PLA River Works Licences for Residential Use – Review of the Charging Method

Consultants' response to the public consultation Version II 23rd December 2011

Statement from the consultants in response to the public consultation

The proposals we developed broadly satisfied the key points raised by the licensees and residents at the outset of the review, namely:

1. charging operators a percentage of mooring revenue, suggested independently by five of them;
2. charging others based on a notional mooring fee (derived from operators' rates) and using boat length/area, plus location differences;
3. applying a different charge for the commercial letting activity of large multi-tenanted houseboats;
4. any reference to sales values must relate solely to the mooring/river works element, not the boat;
5. taking some account of the licensee's costs;
6. a simple, clear, reliable, consistent method.

The Proposals Report was sent to licensees along with an estimate of their individual assessment (excluding site-specific factors) using the proposed charging method, so that they could see what it would mean for them. It was also sent to a broad range of other interested parties.

The public consultation resulted in responses relating to 19 licences (also representing 16 houseboats), 57 houseboats (who were not licensees or co-licensees) and 17 others. The consultants also arranged 16 meetings with a total of 49 people (and phone calls with 2 others). This was considered a good level of response.

There were a range of views:

- a minority supported the approach;
- some people agreed with some of the principles, but not necessarily the amounts proposed;
- many disagreed with some of the basic principles adopted and also the amounts proposed.

The points of disagreement centred on:

- 'best consideration' only applies at arbitration;
- the actual use is agreed when the licence is signed and an increase cannot be applied in relation to the potential value;
- disagreement with the valuation approach; the third share for the PLA was too high, since the licensee brings the capital, takes the risk, and the PLA make no financial contribution;
- the PLA were acting too commercially and using their monopoly position;
- *actual* costs should be allowed and are higher than 15%; capital costs should also be allowed;
- comparisons with other navigation authorities' charges showed that the charge should be lower;
- queries on the data in the report saying some was incorrect/selective/missing;
- site specific factors needed to be taken into consideration;
- width should be a variable and the formula should use boat area;
- the estimate for some licences which had been reviewed in the last few years showed an increase; the licensees believed their last review had been settled at 'best consideration' and questioned the justification for a further increase;
- the affordability issue was raised and the need to consider those living afloat.

What is the consultants' response and what changes will be made as a result of the consultation?

The response forms and meetings provided a rich source of feedback which we considered in detail. In this document we have set out many 'Questions and Answers' to address the points made and questions put to us. It also includes a summary of the changes that will be made, drawing on the feedback we received.

Principles

In relation to the points of principle which some respondents have questioned, it has always been clear during the review that there are strong-held beliefs about what should be the correct principles for charging for River Works Licences. It is important to remember that the following issues had to be taken into account, in addition to the views of licensees, residents, PLA and members of the Steering Group:

- The provisions of the Port of London Act 1968
- The independent legal opinion which stated that *"the underlying objective of the provisions in section 67 is to ensure that the PLA is required to charge what is the best consideration on the defined basis..."* meaning *"best in monetary or commercial value"* that can *"reasonably be obtained*". They can take account of the value derived from the licence and must consider all relevant circumstances of each case, but cannot exploit their monopoly position. The assessment is *"... one generally reflecting the market value for the mooring in the particular location in which it is situated..."*
- Government guidance on how Trust Ports should set their charges (*Modernising Trust Ports, 2009*)
- By granting a RWL, the PLA enables a mooring to be created, and that mooring has a value (actual or potential). The licensee benefits from the value created.
- Since they own the river bed, the PLA is entitled to a share of the current market value as set out in the licence agreement.
- The PLA is not able to set reduced or "affordable" charges.

Changes

It is important to place the feedback received in context. Of the written consultation responses received relating to 19 licences, 15 were estimated to have an increase. No responses were submitted or meetings held with 9 licensees out of the 30 licences to which the formula would have applied. It should also be noted that 9 licences were estimated to have a decrease, just under a third of the 30 licences to which the formula would have applied.

It will be impossible to recommend an approach that everyone will agree with because not everybody likes or accepts the principles. However, in our independent, professional view, these principles above set the parameters for the charging methodology. They will therefore remain the underlying principles for the Recommendations Report.

The aim is, and has been, to develop a clear, consistent, reasonable approach to charging, given the parameters we have to work within.

Some of the issues raised were addressed in the Proposals Report, and several others will be amended or written more clearly in the Recommendations Report, including some minor data corrections and the inclusion of 5 other licences.

The PLA's share of net value will be changed from 33% to 30%, which equates to a change from 28.3% to 25.5% of gross mooring value (the rationale for this is explained in 'Share of Net Value'). The calculation and application of the notional mooring fee has also been modified.

Whilst these changes may seem small, the combined effect would result in an estimated decrease or small increase in charge for half of the 35 licences, most of which have been reviewed more recently. Of the remaining licences, the larger increases tend to be for licences which have not been reviewed for over 10 years.

Summary of amendments to our proposals in response to the public consultation

Share of net value

The PLA's share of net value will be changed from 33% to 30%, which equates to a change from 28.3% to 25.5% of gross mooring value

Notional mooring fee

- We will amend the approach to use a straight average from the underlying data, rather than from 4 geographical areas.
- We agree that the 13% 'rule' for sites charging mooring fees had some flaws and is unfair on others, so will not include it in our final recommendations.
- Potentiality - we will clarify the parameters further in our final recommendations, particularly in relation to the questions people raised.
- The BW boat licence in the London-wide notional fee calculation will be exclusive of VAT. The EA does not charge VAT on its boat licences.
- Narrowboats – the discount of 33% should apply to all narrowboats because it is reasonable to assume that the narrowboat in occupation reflects demand and site layout.
- The calculation for the cost deduction should be a percentage of the London-wide notional mooring fee (not the location-adjusted fee) because costs are not generally affected by location; the result should be deducted from a site's notional gross fee/revenue.
- Costs - to keep things simple and avoid future disputes, we still propose one proxy cost rate for all licensees. Where a site has abnormal allowable costs, these could be considered as a site-specific factor, provided they are justifiable.

Actual mooring fee

The licensee's revenue is affected by the renewal/anniversary dates of each of their moorers' contracts. The timing of the notification of the RWL charge each year in relation to when the licensee sets their own fees is also an issue. These may be site-specific factors to consider and we will include these issues in the report.

Site-specific factors

We recognise that people want a 'menu' of site-specific factors but to devise a definitive list is beyond our remit. However we will put the licensees' concerns to the PLA and recommend they consider how best to address the issue.

Dispute Resolution Panel

- We will recommend that the PLA considers extending the panel's remit to other types of River Works Licences, although the practicality will depend upon the method for setting those charges.
- We will advise that there should be a specified process, format of submissions and time limit for both parties to comply with. Further work is required by representatives of the licensees and PLA to develop this.
- We will recommend that the PLA should also be able to refer cases to the dispute panel if for example licensees ignore PLA notices of review, or simply register an objection within the specified time, and let the arbitration process advance.
- We will ask the PLA to note and consider the interest in an Ombudsman, although their role may duplicate that of the Dispute Resolution Panel.

River works without a PLA River Works Licence

- We will clarify the situation where the PLA do not own the riverbed, for example it is owned by The Crown Estate. In such circumstances, we understand it charges a Navigation Licence Fee in respect of the works.
- We will recommend that the PLA makes a statement about unlicensed works, and what it is doing about them, as far as it is able to.

New licences

We will recommend that the formula is applied to the annual sum for new licences. Other terms need to be left open to negotiation as appropriate for both parties so as not to restrict potential development.

Merits

We will include the demerits in the Recommendations Report

Corrections

The Recommendations Report will include the corrections highlighted from the consultation.

Responses to the key points and questions made in the public consultation

General points

Some houseboaters on the River are not paying anything to the PLA, which is unfair. The report should not exclude unlicensed boats.
The purpose of the report is to set a charging method for River Works Licences, and therefore those without River Works Licences are excluded because they do not have a licence. We have no information on any unlicensed sites and the issue is beyond our remit. However if and when these sites do become licensed the proposal should apply to them also. We acknowledge the issue is of concern to some people and will recommend that the PLA makes a statement about it, as far as it is able to.

Too many residential boats were excluded from the study
As stated above, the sites included were licensed sites, including new licences where they have been occupied by houseboats. Some sites are included in the total number of licences and houseboats referenced in the Report but had to be excluded from the application of the formula because they have specific terms regarding charges (explained on page 48 of the Report).

The terms of reference should also have allowed comparisons with RWLs for other uses (non residential)
We worked to the terms of reference agreed by the Steering Group. Leisure moorings are not relevant as comparables – they are a different 'product' with a different demand and market to residential moorings and hence a different value.

Houseboats on river works licensed for other purposes should have been included.
This group was not part of our remit.

Important information was edited out on existing agreements.
We looked at all the licences but commercially confidential requirements mean that these could not be made available to the Steering Group.

What is the situation where the PLA do not own the riverbed, for example it is owned by The Crown Estate?
The PLA confirmed that it cannot charge for River Works Licences where it does not own the riverbed and in such circumstances, we understand that it charges a *Navigation Licence Fee* in respect of the works. We will make this clearer in the report.

We dispute that the PLA own the riverbed. They were gifted the riverbed and therefore should not make a commercial charge.
If the PLA owns the freehold of the riverbed, by whatever means it came by that interest, then they are entitled to make a charge as freeholder. If the ownership is disputed, that is a separate matter, outside the scope of this review.

Best consideration only applies at arbitration so the PLA can actually agree less than best consideration
Some licensees believe the PLA is only required to charge best consideration that can reasonably be obtained at arbitration, leaving them able to agree a lower amount before that stage. However, we understand this is not the case, considering the government guidance *Modernising Port Trusts*, the independent legal opinion and the indication of the PLA throughout the review. Our recommended approach therefore aims to achieve best consideration that can reasonably be obtained when setting charges, not just at arbitration.

There's an affordability issue here and these are people's homes which is a circumstance that has to be considered... People cannot take their boats elsewhere once they cannot afford the charges – they are always subject to the PLA's monopoly.
The legal opinion confirms that the licence must reflect market value. It also says that a licensee's personal circumstances would generally not be relevant to the assessment i.e. setting the charge. However it did recognise that if best consideration resulted in a significant increase which caused hardship then phasing should be considered.

Our proposal restricts the PLA from exerting its monopoly position because:
(a) The proposal clearly identifies and caps the PLA share;
(b) The charges are based on a broad basket of open market rates where the PLA is at arm's length from setting the fees.

Points made on the questions on the response form

Context for the proposals

Various comments were provided and we will edit the report as appropriate.

Other charging options

Some respondents expressed preference for some of these options, including:

- A minimal share of the value, like a ground rent
- Charges per pile and length of pontoon
- A fixed rate 'menu' of charges for the river works themselves
- Apply an index to the original fee agreed at the outset

However, as stated in our assessment of these options, the charge should reflect the market value of the use to which the works are put and can take account of changes occurring after the date of grant. Most licences refer to an annual sum *'from time to time agreed or assessed in accordance with the PLA Act 1968 s.67'* and therefore reviews of the assessment are to be expected.

Actual annual mooring fee

Why should you apply a notional mooring fee to a site which is charging mooring fees – surely you should use their actual fee? ...why should best consideration apply to the lower value sites? ...how will you decide whether to use their actual mooring fees or apply the notional fee?

The barrister was asked specifically: "*...can the PLA's charge be based on the potential value, for example if the works are unoccupied or the licensee is not charging competitive/maximum rental fees...*" To which he responded*:*

"Generally, in my opinion, it is the potential use or value that will be relevant so long as that is reflective of what is reasonably obtainable as a best consideration... It would then be appropriate to assess what would be the realistic range of use of the mooring or work and what is the general market demand and value for the right to maintain the mooring or work for that purpose. I consider that normally that would be the principal influence on the best consideration which is reasonably obtainable. It would not generally be dictated by the particular use which the licence holder chooses to make of the mooring or work."

Therefore it may be more appropriate to apply the notional fee to sites charging below the market rate.

The objective is to estimate the potential market value that could reasonably be achieved. The legal opinion said that the assessment is to be *'... one generally reflecting the market value for the mooring.'* Having spoken with many of the mooring providers on the Thames, it is understood that some take a commercial approach while others have said they adopt a softer approach to their fees, charging less than they could achieve. We accept that it is a potentially subjective approach to decide whether to use actual or apply notional, but we found it relatively easy to establish during discussions with many of the mooring providers.

It will be very important to distinguish whether a site's fees are below market-rate or they have been 'marked down' out of necessity because of site-specific factors. These factors will need to be taken into account when considering the appropriate mooring fee to use, and whether any adjustments should be made.

If the PLA applies the notional fee instead of the actual fee, and the licensee disagrees with the approach, the licensee could take the matter to the dispute resolution panel.

An increase in an operator's RWL means they increase their mooring fees. Next year the RWL will be based on their increased fees which they will again pass on, and so on...

We should be clear that this would only be the scenario if the operators' *actual* mooring fees were used as the basis for the charge; in some cases the notional fee may be applied. This circular effect assumes that (a) the proposal results in an increased RWL for the mooring operator and (b) that they will always pass on the full effect, which may not always be the case. However we do accept that increases could be passed on, although this circular effect would be expected to level off and, furthermore, the effect may be mitigated if any RWL fee increase is phased.

Our mooring fees are set on the same date each year, but may only apply to our houseboats later in the year, on the mooring contract renewal date. To assume that the annual mooring fee applies from day one across our site is to overstate the actual income.

Understood. This may be a site-specific factor to consider. RWL payments should be discussed with the PLA. We also accept that it will be important to consider the timing of the notification of the RWL charge each year in relation to when the licensee sets their own fees. We will include these issues in the report.

An increase in an operator's RWL charge also means the London-wide notional fee will go up for everyone

Any mooring fee increases by sites on the tidal Thames included in the basket will have a limited effect on the London-wide notional mooring fee because there are currently only two sites out of around 20. The remaining sites in the basket are within London on the canals, docks and non-tidal Thames.

To allow the commercial operators a 13% allowance is unfair on others.

We originally proposed that the notional mooring fee would be used if the site's actual charges were below its notional mooring fee by more than 13%, otherwise its actual fee would be used. Because it was a subjective judgement to determine whether to use actual or apply the notional, we aimed to set out some parameters for determining which approach to take.

However we agree that the '13% approach' has some weaknesses and is unfair on others, so will not include it in our final recommendations.

Notional annual mooring fee

Why have you only used some sites in the basket? All mooring fees should be used, including the lower mooring fees because this represents the entire market.

The objective is to estimate the potential market value that could reasonably be achieved. The legal opinion said that the assessment is to be *'... one generally reflecting the market value for the mooring.'*

Having spoken with the various mooring providers on the Thames, it is understood that some take a commercial approach while others have said they adopt a softer approach to their fees, charging less than they could achieve. Since the notional mooring fee must be a proxy market rate, it should be based on competitively-priced mooring fees rather than an average of *all* mooring fees including those not competitively priced.

In some cases the fee is also 'marked down' because of specific factors at the site. Fees that are 'marked down' should not be used as a benchmark for other sites which don't have those factors. It should also be noted that a site which is at the extreme top end of the market has also been excluded from the basket to avoid skewing the result.

There are enough comparable sites on the Thames without needing to use sites from other waterways.

Following from the point above, there are too few licensees on the tidal Thames charging competitively-priced residential mooring fees to provide a suitable and stable proxy market rate. Therefore a broader sample has been taken from the tidal and non-tidal Thames, canals and docks within London.

In a conversation with us, one mooring provider said that they find it difficult to get competitive comparables on the Thames and thought our model to be helpful and sensible.

It should also be noted that some people agreed with the inclusion of mooring sites on different waterways in London.

It is subjective to decide which sites are competitively priced and included in the basket each year.

Agreed, but there is reasonable justification for excluding certain sites, as explained above, for example those mooring providers who say they adopt a softer approach to their fees or mark them down because of site-specific factors.

The list of sites used to derive the notional mooring fee will therefore be a reasonable representation going forward and is based on research and discussions with mooring providers. Of course some sites may be added or removed if their circumstances change.

Will the PLA establish the notional mooring fee each year or is it to be agreed between representative parties?

We propose that the PLA publishes the notional fee, and the details from which it is derived. We envisage this being a very similar format to Appendix I in the Proposals Report. This will be open to validation since all the sites' fees will be openly disclosed or published, and can be disputed via the Dispute Resolution Panel.

Service charges, parking and sites with land-based facilities have been included in the basket, some are deep-water moorings, canals are better than the Thames for mooring...

A few sites in the basket have some land-based facilities such as toilets and showers; a few include parking in the mooring fee but this is generally for outer London sites where parking is less of a premium (note that any supplementary parking charges have not been added to the mooring fee).

Whilst a few sites may have advantages, they may also have disadvantages. For example the boaters have to cruise to a pump-out, the mooring licence is for 6 months, boats cannot be sold on the mooring, the site accommodates narrowboats only, the maximum boat length is 17 metres... Overall, sites have some pluses and minuses. People's views on whether they are a plus or a minus, and how much they are worth, are subjective and will vary.

Therefore it's impossible to isolate each perceived advantage or disadvantage and identify a reasonable value for it, so you can't adjust up or down with any objectivity.

On the whole, the sites and fees are within a reasonable range which reflects the tone of residential mooring fees in London, with several sites above and below the norm excluded.

We accept that our statement in the report 'the Thames is preferable to the canals' is a value judgement. It is based on our experience and observations, but will remove the statement from the report.

Where service charges are made, the elements within the charge were found to vary between licensees. On some sites it is not necessarily entirely cost-based, on others it covers all maintenance costs, whilst on others it includes the PLA River Works Licence fee.

Therefore in order to avoid inconsistency, the appropriate approach is to combine the licensee's mooring and service charges to identify the total fee payable by the boater.

BW and EA boat licence fees should be excluded

We understood from the legal opinion that mooring fees for houseboats on other waterways could be relevant but should take account of whether a boat licence cost has affected the amount paid for a mooring.

The EA/BW boat licence is an additional cost payable by the boater for occupying waterspace and therefore should be factored into the analysis. The rationale is that boaters have to make provision for the EA/BW boat licence fee when considering the amount they are prepared to pay for a mooring.

Therefore the market rates for mooring will effectively incorporate a deduction for the boat licence fee. In other words, the cost to moor on those waters is the combined total of the mooring fee and boat licence fee, whether or not the houseboat cruises.

Is VAT included in the BW and EA boat licence fees and should it be included?

The EA does not charge VAT on its boat licences. The BW boat licence did include VAT, but on balance, this should be excluded to ensure a consistent approach (even though the boater can rarely claim back or offset the VAT they pay).

Why do you use 4 sub-averages of fees for the different waterways in the London-wide notional fee? Since some of the areas have only a few sites, this gives some sites too much weight in the notional fee.

The aim was to give equal weight to the four types of waterway (tidal Thames, non-tidal Thames, docks and canals) in deriving a London-wide fee and also to show the level of fees for each of the four areas. However since some of the areas have only a few sites, this gives some mooring sites too much weight in the notional fee derived. Therefore we will amend the approach to use an average from the underlying data.

Alternative approaches suggested for deriving the notional fee

One respondent suggested a mooring matrix to which mooring providers add their own sites, including their location, facility factors and boat sizes. It could include sites on other waterways in London. Other sites could then apply their details to see where they 'fit' in the matrix, thus deriving a notional fee and dealing with each site's circumstances.

We explored this proposal, but it became clear that the results would be ambiguous because of the inconsistencies in the mooring providers' fees and approaches to pricing.

Another group suggested apportioning the PLA's current total revenue from residential RWL's across the licensees by their area of waterspace occupied with adjustments for location. Their assumption was that the PLA's current total revenue represented best consideration for all licensees.

In some respects, this was not too dissimilar to the proposal. Calculating the area of waterspace occupied by the licensee is simply an alternative measurement to boat length, although this could lead to dispute over how to draw the boundary – boat length is more readily identifiable. The adjustments for location were the same approach as in the proposal. However to assume that the PLA's current total revenue represents best consideration for all licensees is incorrect since some licences have not been reviewed for many years, and also, our proposal would have resulted in a reduction for others.

One licensee uses a 'basket' of residential mooring fees to derive an average from which they set their rates. They shared their calculations (in confidence) with us. Whilst this is a similar approach to the proposal, it was an average which included fees at sites that were 'marked down' and not all were competitively priced. Furthermore there were no location adjustments.

A respondent suggested that the RWL charge should mirror the Council Tax charge, which takes account of value and location.

Council Tax is based on values at 1st April 1991. The Council Tax value is based on the mooring (not the houseboat) but there is no valuation as such; the tax is based on value bandings and the majority if not all houseboat assessments will be at Band A. Furthermore, this does not provide us with a market value for mooring fees.

We are owner-occupiers, why should you apply market/commercial rates to us?

Whilst we appreciate that you don't charge yourselves a mooring fee for your home, you do have to pay for your River Works Licence and we have to put a value on this. The legal opinion said that the assessment for River Works Licences is to be *"... one generally reflecting the market value for the mooring."* It also said *"... thus the circumstances would include consideration of the potential mooring rents which could be achieved as a result of the works to be licensed."*

Therefore we have used the notional fee to estimate market value and ensure a consistent approach across licensees.

Why are you using property prices to set the location adjustment for houseboats?

The aim is to establish differences in value between the mooring locations. After research, the most suitable and transparent approach is by reference to property prices at postcodes of the mooring locations. Use of the property prices is solely to get a location differential factor. It does not seek to make any comparison or link between prices of land-based property and houseboats**.**

Why are you not looking at actual house sale prices? Why not use say 4 or 5 figure postcodes relating only to riverside properties or properties close to the river.

We did explore many options including those above, but the sample sizes are much smaller and therefore had the potential to skew the results, particularly with river-front property. It is unlikely that the difference between asking and sale price will vary significantly across all the postcodes and therefore using sales prices would not make much difference to the results. After research, this website was chosen because it offered very good sized samples per postcode which avoids any anomalies skewing the result in smaller samples.

We would like the site-specific allowances to be published to ensure transparency and consistency. We don't want to negotiate them directly with the PLA, which leaves this issue open to potential dispute.

We recognise that people want a 'menu' of site-specific factors and allowances to ensure an open and consistent application. We set out some parameters in the Proposals Report, but to devise a definitive list is beyond our remit for the review since it would require a site-by-site assessment, research to establish whether the factor is already reflected in postcode, and discussion with both the licensee and PLA. We will put the licensees' concerns to the PLA and recommend they consider how best to address the issue.

Certain factors were raised relevant to specific sites e.g. Helicopter noise, storm water sewage outflow, aircraft coming in to land (and not included in postcodes) ...

Same answer as above

Sites below Richmond lock which ground twice a day should have a discount. Sites above the lock should have an upward adjustment because they have the advantage of constant water level for 11 months a year.

Grounding is a fact of living on the tidal River which is common to most of the sites in the review and we don't believe it merits any specific discount on the notional mooring fee as explained earlier. Feedback from moorers above the half lock tells of the disturbance created by the annual draw-down, which they consider is a significant disadvantage which outweighs any benefit from being afloat for 11 months. Therefore it is debatable whether an adjustment is appropriate.

Getting the true net mooring value requires site-specific analysis. Proxies don't give the true picture.

This is correct to some extent, but such approach would require a site-by-site negotiation between the PLA and licensee, which is similar to what happens now. All sides want to move away from this and have a more predictable method for setting the fee. Whilst you may lose some accuracy by applying proxies, you gain predictability and reduce the scope for dispute.

Applying the notional fee to the boats

The approach should take account of boat area, different types of boat, boat-shaped boats, boat perimeter, living space, area of waterspace occupied, extra storeys ...

The short answer is that the market does not adopt this approach. Nevertheless these issues were explored and the rationale is provided below.

The notional mooring fee is derived from a basket of sites that charge per metre (or per berth in some cases which were converted to per metre). It must therefore be a rate per metre.

The sites in the basket accommodate boats with widths from 2.2 metres to around 5 metres. There is no price distinction for the boat's width or style – boaters pay the same rate, regardless. Therefore the notional mooring fee should apply equally to boats on the tidal Thames up to 5 metres wide.

Furthermore there is no market practice or comparables for rates per boat perimeter, area, living space or type of boat and therefore it is not appropriate or possible to set any reasonable rate using this approach. (It would also require a boat-by-boat inspection and clear criteria as to what constituted the perimeter, living space etc.)

Other options were considered and tested for differentiating between boat width and height, for example an extra 25% for each additional storey. While the principles were reasonable and aimed for fairness, the result was to discount and inflate the notional rate to potentially unrealistic and hypothetical levels, particularly as there was no evidence on which to base these factors.

A charge per area (square metre) was examined but was found to be disadvantageous to all boats above the average width and provide more of a discount than 33% to narrowboats. See the example below:

Using the width data available to us for 220 houseboats on the Thames at licensed sites, 3.7m is the average (modal) width. To calculate the square metre rate: if £336 is the linear metre rate for a boat with the average beam of 3.7m, this equates to a square metre rate of £90.81 i.e. £336 divided by 3.7.

Boat A 12.2m long x 5m wide = 61 square metres		
Notional mooring fee under the current proposal	Notional mooring fee by square metre	difference
£4,101	£5,542	+ £1,441

Boat B - narrowboat 14m long x 2.13m wide = 29.87 square metres		
Notional mooring fee under the current proposal	Notional mooring fee by square metre	difference
£3,138	£2,714	- £424

Boat C 25m long x 4.8m wide = 120 square metres		
Notional mooring fee under the current proposal	Notional mooring fee by square metre	difference
£8,404	£10,903	+ £2,499

The discount of 33% for narrow boats is based on the assumption that they occupy a space only capable of accommodating a narrow boat. This will require site inspections and a discussion about demand, which is therefore open to dispute.

Agreed. It will be difficult for the PLA to prove that there is demand for a larger boat in the space, or indeed for the licensee to prove that there is only demand for narrowboats. On balance, a reasonable approach is for the charge to assume that the narrowboat in occupation reflects demand and site layout.

The proposal incentivises the replacement of traditional boats with large purpose-built structures.

There is no incentive, actually there is a disincentive in one respect. Larger purpose-built structures will tend to have wider beams and will therefore pay a higher rate because we propose to apply a weighting to boats above 5 metres wide:

Boat width	5m	5.1m	5.2m	5.3m	5.4m	5.5m	5.6m	5.7m	5.8m	5.9m	6m	6.1m	And so on...
Weighting	1	1.02	1.04	1.06	1.08	1.1	1.12	1.14	1.16	1.18	1.2	1.22	

Furthermore, the types of vessel on the River can be controlled by the local planning authorities. This issue is set out in the AINA advisory document Residential Use of Waterways[1], particularly section 3.1.1, 3.1.2 and 3.1.3. If an existing residential boat is to be replaced with a purpose-built structure, it may well require planning permission. In practice however, we don't believe that many local authorities, mooring providers or boat owners are aware of this.

It is clear that some houseboat residents feel strongly about this issue and they should therefore engage directly with their local planning authority. We understand that the PLA, as a navigation authority, cannot control or encourage particular styles of vessels.

Can the assessment say that we could have more or bigger boats at the site and therefore be charged for that potential use? The potential should be what's agreed at the outset of the licence.

The legal opinion was that the charge can be based on the reasonable potential of the mooring and the income that could be derived (if the actual use does not reasonably reflect its potential). We set out some parameters in the proposals report on this issue, have clarified them further below and will include them in our recommendations.

The presumption would normally be that a site's existing occupation reflects its reasonable potential, from single-boat sites to multiple-boat sites, and this is a reasonable reflection of the houseboat market. We have found that people usually fill the available space to provide the greatest living space (and revenue on fee-paying sites) within reason. So for the majority of cases, the question of a site's potential would not be an issue – it is as existing occupancy.

It would be unreasonable to say that a fully occupied site could raft up more boats, for example. Or that Licensee A with a single houseboat should be charged for two houseboats just because their neighbour, Licensee B, with the same length of riverfront has two houseboats. If Licensee A replaces their houseboat with a bigger one, they should be charged for the larger houseboat because they are using the site and river works licence to its potential. If Licensee A wanted to add a second houseboat to their site, they would need to apply for consent to the PLA and would be charged for the two houseboats.

The down-sizing of a houseboat or of the number of boats at a site is likely to be rare – many people have told us that there's a tendency to up-size whenever possible. It is not appropriate to say how the assessment should be made in such a hypothetical situation. One would need to consider the circumstances for the down-sizing and whether any amendment/supplement to the licence were required, particularly if it (or the accompanying application for the licence) specifies the number and/or size of boat(s) to be moored.

[1] http://www.aina.org.uk/docs/AINA%20Residential%20Use%20of%20Waterways%20Advisory%20Doc%20Feb%202011.pdf

Costs

Which costs are allowable? Why is nothing allowed for administration, office costs and management?

Allowable costs to be deducted from the gross mooring fees in order to net them down need to be carefully considered. We are referring solely to the costs necessarily incurred in the running of the mooring, i.e. in maintaining and operating it.

Thus the costs of cleaning, annual maintenance and repairs of pontoons and the installations, insuring the pontoons and providing electricity to the common parts as well as the costs of health and safety checks all form part of the deductible costs because they comprise the costs of running the facility.

Administration and management are assumed to be carried out by the licensee and for which they receive remuneration through their share of the mooring fee. To make a deduction from the gross mooring income would therefore be double counting. The majority of licences are for only a small number of moorings and therefore to include an allowance for office costs in most instances would over state the costs.

The legal opinion says that the licensee's costs of setting up and installing the river works is to be taken into account. Why are depreciation, refurbishment and replacement of the works excluded?

The licensee brings their capital to enable the creation of the mooring. This cost is taken into account because the licensee receives a return on their capital, up to one third of the net mooring revenue. Over the life of the scheme, they should make provision for replacing the infrastructure (as it reaches the end of its design life) by setting aside a sinking fund.

To look at it another way, if the periodic capital replacement costs were to be deducted from the gross mooring revenue, the licensee would not, in effect, be contributing their 'share' to the scheme. Instead, they would be requiring all three parties to fund the capital from the gross mooring revenue. This could be double counting and leave little net value remaining.

You should deduct actual costs, like HMRC allow on tax returns... One rate for all licensees is too general. Marinas have some costs that smaller sites don't... Larger sites can achieve "economies of scale" that smaller sites can't... We have higher costs because we have more significant river works infrastructure... There should be different cost bandings for different mooring arrangements.

Licensees operate their sites in different ways. Some have achieved better rates for expenses than others, some use voluntary labour, some have less river work infrastructure... We did explore the deduction of actual costs but this would require detailed scrutiny of accounts each year and could well result in dispute over which items are admissible and the reasonableness of the costs. We explored the option of cost bandings but it would be difficult to distinguish clear boundary lines between different levels of infrastructure.

Therefore to keep things simple and avoid future disputes, it is proposed that this proxy cost rate of 15% should be used and applied to all licensees. In limited instances it may be possible to identify specific reasons why allowable costs should be higher on a particular site. This will need to be considered on an individual basis but it is expected that any allowance under this heading will be very much the exception.

The addition of VAT to the River Works Licence is an additional expense. We don't charge VAT on the mooring fees so can't to recoup it.

VAT is a tax in the same way as income tax and, as such, is not an element to be taken into account either on the income or on the expenditure side of our considerations. We have therefore excluded it from all the calculations. Like any tax this is something that business, and if appropriate, we have to pay.

Why doesn't the PLA incur the cost of maintaining the section of riverbed i.e. their contribution? ... the PLA provide no services and incur no costs in relation to the moorings, unlike the licensee.

As owner of the riverbed, the PLA are entitled to a return for the occupation of their riverbed and their enabling 'development' on their riverbed i.e. the river works. The responsibility for maintaining the licensed land (riverbed) depends on the terms of the licence.

The PLA still incurs some costs. They need to administer the licence, enforce it and ensure that the terms are being adhered to; they may need to visit the site and review circumstances such as boat dimensions; they also incur costs of negotiations and sometimes for arbitration. They are responsible for navigation on the river, including past the licensed sites, so they also incur costs in carrying out these duties.

The licensee's relevant costs are taken into account with the 15% deduction.

Basing the cost deduction on the location-adjusted notional value is wrong because costs are not linked to location value.

Agreed. The calculation for the cost deduction should be a percentage of the London-wide notional mooring fee (not the location-adjusted fee) and the result should be deducted from a site's notional gross fee/revenue.

Why is Council Tax excluded as a cost?

This is a cost of living that is borne by the occupier of the houseboat, along with utility bills etc. The assessment for the river works licence is based upon the value of the mooring, so only costs directly associated with the mooring are relevant.

What about local authority costs for planning permission?

This is one of the many fees included in the overall capital cost of setting up and installing the scheme.

Share of net value

The PLA are obliged to give RWLs - they cannot refuse to 'unlock the value' and have no ransom... The licensee incurs investment costs and risk, so they should receive a larger slice of the "upside"... The PLA should have a ground rent because the *licensee* brought the capital and gets the premium... Because risks are unequal, the rewards should not be shared equally... The opportunity cost of the riverbed is nil.

Whilst the PLA are required to grant a licence on request and provided the applicant meets the criteria, (does not obstruct the navigation, has a full access to the land and has planning consent), they are still the freehold owner of the land (river bed). As owner of the land they are entitled to receive a fair market value for their interest, that is the licence, they are granting. Whether they can refuse to grant a licence or not has no relevance to the question of value.

The project, i.e. the creation of the mooring, cannot take place without each of the three parties' input. Therefore, in concept, each has equal strength and therefore is entitled to an equal share in the net value.

If 16.66% of the value was what the PLA proposed in 2006 what is the justification for 33% now?

This is not comparing like with like. The PLA's 2006 proposal was for 16.66% of the *gross rental value* of the houseboat on the mooring. The current proposal is for 33% of the *net value of just the mooring*. The current proposal would result in a lower RWL charge than 16.66% as illustrated below:

Based on advertisements earlier in the review:

Narrowboat for rent in Kew advertised (Houseboat Centre December 2010) at £1,250 per month. Say a rent of £1,100 is agreed, giving £13,200 p.a. 16.66% of the gross rent is £2,199 as the RWL fee.

Notional annual mooring fee of £336 x 0.83 weighting for Kew = £279. 33% reduction for narrowboat = £187. £187 x 22 metres = £4,114 gross mooring revenue. Less 15% costs gives £3,497 net. 33% RWL fee is £1,154.

Dutch barge advertised for rent (Riverhomes August 2011) in Hammersmith at £450 per week. Say a rent of £400 is agreed, giving £20,800 p.a. 16.66% of the gross rent is £3,465 as the RWL fee.

Notional annual mooring fee of £336 x 01.14 weighting for Hammersmith = £383. £383 x 25 metres = £9,575 gross mooring revenue. Less 15% costs gives £8,139 net. 33% RWL fee is £2,713.

The share of net value in the real world varies according to location

We assume here that this net value refers to the development of the site and hence the one third share. In the real world the freeholder of the land would extract the maximum value that they could get, exerting any ransom they may be able to.

In the instance of river works licences, the PLA and potentially the riparian owner may wish to extract the maximum value that they can obtain, including monopoly value. However the Act requires us (and correctly so) to exclude the PLA's monopoly power/value. Thus the PLA's share is capped by our recommendations so that they cannot exert their monopoly position over what they are entitled to. Also in the real world the prospective licensee will take no share of the increase in value applicable to the land. In other words he would be expected to pay the full development value of the land. The model used here however allocates a share of that development value to the licensee.

The 33% of net does not relate to other navigation/port authority rates. Medway Ports charge 12.5% of gross. Crown estate charge 8%-15% of gross. BW charge 9% of gross for connected marinas. The British Waterways 50% fee for "end of garden" moorings is because these have minimal cost, equal minimal risk and no opportunity costs.

Firstly, the proposed formula equates to 28.3% of gross mooring value[2].

There is a broad range of reference points from the other navigation and port authority rates ranging from 9% to 50% of gross mooring value. It is important to understand what exactly these rates take into account when considering their relevance and making comparisons:

The BW 9% rate is based on the marina's capacity, not occupancy and therefore the operator is charged for vacant berths. Also, the boats do not occupy BW's canal-bed, they occupy the riparian land-owner's bed of the marina. Therefore you would expect this rate to be lower. The Medway Ports 12.5% charge is in addition to a base rent. You would expect the BW 50% 'end of garden' rates to be higher to reflect the fact that there are only two parties involved and there is usually minimal cost or risk.

The Crown's marina rates and in fact, the other authorities' marina rates are for commercially operated marinas. Such sites normally involve considerable investment e.g. excavation, road access, parking and buildings (in addition to piles, pontoons and services) to make a marina viable. The marinas are mostly for leisure use, for which demand is arguably lower than residential moorings in London. Overall they have a different profile of use, cost and risk.

33% has not been supported with evidence – you refer to a small number of agreements which cannot be confirmed. Some licences have fees at much less than 1/3 of net revenue e.g. 20% of gross mooring fee at Chelsea Yacht and Boat Company.

We have established that the new agreements over the years have shown an upwards trend as we set out in our report. The newest agreements, although few, have shown that new licensees have been willing to go ahead on the basis of an equal split between the licensee and the PLA. There are only a few new agreements because there have not been significant numbers of new residential mooring schemes over the years. This supports our initial conclusion that 33% is reasonable on the basis of each party being an essential requirement for the mooring scheme. Hence they would be entitled to an equal one third share.

However, in considering the post-2000 licences, the developer's receipt of upfront capital premiums for the moorings is likely to form an element in their considerations when agreeing terms with the PLA. Such facility may not always have been open to pre-existing licences. In recognition of this issue the recommended percentage appropriate to the PLA will be 30% of the net mooring revenue. This equates to 25.5% of gross mooring revenue; there are reference points from earlier agreements which support this approach.

The Riparian Local Authority has an interest/contribution by granting planning permission and S106.

The Local Authority, as the planning authority, is acting in the role of guardian of the environment. They do not sell and indeed have no authority to sell planning permissions. This is one of the many fees included in the overall capital cost of setting up and installing the mooring scheme. Section 106 agreements are available to the local authority as a method of ensuring that a developer contributes to necessary additional infrastructure costs incurred by the local authority and in the vicinity as a result of the developer's proposed development.

If the Local Authority is also the riparian owner then they may be entitled, as riparian owner to a share of the value created because they own the access.

[2] Say gross mooring revenue = £1,000. Less £150 deduction for costs (i.e. 15%) leaves £850 net mooring revenue. One third of the net £850 = £283. £283 is 28.3% of the gross £1,000.

Dispute resolution

There was general support for the Dispute Resolution Panel as a stage before arbitration, although views differed on its constitution and remit.

Suggestions on the members of the panel - It would be better if neither the PLA nor the licensees were represented on the proposed panel. It would then be fully independent. The chair should be a lay person not the district valuer, but possibly an accountant or a local MP....

We still believe that the chair should be the District Valuer since the issue centres on establishing a value for River Works Licences. Either both the licensees and PLA are represented on the panel, or neither. We tend to agree that the panel would be fully independent if neither were represented. And in any case, both parties will be making their representations to the panel during each case. We therefore need to identify two other suitable members who would assess the cases neutrally, have no close interest in the outcome or sympathies with just one side. They must also have the necessary skills. There were various suggestions, so we will consider this further.

The Dispute Resolution Panel should also consider disputes on aspects of the formula e.g. the 1/3 split, not just disputes within the formula.

We recognise that the public consultation has highlighted challenges to some of the principles of the formula.

Whatever approach or formula is adopted by the PLA, it will follow a year's worth of intense work with a Steering Group and consultation with those affected. It is unlikely that the Dispute Resolution Panel will be sufficiently conversant with the issues to make a recommendation on the principles of the formula, and would not be in a better position than the current Steering Group. Therefore we do not see how the Dispute Resolution Panel can competently consider these issues and believe it has to work within the parameters of the formula.

The PLA should also be able to refer cases to the dispute panel if for example licensees ignore PLA notices of review, or simply register an objection within the specified time, and let the arbitration process advance.

Agreed – we will include this. There should be a specified format of submission, process and time limit for both parties to comply with. In order to develop this, a detailed understanding of the requirements of the process is required.

The panel should take oral evidence from both parties together with their valuers or representatives. It would need to be oral because otherwise there would need to be exchanges of documents with rebuttal and counter rebuttal exchanges.

We believe this approach may be difficult to conduct orally, requiring the panel to take notes, therefore written evidence should be submitted, to an agreed format and length.

The Panel should be extended to other types of River Works Licences

Agreed in principle, although the practicality will depend upon the method for setting charges for other types of River Works Licences. We will recommend that the PLA considers it.

We would like a separate complaints procedure and/or ombudsman.

We will ask the PLA to note and consider the interest in an Ombudsman, although it may duplicate the role of the Dispute Resolution Panel.

Reviews

Will there still need to be reviews with each licensee every year? What happens to people on 5 yearly reviews? How will there be agreement on the notional fee basket review every year? We preferred RPI.

For all licensees whose licence terms refer to a 'sum to be agreed from time to time' the formula would be applied each year to determine their annual sum payable. For those licensees whose licences include different terms, e.g. a percentage of mooring income, the formula would also be applied each year using their actual mooring fee or by applying the notional mooring fee to their site, it that is more appropriate.

The formula is the only calculation each year. RPI or other adjustments are not relevant because the charge will track market values of residential mooring fees in London (which could go up or down) and it will be up-to-date each year. This replaces the previous practice of periodic reviews of the licensees' charges using comparables and applying RPI or a similar index between reviews.

Each year the PLA would update the London-wide notional gross mooring fee using the prevailing mooring fees of sites in the basket. It would be derived from publicly available information and is therefore completely open to validation. The PLA would also need to provide information on any decapitalised mooring sale prices they include in the basket and how the amount has been derived. If licensees felt that other sites should be included in the basket, or if they disputed the amount or calculations, they could refer the matter to the PLA and then, if necessary, the Dispute Resolution Panel.

Only occasional site-specific checks are advisable to ensure that any agreed site-specific allowances are still applicable and to identify any new factors that may affect value.

It should be noted that the terms of some licences stipulate a specific review pattern, usually five-yearly, with annual adjustments to the fee between reviews, usually RPI. In these cases, the formula could only be applied on the review date, for example every five years. The PLA and licensee are 'locked in' to these licence terms, which does create a degree of inconsistency between fees paid by licensees, which is unavoidable, but at least the method of charging is consistent. The licensee could approach the PLA with a view to varying their licence terms if they wanted to.

We appreciate that reviews using RPI was a nice and simple approach, but the aim is for the charges to reflect market value – the proposed approach tracks market values of residential moorings in London; RPI does not.

Merits

The demerits were not listed as well as the merits

Accepted. We will include these in the Recommendations Report including feedback from the consultation.

Large multi-tenanted houseboats

No responses were received from the three licensees operating this type of houseboat. Among other respondents, there was general consensus that these commercial ventures are very different to other residential mooring arrangements so should be approached on an individual basis. This enables the circumstances to be taken into account.

Some people commented that the method relies on the licensee providing the necessary information, and that the PLA has limited power to require its provision. We accept this limitation, but if the information is not forthcoming, then the PLA will need to use reasonable estimates and market evidence of lettings.

New licence agreements

New licences should have their charges calculated in the same way as existing licences, otherwise you create more inconsistencies.

We agree that any annual charge should follow the formula.

It is essential to ensure that the terms for new developments are open enough to enable *both* the developer (prospective licensee) and PLA sufficient flexibility to agree terms as appropriate at the time. Within the context of a new development both parties need to be able to negotiate the viability of a proposal with sufficient manoeuvre room to ensure that the project can take place. To be too prescriptive could restrict developments and thus restrict supply of new moorings. For this reason we will therefore recommend that the charging method should apply to the *annual charge* for new developments, but that additional terms can be freely negotiated.

Much better predictability of the annual charge will enable more reasonable and reliable assessments of viability and hence negotiations. Another result will be that prospective moorers at a new site would be better able to make an assessment of what they are prepared to pay for any premium because they will know what the annual sum is likely to be (by applying the formula).

Phasing in the changes

There was some support, or 'not sure' views on our phasing proposals. Some people said raised concerns over the resources of longstanding residents and maybe the need phase over a long period of time. Overall we think the phasing approach is reasonable. It should be remembered that the legal opinion said that an individual's personal circumstances should not affect the charge, although if faced with hardship because best consideration represents a significant increase then there may be scope for phasing in the increase as a 'proportionate' approach.

Publishing each licensee's charges

Many licence-holders and house-boaters were happy for their licence fees to be published, although it's important to note that several licensees did not want their fees to be published.

Ultimately the licence fee is commercially confidential and the PLA cannot publish an individual licensee's fees without their explicit consent, which would need to be sought from each one and kept on record with a time limit.

We note that some licensees are sharing their licence information with OPLAC.

The publication of fees is for the PLA to consider in the light of feedback from the consultation.

Results of applying the formula

There were some errors in the report

Accepted – there was a considerable amount of information requiring analysis. In order to correctly compare the current charge with the proposed charge, i.e. 'like with like', we had to use the same basis as the licensee's last assessment, for example the total length of boats in occupation, or the pontoon metres, *at that time* (in some cases this was many years ago). Therefore, if boats have changed since then, it is not an error to use the original dimensions. The PLA and licensee can update the details when the licence fee is reviewed.

The errors that were highlighted to us and the corrections include:

Errors	Result of the correction
Boat dimensions for two boats	Add £1,260 to the total increases
Corrections to the postcode for 5 licensees (the postcode changes half way along the road where they are moored and we had used the wrong one) which reduced each of their estimates	Add £1,023 to the decreases i.e. there is a further £1,023 of decreases
The current charge for one licence was lower than stated (the estimate is unchanged). The estimate posted to them included the correct information, however.	Add £731 to the total increases The PLA existing revenue is £731 less
We had also excluded 5 licences which we understood to be in the process of transition to a new head licence. However we now understand this has not taken effect and therefore the existing licences need to be included.	The PLA existing revenue is £4,061 more Add £11,607 to the total increases

The net effect of these corrections is:

	Original report	Corrected
Total of the decreases	£3,775	£4,798
Total of the increases	£93,997	£107,595
Total net change	£90,222	£102,797
Current total revenue	£364,905	£368,235
New total revenue	£455,127	£471,032
Percentage increase	24.7%	27.9%