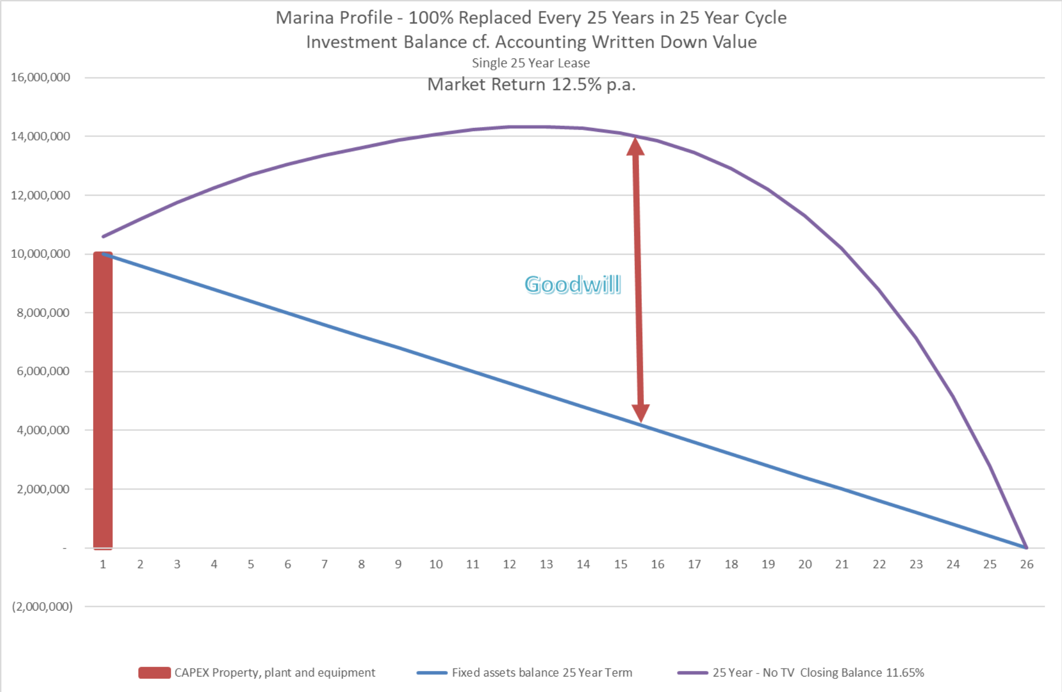
Scenario: 25 Year Term; No Termination Value Final 5 years

	Model timeline label Forecast period counter		Forecast 21	Forecast 22	Forecast 23	Forecast 24	Forecast 25
	25 Year - No TV Opening Balance	AUD	10,179,285	8,801,530	7,136,473	5,144,837	2,782,517
plus	Return on Investment	AUD	1,186,251	1,025,694	831,655	599,558	324,263
less	Free Cash Flow - 25 year No TV	AUD	2,564,007	2,690,751	2,823,290	2,961,878	3,106,780
	25 Year - No TV Closing Balance	AUD	8,801,530	7,136,473	5,144,837	2,782,517	(0)
	EBITDA : Initial Investment ratio	%	24.19%	25.38%	26.63%	27.94%	29.31%

What is the difference between the Investment Balance and the Accounting Balance?

The Investment Balance is the theoretical price at which the Marina concession would sell in an arm's length sale between a willing buyer and a willing seller. If you were to buy the marina business at any point in time, the difference between the purchase price and the Balance Sheet asset value is an intangible asset, which for simplicity we will call Goodwill -as in Chart 25.2.

Chart 25.2



Pitcher Partners Reports used the assumption in all their Case Studies that there was no Termination Value available to the marina Concession Holders. This is because the Government landlords always exclude any compensation to, or from, the lessee on termination of the marina concession lease.

The marina concessionaire is not compensated for either Goodwill or for the remainder value of any improvements. Neither is the concessionaire subject to any make good provisions. These terms are entirely consistent with the long held practice of extending the concession lease term to the concessionaire, and the intention that the site will remain as an operating marina in perpetuity.

This being the case, despite the drop dead assumption in the Pitcher Partners Case Studies, there remains the prospect of the concessionaire obtaining a future benefit from the business Goodwill and the remainder value in the infrastructure. The fact that the re-development will on average cost 75% of the greenfields development cost indicates that there may be a remainder value in the marina infrastructure for the 25% difference.

What Termination Value (TV) will the investors need to achieve the Market Yield?

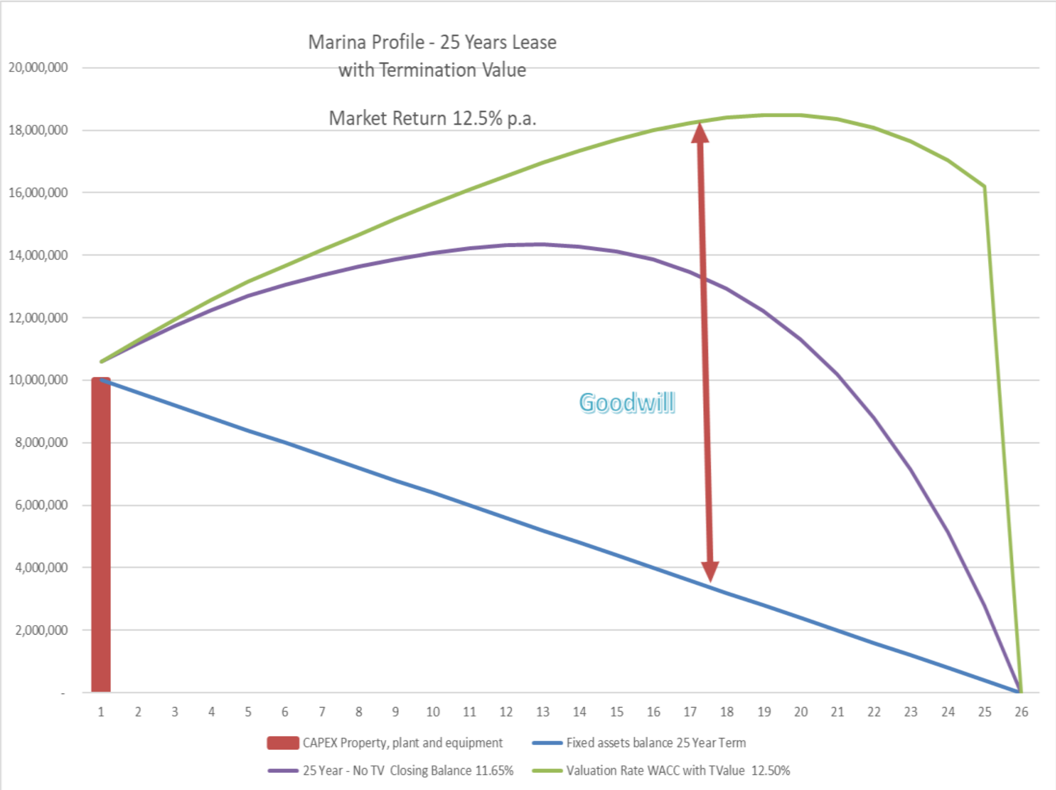
In the scenario we are examining, the forecast IRR is 11.65%, or 0.85% below the Market Yield of 12.5% p.a.

To the untrained eye, this may not appear to be much of a shortfall. Claymore reports on such matters refer to the amount, as a percentage of the original investment, by which the investors will fail to achieve a return OF their initial investment, plus a return ON that investment at the Market Yield.

Looked at another way, it is the TV the investors would need to receive such that they achieve market rates of return.

Chart 25.3 was produced by calculating the TV required to achieve the 12.5% Market Yield.

Chart 25.3

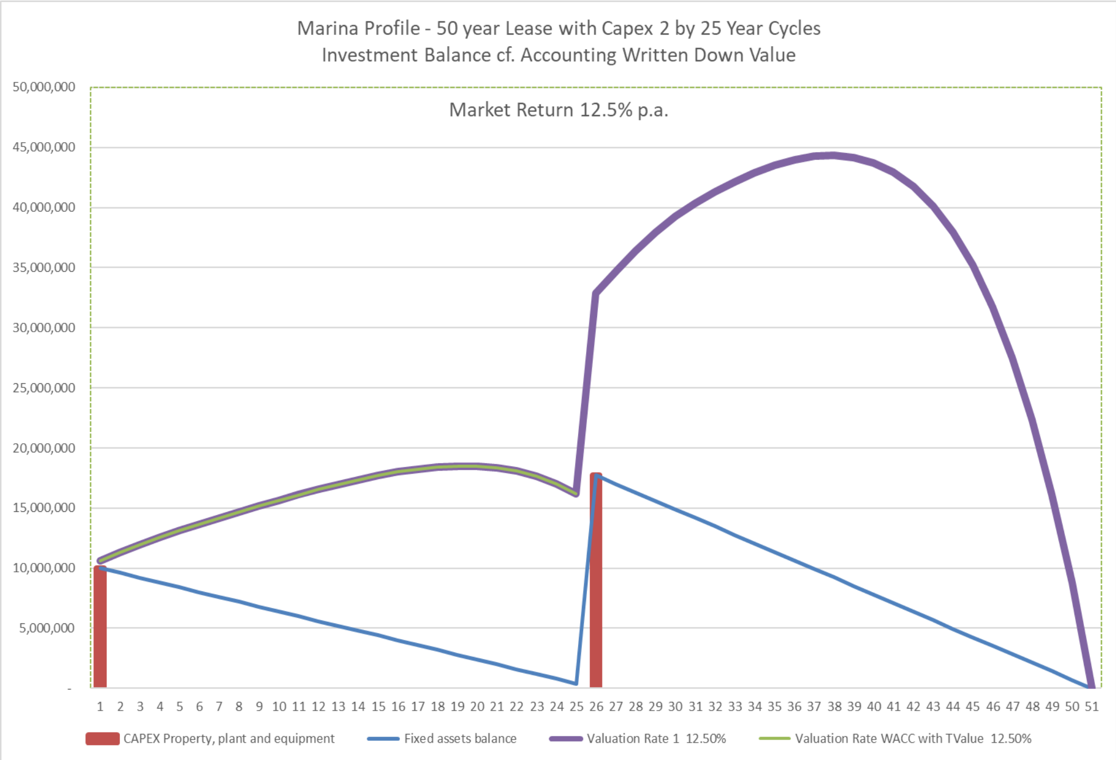


The green line is the investment balance assuming a TV will be achieved which is just sufficient to achieve the 12.5% market Yield.

Note that the TV required to make up the 0.85% p.a. yield shortfall is 60% greater than the initial investment in nominal dollars.

If the lease is 50 years, rather than 25 years, the same set of assumptions require additional Capex in Year 25, but will achieve the market Yield of 12.5% p.a. without the need for a TV.

Chart 25.4



Note that in this case the Green Line for the 25 Year plus TV scenario overlaps the first 25 years of the 50 year purple line – which is the 50 year investment profile.

The second Red Bar at the start of Year 26 is Capex calculated as 75% of original cost, but escalated at the Construction Cost escalation rate. (CPI + 0.5% p.a.). This may give the reader some perspective on the importance of having at least a 50 year term, either explicit or through policy or Options to extend or rollover the lease.

To the writer, this is a compelling reason why the marina industry would only achieve Investment Grade status and economic efficiency if the concession lease terms and conditions were actually freehold title, or commercially very close to freehold title.

Three disadvantages to an investor immediately apparent from Chart 25.4 are:

4. The investment in Capex is very large and a long way out for the second development at the end of Year 25;
5. The amount invested is “lumpy”, with great differences in the capital commitment over the lease term; and,
6. The Payback period is very long, meaning capital is committed for a very long term. While this is attractive to Superannuation Funds, while ever the structure is not of an Investment Grade attractive to institutional investors, marinas will remain the domain of family businesses, with an investment profile not suited to issues such as succession planning, spreading of investment risk and liquidity.

The Model presented in this analysis is ungeared. If debt funding is built into the model, the Free Cash Flow is even more restricted, Payback is even longer, and the profile of the equity investment is even more ‘Lumpy’.

If we were to introduce debt at say, 50% of construction cost, with level repayments, the Debt line would begin reducing from the first period. The net equity would have a steeper rise and a later date before any repayment of capital. For a small family company, this means an increasing amount of their savings are tied up in the marina for most of each investment cycle (assumed to be the 25 years between each rebuild in the Pitcher Partners Reports).

Rebuild in 5 year Stages Scenario

What happens when an ideal redevelopment in stages is analysed?

So how will this profile look when we introduce one or more refurbishments of part of the marina at various stages during a 25 year life cycle?

It is unlikely that the ideal will ever be achieved in an actual live case. However, the scenario presented below is closer to the investment and redevelopment profile of most marina businesses which both Claymore and Pitcher Partners have advised over the decade sing the Pitcher Partners Reports were published in 2008 and 2010.

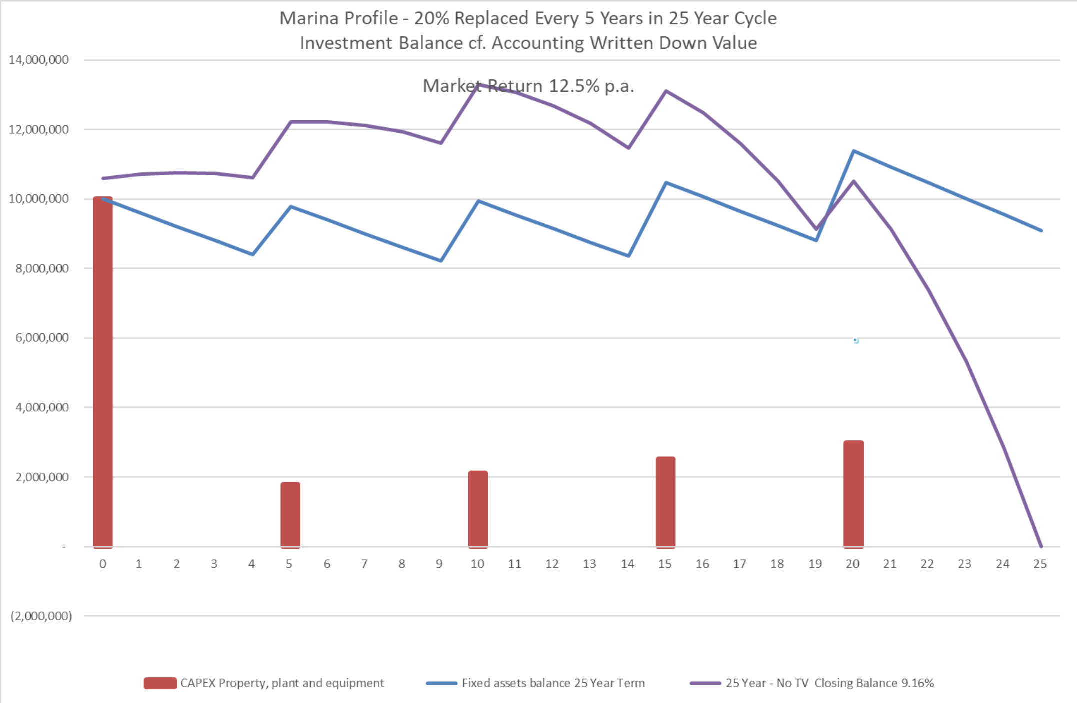
When we Model any Marina with mid-term investments, the greater the frequency of reinvestment in upgraded leasehold improvements, the more stable your investment profile. Both market value and accounting balance sheet stay at a more constant level. Debt levels are also more constant.

For a normal marina investment strategy, where investors / operators do try to spread the re-development for both optimal occupancy and to minimise / flatten the amount of capital invested at any one time, there is a problem whenever the remaining lease term drops below 20 years. This is especially true unless there is compensation in the lease for any unamortised investment at the end of the lease, including for goodwill.

The more attractive investment profile is a scenario with a 50 year lease term, with equal cost (in current dollars) Capex commitments every 5 years.

No rational investor would be willing to commit to any new stage of development without some certainty that the new or refurbished infrastructure will be in service long enough to recoup the investment and a market return on that incremental investment. Chart 5.5.1 and 5.5.2 illustrate that this is difficult to achieve without a rolling lease structure, or a very long lease with policy support for lease extensions automatically provided with Capex approvals.

Chart 5.5.1



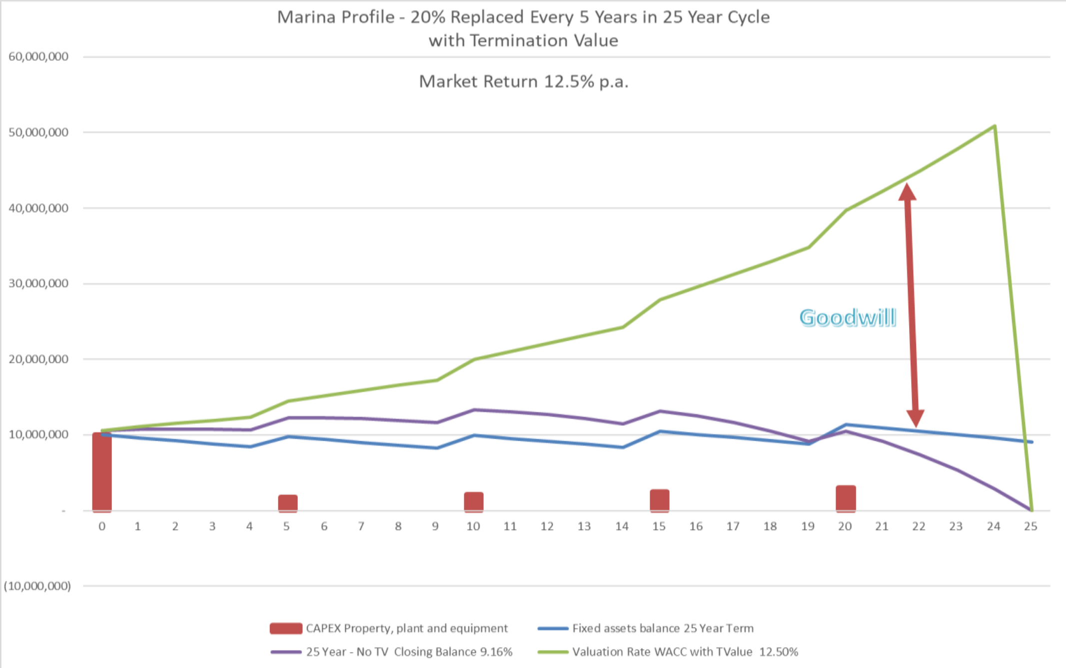
The first thing to note is the level capital commitment and accordingly a fairly flat curve representing the investment commitment.

However, if the concession lease terminates without compensation for Goodwill and remainder value in the infrastructure, the return on investment drops to an unacceptable level – after a 25 year lease term, just above debt interest at 9.16% p.a.[34]

It is no surprise that the TV after 25 years will be much higher than in the 2 by 25 scenario, as the remaining useful life of each development stage ranges from zero to 20 years of the 25 year useful life.

[34] This rate of interest on debt is only available using the marina as security, with collateral security provided by the investors to the bank.

Chart 5.5.2



For a 50 year lease with Capex every 5 years, the return on investment is still well below the Market Yield. As noted earlier, an IRR of 11.26% compared with 12.5% per annum would accumulate to a required TV which is too large to include in a Chart.

Chart 5.5.3

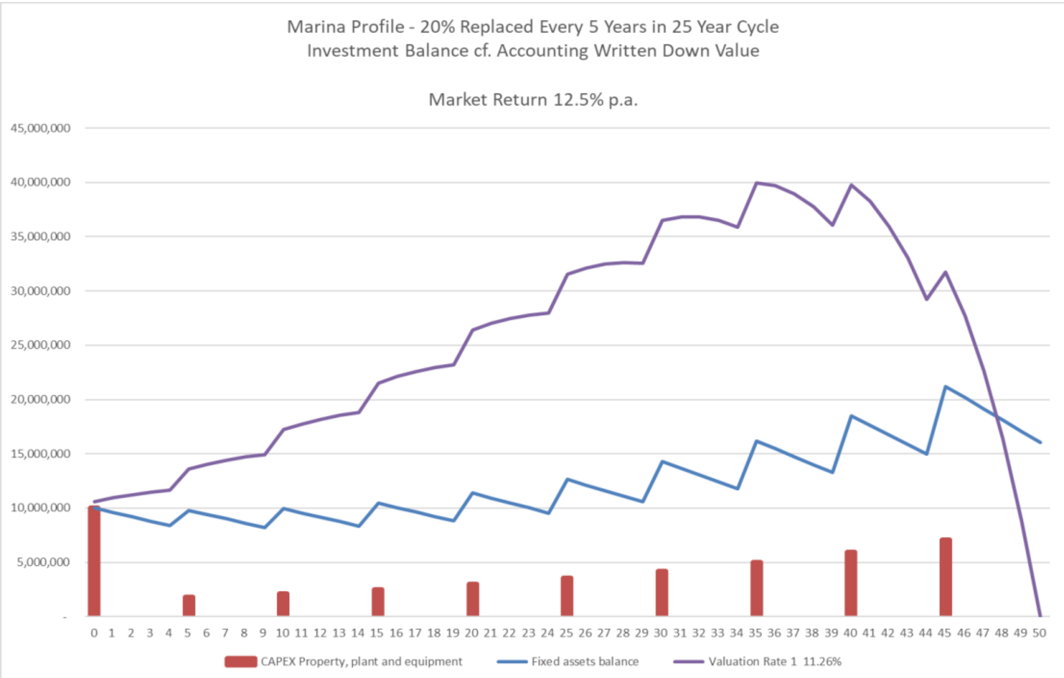
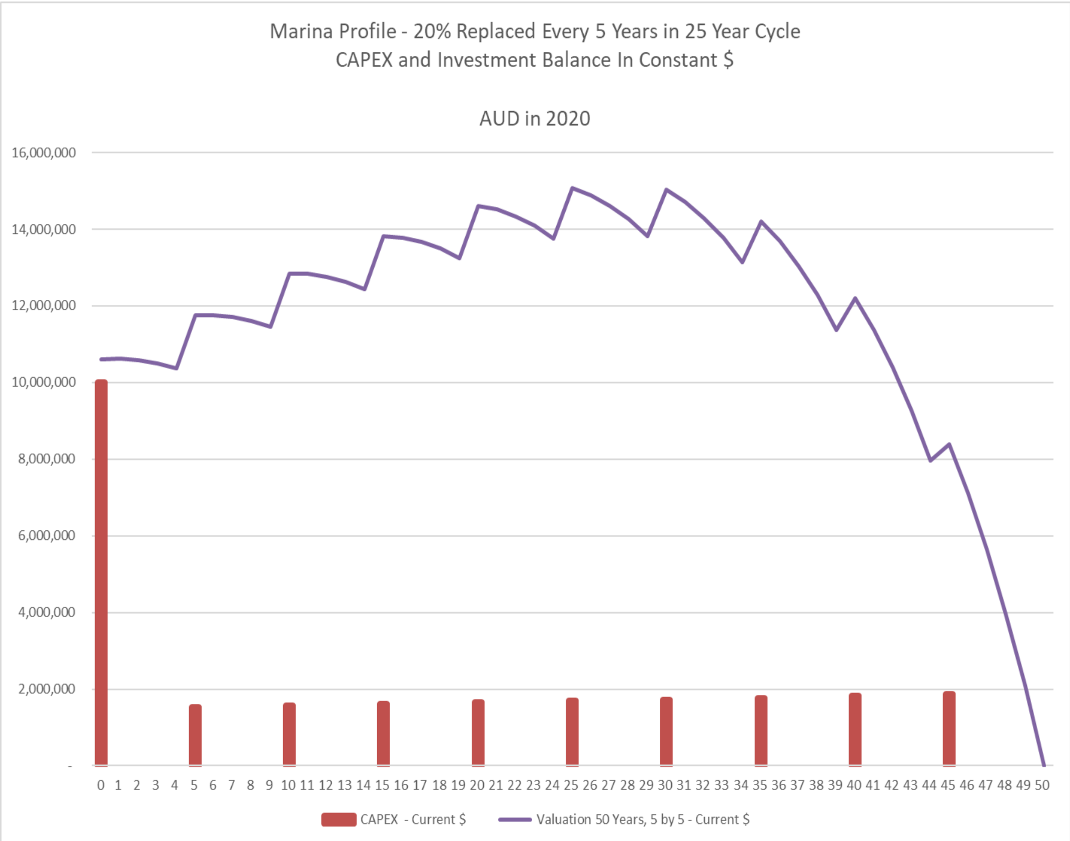


Chart 5.5.3 demonstrates a steadily increasing investment balance, growing with the Goodwill of the business, but mostly growing in this Chart due to the inflation on earnings and capital outlays.

When combined with more frequent Capex commitments but at a much more acceptable level compared to the total \investment, this scenario is a far more attractive investment profile for both the current owners of Australian marinas (SMEs) and for professional investors.

When this investment profile is converted to current dollar equivalents, the stability of the investment profile is even more apparent.

Chart 5.5.4



Findings from Review of Pitcher Partners Model

The Pitcher Partners Model provided support for their recommendations regarding setting of sustainable rentals and sustainable lease terms. More sophisticated modelling we have used in advising marina operators in negotiations for lease extensions, lease renewals and development approvals have reinforced the Pitcher Partners findings, but have also highlighted the need for termination provisions which are fair and support sustainable development in the marina industry.

Conclusions to be drawn from the above technical analysis are set out under three headings:

1. **Impact on Lease Term**

It is important to emphasize that, because of the 20-25 year life cycle for marina infrastructure, there will need to be substantial reinvestment within each lease term. With expected changes in market factors, climate change potential impact (rising sea levels, greater wind and wave action), client expectations, technology and changes in the industry, such as non-fossil fuel powered alternatives, there is an expectation that the life cycle of marina infrastructure may decrease[35].

Secondly, if a term of only 25 or 35 years is granted for a lease extension, the concessionaires will need to be constantly coming back to the Authorities for lease extensions. Given the historic time taken, and the fact that some Authorities have no policy or lease terms which guarantee an extension, this will be inefficient for the Authorities and the industry.

Thirdly, committing to specified and documented capital outlays is non-sensical 5 years out or more. However, a 20-25 year reinvestment cycle is known to be necessary in the marina industry to maintain quality facilities and services. Capital upgrades are subject to continuous review of major drivers including the physical condition and functionality of legacy infrastructure and also changes in demand for marina services and facilities.

2. Impact on Termination Value

There are good policy reasons why marina concession leases typically do not contain make good provisions when the lease term expires, but also exclude any liability on the Authority to compensate for Goodwill or remainder value in the infrastructure.

It has always been government practice in Australia to treat goodwill and remainder value as assets of the concession holder, with an expectation that leases will be extended and improvements and refurbishment will be paid for by the concession holder, so that the community will have continuing quality facilities and services.

3. Impact on Sustainable Rental

Any significant head of expense will have a direct impact on the investment return achieved by equity investors. Any other financial input which enhances the financial performance of a marina will impact on the amount of site rental the investors are able to pay. It will also impact on the business owner’s ability to pay rental during difficult economic or trading conditions.

Since higher return on investment coincides with the greater certainty of tenure, the Model analysis supports the Pitcher Partners conclusion that sustainable rent requires a sustainable lease term. We add that certainty of tenure combined with adequate TV compensation if the tenure is not extended is also a factor in optimising the level of sustainable rent for any particular marina business.

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[35] BIA has expressed concerns that the terms and conditions in marina leases need to have the flexibility to deal with emerging issues which threaten the 25 year traditional life cycle. Since the PP reports were prepared there has been significant downward pressure on yields and a significant reduction in the access to debt for marinas. The marina industry faces significant challenges over the next 10-20 years with the adaption to Climate change and infrastructure requirements for increased extreme weather events, the electrification of propulsion and the changing needs and behaviours of consumers (the rise of shared ownership and clubs) which will increase re-investment requirements and shorten investment cycles.