

***The Great Sandy Straits Marina Resort Tenants Association Inc***  
***P O Box 7272***  
***Urangan. Qld 4655***

3 August 2012  
Reference: 001-12

The Research Director  
State Development, Infrastructure and Industry Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Sir/Madam,

**Re: Inquiry into Land Tenure Matters**  
**Great Sandy Straits Marina Resort (GSSMR)**  
**Perpetual Lease 209525**

Please find enclosed our submission for consideration of the committee.

This submission sets out our experience and suggested lessons arising out of the leasehold land tenure of the State sponsored Great Sandy Straits Marina Resort, a tourism development in Hervey Bay. Completed in 2003, GSSMR comprises nominally 300 sub-leased residential units, 15 shops and 200 berth marina with an indicative value of nominally \$140m.

Unique in Queensland, GSSMR has undergone three changes in land tenure, all failures in their circumstances, with the last a dysfunctional mess. We therefore hope our analysis of the GSSMR experience will assist the committee in its work and that some important lessons can be considered for similar future developments.

GSSMR remains an unresolved problem for the three (3) principal stakeholders:

- The State,
- The 300 Sub-lessees and,
- The State's Lessee, Agreedto Pty Ltd (of the Mantra Group)

Our submission may be a little different in that in our view GSSMR demands executive direction from Government to establish a just and equitable outcome for all parties irrespective of current legal process in hand as explained herein. We hope the committee may take action to seek resolution equitable to all involved.

Our executive is available to respond to any queries, or provide such advice or further comment the committee may see as relevant.

Yours Sincerely



Ray Maxwell  
Secretary  
GSSMR Tennant's Association Inc.

Ph: [REDACTED]

Em: [REDACTED]

*The Great Sandy Straits Marina Resort Tenants Association Inc*

**SUBMISSION TO THE INQUIRY INTO LAND TENURE MATTERS  
Queensland Parliament  
State Development, Infrastructure and Industry Committee**

**ANALYSIS & LESSONS OF A STATE SPONSORED PROPERTY SCAM**

**STAKEHOLDER:**

**Sub-Lessees of the Great Sandy Straits Marina Resort  
Urangan Harbour, Hervey Bay**

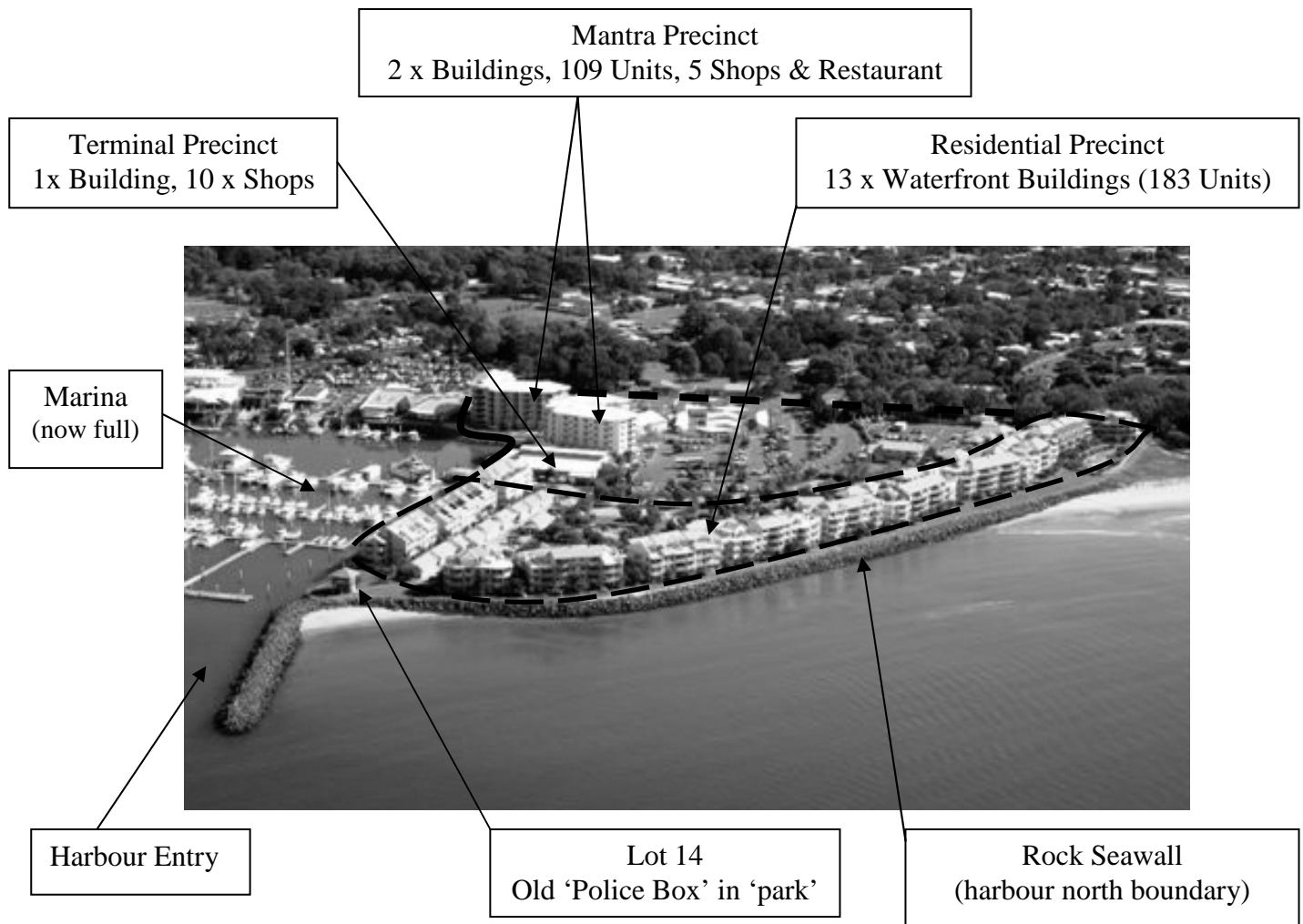
**Perpetual Lease 209524**

**The Great Sandy Straits Marina Resort Tennant's Association Inc.  
PO Box 7272  
QLD 4655**

**3 August 2012**



**GSSMR – Residential Precinct (north facing)**  
**Showing rock seawall forming north boundary of Urangan Harbour**



**GSSMR Urangan Harbour (northern harbour area)**

*The Great Sandy Straits Marina Resort Tenants Association Inc.*

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**SUBMISSION TO THE INQUIRY INTO LAND TENURE MATTERS**  
**Queensland Parliament**  
**State Development, Infrastructure and Industry Committee**

**ANALYSIS & LESSONS OF A STATE SPONSORED PROPERTY SCAM**

Why would 300 residential unit investors in a State sponsored marina and residential complex in Hervey Bay come to consider their personal investment to have the characteristics of a State sponsored property scam?

This submission explains why and the principal lessons to be learnt in undertaking similar future developments on State lands.

**1. INTRODUCTION**

Set out are the substantial lessons to be learnt from the project known as the Great Sandy Straits Marina Resort (GSSMR), a residential and tourism development built in stages over 10 years from 1992 to 2003 on State leasehold land as a major upgrading of the Urangan Boat Harbour, Hervey Bay. A project description is set out in Section 2.

GSSMR is remarkable in that the project has had three (3) land tenures since inception, all failures in their circumstances, which must be unique in Queensland. This fact alone identifies there are important lessons are to be learnt for future State developments.

This submission is relevant to land tenures of State coastal leasehold land and multi-use tourism developments, particularly residential (short & long term occupancies) small business (shops and restaurants) and other strata title type investments that are to be sold into the wider retail real estate market.

This submission does not deal with the many other substantial and lesser structural and administrative issues that should be addressed in future developments (for example the role and authority granted to the representative bodies of the GSSMR sub-lessees and limits of responsibility, within and between precincts).

**In addition to lessons to be considered, it is also proposed herein that the Committee should consider the circumstances of GSSMR and give direction to rectify the GSSMR land tenure as a matter of equity and natural justice.**

We hope the Committee can lend its weight to a solution and benefits from the lessons to be learnt from the land tenure experience of the GSSMR development.

## **Acronyms**

The following acronyms are adopted herein:

GSSMR: The Great Sandy Straits Marina Resort, means herein the property development contained within the State's "Dry Lease", now perpetual lease 209524.

Sub-Lessees: Means the sub-lessees of the Residential Precinct and Mantra Precinct, represented by the GSSMR Tenant's Association Inc., and Marina Pacific Pty Ltd respectively.

State: Means those departments with administrative control over the GSSMR development over the years and can mean the Government of the day. Principal departments have included the Harbours Corporation, Lands Department, Queensland Transport, Department of Natural Resources, Department of Environment and Resource Management and now Department of Natural Resources and Mines (DNRM).

## **Important:**

The sub-lessees have pursued an equitable solution for the GSSMR since project completion during 2003. It has become apparent to the Association in dealing with various bodies over the years that it is not possible to come to understand the issues without significant effort. It is perhaps not until one buys a lease and comes to study the details, that the situation of GSSMR sub-lessees becomes clear.

It is considered that no-one, local members, departmental executives, nor Ministers have been able to take the time to come to grips with the details of the GSSMR situation. If the whole of the situation were understood in the detail known to sub-lessees, action to resolve GSSMR would have occurred long ago. There is a substantial injustice involved and it is hoped the Committee can come to recognise the circumstances of sub-lessees and seek to direct a resolution.

It has to be a fact that the GSSMR outcome was not intended, but equally it has to be recognised that the only party that can rectify the situation is for the relevant officers of the State to be directed to do what should have been done years ago.

## **Interpreting the Facts**

It is noted here that the facts and interpretations presented herein are based on the best assessment the volunteer efforts of sub-lessees can gather. They are drawn from available record, including records of the GSSMR Tenant's Association, Precinct budgets and accounts as available, and records obtained through difficult and frustrated freedom of information undertakings. Opinions expressed are genuinely held based on the information gathered and are made to be objective without seeking to exaggerate so as not to mislead the committee in its efforts.

## **2. PROJECT DESCRIPTION**

The Great Sandy Straits Marina Resort development comprises a 200 berth marina on a separate 40 year State harbour lease known as a "Wet Lease" and an onshore State "Dry Lease" (now a perpetual lease) with three (3) precincts; a marina Terminal Precinct with 10 shops, a 183 unit "Residential Precinct", a 109 unit 'Mantra' Precinct

for short term accommodation with a conference centre, 5 shops and restaurant - about 304 sub-leases, nominally given as 300 herein. This submission deals with only the on-shore Dry Lease outcome.

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External to the occupied precincts and within the Dry Lease are areas open to public access and containing public infrastructures<sup>1</sup>. These areas include a substantial seawall that forms the north boundary of Urangan Harbour enclosing the Dry lease land, public board walks and an access road serving the marina terminal and the Residential Precinct. The total real estate value of the development is in the order

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\$140m<sup>2</sup>. Page 2 of this submission and the marked-up survey plan in Appendix 1 show the general layout and use of the land.

All residential and accommodation units have been sold-off to small investors and residents under registered State approved, initially 75 year sub-leases, and subsequently 999 year sub-leases. About 120 x 75 year leases were sold by 1997, when the land was transferred by the State from control under the Harbours Act to a perpetual lease under the Land Act. All subsequent sub-leases are 999 year term and about 45 x 75 year sub-leases remain in place. The legal status of this transfer remains uncertain and unresolved.

Each of the two residential precincts operates as its own budget and cost centre under the control of the State lease holder Agreedto Pty Ltd, a holding company of the Mantra Group. The Residential Precinct sub-lessees are represented by their Tenant's Association and the Mantra Precinct sub-lessees by the body corporate company Marina Pacific Pty Ltd. The Terminal Precinct is a sub-lease owned by ALS Nominees with the 10 shops under commercial sub-sub-leases.

The GSSMR project was tendered about 1987 and after 5 years delay (probably consequent on the 1988 share market and property crash) was finally committed late 1991 and largely completed about March 2003. The developer was FKP Limited (and predecessors) with the State lease held in a shelf company GSSM Pty Ltd.

Late 2005 FKP was able, with Ministerial approval, to sell for \$660,000 to S8 Limited the State lease and the contained investment interest of the 300 sub-lessees, by transfer to a shelf company Agreedto Pty Ltd. The sale was settled December 2006 after objections by the sub-lessees were dismissed by the Minister.

Thus, a shelf company, Agreedto Pty Ltd, now holds the State lease and owns the \$140m property investment of 300 small investors for the relative peppercorn sum of \$660,000.

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<sup>1</sup> Public infrastructures within the Dry Lease include; the major rock seawall forming the northern boundary of Urangan harbour, public waterfront boardwalks, pedestrian access, public access road and a sewer pump station. Other works off the Dry lease include dredging the harbour, State office buildings, VMR facilities, public boat ramp (then largest in Queensland) and public roads and utilities.

<sup>2</sup> This approximation of \$140m assumes actual real estate value, but as set out herein, the worth of GSSMR sub-leases as currently structured are heading toward zero in about 30 to 50 years.

Shortly after settlement of the sale, S8 Limited collapsed and control of Agreedto Pty Ltd was taken over by MFS Limited about January 2007 and transferred to control of the Stella Group (now the Mantra Group). Then a year later, about January 2008, MFS collapsed and the Stella (Mantra) Group came under control of the private equity investor, CVC Equity, with the result Agreedto Pty is now controlled by another shelf company registered in the Channel Islands and administered under the Mantra Group.

The current land value is less than \$15m, less about \$5m for the current land development cost, giving a net land value of less than \$10m. State land rent is 6% of the 3 year average unimproved land value, so currently roughly around \$600,000 per annum, notionally \$2,000 average per annum per sub-lease. Residential sub-leases currently incur about \$1,700 per unit having risen from \$165 per unit in 1997.

### **3. LAND COURT APPEAL**

The committee is advised here that an application to freehold the GSSMR lease has been submitted by Agreedto Pty Ltd under the Land Act. The intention of the freehold application is to convert GSSMR to a multi-layered strata title scheme under the BCCM Act by conversion of the sub-leases to freehold strata titles. The application is essentially on behalf of the 300 sub-lessees. In response the Minister has made an offer which includes the following:

- (i) An offer to freehold (ie, freehold is deemed acceptable tenure),
- (ii) Payment of the State's assessment of the land price due as \$10m + GST, and,
- (iii) Attachment of a 50 year lease over the public areas of the lease and presumably responsibility for the contained infrastructure. It is considered these works and lands contain contingent liabilities in the order of \$7m (2010).

Subsequent to the State's offer, an appeal was lodged with the Land Court seeking to have the land value determined at nil in the unique circumstances of GSSMR. This appeal was dismissed by Member PA Smith 23 May 2012 (File LAA951-10). Agreedto Pty Ltd has since lodged an appeal to the Land Appeal Court and a hearing date is set down for 27 September 2012.

The legal process has been effectively undertaken by Agreedto Pty Ltd on behalf of the sub-lessees in an attempt to resolve the GSSMR land tenure issues. This work has been undertaken in consultation with the sub-lessees representative bodies and all legal costs are being borne by the sub-lessees.

The Court is dealing only with the issue of the land price valuation to be paid in terms of the Land Act. Unfortunately, resolving the land price will not address numerous other issues attached to the land arising out of the State's administration. The Land Court cannot address the inequities arising out of the changes in land tenure nor such matters as the imposition under the freehold offer that sub-lessees are to take over liabilities attached to the land under a 50 year term lease, even though they are excluded from their sub-lease.



It is also not relevant to the Court that in seeking to have the land value under the Land determined as “nil” actually means ‘nil at no further cost to sub-lessees’ in that the land value has already been extracted from the sub-lessees twice over. Nor is it relevant to the Court that due to a wrong development strategy sub-lessees are paying land rent to rent the same land they paid to develop and are to bear an accumulated sinking fund liability estimated to be about \$4m.

#### **4. WHY A SCAM?**

So, why could GSSMR be considered by the sub-lessees a State sponsored property scam?

##### **In Summary:**

1. The State moved from a 40 year lease to a scheme with 75 year sub-leases, then to a 999 year sub-lease in order to extract the land value to fund various harbour works. The move to a 999 year term lease ensured sub-lessees effectively paid for the land - the first time.
2. The State adopted exceptionally low sinking fund contributions, thus making annual costs of a sub-lease appear lower (by some 10% or more) and leading to a current liability in the order of \$4m.
3. The State obscured the fact that land rent was payable and obscured the inevitable outcome that land rent would rise at over 20% per annum compound for years to come, double the rate of growth in land value. This circumstance was to lead to sub-lessees paying land rent equal to the net land value at project completion, currently repeated every 2 to 3 years. Thus sub-lessees are paying the land value a second time (total rent paid to date \$6m).
4. The predictable consequence being that the sub-lessees would be driven out of their lease in about 30 to 50 years, or sooner, depending on future market conditions.
5. To stop the financial pain and secure their investment, sub-lessees would by about Year 15 to 20 into the lease term be inevitably forced to seek to have the land converted to freehold. As now occurring.
6. In seeking to freehold the property, the State now demands a third payment for the land at current prices.
7. Additionally, half way through the development, the State removed from the State’s 75 year lease conditions that protected the investment of the sub-lessees (Clause 19). This action allowed the developer to depart without recourse, leaving behind contingent liabilities estimated to be about \$7m.
8. Although excluded from the sub-lease conditions, the State now requires sub-lessees accept responsibility for the public lands and the attached liabilities.
9. Finally, the removal of Clause 19 permitted the developer to sell out of the State’s lease with the result that the sub-lessees \$140m investment is now controlled by an off-shore private equity company through a shelf company registered in the Channel Islands.

The above would seem to give the appearance of at least unreasonable dealings by the State with the GSSMR land.

Sub-lessees face, or have observed the outcomes set out below. A fuller presentation is set out in the enclosure in Appendix 3 summarised as follows:

1. Sub-lessees find they have paid the equivalent of freehold unit prices for a 999 year residential sub-lease that has no prospect of being viable residential real estate beyond about 30 to 50 years – see Appendix 3 (eg Chart 2 Page 48).
2. Consequently, sub-lessees have come to realise their sub-lease will increasingly become observably and virtually unsaleable from about 15 to 20 years into the lease term, conditions now apparent and apparent prior to the GFC) – see also Appendix 3 (eg Charts 5, 6 & 7 Page 52 on).
3. Find they are expected to pay for the land three times over:
  1. First by their initial sub-lease purchase, (about \$3.5m in 1993-4)
  2. Then as accumulated land rent (currently, if summed every 2 to 3 years, exceeds the land value at project completion in 2003) (total rent paid to date about \$6m),
  3. Then a third time to convert the land to freehold (current disputed demand of the State \$10m+GST).
4. State land rent has increased at double the rate of increase in land value since first occupancies 1993-94 due to a quirk in the methodology applied by the State – see Appendix 2. GSSMR sub-lessees have suffered State land rent increasing at an average compound rate exceeding 20% per annum since 1993 compared an increase in assessed land value growth of about 10% per annum. This outcome is not observable in their sub-lease and was not apparent until after project completion – see Appendix 3 (eg Chart 4).
5. It is this condition that leads to the inevitable failure of the 999 year sub-lease. This is a fundamental issue for sub-lessees.
6. It is a questionable undertaking played out on sub-lessees to cause the State land rent to be not explicitly stated in their sub-lease, to hide the methodology that results in land rent rising at double the increase in land value for years to come and not advise the potential for this to occur.
7. Increasingly sub-lessees found that the State approved sub-lease (specifically QA authorised by the State) has substantial administrative problems.
8. Further, sub-lessees came to realise their Association had no authority over the annual expenditures required to run and maintain the property, even though the ownership costs are funded by the sub-lessees<sup>3</sup>.
9. During 1997 with about 45% of sub-leases sold, without the required authority of, and unknown to the sub-lessees, the State removed from the State lease a substantial lease condition (Clause 19) which protected the sub-lessees investment. This action:

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<sup>3</sup> It is noted here that to assist sales during the marketing of GSSMR, the developer issued to potential sub-lease buyers a Notice to Purchasers that undertook to establish the Tenant's Association and also enter into an agreement with the Association so as to give sub-lessees control equivalent to that available under BUGTA. The Association was established, but apparently once sub-leases were selling under the 999 year sub-lease, the developer 'walked-away' from the promised agreement, leaving the sub-lessees without any control over their precinct expenditures.

1. Removed the need for the developer to hand over control of the State lease to the community of sub-lessees (as first intended and documented by the developer<sup>4</sup>),
  2. Allowed the developer to sell out of the development leaving behind substantial contingent liabilities estimated to be about \$7m (2010),
  3. Left sub-lessees to face an accumulated sinking fund liability in excess of \$4m (2010)
  4. Permitted the \$140m GSSMR property investment funded by the savings of the sub-lessees to be transferred to control of a local shelf company, Agreedto Pty Ltd, in turn held in a shelf company registered in the Channel Islands controlled by an international private equity investor.
10. Under the State approved sub-lease sub-lessees have no responsibility for the public lands and works. However, sub-lessees have become aware of numerous problems with these works and estimate they carry contingent liabilities in the order of \$7m. It is considered many of the problems arise out of lack of oversight by the State.
  11. Yet sub-lessees now find they are faced with a demand to take over responsibility of the public lands and the attached liabilities under a 50 year term lease, even though they are excluded from the State's approved sub-lease and the State is responsible for the outcome.
  12. In a similar vein the freehold offer requires the sub-lessees to unwind the excision of Lot 14 from the only land dedicated in the State lease as public open space and to be landscaped. Lot 14 was approved by the State about 2005 and sold to private interests despite the objections of the sub-lessees to the loss of parkland. Sub-lessees are now faced with a costly correction of this approval by the State.
  13. In facing the demand to now pay for the land a third time, sub-lessees are, in effect, being asked to pay \$10m to solve the substantial problems created by the State. Thus sub-lessees are being asked to pay \$10m for land already funded by them twice over, take over \$7m in contingent liabilities that are not their responsibility and bear accumulated sinking fund liabilities in the order of \$4m.
  14. Eventually, sub-lessees found under FIO discovery GSSMR has had 3 land tenures since 1991, each change at the request of the developer and changed simply by direction of the Minister - each in turn not applicable to its circumstances.
  15. Yet when the sub-lessees identify the need for a fourth tenure and seek to resolve an equitable outcome, no such courtesy has been extended even though the need to restructure is more apparent, and despite the fact it has been sub-lessee's savings which ultimately funded the entire development including the substantial public works for the benefit of the community.

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<sup>4</sup> About 2004 the developer presented to sub-lessees a draft "constitution" for transfer of the State's lease to control of the sub-lessees under a layered lease structure. After various concerns were raised by sub-lessees, the developer, without reference to the sub-lessees, sold the State's lease to S8 Limited who happened to be aggressively in the market buying-up management rights.

16. Sub-lessees have been effectively forced by the State to seek to freehold the lease under inequitable circumstances, in the face of the increasing land rent, the doomed future of their sub-lease and general dysfunction of the lease structure.
17. The effect of the 'hidden' land rent methodology was destined to cause land rent to increase at 20% per annum compound could be seen as a ploy to drive sub-lessees from their lease some 30 to 40 years or so into the future – a process that has begun. 30 to 40 years happens to be the usual term of a harbour lease.
18. Sub-lessees have faced inordinate delays to resolution of the GSSMR land tenure, still unresolved and requiring substantial voluntary effort by sub-lessees and legal costs to progress – all unnecessary if the State had acted equitably and dealt with the sub-lessees when the lease problems were brought to their attention.
19. Due to the transfer of the GSSMR lease to control under the Land Act after nearly half of the sub-leases had already been sold and in circumstances where the Land Act does not explicitly contemplate the GSSMR situation, the sub-lessees are now being forced through the Land Court to prove the land has no value in terms of the Act.
20. This legal action of necessity does not and cannot address the fact sub-lessees have already paid the land value, have been (reasonably) improperly charged rent (renting land one has already paid for makes no sense), and the Court cannot address the fact that the land tenure was wrongly conceived in the first place – rather, wrongly conceived on three occasions! All facts unknown to the Land Court.

So, sub-lessees are faced with paying for the land three (3) times over, have suffered State land rent increasing at an average rate exceeding 20% per compound annum since 1993, found their 999 year sub-lease has no prospect of lasting beyond about 50 years and now becoming unsaleable, had the protection of their investment (Clause 19) removed from the State's lease by the State, seen the State allow the developer to exit the development scot-free, find their \$140m property investment owned by a private equity investor in an off-shore shelf company, face an accumulated sinking fund liability in excess of \$4m, have faced inordinate delays and legal costs seeking resolution still unresolved, found under limited FOI discoveries GSSMR has had 3 land tenures with 2 changes undertaken simply by request of the developer and by direction of the Minister.

Yet when the substantial land tenure issues are raised by the sub-lessees to undertake a fourth restructure that should have been the answer in the first place, all approaches are dismissed. Instead sub-lessees are effectively forced by the State to face a demand to pay again for the land they have already funded, face a demand to take over infrastructure with contingent liabilities in the order of \$7m facilitated by the State even though they are an excluded responsibility under the State's approved sub-lease, find an accumulated sinking fund liability in the order of \$4m after about a resale turnover of about 50% of sub-leases, are required to resume Lot 14 previously approved by the State, have had to fund extensive legal action in attempting to get

resolution involving hundreds of hours of voluntary effort by sub-lessees trying to sort out the mess created by the State, all when none of this effort should have been necessary.

It is measure of the failure of the GSSMR land tenure that sub-lessees have incurred to date something like \$500,000 in legal fees since 2003 trying to sort out what should never have occurred.

There is no doubt sub-lessees have been shabbily treated. Is it any wonder the process looks like a State sponsored property scam to investors and residents alike.

### **Investment Outcome**

GSSMR sits as an example of how to undertake a significant tourism development and destroy investor interest and confidence in the State's ability to treat the investment public equitably. The GSSMR situation is probably best summed up by two overseas sub-lease investors from different countries at different times (almost the same words like), "...this place (the GSSMR property tenure) is something like you might find in a Third World country, not in Australia..." These comments were heart felt and a damning indictment of land tenure and sub-lease administration structures in Queensland. Most off-shore investors have sold out over the years, never to return.

Before the GFC hit commercial sub-lessees were having difficulty, some not paying levies and others being subsidised. Council rates had risen dramatically and double rating of dual-key units in the Mantra Precinct has been a substantial unexpected burden. A survey of sub-lessees during 2006 showed investment returns of less than 1%. Prior to the GFC the local agent considered over 20% of sub-lessees would sell if they could. However, both then and more so now, there is little prospect of a sale and none of returning a fair price.

Before the GFC banks were advising potential sub-lease buyers they were no longer prepared to lend mortgage funds against GSSMR sub-leases. The sub-leases have no security value. Sales since the GFC are advised as secured by other real estate, or are cash sales.

In earlier days, rising land rent exceeding 20% per annum and the exposure of the unfolding land tenure issues has unfairly driven out sub-lessees on low incomes or limited savings, mostly retirees. Their investment was entirely workable when they purchased, but were forced to reassess their future and sold out – in retrospect fortunately in advance of worse things to come. Post GST those in similar situations are stuck with uncertain futures.

### **5. LESSONS TO BE LEARNT**

The following is a suggested list of issues that should be addressed in setting up the land tenure for future State development tourism projects and particularly if they involve prime residential waterfront land. This list does not address the many internal administration issues related to administration and ongoing ownership and management of a community such GSSMR.

1. Decide between a sole owner development and strata-titled type property (ie decide if a community of interest is to be developed and if it is to be structured under the BCCM Act, or say BUGTA if to be leasehold).
2. Do not loose focus on the different land tenure needs applicable to the type of ultimate ownership as is apparent with GSSMR.
3. A 40 year lease or 75 year lease is not practical land tenure for residential real estate (as initially adopted for GSSMR).
4. A 999 year residential sub-lease subject to land rent based on waterfront freehold land valuation is also not viable real estate.
5. A 999 year residential sub-lease on prime waterfront land is a fatally flawed concept and cannot remain viable beyond about 30 to 50 years. The 999 years is meaningless unless land rent is a peppercorn rent.
6. The only equitable way to extract the freehold land value of State land is to adopt a secure land tenure, either:
  - i. provide freehold tenure to the various tenancies (apartments, shops, etc.), (refer Mackay Harbour), or,
  - ii. 999 year sub-lease subject to a peppercorn rent only (refer Brisbane's Southbank) – any higher rent structure is not equivalent to freehold as demonstrated herein.
7. Address in detail the exit strategy for the developer and handover of the property to the ultimate owners.
8. As the delivering project manager, the State should recognise that the developer, while a substantial risk taker who brings the required resources and skills to the project, takes a substantial margin and is soon forever gone. What remains is only a long term community asset and the various owners whose savings have ultimately funded the entire development (assuming no State contribution).
9. Ensure site works are subject to local authority approval along with usual building applications – refer GSSMR.
10. Ensure public works are designed and built to acceptable standards and subject to independent certification.
11. Define at the outset those works to be taken over by public authorities and which authority.
12. Ensure the interests of sub-lessees cannot end up in a shelf company without assets or sources of income and ensure all developer's liabilities are cleared prior to completion and exit of the developer (compare the GSSMR experience).
13. If applicable, resolve the misleading land rent conditions such as GSSMR wherein land rent increased at double the increase in land value over the years to date.
14. Explicitly state in any sub-lease sale contract that land rent is payable and likely to increases at double any rise in land valuation. In fact, such a provision makes such a deal pointless by identifying the potential future outcome of GSSMR type land tenure.
15. Review GSSMR administration experience to reduce a wide range of dysfunctional lease conditions – many are significant. (Adopt or draw upon the rules under the BCCM Act.) . There are many issues, but limits of responsibility

- are poorly drafted in GSSMR leases. Ensure limits of responsibility within and between precincts are equitable and properly drafted.
16. Ensure cost sharing rules are equitable and viable (refer GSSMR experience).
  17. Ensure sinking fund conditions are commercially and professionally realistic by adopting the rules under the BCCM Act. Ensure use of professionals independent of the developer (refer GSSMR experience where the sinking fund contribution is fixed at 5% and should be flexible around 15% to 20%).
  18. Ensure any land value paid in purchasing a residential or commercial unit is not paid more than once.
  19. Ensure buyers are protected in that they control their investment through an appropriate representative body, at least to the standards of the BCCM Act as amended from time to time. Ensure that annual expenditures are subject to the control of the same representative body.
  20. It is notable that the Association is aware that some conveyancing professionals either refused to deal with GSSMR, or recommended their clients not purchase a sub-lease. If all professionals had acted in this way then GSSMR would never have got-off-the-ground. The State should consider why many, or some, professionals, ranging through agents, solicitors, bank valuers and loans officers, simply acquiesced for various reasons.

## **6. FREEHOLD APPLICATION FOR INTERNAL REVIEW**

The current freehold application for GSSMR has been the subject of an Internal Review by the (now) Department of Natural Resources and Mines. This review led to the current State's offer seeking a purchase price of \$10m for the land. This valuation is currently the subject of the appeal before the Land Appeal Court as advised in Section 3 above.

A copy of this submission is enclosed in Appendix 3 for reference purposes and more detailed descriptions of the property and the land tenure issues outlined herein.

## **7. CONCLUSION**

It is hard to understand that in the modern era a development such as GSSMR can end up in the mess it is given the accumulated knowledge and experience of the State's management resources. But at least GSSMR presents in the one package a long list of lessons across all aspects for the type of development, ranging through project delivery, land tenure, town planning, development approvals, engineering and design, administration arrangements and long term sustainability.

As stated earlier, it has to be a fact that the GSSMR outcome was not intended, but equally it has to be recognised the State is the only party that can rectify the situation and one hopes the lessons learnt are noted to ensure such outcomes are never repeated.

The basic lesson seems to be the need to accept that sight must not be lost of the community interest and particularly that of the long term community established by the development.

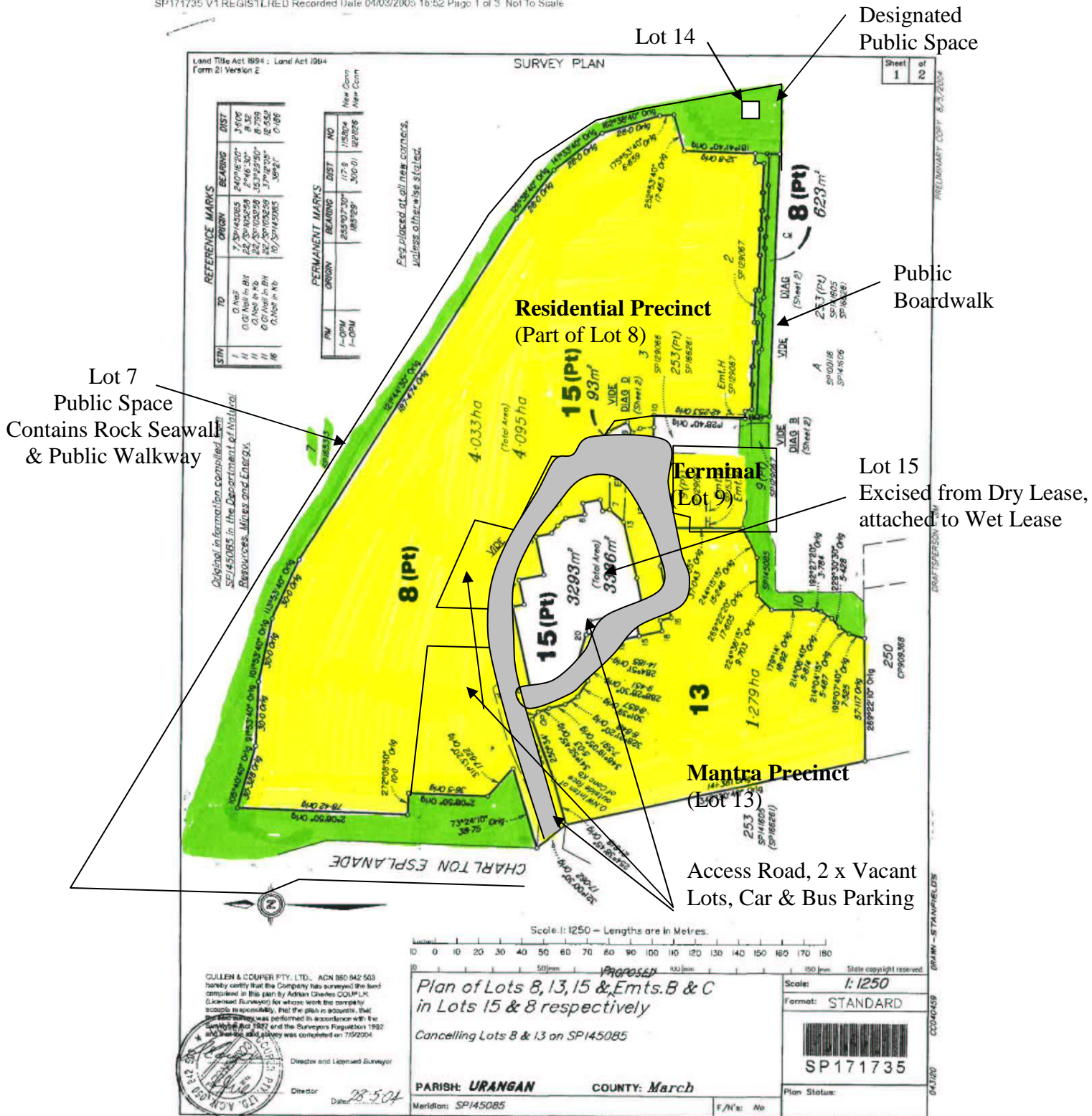
The Tenant's Association commends this submission for consideration to the Committee and stands available to contribute in any way the committee might find useful.

***The Great Sandy Straits Marina Resort Tenants Association Inc.***  
**3 August 2012**



## Appendix 1 SURVEY PLAN

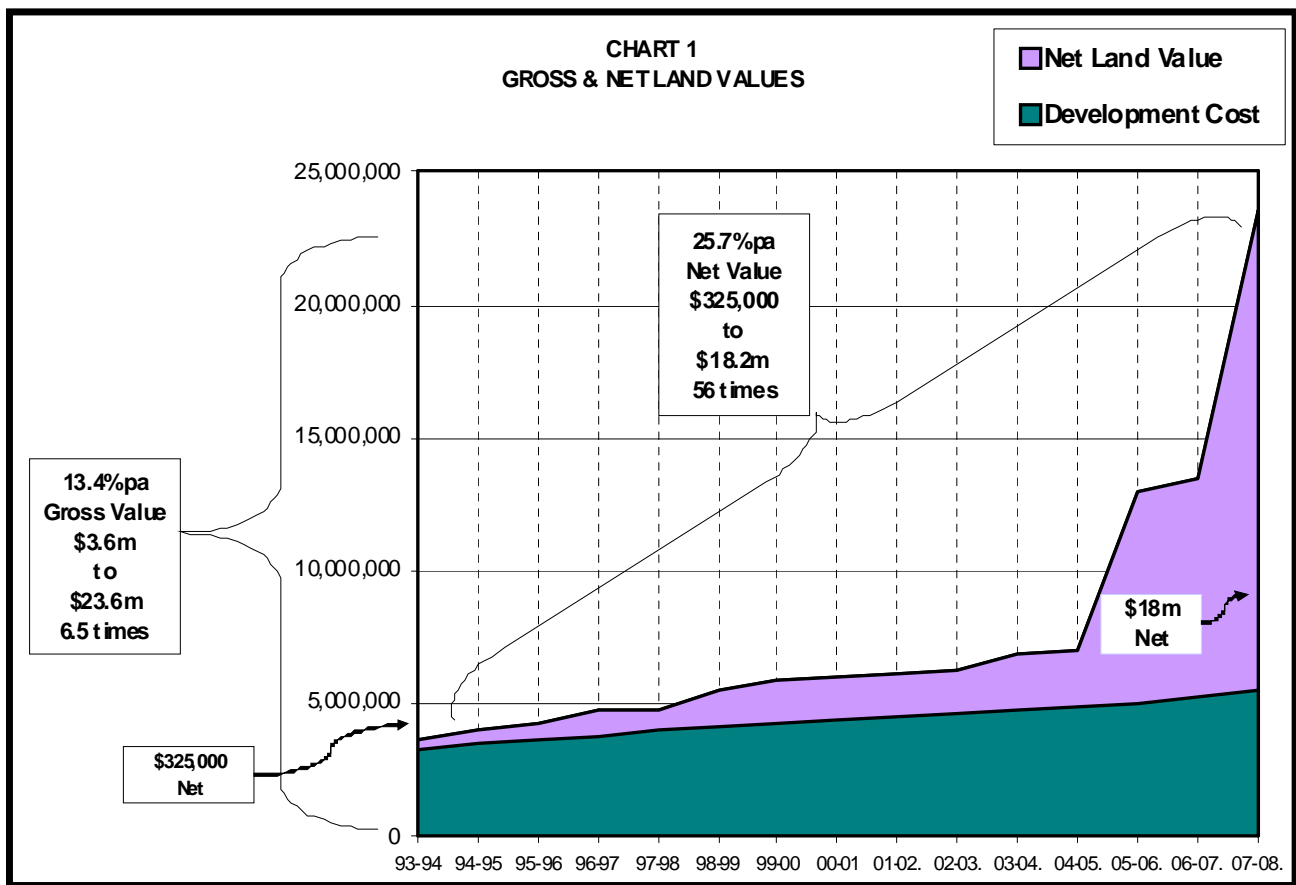
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GSSMR Dry Lease (green identifies public areas which include pathways, seawall, rock walls and boardwalks). Mark-up is schematic only and approximate.

## APPENDIX 2

### IMPACT OF STATE LAND RENT METHODOLOGY



FN 5 The above chart shows a plot of increasing State land values used to determine land rent<sup>5</sup>.

For development projects such as GSSMR the land value used is actually a 'NET VALUE', being the assessed GROSS LAND VALUE, (the mauve coloured plot), LESS the land development cost adjusted to current construction costs as the years pass (the green plot). For example, 2007-08 \$23.6m less \$5.4m gives \$18m net land value, which compares to \$325,000 net land value 1993-94.

Over time, as the growth in gross land value outpaces the growth in construction costs, the net land value and consequential land rent, begin to increase exponentially above the deducted land development cost.

GSSMR highlights the problem because, as it turned out, the project was commenced at a low point in the property cycle after the 1988 'Share Market Crash' and property prices took a long time to recover (particularly in Hervey Bay), apparently and curiously, coincidentally for roughly the same duration as the 10 year project duration. However, the average growth

<sup>5</sup> This chart is extracted from earlier work of the Association. The \$18m net land valuation is out of date and is now \$14.9m as a result of an appeal. Subsequently, land values have fallen below \$10m post the GFC. Adjusted the \$14.9m leads to Land Growth 12.7%pa and Land Rent 24.1% for 2007-08.

over the period shown 1993 to 2008 is not unusual for waterfront seaside land within tourist destinations since at least WW11 and even if evened out will give the same outcome – eventual crippling increases in land rent.

The same condition will underlie all similar type developments and particularly waterfront developments where land values in Queensland and particularly areas based on tourism, historically show long term growth rates typically above 10% compound per annum, many well above this rate, long term.

Thus, GSSMR stood exposed to a predictable growth rate in land rent in the order of 20% per annum, but the potential was well hidden from sub-lessees when making their purchase. Luckily for the State, this condition was not evident to sub-lessees until after the 10 year selling program was completed and the 10 years of depressed land prices in Hervey Bay.

It is a questionable undertaking played out on sub-lessees to cause the State land rent to be not explicitly stated in their sub-lease, to hide the methodology that results in land rent rising at double the increase in land value for years to come and not advise the potential for this to occur.

As shown in the chart above by 2008 GSSMR had suffered State land rent of increase of 25.7% average compound for 15 years on a land value rate of increase of 13.4% per annum. Subsequent land valuation appeals and falling land prices has seen these figures fall to be currently land growth 7.8% pa and land rent growth 16.7% pa compound for 19 years since 1993. Inevitably land prices can be expected to recover returning to higher rates again, although more likely to a lower trend.

(It is relevant here that the GSSMR precinct accounts are not mandatorily available to potential buyers under the lease tenure strategy, nor, did the developer's statements and budgets separate the land rent paid until 2001, 7 years into the occupancy phase).

It is understood the concept of deducting land development cost has been deleted from usual State land rent determinations. Therefore, it may be developers and sub-lessees will be paying the/a 'full' land rent from the beginning. However, it is unknown if this approach will be necessarily applied to the development phase of future projects. The GSSMR condition of initial low land rent has been seen by sub-lessees as a ploy to assist in the State and the developer achieving sales – so too was adopting a fixed 5% rate for sinking fund contributions when this should have been 15% to 20%.

The risk seems to remain that State land rent could be manipulated for future developments.

In any case, if the concept of deducting the development cost from land value is no longer applicable, the effect of increasing land rent will only become self evident earlier in the occupancy of a project, highlighting sooner that the concept of selling 999 year residential sub-leases is fatally flawed.

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**APPENDIX 3**  
**EXTRACT FROM GSSMR INTERNAL REVIEW SUBMISSION**  
**Freehold Application 1 April 2010**  
**Internal Review Submission 21 July 2012**

The following extract is the submission of The Great Sandy Straits Marina Association Inc. (Tenant's Association) enclosed in a request for Internal Review, submitted to the Department of Environment and Resource Management in response to the Department's current freehold offer.

**999 Year Sub-lease Value Analysis and Charts**

Included in this extract are charts with various examples plotted of the assessed property 'worth' of GSSMR sub-leases using GSSMR expenditure records from 1993 onward, extended to show forecast outcomes until sub-leases have (theoretically) zero worth. The potential of course will become predictable long before zero worth and thus lessees will continue to sell out at lower and lower prices until leases are abandoned.

For a quick view, refer to Chart 5 (Page 52) which shows a plot for a typical \$500,000 unit purchased in 2005 which could be facing an annual levy of \$100,000 per annum by about 2027 driven by land rent increases only – see Chart 4.(Page51)

Chart 5 shows unit value will tend to collapse from about 2010 onward (ignoring the GFC) and in theory will be worthless about 2030. However, long before sub-leases will become unsaleable and will have been abandoned. This Chart assumes a land valuation increase of 10% per annum leading to a land rent increase of 20% per annum similar to that experienced to date.

The GFC has additionally caused a significant drop in land values in Hervey Bay, at least improving the short term the land rent outlook. However, the eventual return to the trend in land values will only delay the inevitable by the years it takes for land values to recover post the GFC.

**Note:** The data set out in the following extract is based on earlier work of the Tenant's Association to 2008. Since 2008, the States net land valuation of \$18m shown (used to determine State land rent) has been appealed and adjusted to \$14.9m. Subsequent to the GFC this value has fallen to below \$10m.

The enclosed charts remain valid despite the recent significant falls in land values. Sooner, or later, increasing land values will return to trend – trend for waterfront land within tourist destinations. The only affect in respect of the charts and forecasts shown will be to perhaps to delay the inevitable outcomes by the current time for recovery of land values.

**EXTRACT**

Submitted under cover of application for Internal Review by Holman Webb, Lawyers, on behalf of Agreedto Pty Ltd, dated 21 July 2010.

The extract comprises "Appendix A to Attachment H of the application as follows:

**"Appendix A to Attachment H to Application for Conversion of Freehold of the Great Sandy Straits Marina Resort**

**Submission presented by and on behalf of The Great Sandy Straits Marina Resort Tenants Association Inc. (Residential Precinct)"**

And continues to Page 68>>>

***This is Appendix A referred to in the Attachment to the Application for internal Review of Original Decision lodged by Agreedto Pty Limited. (Application)***

***This submission has been prepared by and on behalf of The Great Sandy Straits Marina Resort Tenants Association Inc (Tenant's Association)***

***P O Box 7272***

***Urangan. Qld 4655***

***Pertaining to issues affecting not only the residential precinct but the development as a whole.***

**It is the position of the Tenant's Association that the purchase price set out in the offer is based on a flawed valuation process and that the value of the Land for the purpose of the freehold application should be Zero (\$0.00) for the reasons set out.**

**This submission is provided in support of the application by the head lessee (Agreedto Pty Limited) and we understand the issues contained herein are generally accepted by Agreedto Pty Limited in support of the Application.**

**The Principal Issues as raised in our submission are as follows:**

- (1) Land Value already extracted.**
- (2) 999 Year sub-lease flawed and is a general policy mistake.**
- (3) Responsibility for attached liabilities – and considerations of general exposure for the State.**
- (4) Relationship to new Urangan Boat Harbour Redevelopment.**
- (5) General issues of inequities.**
- (6) Social impact on perhaps 30% of sub-lessees (say 100 of 300).**

## INTRODUCTION

### *GSSMR Past Land Tenure's*

By way of opening comment it is worthwhile to set out the issues pertaining to the land tenure adopted in the past and the Tenant's Association concern as raised throughout this submission.

The State has on three (3) previous occasions granted significant change to the land tenure of GSSMR to the benefit of a Developer and the State in what became a need to develop investment security for the investors and residents (who funded the development) to ensure viable real estate as follows:

- (1) **40 Year Harbour Lease.** Records show that the GSSMR development was awarded under an initial investigation lease on the basis of implementing the development under a 40 year commercial harbour lease. The apparent objective of the State was to see a commercial resort and marina development under a single corporate owner in common with typical 30 and 40 year harbour leases throughout the State.
- (2) **75 Year Harbour Lease.** After several years of delay and project definition, and just before execution of the head lease, the developer issued an ultimatum that unless a 75 year term lease was adopted they would abandon the project (75 years being the maximum term under the Harbour's Act).

By this time the design concept included a residential precinct and the project funding was to be based not on funding by the lease owner, but by pre-selling 'off-the-plan' under contract residential and commercial sub-leases to the general public at values **equivalent to freehold values**. A 75 year lease was seen by the developer as the minimum term to secure sales at prices equal to freehold values to extract the land value to fund the public infrastructure.

The Minister subsequently agreed to a 75 year lease term that was solely intended to cause GSSMR property (primarily residential units under a 75 year sub-lease) to be seen as investment grade real estate.

- (3) **Perpetual Lease & 999 Year Sub-Lease.** The 75 year sub-lease was apparently recognised by the developer as the minimum to achieve sales, but limited the real estate market considerably. Many banks subsequently refused to fund construction finance and mortgages over sub-leases (and still do).

By about 1996/97 the lease term remaining had dropped below 70 years and the developer was seeking a means to secure the real estate value. Eventually the State adopted (proposed) a perpetual lease and approved the adoption of 999 year term sub-leases, again with the sole purpose of seeking to secure the developer's need to achieve sub-lease sales at equivalent to freehold values in an attempt to secure the investment quality of the property.

During 1997 the 75 year lease was cancelled and a new perpetual head lease implemented and the property transferred to the control of the Land Act (without reference to the 100 or so sub-lessees who by then held a 75 year lease over their residential unit).

After a further 10 years it has now become evident to sub-lessees that a 999 year sub-lease is not sustainable and will collapse well within 75 years. "Collapse" being the State land rent will become so significant that their only option will be to sell out and/or abandon their sub-lease.

It is now clear to any informed sub-lessee and potential buyer that the GSSMR sub-leases should not be treated as real estate, but treated as equivalent to an informal commercial expiring lease where any capital investment should be written off over 20 to 40 years then the lease abandoned as State land rent escalates.

It is clear that each of the three (3) past GSSMR land tenures were not suitable for residential real estate as now evident to sub-lessees and demonstrated by the implementation of policies adopted by Government for other State developments involving residential property. For this reason alone the land should simply be converted to freehold for the administration costs only.

### **Steps toward Freehold Application**

The project (GSSMR) was to extend over 10 years and was completed during 2003 (except for the issues of liability left behind by the developer FKP Limited).

With proper consideration to the interests of the community created, GSSMR should have been converted to freehold by project completion during 2003. Instead an unfortunate sequence of changes beyond the control of sub-lessees began to unfold that prevented an application to freehold being submitted until February 2008.

During 2003 and early 2004 FKP began a process to seek to transfer control of the GSSMR lease to sub-lessees and issued a draft constitution for consideration. Sub-lessees appointed an industry expert to assist in representing their interests to FKP and identified a number of significant issues that needed resolution before handover could be completed.

FKP were clearly faced with a dilemma in that they needed to exit the development and no other party other than the sub-lessees had reason to take over the GSSMR lease. It is also known that attempts by FKP to hand the public road and seawall over to public authorities were rejected. In addition, FKP were aware the property contained a series of liabilities with a potential non-recoverable exposure of several million dollars that exposed them to losses and compensation to sub-lessees.

However, by coincidence at the time, S8 Limited had entered the "management rights" market and were buying up management contracts throughout Queensland that in the past were usually traded between 'Mum and Dad' managers who operated on a 12% to 15% gross return. S8 were in a process of buying and consolidating these acquisitions into an ASX listed corporate structure where a yield of 3% to 5% was acceptable and in the process revaluing their investment presumably referenced to the lower yield.



The sub-lessee's expert representative had only one meeting with FKP later during 2004 and, as later became known FKP abandoned this dialogue to sell the GSSMR lease to S8 without reference to sub-lessees. The GSSMR lease sale was contracted about December 2005 and settled a year later in December 2006.

Sub-lessees were unaware that FKP had entered into a sale agreement with S8 until DNR (now known as the Department of Environment and Resource Management) advised sub-lessees about May 2006 that an application had been made to transfer the lease to the control of S8 Limited and granted time for sub-lessees to submit any objections that they may have had to the transfer. However, the sub-lessees apparently had no rights to prevent the transfer and the objections of sub-lessees were rejected by DNR and the sale completed late 2006.

Subsequently S8 ignored approaches of sub-lessees to resolve the dysfunctional GSSMR land tenure. However, before any progress could be made, MFS Limited commenced takeover proceedings of S8 about October 2006 settling about January 2007. Again MFS ignored approaches of sub-lessees to address their concerns. MFS subsequently collapsed having consolidated their management businesses within the Stella Group. The GSSMR lease is now managed by the Stella Group (now renamed the Mantra Group) controlled by an offshore equity manager CVC Equity through Voyager Europe Holdings SARL registered in the Channel Islands (as last searched).

It was not until about August 2007 some 4 months after Stella took control of Agreedto Pty Ltd in April 2007 that a representative of the Stella Group met with representatives of the sub-lessees and took seriously the advice of the need to convert the GSSMR lease to freehold. Stella advised of their agreement to submit a freehold application during September 2007. The application was finally submitted about 1 February 2008.

The above situation only occurred because sub-lessees had no authority to seek a solution to the GSSMR land tenure at completion of the development in 2003 and prevent the sale of the lease. The conditions of Clause 19.1 of the original 75 year lease which gave considerable rights to sub-lessees had been removed as sub-lessees were to discover in a letter from the Minister dated 21 February 2006 thus eliminating any facility for sub-lessees to force a solution.

It was the combination of removal of Clause 19.1 and the unfortunate sequence of transfer of ownership of the GSSMR lease from control of FKP Limited to the transient corporates of S8 Limited and then MFS Limited, both of which had no concern for the interests of sub-lessees which led to the substantial delay in submitting the GSSMR freehold application. It has then taken another 18 months to respond to the application.

A number of further propositions are presented and set out in the various Parts below. Many of the heads of argument are common to all options and all matters raised should be considered in considering each issue raised.

The following issues are given in addition to issues raised independently by Agreedto Pty Limited.

## ***PART 1 – LAND PRICE SHOULD BE NIL – PAID FOR ALREADY***

The land should be converted to freehold without further cost, other than administrative costs, for the reasons set out herein.

Further, it is the position of the Tenants Association that the State should take over the public lands and infrastructure for the reasons given as set out below. However, it is acknowledged that this is a separate issue to the valuation of the Land to be freeholded, but raised in any event so that the Minister can more clearly understand the issues at hand.

It is proposed that the sub-lessees will continue to push for appropriate control of the public lands (by appropriate bodies) outside of this application but the propositions are put forward as a self guide as to the importance of giving consideration as to why the value of the purchase price for the freehold land should be Nil.

### ***1.1 Land Already Paid For***

The fundamental concept sought by Governments for developments such as GSSMR is to extract the land value to fund a public facility by conditionally granting the land to a successful bidding developer to fund the associated public works and tender any difference in value for the project.

Usually the land value essentially equals the value of the required public works plus a positive or negative tendered sum. The value of (the cost of) the land is thus built into the market prices allocated by the developer usually to each of the elements of some form of strata titled mixed use residential, tourist accommodation and commercial property.

The concept of extracting the land value is the typical means by which many such State projects and associated public infrastructures are funded – the land value is extracted to fund the public infrastructure.

Usually it is the public works that is the central reason for the development. In the case of GSSMR the main objectives were to deepen the harbour by dredging, build what was then the largest small boat, boat ramp in Queensland and construct a ferry terminal and shopping arcade serving the tourist industries of Fraser Island and Whale Watching. None of this infrastructure was provided free, but is represented by the value of the land extracted by the Government tender process and by deliberate intent built into the sale value of GSSMR's 285 residential units, 15 shops and other lesser land uses sold off to the general public.

Until recently, record shows that GSSMR residential units were originally marketed, and have been subsequently **traded and valued at freehold unit values** over the years. Thus GSSMR sub-lessees have already paid for the land in their 75 year and 999 year sub-lease purchase. In fact, this can have been the only intention of the State.

Please also see commentary in Items 1.3 and 1.4 below regarding the multiple payments made by sublessees to date.

As such, as well as being simply inequitable to charge any further purchase price, the Minister must subscribe to a Nil purchase price when considering the original decisions to commit to the past GSSMR land tenures.

## ***1.2 999 Year Sub-Lease Fatally Flawed***

Central to maintaining the equivalent of freehold values for GSSMR units was the conversion during 1997 of the original 75 year harbour lease to a perpetual lease with 999 year sub-leases over residential units. There can be no doubt that the sole purpose of the introduction of the 999 year sub-lease was to maintain property values and security equivalent to freehold and to move from the decaying asset of a 75 year sub-lease which was increasingly difficult to sell. By 1997 it had become clear to the State and the developer that the 75 year lease needed to be replaced.

However, as sub-lessees have become aware, the 999 year sub-lease implemented by the State under the Land Act with the consequent State land rent will destroy the investment value of the sub-lessees probably from about 15 to 20 years into the life of the development in the case of property like GSSMR. It is now evident to sub-lessees their investment could very well have no value within about 30 years and from now on sub-leases will become increasingly unsaleable. In fact, a fully informed potential buyer would now (15 years into the development) not buy a GSSMR lease under any circumstances (other than to write-off any capital and expect to stop paying land rent at some future stage when the rent becomes personally unaffordable – an improbable undertaking).

Under the Land Act the land is valued equal to surrounding freehold land and the rent then calculated as 5% of the net land value (after deducting the original development cost). The critical issues for the GSSMR land are that:

- (i) The land is prime waterfront land and thus, as State wide record shows, its value can be expected to outpace inflation significantly. Record shows the GSSMR land value has increased at a compound rate of 12.3%<sup>6</sup> pa since commencement 1993.
- (ii) The method of calculation of land rent leads to an underlying (and hidden) growth rate in land rent about double the growth in land value. The GSSMR record shows the land value has increased at an astounding compound rate of 24.1 % pa (20.0% adjusted) since commencement during 1993.

It is just not credible to think that any member of the general public looking to buy a GSSMR sub-lease could be expected to be aware of the potential for the State land rent to increase at a compound rate of nominally 20% pa<sup>7</sup> long term. It is considered that if all potential buyers were informed of the facts no GSSMR sub-lease would have ever been sold and the development would not have proceeded. In fact, many professionals, banks and lawyers will not deal with GSSMR as secure real estate.

The State is in addition arguably complicit in the non-disclosure of the predictable growth in State land rent which, due to the methodology imposed by the State has resulted in an average

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<sup>6</sup> Note: All financial data leading to cost data set out herein is based on the land valuation of \$18m at 2007-08 and does not reflect the result of the subsequent Land Court appeal that resulted in a revised valuation of \$14.9m. The impact of this later valuation is relatively small. The above 12.3% pa adjusts to 10.8% pa 1993-4 to 2009-10 (and the 24.1% pa below changes to 20.0%). Updated figures can be provided if required, however, the principal of the issues raised throughout this submission remain unchanged.

<sup>7</sup> This 20% pa is derived from the current land value of \$14.9m – see also Footnote 1.

compound rate of growth of State land rent of about 20% pa - about double the growth in land value.

The long term effect of the growth in land rent can only mean a depreciating capital value for a sub-lease. Annexure 2 sets out charts for typical GSSMR units showing that a 999 year sub-lease will be worthless about 30 to 70 years into the lease depending on the land rent growth rate experienced. At the GSSMR land rent growth rates to date, a typical \$500,000 unit (sub-lease) 'purchased' in 2006 will be worthless by about 2030 (see Annexure 2 Chart 5 – 20% pa Land Rent).

The condition of approaching worthlessness is now becoming increasingly evident to GSSMR sub-lessees and potential buyers as annual levies increasingly become higher relative to other Hervey Bay properties and investment returns fall to zero (they are about zero now, or less).

During the early years of the GSSMR, State land rent was not significant to sub-lessees, but has now become significant and the future can only be the land rent will become crippling for rich and poor alike. The increasing levy has already driven out many residents and investors on pensions and low incomes – many others are now trapped unable to sell.

The GSSMR lease is now 17 years into its term and the future is now evident to informed buyers. Some recent sales have occurred only because the buyers are uninformed and/or are now assuming freehold will occur. For informed buyers a GSSMR sub-lease, if it remains leasehold, should have no value under any normal property investment circumstances.

Clearly, the transfer of the land to control under the Land Act and conversion of the land to a perpetual lease with 999 year sub-leases, and making the land subject to State land rent and also subject to the freeholding conditions of the Land Act, imposes a terrible injustice on the sub-lessees who have made their purchase in good faith without ever comprehending the prospect that the land rent could be increasing at a compound rate of about 20% pa.

Clearly the land should have been converted to freehold at commencement of occupancy at no additional cost for the land as occurs with other State projects. Certainly no other State development involving prime residential water front land can nor would adopt the GSSMR perpetual lease and sub-lease structure.

Granting of a 999 year sub-lease halfway through the development phase of GSSMR effectively gave away the land to a time frame essentially equivalent to freehold ownership. Granting freehold at no further cost to sub-lessees now simply completes the process of providing sustainable land tenure as was intended.

### ***1.3 Land Value Paid Over and Over***

As a consequence of the transfer of the land during 1997 to bring it under the control of the Land Act and the failure of the State to address in the perpetual lease long term sustainability of the GSSMR, sub-lessees now face the affect of ever increasing land values significantly outpacing inflation.

State land rent has now risen to the level where sub-lessees pay every three (3) years land rent which equals payment of the total value of the land at project completion during 2003. Such a

repeating payment of the land value as State land rent is not a viable investment for sub-lessees. It is outside the realms of fairness that the State again seeks to have sub-lessees pay for the land a third time.

#### ***1.4 Accumulated Rent***

Any inspection of the GSSMR land tenure structure would show that instead of converting the original 75 year lease to a perpetual lease with 999 year residential sub-leases, the property should have been instead converted to freehold on completion of construction (which will be adopted for the new Urangan Boat Harbour Redevelopment and which has been applied to other similar mixed use developments located on State land). In these circumstances the accumulated rent paid to date by sub-lessees should be treated as a contribution to the land value and deducted from the land value.

Land rent paid to June 2010 is estimated to be about \$3,415,000. It is also thought that some penalty charges may have been incurred due to late payment which should be accounted for as contribution. Any late payments are outside the control of sub-lessees.

### ***PART 2 - GSSMR POLICY MISTAKE***

The strategy and structure of the GSSMR development is a consequence of a policy mistake on three (3) basic counts as follows and the land should simply be converted to freehold at no further cost to sub-lessees (unit owners):

- (i) Basic Policy
- (ii) 999 Year Sub-Lease Fatally Flawed
- (iii) Lease Dysfunction

#### **(i) Basic Policy**

There is no doubt that if GSSMR were to be repeated at least the residential areas of GSSMR would be converted to freehold prior to completion of construction and settlement of unit sales without further cost to unit owners (sub-lessees as they are currently). The best test for this proposition is to assess whether or not the land tenure structure imposed on GSSMR sub-lessees would be repeated and applied to new projects, for example, to the adjacent proposed new \$800m Urangan Boat Harbour Redevelopment Project. It is certain this will not occur because GSSMR is a policy failure and there is no chance of a successful unit marketing programme for the new development given the experience of the approximate 300 GSSMR sub-lessees.

It is suggested that the GSSMR land tenure concept should have been reviewed when the developer undertook a major redesign review to move from a major commercial tourist resort to a largely significant residential development comprising the 13 buildings of similar design now constructed. Instead of a significant commercial tourist venture, the property became largely residential with the later addition of a downgraded motel/hotel structure relocated from the prime beach and bay frontage to the lesser marina frontage (now the Mantra Precinct).

Instead of addressing the needs of the community interest created for what became a major residential development, the only objective became the selling of units at freehold values so as to fund the development. The later adoption of the 999 year sub-lease served this purpose.

The underlying issues of lease dysfunction and future cost increases were not detectable by most market participants, including many but not all, valuers, banks, conveyancing solicitors and agents. Enough of these professionals have been sufficiently compliant to facilitate sub-lease sales, but nevertheless and inevitably as some have warned, the GSSMR lease structure “will come unstuck one day”. GSSMR is a policy mistake that will never be repeated and as such GSSMR should be reconfigured and delivered as would occur and has occurred with any other similar State project.

**(ii) 999 Year Sub-Lease Fatally Flawed**

As set out under Item 1.2 above the 999 year residential sub-lease (or the 75 year lease) has no prospect of financial viability in the real estate market beyond about 15 to 25 years and they can be expected to be abandoned within about 30 to 50 years. On this basis alone GSSMR should be reconfigured to properly stabilise the investment of those who have purchased sub-leases.

Either land rent should be fixed at the ratio existing at project completion perhaps subject to inflation adjustment only or more correctly at a peppercorn rent such as adopted at Southbank, or, the lease concept abandoned and the property converted to freehold.

**(iii) Lease Dysfunction**

The GSSMR lease and sub-lease structure is so seriously flawed in its structure and detailed administration that the only practical solution is to abandon the lease and convert the property to freehold. The lease structure provides no consumer protection, no sensible property transfer process, requires something like at least \$4,000 to \$6,000 in legal fees to undertake transfer from vendor to buyer each time a sub-lease is sold as well as the cost to the State to administer.

The sub-lessees representative body has no authority and should arguably be abandoned as its existence misleads potential buyers implying that there is some form of authority over their investment when there is none.

The cost structures of the sub-leases have significant drafting flaws and ambiguities and should be abandoned on this account alone.

For example:

- The sub-lease dictates a sinking fund contribution of 5% pa of expenditure. This knowingly understates the need by a significant margin. Industry figures indicate 15% to 20% to be usual, yet this 5% condition forms part of a specifically approved sub-lease approved by the State.
- The proportions stated in the sub-leases for each precinct to (presumably) share the common area costs add to about 85% leaving about 15% unfunded, or, currently about \$200,000 pa unfunded. It is believed this is not a mistake **but represents an intention** to hand over the public areas and infrastructure to relevant public authorities – the 15% relates directly to (and is) the area of these public lands.
- The residential sub-lease conditions are silent on the responsibility of sub-lessees for costs arising out of the substantial infrastructure within the GSSMR lease (eg; the seawall and marina rockwall, public access road and roadside works, sewerage pumping station, the pedestrian public boardwalks etc.). These works have a cost of construction in the \$100,000's and were an integral part of the project before the

sub-leases were drafted and selling commenced. Yet the sub-leases make no reference to any responsibility for their costs of ownership, yet detail responsibility for numerous trivial precinct costs, separately identifying costs related to taps, toilets, light switches, toilet paper, soap, telephone handsets and numerous others. Even the much later Mantra Precinct sub-leases (occupied from 2003) make no reference to the substantial public infrastructure.

The oversight of the substantial public infrastructure was not a mistake, but a plan not declared in the sub-leases, to hand the public lands and infrastructure to the relevant public authorities – the 85% proportion issue above supports this view from the point of view of sub-lessees.

- A further element of the dysfunctional lease structure is that the 110 Manta sub-leases and the Terminal sub-lease provide for these precincts to be excised and placed on their own head lease. This proposal appears to be a partial step towards the intended dissolution of the GSSMR lease. However, this excision provision does not address how the public lands and infrastructures left behind are to be dealt with – again it appears the intended plan was for the public lands to fall to the control of relevant authorities.
- The Residential Precinct contains at least two (2) forms of sub-lease; a 75 year lease (about 40) and the remainder a 999 year sub-lease. Each has different conditions for sharing of General Outgoings (Clause 5.1.2 (n) ); the 75 year sub-lease states 40% and the 999 year sub-lease a formula “AxB/C” leading to disputed outcomes.
- The head lease/sub-lease property tenure has numerous administrative problems ranging from sharing costs, interface between precinct and sub-lease costs sharing/responsibility, differences between sub-leases within precincts, sinking fund provisions, GST on rates, conveyancing, insurance, etc.<sup>8</sup>
- Unlike the BCCM Act which has a large body of accumulated knowledge defining the relationship between unit owners, the sub-lease is very limited and additionally adds numerous uncertainties with the additional relationship between sub-lessees and a head lessee.

The various GSSMR sub-leases are documents approved by the State by specific signing-off by the relevant Department at the time. There was clear intent by the State that GSSMR sub-leases should take the form adopted.

To rectify the GSSMR situation the State should simply accept the lease structure should be abandoned and converted to freehold without further charge for the land. It is noted here that the State has on three (3) previous occasions converted the GSSMR land tenure by Ministerial/Executive decision at the request of and to the benefit of a Developer without recourse, on each occasion seeking to secure viable real estate value, albeit without long term success. Conversion to freehold will provide a certain outcome.

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<sup>8</sup> The leases do not address how the difference in value between a 75 yr and 999 yr sub-lease is to be dealt with for conversion to freehold?

## ***PART 3 – LIABILITIES: CONSIDERATION FOR STATE***

### **Introduction**

In addition to the issues raised above, the Tenant's Association considers that there is in fact a significant liability which has not been considered in the valuation process – which attaches a significant liability to the Land(s).

The freehold offer by its stated conditions, attaches the Land to be freeholded to adjoining Crown leasehold tenure. There is significant incumbent liability attached to the leasehold tenure as well as the proposed freehold land which must be taken into account in determining the purchase price.

### ***3.1 Existing Liabilities \$12.7 million***

It is the Tenant's Association position that the actual status of GSSMR as delivered by the State means the State is required to pay to the sublessees the amount of \$12.7m to place sub-lessees in the position they would have been if the GSSMR land tenure had been properly dealt with in the first place.

Whilst the Tenant's Association sincerely believe that such liability exists, it also raises the issues so that the Minister can more fully appreciate the potential benefit to the State should it grant a zero valuation for the purchase price.

The basis for the claims is set out as follows:

The GSSMR development represents a serious development failure of the State. The principal oversight of the head lease is that it is silent on an exit strategy for the developer. As a consequence the development has been left with liabilities estimated to be an exposure of \$12.7m as set out below and in Annexure 1.

The original GSSMR development strategy assumed the developer would control the property for the term of the lease (originally a 40 year commercial harbour lease), but then the developer subsequently proceeded with a strata sub-lease title structure to progressively sell off all interest in the development, including any operational profits and set up a sub-lease structure to the approval of the State that assumed the public land and infrastructure would be taken over by the relevant public authorities.

Under the earlier 75 year sub-lease, so as to ensure the interests of the sub-lessees were protected, the lease included a provision that if the developer wished to transfer (sell) the GSSMR lease they had to obtain the written approval of all GSSMR sub-lessees - an impossible undertaking that may only have been achievable under a Court order with significant majority in favour and on terms acceptable to the sub-lessees.

The State's lease fails to recognise that at the completion of the development phase the developer required (and in fact the community expected) the residential and commercial units to be sold out to a self managed community structure. GSSMR became a community of interest rather than a single owner resort development as originally contemplated.



Clearly the only way the developer could exit the development and head lease (an inevitable outcome) was for the developer to transfer control of the lease to the sub-lessees and ipso-facto, in a condition acceptable to the sub-lessees.

Given the contractor had sold out all interest in the property including all income earning interests there was nothing left to sell but to dispose of any attached liabilities (of which there are many). Thus, to exit the development the developer would have to rectify any defects, or, alternatively, compensate sub-lessees on a negotiated basis acceptable to the sub-lessees.

Clause 19.1 of the 75 year lease ensured the developer could only practically hand over the lease to the control of the sub-lessees and ensured that this could only occur on an agreed basis (to an acceptable standard). This clause also meant the State did not have to be involved in ensuring the proper design and construction of the development because to exit at completion, the developer had to be cognisant of the demands of Clause 19.1 (although, it seems in the event the developer failed to recognise this obligation, somehow expecting to muddle through).

During 2003 the developer approached the sub-lessees to seek to hand over the head lease and it is known had reached the position of recognising that they would have to pay compensation to exit the development in face of the attached contingent liabilities. An amount of compensation was never discussed because at that point S8 Limited (since placed in Receivership) were rapidly buying up management rights throughout Queensland. It is considered in the case of GSSMR, S8 purchased without proper due diligence because they actually paid the developer \$660,000 for the head lease when the sub-lessees had at the time identified at least \$4m in liabilities that needed to be addressed.

As sub-lessees were to later discover the conditions of Clause 19.1 were removed from the head lease by the State during the development of the perpetual lease entered into during 1997, thus removing any impediment of the developer's to opportunistically sell out.

It is obvious that any potential buyers of a sub-lease would expect the development to comply with usual standards of development found throughout Queensland and Australia – that is usual and common building and engineering standards. However, due to a lack of control over the development by the State the developer has been able to on-sell the head lease with substantial design and construction defects as follows:

### **3.1.1 Public Lands & Infrastructure**

The GSSMR lease structure has a major flaw in respect of the public infrastructure. The head lease clearly makes the head lessee responsible for the public lands and contained infrastructure, while the 285 residential sub-leases make no mention of the existence of these substantial works. For this and other reasons it is apparent both the State and the developer had an expectation that relevant authorities would take over this infrastructure - it being inevitable the developer would seek to sell out and had this process in hand throughout the latter years of the development.

Other dysfunctional conditions of the lease structure mentioned above also determine the State expected to take over the public lands. The consequences are sub-lessees carry no responsibility for the public infrastructure.

The State will be aware that at least the seawall, inner harbour rockwall, public boardwalks, main public access road, are each substantially deficient in design and/or construction standards. So much so, that neither any Department, nor the local Council has been prepared to date to take over these public facilities.

The sub-lessees have also had no opportunity to seek proper standards for these works, nor could they have been aware of the issues at the time of purchase of their sub-lease even though their funds ultimately funded their construction.

It is iniquitous that sub-lessees have been placed in the position by the State that they are being asked by the State to take over the responsibility for these works and lands when the State is not prepared to and when the State set up the property structure that facilitated the sub-standard development and caused sub-lessees to fund the works without any authority over their acceptance – and in fact half way through the development and sale of sub-leases the State removed the only authority and only opportunity sub-lessees had to demand rectification or compensation from the developer – that is the removal of the conditions of Clause 19.1 from the head lease.

If it is intended sub-lessees take over responsibility for the public lands and contained infrastructure, as indicated in the first offer under a 50 year State lease, two (2) sources of cost arise:

- (i) Rectification of infrastructure to normal engineering standards,
- (ii) Ownership costs over the term of the 50 year lease.

**(i) Rectification of Infrastructure**

The following works at least are alleged to be defective and/or sub-standard. The provisional assessments shown are subject to detailed professional investigation and estimate:

	Provisional Assessment
• Seawall – design and construction standards (see Item 3.3 below):	\$800,000
• Marina rockwall – defective rock (Dundowran Rock) underneath boardwalks:	\$300,000
• Main Public Access road – does not meet Council standards:	\$400,000
• Boardwalks – near end of life after just 12 or so years:	\$300,000
• Sewerage Pumping Station (pump replacement – requires inspection)-allow:	\$50,000
• Power Distribution – requires total upgrade for load – potentially:	<u>\$750,000</u>
Rectification of Public Infrastructure – provisional assessment:	<u>\$2,600,000</u>

The sub-lessees have had no authority over the standards of design and construction of these works. If GSSMR were a commercial development the owners would bear the risk of the construction and defects would be their problem, but selling off strata-titled sub-leases imposed a responsibility on the State to ensure proper standards and to protect the community interest. The sum of this assessment should be borne by the State or deducted from the land value.

## **(ii) Ownership Costs – 50 Year Lease**

Allow provisionally a sum of \$50,000 pa to maintain and repair the public infrastructure. Gives \$2.5m for a 50 year lease term. Allow provisionally \$2.5m subject to professional analysis.

- Ownership Costs of Public Works – 50 years: \$2,500,000

It is considered the consequences of a significant storm event are uninsurable due to the defective design criteria surrounding protection of the Residential Precinct buildings and grounds. Thus allow the costs of one (1) significant storm event over 50 years (flooding of 25 ground floor units and loss of landscaping – assumes no damage/collapse of buildings consequent on failure of the north seawall):

- Uninsurable Storm Event - allow one (1) significant event: \$1,500,000  
Exposure attached to 50 Year lease: \$4,000,000

Total exposure attached to public lands and public infrastructure: \$6,600,000

### **3.1.2 Property/Building Sinking Funds**

The State approved sub-leases provided for an annual sinking fund contribution of 5% pa of annual expenditures, which manifestly understates the need which should be in the order of 15% to 20% pa. This provision is included in the State approved lease and assisted the developer to sell out sub-leases by understating the required annual contributions while at the same time the State's BCCM Act 1997 required all freehold property establish sinking funds leading to proper contributions. The State at least clearly ignored its own knowledge base as expressed in the BCCM Act in approving the GSSMR sub-lease sinking fund provisions. No head lessee to date has addressed the sinking fund needs of the development.

The State approved the form of sub-lease including the inadequate sinking fund provisions. This gave the appearance of low annual costs to help garnish investment capital of the general public by selling sub-leases to fund the GSSMR development.

The result is that after about 17 years of occupancy, the sinking fund of the Residential Precinct in particular is significantly underfunded. A recent sinking fund analysis commissioned with a professional quantity surveyor shows the Residential Precinct to be about \$3m under-funded, or, about \$16,000 per unit<sup>9</sup>. This liability has to be dealt with in the near term and is additional to any costs to freehold GSSMR.

A professional analysis of sinking fund requirements for the Mantra Precinct has yet to be undertaken. A provisional sum of \$1m has been provided herein to allow for the Mantra sinking fund, subject to a professional analysis.

The Mantra Precinct did not settle until 2003 and by 2003, bodies corporate State-wide had been operating sinking funds for over 5 years with contributions typically three (3) or four (4) times the State approved Mantra sub-lease, yet the Mantra sub-lease still included the 5% contribution condition.

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<sup>9</sup> These figures include a provision of \$750,000 for the required upgrade of the power supply to the Residential Precinct – the subject of a recent review by an independent consulting engineer following power outages.

The State leasehold structure makes no provision for disclosure of the accounts or status of the buildings and surrounds. Many sub-leases have been resold over the years with the result new owners have unknowingly incurred the accumulated liability attached to their sub-lease (if in fact, this is not a legal liability of the head lessee). It has only been through the efforts of the Tenant’s Association that the facts of the situation have been identified through undertaking a professional sinking fund analysis and other engineering review to find sub-lessees face accumulated building liabilities estimated to be about \$3m.

The State is arguably culpable for the GSSMR sinking fund situation and the fact that there is no mandatory disclosure of the facts during a sub-lease property sale. It is considered the effect of the sinking fund burden should be taken into account in assessing the land value to be borne by sub-lessees. A new potential buyer of a sub-lease, if aware of the situation, would seek to reduce the asking price by this liability as should an informed Valuer, thus devaluing the property to this extent.

The sinking funds of the buildings after up to about 17 years of occupancy by sub-lessees are provisionally assessed to be under-funded as follows:

• Residential Precinct	\$3,000,000
• Mantra Precinct	<u>\$1,000,000</u>
	<u>\$4,000,000</u>

No provision has been made here for sinking funds to cover public infrastructure. However, a provisional sum of \$50,000 pa has instead been adopted as set out in Item 3.1.1 (ii) above, Ownership Costs – 50 Year Lease.

**3.1.3 Summary Liabilities of the State**

Based upon the above provisional assessments the total liability attached to the GSSMR property considered the State’s responsibility is:

• Rectification of Public Infrastructure:	
	\$2,600,000
• Ownership of 50 Year Lease (public lands):	
	\$4,000,000
• GSSMR Sinking Funds:	
	<u>\$4,000,000</u>
	Sub-Total
	<u>\$10,600,000</u>
• Contingency for Risk	

If sub-lessees are to take over all these liabilities a contingency sum of at least 20% should be added to account for risk giving a potential exposure of sub-lessees as follows:

	20% of \$10.6m gives:	<u>\$2,100,000</u>
• Total Exposure of Sub-Lessees:	Adopt	<u>\$12,700,000</u>

The \$12.7m liability which attaches to the responsibilities of the State does not address any poor building design and construction details within each precinct and which unfortunately are significant in themselves. These matters are accepted without prejudice herein at this time as being sub-lessees risk in common with any other property purchase.

In other circumstances the land tenure of GSSMR would have been converted to freehold at completion of the development without additional cost to the sub-lessees and the public infrastructure design and construction completed to acceptable common community standards. The same standards should now be applied to resolving the GSSMR land tenure.

If sub-lessees are to bear the cost of the land, which is considered unreasonable and inequitable, the cost should be assessed as the land value less the attached liabilities that a prudent buyer of GSSMR would assess, being nominally the \$12.7m assessed as set out herein.

### **3.2 Seawall Reconfiguration**

The seawall to the northern boundary of GSSMR requires additional consideration to the rectification works allowed for above under Item 3.1.1 (i) above. Three matters require resolution:

- (i) Design and Construction Rectification
- (ii) Public Access
- (iii) Construction Access and Public Access New UBHR Project

#### **(i) Design and Construction Rectification**

The new (2003) northern seawall has the following design and construction issues:

- a) Design. The new seawall is designed to withstand a 100 year storm event, but the design criteria ignored the proximity of the adjacent buildings which are now exposed to “green water” wave overtopping, probably for less than a 20 year storm event, when the standard should be at least a 100 year event. In addition the seawall configuration does not provide for maintenance access and nor is there a 6m offset from buildings and a formed public pathway as proposed in the original GSSMR development plans.
- b) Construction. The new seawall does not comply with the approved construction drawings in some significant ways including:
  - A vast amount of facing rock and crest rock is significantly under-size.
  - The substantial cut-off wall shown on the drawings has not been provided.
  - The rock used is considerably fouled by ‘fines’ crusher-run material.

It is surprising that the seawall has been accepted by the relevant authorities as compliant with the design and approved specification.

#### **(ii) Public Access**

The existing public thoroughfare access along a grassed surface has reached its pedestrian traffic limit due to the increasing population surrounding the harbour area. The population to be added to the Urangan area by the new UBHR Project and surrounding land redevelopment will increasingly make a grassed public walkway untenable. The current thoroughfare falls very short of usual community standards adopted for foreshore public access. In addition, the offset to the adjacent buildings of near zero to the pathway (to Lot 7) falls well short of the 6 meters originally proposed and not provided by the developer. The pathway configuration was a significant source of dispute during the course of development of GSSMR in not meeting the required design layout standards at the time.

One option is to close this informal route to the public and provide pedestrian harbour access via the existing purpose designed Council foreshore bicycle/pedestrian walkway leading to the Marina and Boat Club and other waterfront pathways and boardwalks.

(iii) Construction Access and Public Access New UBHR Project

The new Urangan Boat Harbour Redevelopment (UBHR) Project includes provision of a public walkway around the perimeter of the harbour including along the route of the northern seawall (as known to sub-lessees). In addition, it is understood the harbour entry breakwater structures are to be modified and extended as part of the UBHR Project. This work will require construction access for heavy equipment along the location of the GSSMR seawall.

It has been proposed by the Association in a submission to the UBHR Project Departmental manager that provision of either or both of these aspects be combined with the necessary rectification works by reconfiguring the existing seawall to a cross section similar to that proposed within the Harbours Corporation about 1990 when originally planning GSSMR.

Any settlement of the GSSMR land tenure needs to address how the status and future use of Lot 7 and the contained northern seawall is to be resolved.

A provisional estimate of \$1,000,000 is allowed here to reconfigure the seawall, form a paved access walkway/heavy vehicle roadway, and provide discrete pedestrian walkway lighting. It is noted here reconfiguration of the seawall would have the effect of offsetting the rectification provision of \$800,000 allowed in Item 3.1.1 (i) above.

Allow: \$1,000,000

### **3.3 Removal of Essential Consumer Protection Clauses by State**

A significant failure of the restructure of GSSMR from a 75 year harbour lease to a perpetual lease under the Land Act was the removal of Clause 19.1 from the conditions of the original lease.

This clause required written approval of all sub-lessees to be given to the transfer of the head lease. In effect the clause ensured sub-lessees were the only entity that could have an interest in taking over GSSMR. The clause ensured the developer would work towards proper completion of the development such as to ensure the development was completed to a standard reasonably capable of being acceptable to handover to sub-lessees – it being inevitable the developer would require to exit the development when all elements were sold out.

Clause 19.1 also prevented the head lease being sold to an entity that was not acceptable to sub-lessees. In fact, there was no prospect of any other party buying the GSSMR lease once developed because all interests and sources of profit had been contracted away and property sold out by the developer.

Removal of the conditions of Clause 19.1 removed substantial property rights of sub-lessees even though they were the sole parties who funded the entire GSSMR development including the substantial public infrastructure and the developer's profit. The deletion of Clause 19.1 was undertaken by the Government without reference to and without the knowledge of sub-lessees. This action appears prima facie to the Tenant's Association to be a major legal damage to the lease structure.

At completion of the GSSMR development during 2003 the developer entered into negotiations with sub-lessees to take over the development under a community scheme arrangement. A draft constitution was issued by FKP Limited for consideration of sub-lessees. In response sub-lessees brought to the attention of FKP a series of issues and liabilities attached to taking over the head lease. It was known by all parties that a financial settlement in favour of sub-lessees would be necessary to complete a handover.

Unknown to sub-lessees (who were mistakenly relying on Clause 19.1) the clause no longer existed and S8 Limited had moved into the Queensland market to acquire as many 'Mum & Dad' management rights contracts as they could. Without reference to sub-lessees FKP sold the GSSMR lease to S8 while still holding out the prospect of handover to sub-lessees. For reasons considered to be inadequate due diligence, S8 paid \$660,000 for the GSSMR lease when the sub-lessees considered the lease contained several million dollars in contingent liabilities.

The removal of Clause 19.1 by the State meant sub-lessees had removed from them their rights to force a proper completion and settlement of these contingent liabilities now assessed to be in the order of \$12.7m as set out in Item 3.1 above.

It was always axiomatic that FKP limited would exit the development on completion because all financial interest had been sold out and any profit had been contracted to the managers and others. There was no commercial benefit in holding the head lease, in fact, the reverse.

Consequent on the removal of Clause 19.1, the assessed amount of contingent liabilities attached to the land should be considered in the valuation attached to the Land in delivering the purchase price – provisionally estimated to be \$12.7m as set out herein.

#### ***PART 4 - NEW URANGAN BOAT HARBOUR REDEVELOPMENT PROJECT***

It is the Tenant's Association's position that the State is bound to deal with GSSMR on the same terms as the new Urangan Boat Harbour Redevelopment (UBHR) project. GSSMR cannot be a proper outcome if the same land tenure strategy cannot be applied to the UBHR project. It is outlined below that application of the GSSMR land tenure to the UBHR Project is an improbable undertaking.

According to the Expressions of Interest documentation the UBHR Project involves a larger but similar mixed use development to GSSMR with provision for 1,700 units compared to GSSMR's 300 units.

If GSSMR is considered a viable and proper undertaking of the State the structure of the GSSMR land tenure represents a considerable fund raising benefit to Treasury that cannot be overlooked for application to the new UBHR Project, otherwise the Government could be exposed to challenges improper behaviour by giving away an estimated \$180m of State asset value as set below. If GSSMR were to proceed today the outcome of the GSSMR strategy applied by the State can be summarised as follows:

- Set up a lease structure with a 999 year sub-lease that gives the appearance to the general real estate market as being as good as freehold (to large numbers of potential buyers and despite the reservations of many industry professionals). Application of the GSSMR concept

to prime waterfront land is particularly affective given the solid future land value growth to be expected and the significant ‘sea-change’ trend in the real estate market.

While the available number of buyers in the market might not be as large as a true freehold market (many being warned off), with an appropriate marketing campaign there will be sufficient naive and unaware buyers and acquiescent professionals to sell out the property. The sale of 300 GSSMR sub-leases and perhaps another 250 resales since testifies to the fact there are large numbers of available buyers – largely because GSSMR was looked upon by all buyers and some professionals to be as good as freehold.

- Sell and market units (999 year sub-leases) having the appearance of being as good as freehold to extract the equivalent freehold land value to fund the public infrastructure and contribute any excess to Treasury. Thus if GSSMR were to proceed today, on the initial sale of sub-leases:

- GSSMR earns the State land value of \$15m at initial purchase (current values)

First land value earned: \$15m

- Deduct 25% for Developer’s margin leaves say \$12m earned:

**Net First land value earned: \$12m**

- Place the property under the Land Act so as to legislate payment of State Land Rent. This rental structure leads to a mandatory land valuation methodology and consequent land rent increasing at a growth rate about double the growth rate of surrounding freehold land values (a structural fact not disclosed to sub-lease purchasers). This rental methodology means that the State land rent is nominal during the first years of the development and assists the State and developer in selling out the sub-leases while the annual land rent is nominal.
- Subsequently the growth in land rent will sooner or later force sub-lessees to seek to buy out the freehold value dictated by the Land Act - for waterfront property, in about 10 to 15 years (after the developer has sold out and the contract structure is embedded). Within about 15 years sub-lessees will be paying annually State land rent equal to the land value just several years prior. For example, at GSSMR, State land rent paid over the current 3 years equals the land value at project completion in 2003, just 6 years prior. Even at slower land value growth rates the same effect occurs in a relatively short time frame – perhaps within 10 to 15 years at most. Thus:

- Adopt herein that if GSSMR were committed today the State would earn land rent equal to the current land value of \$15m over the next 5 to 10 years.

**Second land value earned (as land rent): \$15m**

- Eventually, the sub-lessees (about 15 years into the development) will be driven to seek to freehold the property to alleviate the financial pain due to the high rate of growth of land rent and because they find they cannot sell their sub-lease as new potential buyers begin to see there is no future in a sub-lease investment. With the property bound by the Land Act sub-lessees can be driven to pay the value land again. Thus:

- GSSMR next earns the future land value (say \$15m at a 10% pa growth rate – over 15 years gives say \$60m future value – this compares with the GSSMR



actual experience of land value growth of 10.8% compounded over 17 years).  
The future \$60m discounted at 5% pa equates to about \$30m in today's dollars.

**Third land value earned: \$30m**

Thus, as an approximation the total land value earned (today's dollars) if GSSMR were committed today is:

**Total Land Value Earned: \$57m**

Gives say about \$180,000 average per unit for a total of 304 units and shops.

The known UBHR project planning provides for ultimately 700 residential and 1,000 tourist units giving the opportunity for the State to raise perhaps \$230m<sup>10</sup> equivalent value at \$180,000 per unit current values (as adjusted in Footnote 5) – that is, the value to the State is potentially \$230m by adopting the GSSMR leasehold land strategy followed by conversion of the land to freehold in say about 15 years.

If the current freehold value of the UBHR land is say \$50m<sup>11</sup> the State can instead raise potentially an extra \$180m using the GSSMR development concept – certainly at the very least say \$100m. If the GSSMR land tenure concept is considered acceptable, it would seem the State is duty bound to implement the GSSMR concept within the UBHR Project so as not to be seen as undertaking an improper strategy to the benefit of the UBHR developer.

The State is either duty bound to seek to recover the notional \$180m from the UBHR project as outlined above and if not, be challenged as being involved in improper behaviour, or, properly deal with the GSSMR property so as to resolve the land tenure and cause sub-lessees to pay the land value once only.

However and needless to say, there is no prospect of the UBHR project proceeding on the above basis because it is not marketable given the potential for exposure of the improper GSSMR land structure and given the experience of GSSMR sub-lessees.

If the UBHR project cannot and should not proceed on the basis of garnishing an extra \$180m from the general public, the GSSMR strategy itself must be improper and the Minister should call a halt to any intention to seek a further contribution for the GSSMR land from sub-lessees.

## ***PART 5 – FURTHER INEQUITIES FOR CONSIDERATION***

### ***5.1 Council Rates, GST and Administration Charges***

GSSMR was committed to development about 1991 long before GST was introduced. Due to an anomaly of the lease structure the 285 residential sub-lessees incur GST on Council rates. In

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<sup>10</sup> GSSMR = say 200 residential units + 100 tourist units gives Ratio 200/100.

Ie UBHR becomes at same ratio 700 residential and 350 tourist units + 650 extra tourist units.

1050 mixed units at \$180,000 per unit gives \$190m land value earned,

Add 650 extra tourist units at say \$60,000 per unit adds a further \$40m.

Total Potential Land Value Earned by State UBHR Project say = \$230m

<sup>11</sup> UBHR Land Value say: 1050 at GSSMR \$50,000 per unit = \$52.5m

650 tourist at say \$20,000 per unit = \$13m      Total    \$66m

Less Developer's Margin 25%                      Net    \$50m

addition, sub-lessees are charged an ambiguous and uncertain administration fee of 10%. Thus the annual rate bill incurs a 21% oncost.

GSSMR rates have grown dramatically from about \$150,000 in 2000 to about \$750,000 in 2009. The \$750,000 incurs an administration charge of \$75,000 (to process 3 invoices) and \$82,500 GST.

Australia wide rates on residential property are GST exempt, but not for GSSMR residential sub-lessees who also do not benefit from senior and pensioner discounts on rates.

The rates, GST and administration charges are symptomatic of the onerous conditions of the GSSMR lease structure and a further reason for reconstruction of the GSSMR land tenure without further penalty to the sublessees.

## **5.2 Force Majeure**

The GSSMR lease structure includes provisions that appear to lead to a force majeure condition. Located on Lot 13, the Mantra Precinct sub-lease provides for mandatory conversion of this land to place the precinct on its own head lease. The Terminal precinct includes a similar provision.

Any one of the 110 Mantra sub-lessees is entitled to exercise this conversion condition. However, should conversion be sought the Mantra lease does not address how the remainder of the GSSMR head lease is to be dealt with or how the costs of the public lands are to be dealt with. Again it is apparent by this construction of the Mantra sub-leases that the public lands were intended to transfer to control of the relevant public authorities.

There appears to be no practical solution to the excising the Mantra Precinct Terminal Precinct other than to abandon the GSSMR lease and reconstruct GSSMR as freehold property under an umbrella body corporate, or, similar.

## **5.3 Urgent Need to Stop Market Inefficiency**

There is an urgent need to resolve the GSSMR land tenure in the interest of sub-lessees who need to sell. At present there is significant uncertainty as to property value – as leasehold a GSSMR unit has problematic value, as freehold buyers are currently uncertain if they are faced with (for example) a \$70,000 conversion cost meaning either sellers are facing a loss or buyers a windfall gain while the GSSMR situation remains unresolved.

A recent mortgagee auction (6 March) of a ‘clean’ unfurnished 2 bedroom unit was opened by the auctioneer at \$250,000, drew no bids and closed on the auctioneers bid of \$300,000. An identical unit next door sold for \$365,000 about 3 to 4 years ago. While there are problems in the Hervey Bay unit market generally, this GSSMR result is more worrying and indicates the issue of land tenure needs to be addressed urgently.

# ***PART 6 - FINANCIAL RESOURCES OF SUB-LESSEES***

## ***6.1 Investment Viability***

The GSSMR land tenure structure and development means that for investors in GSSMR residential and accommodation sub-leases there can never be a productive and viable investment

in the usual sense due to the fact that they are faced with paying for the land three (3) times and repeatedly if State land rent continues. This outcome particularly affects the approximate 250 small 'Mum & Dad' investors with their GSSMR sub-lease representing their main investment and future intended retirement security. Any payment for land will do nothing to increase their already low investment yield, but simply reduce income investment returns – in many cases to below zero percent (0%) per annum with no prospect for recovery of their diminishing capital investment.

A GSSMR unit cannot be a viable investment in competition with the rest of the freehold real estate market when GSSMR investors face paying for their land say 3 times over compared to investors in freehold property who pay once only for their land. Paying rent that equals the land value 5 or 6 years ago is not a growth investment strategy.

Any payment for land to freehold these properties will simply be lost capital further damaging investors capital base and income.

GSSMR property already under-performs other comparable residential and accommodation investment returns. Surveys of sub-lessees returns show net annual yields of around 0% to 1% well below market norms of about 3% to 5% pa.

## **6.2 Financial Resources of Sub-Lessees**

The State, by funding the GSSMR development works by selling off strata title sub-leases to the general public and thus to a wide range of small investors and resident occupiers, has created a situation that involves a large number of people of limited financial means; albeit there is also a small proportion of GSSMR sub-lessees who are well funded.

GSSMR is the sole investment for many sub-lessees, for many their super fund investment and many are retirees of limited income, some on pensions.

For many years GSSMR was an accessible investment as the cost structures were comparable with other Hervey Bay real estate. Annual costs appeared reasonable with low annual land rent, (an improper) 5% sinking fund contribution and Council rates about half usual residential rates (GSSMR being a special rating category that became a different special rating once the project completed.

However, unknown to all buyers the cost structures include unremittingly increasing charges well above the inflation rate, particularly State land rent which has averaged a compound rate of 25% pa for 15 years since commencement in about 1993 exacerbated by the 10% administration fee given in the State approved sub-lease.

A number of low income residents have been driven out by the increasing annual levy suffering personal hardship and disruption. Many others find themselves trapped with property they cannot sell at an acceptable price and face ever increasing annual costs that are now readily observable to potential buyers.

It is unconscionable that ordinary participants in the freehold real estate market, who reasonably see GSSMR as similar 'bricks-and-mortar' typical of freehold property, but with a 999 year lease, "just like Canberra only longer", find themselves trapped by an iniquitous land tenure structure

that is the creation of the State and which removed the only rights they had by removal of Clause 19.1 from the head lease without reference to them or their legitimate interest.

The State has to accept that a decision on the land cost has to be bearable by those sub-lessees who can least afford a contribution to the land value and none should be placed in a position of having to sell out and incur conveyancing transaction costs plus the personal disruption involved. Forced selling is particularly damaging to resident sub-lessees.

The only equitable solution is to convert GSSMR to freehold for no further land cost.

## ***PART 7        CONSIDERATION OF RECOURSE***

As set out above, it is the position of sub-lessees that fundamentally GSSMR is a substantial policy failure and is a land tenure concept that will never be repeated (hopefully). Arising out of all the circumstances of GSSMR, Sub-lessees are now faced with paying (being asked to pay) again for the land to correct a policy failure for which the State is the primary party.

During the course of the development and without reference to sub-lessees or their interest, the State removed the conditions of Clause 19.1 of the 75 year State lease. This deletion removed all rights of the sub-lessees to prevent the sale of the lease to entities the sub-lessees may find unacceptable (it became S8 Limited who were at the time subject to OFC investigations and charges and subsequently went into receivership), and in addition prevented the sub-lessees from dealing with substantial design and construction defects, largely related to the public infrastructure and improper sinking fund provision on property worth nominally about \$130m and currently about \$4m underfunded.

The liabilities left behind by the State's developer amount to an exposure of about \$12.7m as set out herein.

There appears to be no rational reason evident to remove the conditions of Clause 19.1 except to facilitate the developer's disposal of a property structure in trouble and with some serious administrative, design and construction defects. Our concern is that improper arrangements were made that should be subject to more formal review.

Sub-lessees paid for the land to fund the entire development, pay land rent and are now expected to pay again for the land and take over \$12.7m of liabilities to rectify the improper development procedures of the State.

Alternatively as set out above, if it is still deemed appropriate that GSSMR sub-lessees pay for the land under the freeholding process, the State, in the process of developing the adjacent Urangan Boat Harbour Redevelopment Project (UBHR), could consequently be involved in an improper land policy that will cost the State an estimated amount in land value recovery in the order of perhaps \$100m to \$180m – see Part 4 above.

## ***SUMMARY***

The dysfunctional nature of the GSSMR lease is not the work of sub-lessees, but that of the State who brought GSSMR into existence, specifically approved the head leases and sub-leases then removed Clause 19.1 from the head lease. Now sub-lessees are potentially being asked to pay the

freehold price of the land and take over substantial substandard public works to solve the structural problems created by the State. The State should instead simply move to rectify the GSSMR land tenure by conversion of the land without any land cost to sub-lessees.

On a proper construction the GSSMR land should be converted to freehold at no land cost to sub-lessees and the State stands liable for \$12.7m in accumulated liabilities, including the required seawall reconfiguration. The Tenant's Association in conjunction with other sublessees will continue to address these issues outside of this application.

In the alternative, if the land is to be valued and the resulting costs charged to sub-lessees and the public infrastructure imposed on sub-lessees, the land value should be reduced by the costs that a prudent purchaser of the property would seek to deduct. That is, deduct the value of the liabilities attached to the property, being the \$12.7m as assessed herein.

The State could more properly and reasonably recognise that the GSSMR sub-lease does not address the ownership of the public lands and infrastructure and proceed as apparently intended throughout at least the latter years of the development and take over the public infrastructure, reducing the liabilities attached to the property to that of the underfunded sinking funds and deal with this application accordingly.

On all counts set out herein the GSSMR lease should be converted to freehold for no further land cost to sub-lessees (other than the administrative costs of conversion) which will run into many thousands of dollars per sublease in any event. This is the outcome sought by sub-lessees and will be a great relief to many. A large number of sub-lessees simply do not have the financial resources to fund a purchase and most will see no financial benefit if payment is required.

\*

\*

\*

***The Great Sandy Straits Marina Resort Tenants Association Inc***  
***Urangan. Qld 4655***

Our Reference: 030-09

***ANNEXURE 1***

It is estimated the contingent liability attached to the lands is \$12.7m as set out below:

Rectification of Public Infrastructure:	Provisional Assessment
Seawall Rectification:	\$800,000
Marina Rock Wall:	\$300,000
Main Public Access Road:	\$400,000
Boardwalks:	\$300,000
Sewerage Pumping Station:	\$50,000
Power Distribution:	<u>\$750,000</u>
Total Rectification Liabilities:	<u>\$2,600,000</u>
Ownership Costs – 50 Year Lease	
Repair and Maintenance Public Works (50 years):	\$2,500,000
Uninsurable Storm Event:	<u>\$1,500,000</u>
	<u>\$4,000,000</u>
<b>Total Liabilities Public Infrastructure:</b>	<b><u>\$6,600,000</u></b>
Building Sinking Funds:	
Residential Precinct:	\$3,000,000
Mantra Precinct:	<u>\$1,000,000</u>
<b>Total Sinking Fund Liabilities:</b>	<b><u>\$4,000,000</u></b>
Exposure of Sub-Lessees:	Adopt \$10,600,000
Add 20% Contingency for risk:	<u>\$2,100,000</u>
<b>Total Exposure of Sub-Lessees:</b>	<b><u>\$12,700,000</u></b>

**STATE LIABILITY: \$12.7m (provisional)**

Additional State Liability:

Reconfiguration North Seawall	(allow)	<u>\$1,000,000*</u>
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\* Allocation of this \$1m to reconfigure the north seawall will reduce the exposure related to public infrastructure above by \$800,000, thus giving a net total liability of \$12.9m if the seawall is reconfigured and added to all other items listed above.

***The Great Sandy Straits Marina Resort Tenants Association Inc***  
***Urangan. Qld 4655***

Our Reference: 030-09

***ANNEXURE 2 (Charts)***

**999 YEAR SUB-LEASE ANALYSIS**

**(Based on records and costs at December 2007 and the 2007-08 land valuation of \$18m)**

The enclosed Charts 1 to 7 show the underlying and inexorable outcome underlying the failure of a 999 year residential sub-lease that is subject to land rent exceeding the inflation rate by margins typical of Queensland waterfront property in the post WW11 era, also experienced by the GSSMR development.

The charts plot the typical changing capital 'worth' of a unit (sub-lease), assuming the conditions a buyer makes at initial purchase. The Charts plot the effect of future compound State land rent growth rates of separately 10%pa, 12%pa, 15%pa, 20% pa and 25%pa, assuming an inflation rate of 3%pa.

Charts 1 to 6 adopt a typical \$500,000 unit at 2006 and Chart 7 a \$200,000 unit in 1995, about 10 years prior and about the middle of the initial selling of GSSMR units.

Note: The underlying growth in land value is about half the growth in land rent as follows:

Land Rent Growth Rate	Land Value Growth about:
25% pa	12.5% pa
20% pa	10% pa
15% pa	7.5% pa
12% pa	6% pa
10% pa	5% pa

GSSMR actual record of growth rates is set out in the attached Table A and shows the following (adjusted for the recent Land Court appeal decision - \$14.9m):

24.1% pa over 15 years	12.3% pa
------------------------	----------

The above land value growth rates are far from over stated for prime Queensland waterfront lands – long term.

Chart 4 (15% land rent growth) separately shows a typical plot of the impact of State land rent on GSSMR forecast levies using the same data as the other charts.

The charts table the escalation rates adopted for the various components of levy charges, including State land rent. Clearly the State land rent is the driving force behind the devaluation of the 999 year sub-lease (or any term lease). The charts indicate that 40 years for a harbour lease is about the maximum viable term if commercially it can be written off over 40 years. The concept of a 999 year residential lease is not viable as constructed.

The charts plot the 'worth' of a unit at the date of purchase when a buyer effectively assumes a fixed relationship between unit value and the annual levy. That is, at the date of purchase, a potential buyer usually decides to buy because they see their purchase as worthwhile given both the capital sale price agreed and the annual levy as affordable. Applying the same buying decision to a forecast future value of both the typical unit and typical levy determines the

equivalent 'worth' of a typical unit over time. That is, the same buyer making the same decision year after year.

The charts adopt a start point for GSSMR representing typical conditions about 2006 when levies reached an average of \$6,000 per unit, about a tolerable maximum for most buyers having regard to the levies of other similar freehold properties around \$4,000 pa and a typical average unit price then of about \$500,000 – both figures are at about maximum tolerable levels in 2006. Chart 7 shows the same analysis commencing with the same typical unit purchased in 1996 for \$200,000, about the middle of the development period. The results are similar for both the 2006 purchase and 1996 purchase 10 years earlier – both are facing decline commencing within a few years.

The charts adopt the following methodology:

If at original purchase the annual levy is say 1.2% of the capital price (\$6,000 pa of \$500,000 in the sample charts), then when the levies double, the same buyer would see the unit as having the same worth as their original purchase (the tolerable maximum), if the future unit value is adjusted to deduct the capitalised sum required to fund the increased levy. This calculation gives a future unit 'worth' equal to the original purchase decision. For example, a \$5,000 increase in annual levy from \$6,000 to \$11,000 capitalised at 7% pa requires a \$72,000 reduction in price to fund the increased levy and maintain the same tolerable level of "worth" (assuming the buyer is typically not recognising future levy increases as being worse, in which case they would seek a further reduction in worth). In this example, the sub-lease worth becomes \$428,000 (\$500,000 less \$72,000). As shown in the charts this process continues until the levy causes the unit 'worth' to fall to zero.

For land rent increases of 12% pa to 15% pa zero worth is reached in about 30 to 50 years as shown on the attached Charts. The real market is not as precise as the charts, but the current market shows that most potential buyers are not interested in a GSSMR unit at values of recent past sales with rent (levies) double that of other properties.

In practice, individual owners find their levies are too high and sell out and the market of available buyers shrinks to a smaller number of increasingly wealthy buyers. However, again in practice, increasingly wealthy buyers will evaporate at some point because the building facility (quality) falls too far below expectations given the annual levy. Thus, the future for a GSSMR residential sub-lease as viable real estate is limited by the future capacity of sub-lessees to want to pay the increasing levy as the levy outstrips inflation and evaporates as a smaller number of wealthy buyers with no interest in the quality of building presented. The building standard was obviously largely fixed over the planning and design phase 1988 to about say 1994-95 and cannot be undone.

The effect of increasing levies across GSSMR can be seen in that during 2008 there were 60 units for sale compared with about 30 in normal circumstances. Conditions are now somewhat worse with the World's financial crisis and increasing buyer resistance.

A serious situation has developed in that there are many sub-lessees who want to sell and cannot at a reasonable price. There are many sub-lessees who could initially afford a GSSMR unit (the property was accessible to pensioners and low income retirees), who through no fault of their own could not have anticipated their land rent would escalate at 25% pa (or, double the land value growth rate), had no idea their rights had been stripped out of the head lease by the removal of Clause 19.1 and are now stuck.

There is no reason why they should be seeing no more than cost increases commonly seen across the community with similar properties. Instead GSSMR sub-lessees have seen their



levies increase to 50% to 100% relative to other Hervey Bay properties, many are under serious financial stress and are facing a forced sale and having to move house, or, sell a small investment after 10 years of no growth.

The arrears situation of the Residential Precinct highlights the financial stress where some 25 sub-lessees are about \$325,000 in arrears (in an annual budget of \$1.2m) with their arrears ranging from \$6,000 to \$30,000 and averaging \$12,000 each.

There are few buyers and they will soon potentially become non-existent. A situation that is entirely due to the underlying fatally flawed 999 year sub-lease. If the GSSMR facts become known to all potential buyers it is considered sub-lease sales will cease altogether if GSSMR remains leasehold property.

### **Following Charts and Tables:**

**Chart LV 1** - Unit Worth – Land Rent Growth 10.25% pa - \$500,000 unit 2006  
(10.25%pa gives a Unit Worth zero at 75 years, the original lease term).

**Chart LV 2** - Unit Worth – Land Rent Growth 12% pa  
(This chart shows a ‘low end’ land rent growth forecast – land about 6%)

**Chart LV 3** - Unit Worth – Land Rent Growth 15% pa  
(15%pa could be seen as conservative prime land growth – land about 7.5%)

**Chart LV 4** - Unit Worth – Land Rent Growth 15% pa – Impact of State land rent.  
(Derived from Chart LV 3, showing impact of land rent on levy)

**Chart LV 5** - Unit Worth – Land Rent Growth 20% pa  
(Probable situation for GSSMR for coming years, at least medium term)

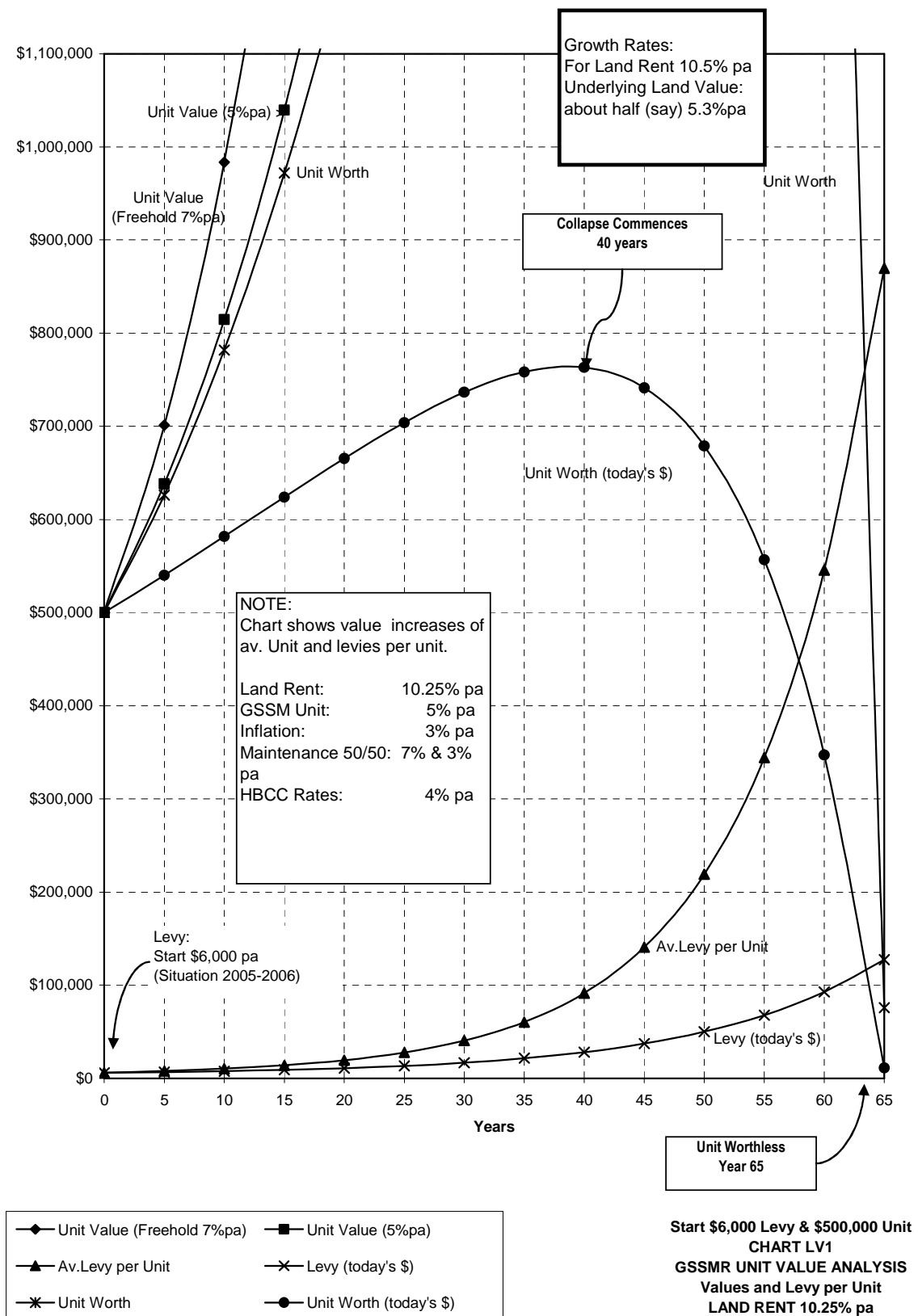
**Chart LV 6** - Unit Worth – Land Rent Growth 25% pa  
(This 25% chart is close to actual GSMR experience – 24.1% pa since new 15yrs)

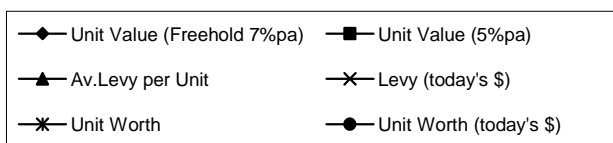
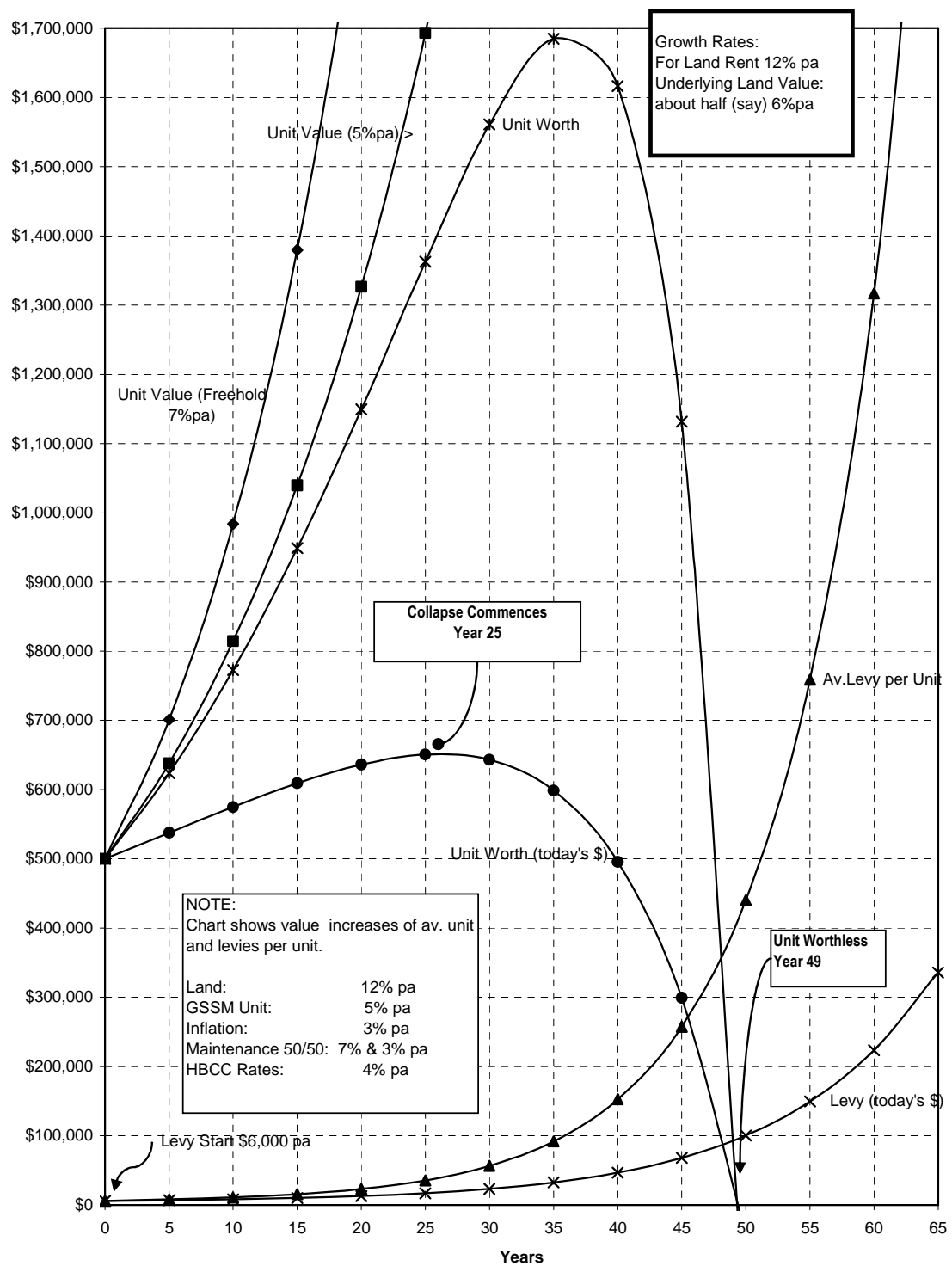
**Chart LV 7** – Unit Worth – Land Rent Growth 25%pa - \$200,000 unit 1995-96  
(Shows outcome of typical \$200,000 unit bought during GSSMR development)

**Table C** – Land Rent Growth Rates – GSSMR Precincts 1993-2008

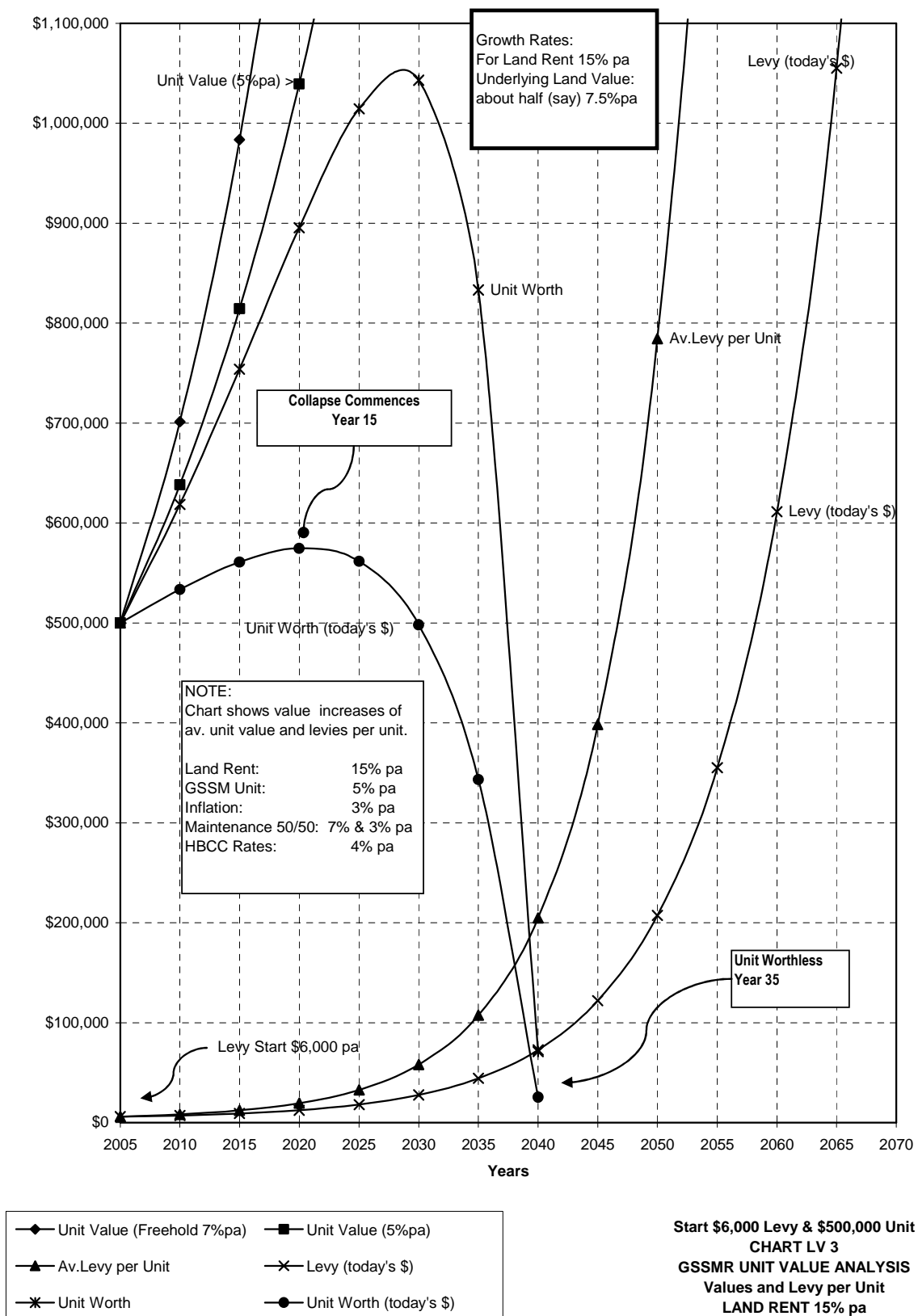
**Table B** – GSSMR Average Levies and Land Rent 1993 – 2008

**Table A** – Derivation of GSSMR Land Rent 1993 – 2008





**Start \$6,000 Levy & \$500,000 Unit**  
**CHART LV 2**  
**GSSMR UNIT VALUE ANALYSIS**  
**Values and Levy per Unit**  
**LAND RENT 12% pa**



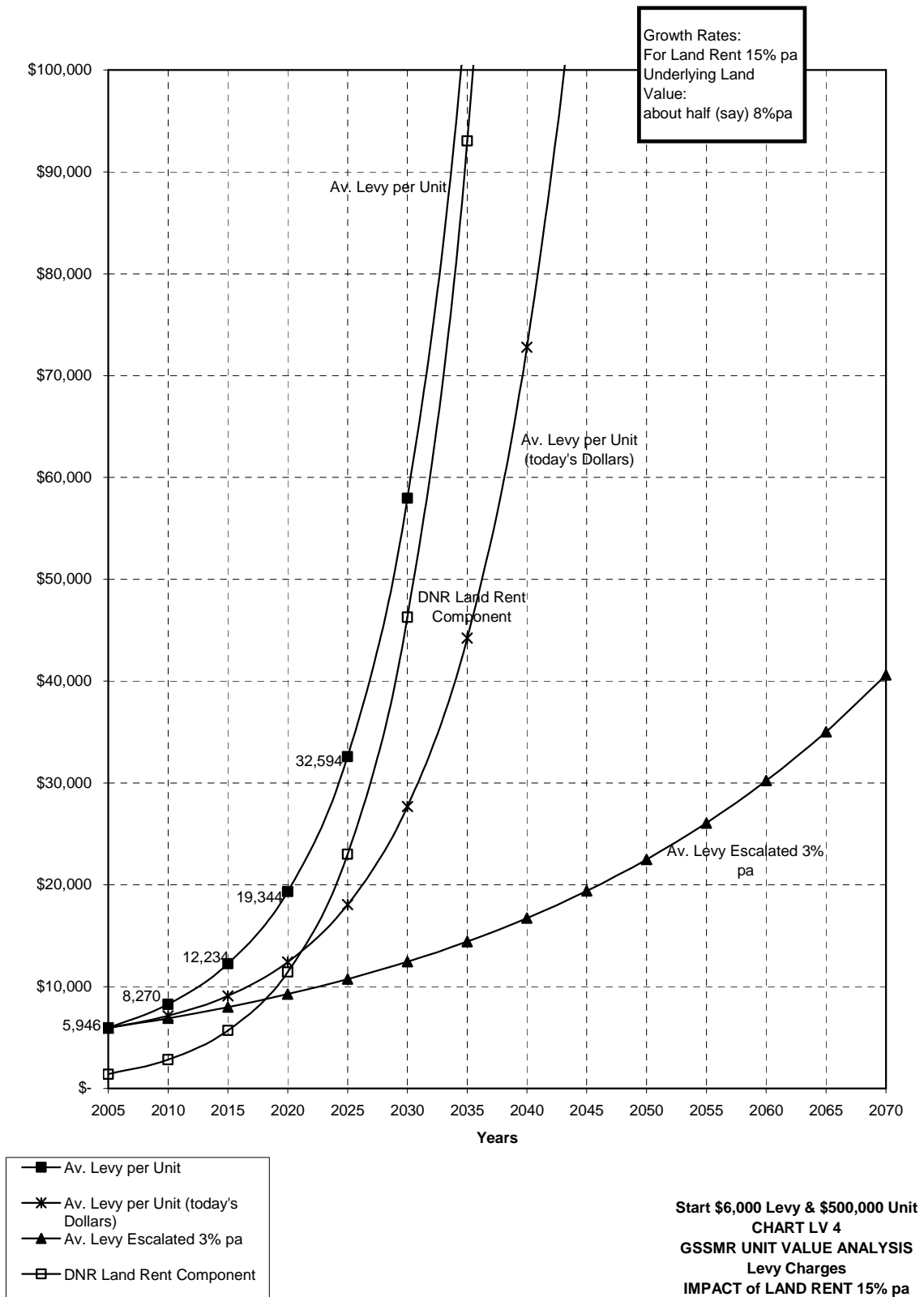
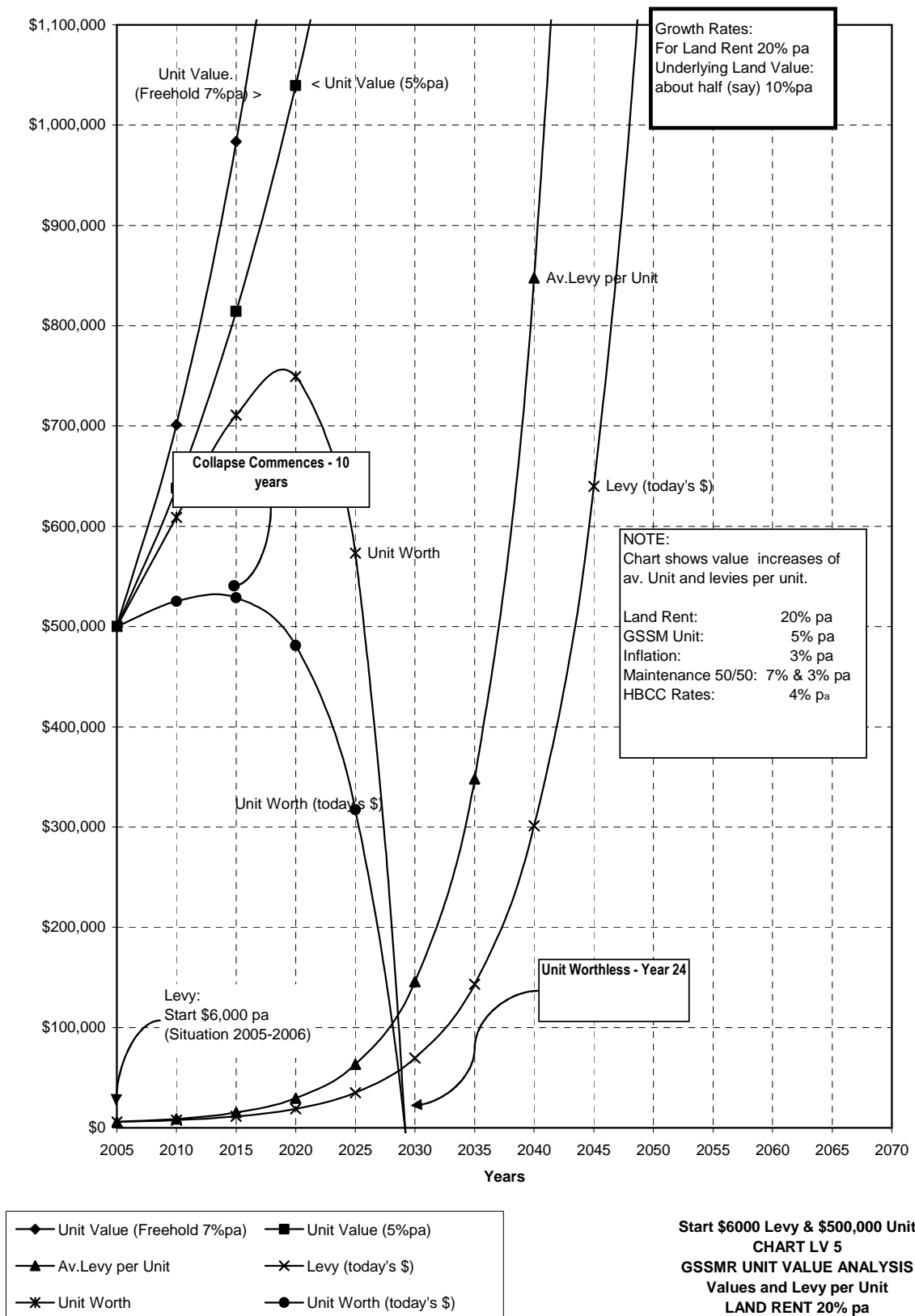


Chart LV 4 shows that increasingly State land rent will drive annual levies and destroy any capital investment in a 999 year lease, typically within about 15 years as indicated.



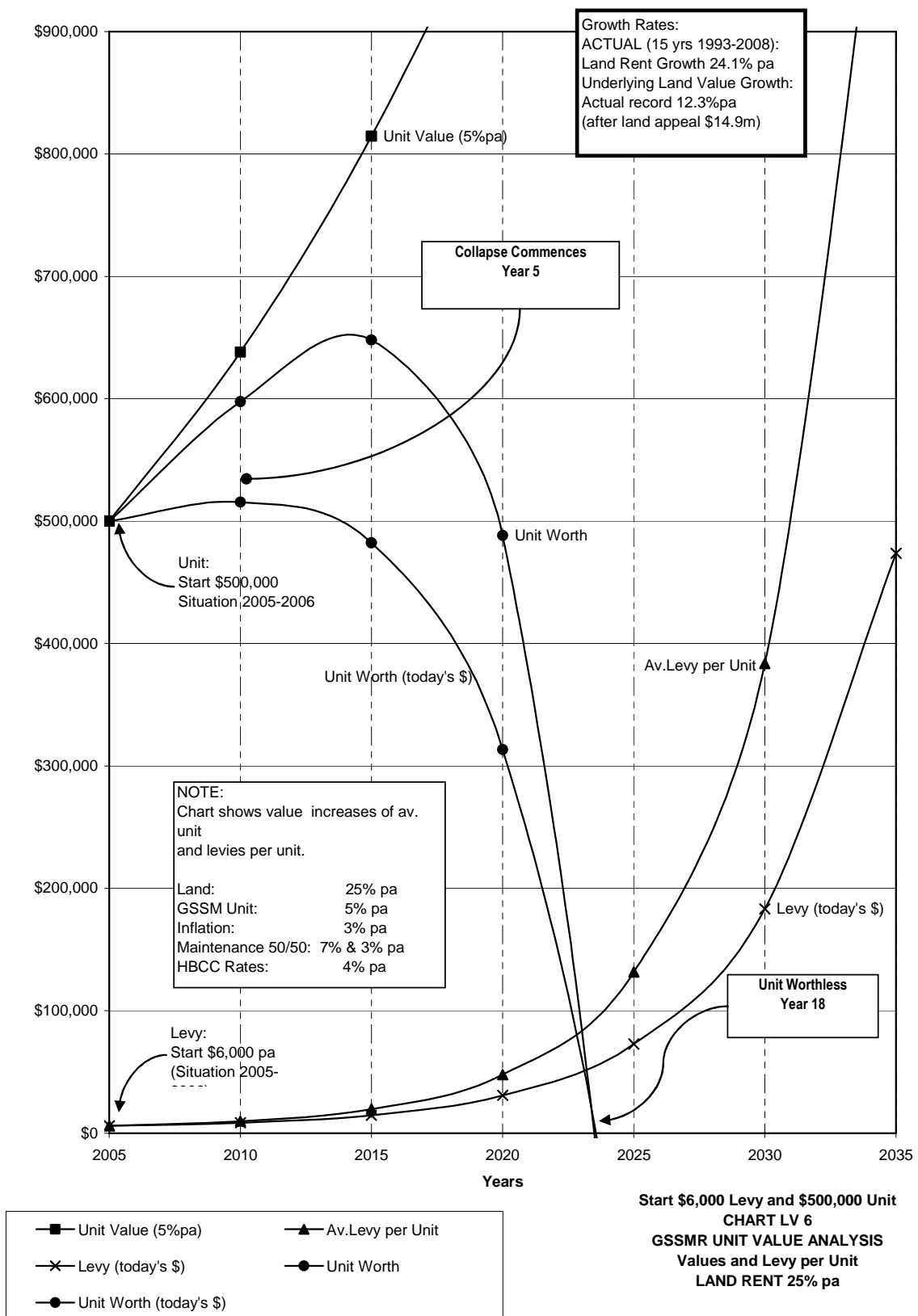


Chart LV 6 shows the projection of the actual GSSMR record to 2006 applied to a \$500,000 unit at 2006 forward to 2035. Interestingly 'Unit Worth' (today's dollars) begins to turn down about 2010.

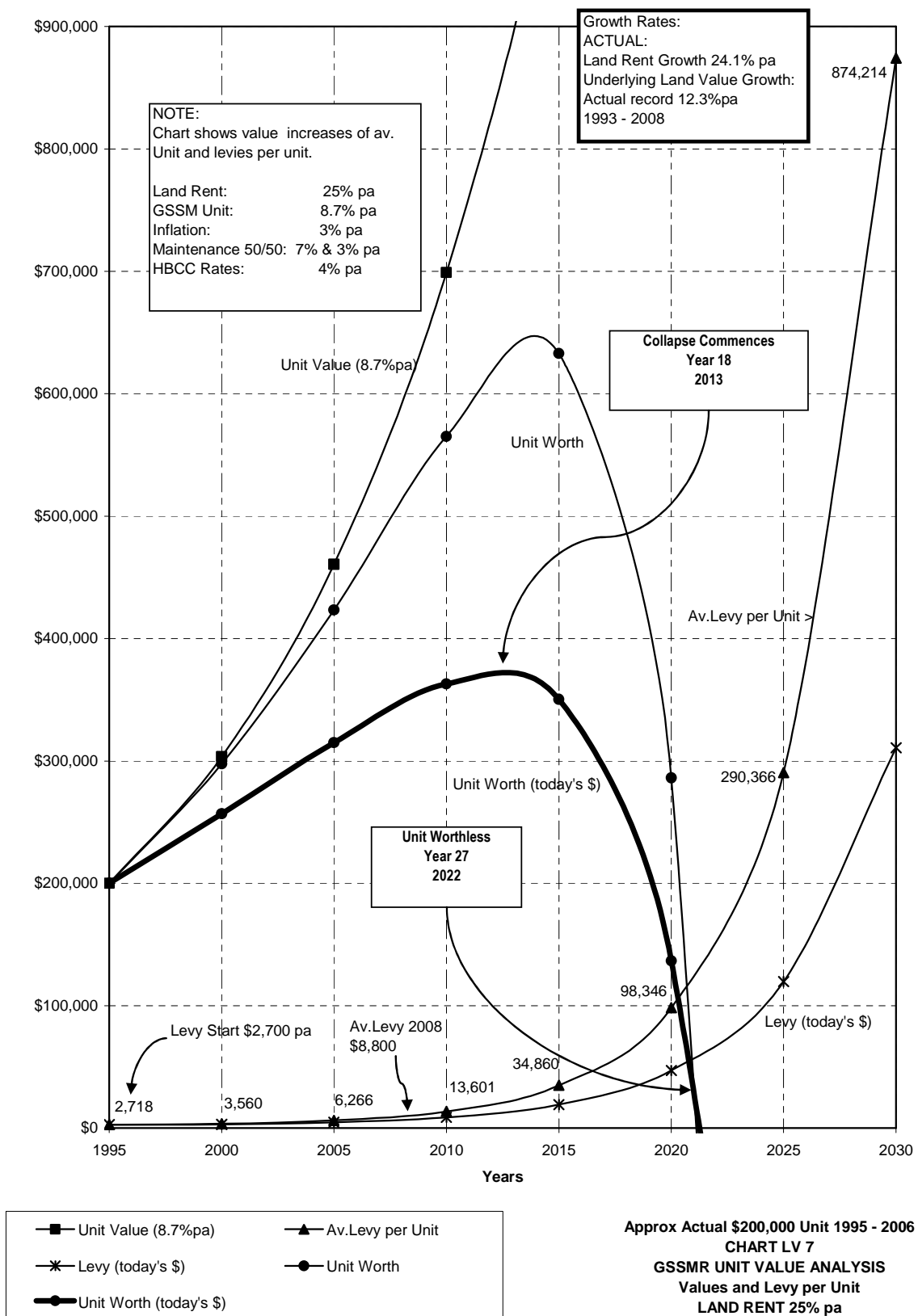


CHART SHOWING \$200,000 UNIT PURCHASED 1995 – Using actual record to date extended forward at actual growth rates experienced to 2006.



# GSSMR Tenant's Association

## Derivation of State Land Rent by extraction from TA Accounts

Notes:

The following land value and land rent has been constructed from the accounts reported to sub-lessees of the Residential Precinct.

Using the reported land rent charges where known, and the proportions applied by FKP year to year, the total GSSMR land rent has been back calculated.

Using the calculated GSSMR total land rent and the percentage of the Land Value stated in the head lease (9% for the 75 year lease and 5% under the PPL), the Land Value for each year has been estimated. The results compare well with the known Land Values shown.

RP = Residential Precinct

Growth Rates (15 yrs): Land Value: 12.3% pa

Land Rent: 24.1% pa

Item	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
<b>Known DNR Land Valuations</b>											2,150,000		8,000,000		14,900,000
Derived Land Valuation															
Land Rent @ 9%	9%	9%	9%	9%	9%										
Land Rent @ 5%						5%	5%	5%	5%	5%	5%	5%	5%	5%	5%
FKP Applied Percent General Outgoings											107,500		400,000	Stella >>	745,000
<b>Expected RP Land Rent</b>											53.60%		50.60%		40%
											<b>57,620</b>		<b>202,400</b>		<b>298,000</b>
									See below >>>	Compares OK		Compares OK		Compares OK	
<b>TA Statements of Accounts:</b>															
RP Share General Outgoings	14,187	23,297	27,065	41,847	50,016										
Ditto (HBCC rates separated)						39,393	43,518							Budget	Budget
HBCC (only) General Rates						8,274	11,118	11,914	13,842	14,581	17,704	19,951	26,572	132,238	115,214
State Lease Rent								44,421	44,421	44,239	57,644	57,620	202,492	208,567	298,000
Sub-Total						47,667	54,636	56,335	58,263	58,820	75,348	77,571	229,064	340,805	413,214
Adopt Land as Proportion	83%	83%	Land as Percent of Sub-total			83%	80%	79%	76%	75%	77%	74%	88%	61%	72%
Assume RP Land Rent	11,724	19,253	22,367	34,583	41,334	<< Worked backwards									
Adopt as Actual RP Land Rent						39,393	43,518							Budget	Stella
Actual Land Rent								44,421	44,421	44,239	57,644	57,620	202,492	208,567	298,000
<b>Derived RP Land Rent</b>	<b>11,724</b>	<b>19,253</b>	<b>22,367</b>	<b>34,583</b>	<b>41,334</b>	<b>39,393</b>	<b>43,518</b>	<b>44,421</b>	<b>44,421</b>	<b>44,239</b>	<b>57,644</b>	<b>57,620</b>	<b>202,492</b>	<b>208,567</b>	<b>298,000</b>
<b>RP Proportion (FKP)</b>	<b>40.0%</b>	<b>40.0%</b>	<b>40.0%</b>	<b>40.0%</b>	<b>54.5%</b>	<b>53.6%</b>	<b>52.7%</b>	<b>54.9%</b>	<b>53.6%</b>	<b>53.6%</b>	<b>53.6%</b>	<b>53.6%</b>	<b>50.6%</b>	<b>50.6%</b>	<b>40.0%</b>
ie Total Land Rent	29,311	48,133	55,918	86,458	75,843	73,494	82,577	80,913	82,875	82,535	107,545	107,500	400,182	412,187	745,000
(Rent 9% then 5% of Land Value)	9%	9%	9%	9%	9%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%
<b>ie Land Value:</b>															
<b>(from State land rent)</b>	<b>325,679</b>	<b>534,809</b>	<b>621,308</b>	<b>960,645</b>	<b>842,696</b>	<b>1,469,888</b>	<b>1,651,537</b>	<b>1,618,251</b>	<b>1,657,500</b>	<b>1,650,709</b>	<b>2,150,896</b>	<b>2,150,000</b>	<b>8,003,636</b>	<b>8,243,745</b>	<b>14,900,000</b>

Compares to actual above

FKP Valuation Report: 5,000,000

Compares to actual above

Compares to actual above

Add \$5m Land Development Cost

Inflation (guess) 5% 5% 4% 4% 3% 3% 3% 3% 3% 3% 3% 3% 3% 4% 4%

Derived Land Development Cost 3,259,369 3,430,915 3,611,489 3,761,968 3,918,717 4,039,914 4,164,860 4,293,670 4,426,464 4,563,365 4,704,500 4,850,000 5,000,000 5,200,000 5,408,000

**Adjusted Total Land Value:** 3,585,048 3,965,724 4,232,797 4,722,613 4,761,413 5,509,802 5,816,397 5,911,921 6,083,964 6,214,074 6,855,396 7,000,000 13,003,636 13,443,745 20,308,000

Growth Rate (10yrs): 13.9% pa

Growth Rate (15yrs): 12.3% pa

Total Increase 1993-2003 >> 73%

Total Increase 2003 - 2008 >> 227%

**Land Rent Growth:**

Land Rent: 29,311 48,133 55,918 86,458 75,843 73,494 82,577 80,913 82,875 82,535 107,545 107,500 400,182 412,187 745,000

Growth Rate (10yrs): 26.1% pa

Growth Rate (15yrs): 24.1% pa

Land Rent: Growth Rate (5 years prior completion): 73,494 82,577 80,913 82,875 82,535 1.2% pa

5 years before and after GSSMR completion: Growth Rate (5 years post completion): 107,545 107,500 400,182 412,187 745,000 21.4% pa

Completion GSSMR Project Works (about mid 2003) >

DERIVATION OF STATE LAND RENT

TABLE A

## GSSMR Tenant's Association Precinct Cost Extractions

### RESIDENTIAL PRECINCT - Average Levy per Unit

Year	No.Units Completed	Budget (\$'s)	Land Rent per Unit		Av. Levy per Unit		Compound % Increase
			Rent	% Increase	Levy	% Increase	
93-94	46	133,000	255		2,891		
94-95	80	204,000	241	-6%	2,550	-12%	
95-96	99	252,000	226	-6%	2,545	0%	
96-97	117	342,000	296	31%	2,923	15%	
97-98	137	441,000	302	2%	3,219	10%	
98-99	170	545,000	232	-23%	3,206	0%	
99-00	185	586,000	235	2%	3,168	-1%	
00-01	185	582,000	240	2%	3,146	-1%	pa
01-02.	185	631,000	240	0%	3,411	8%	(5 years)
02-03.	185	686,000	239	0%	3,708	9%	<b>3.0%</b>
03-04.	185	790,000	312	30%	4,270	15%	
04-05.	185	940,000	311	0%	5,081	19%	
05-06.	185	1,162,000	1,095	251%	6,281	24%	pa
06-07.	185	1,350,000	1,127	3%	7,297	16%	(5 years)
07-08.	185	1,629,158	1,611	43%	8,806	21%	<b>15.6%</b>

(5yrs post GSSMR Completion)

Increase 1993-2008: **7.7%** pa

### MANTRA - Average Levy per Unit

Year	No.Units Completed	Budget (\$'s)	Land Rent per Unit		Av. Levy per Unit		
			Rent	% Increase	Levy	% Increase	
03-04	110	559,866	191		5,005		
04-05	110	544,200	191	0%	4,864	-3%	
05-06	110	645,986	710	272%	5,775	19%	
06-07	110	757,969	731	3%	6,775	17%	
07-08	110	1,037,617	1,321	81%	9,276	37%	

(15 month budget)

Increase 2003-2008: **13.1%** pa

### GSSMR Land Value

Year	GSSMR Land Value*	% Increase	Compound % Increase
93-94	3,585,048		
94-95	3,965,724	11%	
95-96	4,232,797	7%	
96-97	4,722,613	12%	
97-98	4,761,413	1%	
98-99	5,509,802	16%	
99-00	5,816,397	6%	
00-01	5,911,921	2%	pa
01-02.	6,083,964	3%	(9 years)
02-03.	6,214,074	2%	<b>6.3%</b>
03-04.	6,855,396	10%	(previous 9 years)
04-05.	7,000,000	2%	
05-06.	13,003,636	86%	pa
06-07.	13,443,745	3%	(5 years)
07-08.	20,308,000	51%	<b>26.7%</b> pa

(5yrs post Completion)

Increase 1993-2008: **12.3%** pa

\* GSSMR Land Value derived from Residential Precinct land rent charges  
(some records appear inconsistent)

### GSSNR Land Rent Charge

Year	GSSNR Land Rent*	% Increase	Compound % Increase
93-94	29,311		
94-95	48,133	64%	
95-96	55,918	16%	
96-97	86,458	55%	
97-98	75,843	-12%	
98-99	73,494	-3%	
99-00	82,577	12%	
00-01	80,913	-2%	pa
01-02.	82,875	2%	(9 years)
02-03.	82,535	0%	<b>12.2%</b>
03-04.	107,545	30%	(previous 9 years)
04-05.	107,500	0%	
05-06.	400,182	272%	
06-07.	412,187	3%	< 3% assumed
07-08.	745,000	81%	<b>55.3%</b>

(5yrs post Completion)

Increase 1993-2008: **24.1%** pa

#### Note:

The data in these tables has been extracted from available accounts records. Some Residential Precinct records in early years appear inconsistent, notably the negative increases, which probably should be positive. GSSMR land rent data has been derived from stated proportions in the accounts to determine the total charge.

## RESIDENTIAL PRECINCT & MANTRA AVERAGE LEVIES & LAND RENT TABLE B

**GSSMR Tenant's Association  
Precinct Cost Extractions**

**GSSMR LAND RENT**

Year	GSSMR Land Value*	% Increase	Compound % Increase		GSSMR Total Land Rent*		Residential Precinct Share					Mantra Share				Terminal Precint Sahre			
					Rent	% Increase	No Units	% Share	Ammount	Land Rent per Unit	Compound % Increase	No Units	% Share	Ammount	Land Rent per Unit	No Units	% Share	Ammount	Land Rent per Unit
93-94	3,585,048				29,311		46	40%	11,724	255									
94-95	3,965,724	11%			48,133	64%	80	40%	19,253	241									
95-96	4,232,797	7%			55,918	16%	99	40%	22,367	226									
96-97	4,722,613	12%			86,458	55%	117	40%	34,583	296					10	20%	17,292	1,729	
97-98	4,761,413	1%			75,843	-12%	137	54.5%	41,334	302					10	20%	15,169	1,517	
98-99	5,509,802	16%			73,494	-3%	170	53.6%	39,393	232					10	20%	14,699	1,470	
99-00	5,816,397	6%			82,577	12%	185	52.7%	43,518	235					10	20%	16,515	1,652	
00-01	5,911,921	2%	pa		80,913	-2%	185	54.9%	44,421	240	pa				10	20%	16,183	1,618	
01-02	6,083,964	3%	(9 years)		82,875	2%	185	53.6%	44,421	240	(9 years)				10	20%	16,575	1,658	
02-03	6,214,074	2%	6.3%	pa	82,535	0%	185	53.6%	44,239	239	-0.7%	GSSMR Completion				10	20%	16,507	1,651
03-04	6,855,396	10%			107,545	30%	185	53.6%	57,644	312		110	20.6%	22,154	201	10	20%	21,509	2,151
04-05	7,000,000	2%			107,500	0%	185	53.6%	57,620	311		110	20.6%	22,145	201	10	20%	21,500	2,150
05-06	13,003,636	86%	pa		400,182	272%	185	50.6%	202,492	1,095	pa	110	20.6%	82,437	749	10	20%	80,036	8,004
06-07	13,443,745	3%	(5 years)		412,187	3%	185	50.6%	208,567	1,127	(5 years)	110	20.6%	84,911	772	10	20%	82,437	8,244
07-08	20,308,000	51%	26.7%	pa	745,000	81%	185	40%	298,000	1,611	55.3%	110	20.6%	153,470	1,395	10	20%	149,000	14,900

(5yrs post Completion)

Increase 1993-2008: **12.3%** pa

1993-2008: **24.1%** pa 15 years

**24.1%** pa 15 years

**47.3%** pa 5 years

**19.7%** pa 12 Years

No. Units incudes Manager's (2)

No. Units incudes Manager's (2) and Retail (7)

\* GSSMR Land Rent derived from RP rent charges  
(estimates actual DNR land rent invoice)  
(some records appear inconsistent)

**Note:**

The data in these tables has been extracted from available accounts records. Some Residential Precinct records in early years appear inconsistent, notably the negative increases, which probably should be positive. GSSMR land rent data has been derived from stated proportions in the accounts to determine the total charge.

**TERMINAL, MANTRA, RESIDENTIAL PRECINCTS  
LAND RENT SHARE & GROWTH RATES  
TABLE C**

## APPENDIX 4

### SEAWALL ROCK SIZE



GSSMR Seawall showing boxes to approximate specified sizes as follows:

560 kg (larger box shown)

Specified size critical zone: 700kg with minimum 560kg as shown.

120 kg (smaller box shown):

Specified maximum contamination: 5% no rock less than 120 kg.

Undersize rock indicates potential contingent liability under design stress (100 yr storm event)