

PLANNING SYSTEM REFORM PROJECT



Technical paper 1

Leasehold administration in the ACT

Its role in the planning system



ACT Government



ACT Planning &
Land Authority

This is one of five documents that describe proposed reforms to the ACT planning system.
The complete series is as follows:

Directions paper

Technical paper 1 – Leasehold administration in the ACT. Its role in the planning system

Technical paper 2 – Review of the Territory Plan

Technical paper 3 – Streamlining development assessment and building approval processes in the ACT

Technical paper 4 – Review of environmental impact assessment in the ACT

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Overview of proposed reforms

Canberra is a unique city within Australia. Not only is it the nation's capital but it is the only jurisdiction that has leasehold land tenure. While there are many factors that have contributed to the creation of a city that has integrated the built and natural environment, the leasehold system was an invaluable tool during the formative years of the city. It enabled the early planners to ensure that the city developed in a structured way, providing for well-sequenced residential and commercial development, and socially valuable facilities such as churches, community centres, health and educational facilities.

Public ownership of the land was essential to secure appropriate planning outcomes for the fledgling capital city while avoiding the negative impacts of the speculative land dealings experienced in the freehold system. There have been many changes to both the policy and administration of the leasehold system in the ACT. While the fundamental objectives continue to be relevant, there is a need to strengthen the system to ensure it continues to deliver positive outcomes for the community.

There is no proposal to change leasehold as the land tenure system for the ACT. Leasehold provides the ACT with a land tenure system that has been accepted by the community, industry and the finance sector as a secure form of tenure. Any changes proposed to the administration or form of leases will not impinge on the rights in existing leases or the legislative provisions for the grant of further leases.

It is recognised that the evolution of the ACT's leasehold and planning systems has resulted in a dual system of land use and development control, which has not been fully integrated. From a leasehold perspective, the main issues for consideration and possible reform are:

- ensuring the objectives of the leasehold land tenure system in the ACT are relevant and easily understood
- making a clear distinction between the role of the lease and the role of planning policy as may be embodied in the Territory Plan
- identifying a more efficient and equitable charging method for additional use rights
- improving the administration of the leasehold system to better support its own objectives.

The lease will remain as the mechanism to provide a clear and unambiguous statement of the rights and obligations of each party to the lease.

Reforms are proposed that will provide a more robust approach to determining the permitted uses to be included in a lease before the first grant. Criteria will be developed to determine when the first grant of lease should be through a direct grant or restricted grant process. It is also proposed to introduce measures to ensure that where a lease is granted for a particular use, that use is delivered.

The change-of-use charge is identified as a key area where the current system is not transparent. The charge does not always return the appropriate value, nor does it provide a mechanism that reflects the true cost and impact of development on the community. This paper recommends a range of studies to consider both a new development rights charging system, and the need for a separate infrastructure charge in the ACT.

List of recommendations

RECOMMENDATIONS FOR IMPROVING KNOWLEDGE OF THE LEASEHOLD SYSTEM AND LAND ADMINISTRATION

- *Educate the community on the role and functions of the leasehold system.*
- *That the Authority, in consultation with other government land management agencies, prepares and maintains a Land Custodianship Map. The Map would identify the custodial agency for all unleased Territory land.*
- *Investigate options for on-line access to information relevant to planning and leasehold administration.*

RECOMMENDATIONS ABOUT THE RELATIONSHIP OF THE LEASE AND THE TERRITORY PLAN

- *The lease remains as the mechanism to provide a clear and unambiguous statement of the rights and obligations of each party to the lease.*
- *New and existing leases continue to include provisions that specify use, permitted intensity of development, and tenure in a manner that is consistent with the requirements of Commonwealth and Territory legislation, and the Territory Plan.*
- *Amend the Land Act to clarify that 'use' is an assessable element of a development application, including a development application that only seeks to vary the lease.*

RECOMMENDATIONS SPECIFICALLY ABOUT THE LEASE PURPOSE CLAUSE

- *The purpose clauses should continue to list the permitted uses for a lease.*
- *That the Territory retain the capacity to require a specific facility to be built on a specific lease, with the criteria for determining such uses being transparent and accessible to the community.*
- *That leases first granted through processes other than direct or restricted grants processes include a larger range of permitted uses, in circumstances where market forces should be a key factor in determining the mix of uses within a multi-use lease.*
- *Where a new lease provides for a range of uses and has been granted at full market value, there should be a single expression of the overall permitted intensity of development (such as gross floor area) in the lease.*

RECOMMENDATIONS ABOUT GRANTS OF LEASES (OTHER THAN DIRECT GRANTS)

- *There should be only one provision in the Land Act for the grant of leases, accompanied by significant refinement of the number of disallowable instruments for such grants.*
- *Consider establishing a time-limited holding lease as the mechanism to provide for the consideration of a development proposal, where the lease is offered through other than a direct grant process.*
- *If the prospective lessee fails to lodge a development application within the time specified in the holding lease, the exclusive dealing period ends and the lease may be re-offered for sale.*
- *Develop criteria for the grant of licences and short-term leases.*

RECOMMENDATIONS ABOUT DIRECT GRANTS OF LEASES

- *Review the criteria for the direct grant of leases and make those criteria publicly available.*
- *Develop and make publicly available the charging policies for the direct grant of leases.*
- *There should only be one avenue to apply for a direct grant of lease to replace the current system that enables prospective lessees to approach a number of agencies, depending on the nature of the proposed development (for example, aged-care, business leases, place of worship).*
- *There should be no right to apply for a lease variation to add new uses to a lease within the first five years of leases granted through a direct or restricted grant process.*

RECOMMENDATIONS ABOUT LICENCES AND SHORT-TERM LEASES

- *Develop criteria for the grant of licences and short-term leases.*

RECOMMENDATIONS ABOUT CHANGE OF USE AND PAYMENT FOR THE USE OF LAND

- *Amend the Land Act to enhance existing provisions that enable the Authority to require additional information when assessing a development application. This additional information can include plans for any application to vary use or permitted intensity of development, where the proposal is assessed as potentially impacting on the surrounding area.*
- *Review the use of the surrender and re-grant mechanism as a means of giving effect to a development approval that varies a lease.*
- *Develop a codified development rights charging system that includes a public register containing a list of fees that would apply depending on the type of use to be added. The register would also establish charges to increase the intensity of allowed development, where that restriction is provided for in the lease.*
- *Conduct a detailed investigation of the options for infrastructure charging.*

RECOMMENDATIONS FOR IMPROVING COMPLIANCE

- *Prepare legislative amendments to provide for a complaints system for compliance matters.*
- *Review the list of controlled activities in the Land Act, against which compliance action can be taken.*
- *Review the definition of development in the Land Act to clarify its relationship with controlled activities.*

1. Introduction

This paper is designed to prompt discussion about the objectives and roles of the leasehold land tenure system, and to identify the key elements of the current legislative and administrative framework that may benefit from reform.

It is part of a wider planning system reform project launched by the Minister for Planning in December 2004. The aim of the project is:

to create a contemporary planning and land administration system, processes and practices that will provide greater certainty, clarity and consistency, and which is flexible, timely, less repetitious and administratively manageable.

Before self-government, leases were the principal means of controlling land use and development in the ACT. The Territory Plan now takes part of that role, by providing a planning policy framework within which leases can be created and administered. The administration of the leasehold system and the Territory Plan overlap and do not present a seamless decision-making process. Much of this paper focuses on the elements of the lease that contribute to the delivery of planning outcomes, and the refinement of the policies for the grant and variations of lease, to ensure the delivery of specified outcomes in a timely and transparent manner.

2. The role of leasehold in the ACT

Recommendation:

- *Educate the community on the role and functions of the leasehold system.*

The ACT's land tenure system is based on Commonwealth land ownership, as established under various provisions of the Constitution, and Commonwealth and Territory legislation. It is a system that consists of unleased Territory land and public leasehold, with private subleases. Appendix A outlines the statutory framework under which the leasehold system currently operates.

Land was originally leased from the Commonwealth under four leasing ordinances—Leases Ordinance 1918, City Area Leases Ordinance 1936, Leases (Special Purposes) Ordinance 1925, and the Church Lands Leases Ordinance 1924. With self-government in 1989, the ordinances became Acts, and applied only to Territory Land. When it was enacted, the *Land (Planning and Environment) Act 1991* (the Land Act) became the legislative vehicle for granting leases of Territory land.

It is generally accepted that the ACT would not possess its current form had the leasehold system not been implemented. In the early years, and before self-government, it provided a way of controlling development without a detailed planning instrument such as the Territory Plan. In this regard the leasehold system has served the ACT well, and there is no proposal to change leasehold as the land tenure system. Appendix B contains a list of earlier reviews completed since the late 1980s, as these are most relevant to the current review.

2.1 The objectives of leasehold

The decision to have a leasehold system of land tenure, rather than a freehold one, was declared by Edmund Barton. According to Stein (1995), the leasehold system was intended to achieve the following objectives for the ACT:

- to defray the cost of establishing the national capital
- there should be no opportunity for land speculation, either in the area to be adopted for the proposed city or in its near vicinity, as a result of the government's decision to establish a national capital city
- the unearned increment created by the expenditure of people's money should belong to the people
- to ensure the orderly planned development of the city through the use of specific lease purpose clauses.

These objectives are discussed in more detail in the next few pages.

DEFRAYING THE EXPENSE OF ESTABLISHING THE NATIONAL CAPITAL

One advantage of Barton's decision to implement a leasehold system was the capacity of governments to charge land rent, which helped pay for the creation of the capital. But the system did not last long in its original form.

In 1935 there were three amendments to the City Area Leases Ordinance that signalled a fundamental change to the leasehold system. The first amendment reduced land rent to four per cent of the unimproved capital value (it was previously five per cent). The second amendment changed the period for second and subsequent rent reappraisals from every 10 years to every 20 years. The third amendment introduced the concept of cash premiums for the grant of leases, which was the difference between the Minister's reserve and the price bid by the successful bidder. The net effect of these changes was to compromise the ability of governments to raise revenue when construction activity boomed in later decades. In the opinion of Frank Brennan (author of *Canberra in Crisis*, Dalton Publishing, 1971) the initial amendment also undermined:

- ...one of the basic principles of the Canberra leasehold system... With this amendment no longer could it be claimed that the system necessarily:*
- a) Involved no capital out-lay in respect of the land;*
 - b) Gave equal rights to all Australians;*
 - c) Left a purchaser free to devote all his money to building on the land.*

A further decision in 1971 by Prime Minister Gorton to abolish land rent essentially converted the system to its current premium leasehold status. It also removed the lease basis for long-term financial contributions by lessees to the building of the city. In 1974, the option of rental leases for commercial and industrial use was reintroduced, with some still operating today. However, a rental option is not currently available for new commercial and industrial leases; only some community leases are offered with a rental option. Revenue to the ACT Government from the leasehold system was further limited as a result of amendments in 1996 to the Land Act, which restricted charges for the grant of a further lease to not exceed the cost of granting the lease (though the provision for the grant of a further rural lease differs as a result of later amendments).

With self-government in 1988, the national capital came to be funded and governed in a manner similar to that of other Australian jurisdictions. Services such as health and education are funded by residents through taxes and municipal charges set by the ACT government. Services to areas of national significance are funded by a Commonwealth subsidy paid to the ACT Government.

AVOIDING LAND SPECULATION

The earliest debates on the establishment of the national capital occurred at a time when there had been a history of speculative land dealings in Sydney and Melbourne, particularly in the late nineteenth century. The debate over land tenure reform in Australia was heavily influenced by the writings of Henry George (*Poverty and Progress*).

The very long and public debate over the siting of the national capital led to concerns that land speculation would be inevitable. Speculation was seen as highly inequitable because land prices increased primarily as a result of government expenditure on infrastructure such as roads and railways. Profit through speculation was referred to as an unearned increment.

Leasehold land tenure was a means of preventing speculative sales of land. This was because the lease included covenants that required a building to be constructed for the use purpose in the lease within a certain period of time. If the building was not constructed, the lease could not be on-sold, and the government could terminate the lease for failure to comply with the building covenant. In the early development years many lessees surrendered their blocks because they were unable to comply with the building covenant.

The enforcement of this principle became difficult as early as 1925, when an amendment to the City Area Leases Ordinance enabled leases to be transferred before the completion of a required building. The intent of the amendment was to deal with a circumstance where the lessee died before completion of the required building, allowing the lessee's beneficiary to sell the lease. The escalation in land values through 1926–27 was evidence that the amendment opened the door to speculative dealings.

The most recent reconsideration of the issue of speculative dealings in land occurred in 2003-04. The explosive growth in the housing and construction industry resulted in many undeveloped residential leases being transferred many times within a short period of time. Each transfer resulted in an increased sale price.

While there are a number of factors that contribute to speculative dealings in land, the lease provides a vehicle to limit that opportunity. In August 2004 amendments to s.180 of the *Land (Planning and Environment) Act 1991* and its disallowable instrument were passed, to prevent speculative transfers of residential leases. The amendments commenced operation on 1 November 2004. They tightened conditions associated with the requirement for lessees to obtain consent to transfer when dealing in undeveloped land. This small but significant amendment has reinforced the relevance of the objective of avoiding land speculation.

ALLOWING UNEARNED INCREMENTS TO BE RETAINED BY THE PEOPLE

This was originally achieved through the charging and periodic review of land rent. Removing payment of land rent in 1971 meant that, apart from a small number of commercial leases, this significant revenue disappeared. This fundamental change also led to the introduction of betterment or, as it is currently known, change-of-use charge. This charge is set as a proportion of the unearned increment, calculated at various rates over time, with the current rate set at 75 per cent. The rate can be increased or remitted in certain circumstances prescribed by the Land (Planning and Environment) Regulation 1992.

The system has been heavily criticised over the years as a disincentive to development, due to the lack of certainty and transparency. The main complaint is that it is not possible under the current charging system to determine up-front the level of the change-of-use charge that will be payable for a development proposal. The overall benefits of the system in terms of the amount of revenue raised and returned to the people is also questionable when measured against the relative costs of administering the system, even if the rate were 100 per cent.

The original objective of *allowing unearned increments to be retained by the people* needs to acknowledge that, since the 1971 conversion to a premium leasehold system, the way in which the unearned increment has been calculated has been inconsistent and the administrative system has become complex. The Government position is that it is appropriate to continue to charge the lessee when permission is given to include additional use or development rights in a lease. However it is recognised that the existing and previous systems for calculating unearned increments have not been effective and need review. Further consideration of this issue is in Section 7 of this paper.

ENSURING ORDERLY PLANNING THROUGH LEASE PURPOSE CLAUSES

It is generally accepted that leasehold system has helped shape the national capital, as there was no single detailed planning instrument like the Territory Plan before 1993. Historically, leases were the mechanism for both planning and land use control. Leases have been, and still are, a powerful tool for ensuring orderly development, including the provision of a range of community facilities and certain commercial enterprises.

The lease purpose clause states the permitted uses for a parcel of land. There have been significant periods within the history of leasehold administration where the approach to lease purpose clauses changed from being overly prescriptive to unhelpfully broad. The inconsistency within leasehold administration over the decades, in particular the terminology used in lease purpose clauses, has compromised the certainty that specific use clauses should provide. The potential benefits of specific use purpose clauses are achieved only when both the development and general community have confidence that any use restriction imposed to support planning or other Government policy is clearly understood and considered to be an appropriate restriction.

Terminology in purpose clauses has been an issue, particularly in relation to commercial, industrial and mixed use leases. For example, there are many older leases in Fyshwick that have a purpose clause for 'industry or industries'. While this provision could be classed as a specific purpose clause, the activities that could be included under such a term were not only broad under the common meaning of industry, but also changed as new industries developed. This has made compliance action in relation to such clauses very difficult.

In 1968 the *City Area Leases Ordinance 1936* was amended to include a new section 8A, which sought to clarify the meaning of the terms industry, industries, light industry and commercial businesses. This recognised the difficulties created by leases with general

terms in the purpose clause that were not specifically defined. It is interesting to note that section 8A applied both retrospectively and prospectively.

At the other end of the scale there are leases that have very specific purposes clauses. Residential leases have always specified that the use of the land be for residential purposes only, with a maximum number of dwellings specified on all but the oldest leases.

For commercial, industrial and mixed-used leases, a specific purpose clause may reflect a specific planning or development intent at the time of the grant of the lease. In some cases this was because the lessee did not want to buy all of the rights potentially available under planning policy at the time of grant—thereby reducing the cost of purchase of the lease. This is consistent with the former rental arrangements, which would allow the lessee to devote their finances to the development of the lease within the timeframes specified by the building and development covenants in the lease.

The objective of ensuring orderly planning is as relevant today as it was when Canberra was first established. Once the Territory Plan came into operation it contributed to orderly planning through its specification of permissible uses in its Land Use Policies. The challenge is to better define and integrate the roles of the lease and the Territory Plan in providing for orderly planning in the ACT.

2.2 Issues and options for reform

The contribution of the leasehold system to the ACT's development is clear; there is no proposal for wholesale change. It is, however, clear that some reform is needed, particularly with regard to implementation of leasehold under the Territory Plan.

With the introduction of the Territory Plan, the role of the lease should be to provide a clear statement of the extent to which a particular lease contributes to the delivery of the planning policy framework that is specified in the Territory Plan. This is achieved through clearly expressed permitted uses and specified levels of development.

The lease should continue to contain provisions that ensure the timely development and appropriate maintenance of leased land. The lease is also a basis for valuing land—for land tax, rates and for change of use charging. The provisions of the lease should, apart from the commencement and completion of building clauses, contain only those requirements that are relevant for the life of the lease, including use, tenure and size of permitted development, usually expressed in terms of gross floor area.

The lease should continue to support the implementation of Government policies, particularly in regard to the provision of community facilities and other activities which are not the highest value or order of use, but are considered appropriate for a given site.

Any changes resulting from this reform process needs to be clearly communicated to the community. There is a range of views about the role of leasehold, many of which have been formed through misunderstandings or misinformation about the leasehold system. The community should have access to clear, accurate and simple information about how the leasehold system works, and what role it plays in the planning process. This process of demystifying the leasehold system will be important in helping to explain why the proposed reforms are necessary.

3. The relationship of leases with the Territory Plan

Recommendations:

- *The lease remains as the mechanism to provide a clear and unambiguous statement of the rights and obligations of each party to the lease.*
- *New and existing leases continue to include provisions that specify use, permitted intensity of development, and tenure in a manner that is consistent with the requirements of Commonwealth and Territory legislation, and the Territory Plan.*
- *Amend the Land Act to clarify that 'use' is an assessable element of a development application, including a development application that only seeks to vary the lease.*

Historically, leases were the mechanism for both planning and land use control (see chapter 2). The Territory Plan is now the principal planning instrument for the ACT. It provides a policy framework within which leases can be created and administered, and it removes the need for leases to always provide detailed planning controls. The leasehold system and the Territory Plan should complement each other and continue to provide for a well-planned city that delivers appropriate development and provides necessary community facilities at the right time in the right places.

The Territory Plan establishes permissible uses for each land use policy area. The Plan also lists the criteria against which any proposed development is assessed, including an application to vary a lease to change the allowed uses. The lease sets out permitted uses for a particular parcel of land. Any development proposal to conduct a use that is permissible under the Plan can only be approved if it is permitted under the relevant lease.

Leases generally specify fewer uses than are permissible under the Territory Plan. For this reason the lease should continue to be the mechanism for providing a clear and unambiguous statement of the rights and obligations of each party to the lease.

The purposes for which leases are granted can be grouped into four general categories (see Appendix C):

- residential leases
- rural leases
- commercial, industrial and mixed-use leases
- concessional and community facility leases.

These categories do not always align with the land use policy areas in the Territory Plan. For example, a community activity centre is a use that would fit into the category of community facility lease. However, this use can be found in the commercial, residential, community facility, restricted access recreation, entertainment accommodation and leisure land use policies areas.

PROVISIONS OF SPECIFIC SECTIONS OF THE LAND ACT

Under s.222 of the Land Act, a variation to any lease is regarded as a development. This means that a variation to a lease requires a development application, either as a separate application without a plan for building or in conjunction with an application for the erection of a building. Such an application typically contains a request for a variation to the purpose clause of the lease to allow a particular use and sometimes, to remove currently permitted uses.

Section 12 of the Land Act preserves the rights derived from an estate in a particular parcel of land when the Territory Plan came into effect. This means that if a lease permits a purpose that is now inconsistent with the Territory Plan (for example, a commercial use in a residential land use policy), the right to develop the land for that purpose is preserved.

CONTROLS ON DEVELOPMENT

The Territory Plan controls development, but the definition of development under the Land Act (s.222) includes *use* in relation to home business and certain activities on unleased land. The definition also includes the variation to the lease, which in most cases involves the variation of either the purpose clause or the gross floor area provisions. This has been identified as an area where greater clarity is needed about the assessable elements of a development application.

Amendments are proposed to the Land Act to clarify that development includes variations to the permitted uses in a lease, and that the variation must be assessed against the Territory Plan to ensure the proposal is consistent with the requirements of the Plan and its associated instruments. This will reinforce the importance of a comprehensive assessment of both building and use proposals against the Territory Plan. If the assessment results in an approval, the lease purpose clause can be varied after the payment of any fee based on the value of the approved additional rights.

The lease should continue to support the implementation of the Territory Plan objects, as specified in the *Land (Planning and Environment) Act 1991*, particularly with regard to the provision of community facilities or other development assessed as providing a community benefit. Planning instruments which detail the development limitations such as height and setbacks should continue to be in the Plan as a mandatory consideration in the assessment of development applications. A clear indication of the proposed changes to the structure and content of the Territory Plan is in *Technical paper 2 – Review of the Territory Plan*.

4. Key provisions in the lease

The standard lease contains a number of provisions including the land covered by the lease, the term of the lease, the purpose for which the land may be used, the permitted intensity of development and the building commencement and completion requirements. It also includes general provisions requiring the lessee to maintain the block, pay rates and charges, and prohibits the building of any structures without approval.

The two key provisions in relation to planning and development are the purpose clause and the permitted intensity of development, which is normally expressed as either gross floor area or a specified number of dwellings. There is a need to review the current use of these provisions and clarify their continuing role in the planning and development process.

4.1 The purpose clause

Recommendations:

- *The purpose clauses should continue to list the permitted uses for a lease.*
- *That the Territory retain the capacity to require a specific facility to be built on a specific lease, with the criteria for determining such uses being transparent and accessible to the community.*
- *That leases first granted through processes other than direct or restricted grants processes include a larger range of permitted uses, in circumstances where market forces should be a key factor in determining the mix of uses within a multi-use lease.*

The purpose clause states what a parcel of land can be used for under an individual lease—these are called the permitted uses. The uses listed in the lease are a key factor in determining the value of the lease in the market place. More importantly it provides the basis for compliance action should a lessee use the lease for purposes that have not been approved.

Uses in a lease must be consistent with the relevant land use policy under the Territory Plan, and the terminology and definitions must be consistent between the two. This does not mean that the Plan has removed the need for the lease to provide planning controls in all instances. There is still a need for the level of land use control that only a lease purpose clause can provide.

BENEFITS OF A SPECIFIC LEASE PURPOSE CLAUSE

One of the benefits of a specific or single use purpose clause is to assist the Government to achieve planning and other objectives that the market does not always provide for, such as religious facilities, aged-care facilities, or other community uses. Leases of this type may be granted through a direct grant process. They may also be concessional leases; that is, leases that are granted at less than market value (see also Appendix C).

The leasehold system provides an effective tool to provide such facilities within the restriction of a limited supply of land—provided the government retains the capacity to specify uses for a lease.

One of the most valued features of the ACT is the open space network, which provides for green space and recreational opportunities on a range of levels. Open space is identified as public land in the Territory Plan and in the Land Act, and there are specific restrictions on which types of public land may be leased or licensed and the management objectives for the public land. These restrictions also limit the types of uses that can be granted under a lease or licence. In some cases the recommendation of the Conservator for Flora and Fauna is required. The restrictions on the leasing or licensing of public land provide a significant safeguard that should continue as part of the orderly land development that integrates the delivery of environmental objectives.

The lease purpose clause also has clear advantages in other types of leases. In relation to rural and broadacre areas, for example, it can be used to prevent urban and industrial activities being introduced into areas that are crucial for maintaining Canberra's distinctive landscape.

The listing of permitted uses and their definitions in leases should continue.

BROADER LEASE PURPOSE CLAUSES

Canberra is no longer a city in its infancy. Redevelopment in existing suburbs is now as economically significant as development in new suburbs. In fact, the current greenfield developments will be redevelopment sites within the next 30 years. Leases are now granted through first grants, lease variations, and redevelopment proposals. Any review of the leasehold system should take this into account, to be able to provide a balance between planning control and the operation of market forces.

The lease purpose clauses could include a larger range of permitted uses in circumstances where market forces should be a key factor in determining the mix of uses within a multi-use lease. This approach applies to the commercial, industrial, and mixed-use lease categories. Like the specific use purpose clause, the broader purpose clause lists the possible uses contained within the Territory Plan land use policy areas that are considered appropriate for the lease.

A caveat on this approach is that this system has, in the past, occasionally resulted in a broad purpose clause lease being granted with some uses not being able to be delivered on the site. Not all uses listed in a land use policy area in the Territory Plan are feasible on every parcel of land. This means that robust pre-sale planning must be undertaken to ensure what is offered for sale is something that can, with appropriate design, be delivered. It should be made clear that this does not remove the commercial risk that potential buyers would need to factor in to their initial bid, as would be done in other jurisdictions.

There will always be the potential for unforeseen circumstances to arise, including community objections to proposals which do not comply with planning rules, but a robust planning scheme should ensure those circumstances would be the exception rather than the rule. As with specific use purpose clauses, where a broader purpose clause is in place, all development control issues would be addressed through conditions of development approval in accordance with statutory planning requirements.

4.2 Permitted intensity of development

Recommendation:

- *Where a new lease provides for a range of uses and has been granted at full market value, there should be a single expression of the overall permitted intensity of development (such as gross floor area) in the lease.*

One of the key advantages of the lease is that the permitted intensity of development is specified. This provides to the community a clear indication of the density and type of development that will be allowed on the lease. It also contributes to a transparent system of land development, and it provides a clear basis for the valuation of the lease.

A concern is that many commercial leases divide the allowed gross floor area between the range of uses listed in the lease, and it is specified in the lease itself. This may have been as a result of planning restrictions, or a means of reducing payment for additional rights. Such an extent of prescription in leases may be unnecessary because Canberra is a developed city that now has significant commercial and residential redevelopment.

It is proposed that lessees should be able to determine the most appropriate mix of uses for leases they have purchased at full market value, with the lease purpose clause defining the possible range of uses. In most circumstances there should be a single maximum allowable intensity of development in the lease—expressed as gross floor area. The Territory Plan would continue to provide the rules in relation to height, site coverage, plot ratio, with the gross floor area restriction in the lease determined with regard to those planning controls.

5. Grants of leases

Recommendation:

- *There should be only one provision in the Land Act for the grant of leases, accompanied by significant refinement of the number of disallowable instruments for such grants.*

The ACT Government sells leases for land by auction, ballot, tender, over the counter, or direct grant. The method depends on the allowed uses of the lease, and whether or not there are objectives other than highest and best value for the land asset that the ACT Government wishes to achieve. This process has been managed by the Land Development Agency since 2003.

Upon sale, grants of lease of Territory Land are made under the Land Act. Most residential and commercial leases are granted on the open market. Other leases, such as leases for the provision of community services, may be sold on a direct grant or on a restricted basis.

The Land Act contains more than forty disallowable instruments for granting leases under various provisions of the Act—this is administratively complex. There would be benefits in simplifying the legislative provisions so that there is only one provision in the Act for the grant of leases. Significant refinement of the number of disallowable instruments for granting leases could also contribute to a more accessible and transparent process.

This section discusses possible reforms to the way leases are granted. In particular, the current arrangement for granting leases outside a competitive process has been identified for reform.

5.1 First grant of lease other than direct grant

Recommendations:

- *Consider establishing a time-limited holding lease as the mechanism to provide for the consideration of a development proposal, where the lease is offered through other than a direct grant process.*
- *If the prospective lessee fails to lodge a development application within the time specified in the holding lease, the exclusive dealing period ends and the lease may be re-offered for sale.*

Residential and commercial sites are normally granted through one of the public processes—for example over-the-counter sales, by tender or by auction. In these cases, lease and development documentation specifies the conditions on which the leases will be granted, and what standard development restrictions apply to the site.

In some situations, pre-sale planning determines that the lease for sale should include a range of permitted uses that are consistent with the land use policies under the Territory Plan, or that other possible uses will be excluded. However there is no certainty that any

of the permitted uses will be delivered because lessees have a statutory right to vary their lease at any time.

One example of how this can be a problem is when land is auctioned for commercial sites. Such sales have the proposed purpose clause clearly listed in the auction documentation, which helps prospective bidders to work out the suitability of the lease for their business goals. It also helps them assess the market value of the lease prior to auction. The documentation also raises expectations within the community about what facilities are going to be provided on the site.

The problem arises when the listed purposes are not as extensive as the uses allowed under the Territory Plan, and some prospective lessees decide to bid on the potential uses rather than the more restricted list in the proposed purpose clause. Any bidder who is successful at auction can lodge a development application for one of the additional uses as soon as the lease is granted. While the grant of lease is not an absolute guarantee to the approval of a development application to vary the purpose clause, the only real penalty is the requirement to pay a 100 per cent change-of-use charge where the variation is made within the first five years of the grant of the lease. This penalty has not proven to be an effective disincentive to what could reasonably be described as speculative purchases.

This undermines the objectives of transparency and certainty in the implementation of planning policy. However, it also needs to be recognised that where there is a range of uses permitted in a lease, a pre-sale planning process can only be undertaken to a certain level of detail, and it is appropriately restricted to determining the uses to be offered for sale.

One way to improve the process is to strengthen the pre-sales planning process by requiring the successful bidder to buy a holding lease immediately after the auction, or other sales process. Such a lease could be issued on payment of a deposit based on a percentage of the sale price. It would entitle the bidder to an exclusive-dealing period in which to submit for assessment and approval, an application (including plans) for the delivery of facilities that would provide for any or all of the permitted uses. The exclusive dealings period would specifically prohibit any negotiations for additional uses.

A development application lodged under a holding lease would be assessed in the same way as other development applications, with the level of public consultation and third-party appeals determined by the detail of the application. Failure to lodge a development application within the holding period would result in the land being forfeited. In this case the land could be offered to the next bidder, or put back on the market for sale.

If a development application were to be lodged and approved in the holding period, then a final lease would be granted, consistent with the approved development. Such a process ensures that any of the permitted uses, or a combination of them, would have been assessed and approved before a final lease is granted.

5.2 Direct grant of lease

Recommendations:

- *Review the criteria for the direct grant of leases and make those criteria publicly available.*
- *Develop and make publicly available the charging policies for the direct grant of leases.*
- *There should only be one avenue to apply for a direct grant of lease to replace the current system that enables prospective lessees to approach a number of agencies, depending on the nature of the proposed development (for example, aged-care, business leases, place of worship).*

The direct grant process can be used to grant certain classes of lease at market value. However, it more typically applies to concessional leases, which are granted for less than market value. This is because direct grants are normally used to meet planning or other government policy objectives that may not be commercially based, and therefore a market value sale price would be inappropriate. The Land Act provides for the direct grant of lease under a number of provisions, and the criteria for the grant of lease under each provision is stipulated in a disallowable instrument.

A recent review of administrative procedures has identified significant opportunities to improve the way in which direct grant applications are processed, and the circumstances in which certain applications can be processed through a streamlined system.

A significant concern is that the current system enables prospective lessees to approach a number of agencies to start the process of negotiating a direct grant, depending on the nature of the proposed development (for example, aged care, business leases, place of worship). This is neither transparent nor easily understood. This paper proposes that there should be only one agency that can be approached by prospective lessees wanting a direct grant. That sole agency would then be required to consult other parts of government to ensure that all relevant government policies are considered at appropriate stages in the direct grant negotiations.

Another key area for reform is the eligibility criteria for the different classes of lease and the associated charging policies, for example in granting of leases for aged-care facilities. The current (outdated) charging policy no longer adequately provides for the various types of aged-care facilities now available from a range of providers. In the circumstances, it may be more appropriate to apply a new scale of charges that are tailored to the different nature and levels of aged-care facilities and services. As with many community facilities, some are commercial businesses and others are not-for-profit organisations that are supported by subsidies and it may be appropriate for a charging scale to take these factors into account.

Work will be undertaken to review and update charging policies for the various categories of direct grant. A whole-of-government approach is needed to ensure that appropriate and transparent incentives are provided in support of key government policy objectives.

In cases where the incentive relates to a use other than the provision of community infrastructure, it may be more appropriate to provide support through other means, such as direct funding assistance. The issue of granting concessional leases has been the

subject of a separate and detailed review that included extensive community and stakeholder consultation.

There are some direct grants involving small parcels of land that, upon their grant, are subsequently consolidated with an existing lease. Direct grant in these circumstances would be on the basis of either the land not being reasonably capable of separate lease, or the grant facilitating a desired planning outcome.

5.3 Variation of use following the direct grant of a lease

Recommendation:

- *There should be no right to apply for a lease variation to add new uses to a lease within the first five years of leases granted through a direct or restricted grant process.*

The criticism that the leasehold system is not transparent can partly be attributed to the lack of controls over the variation of leases immediately after the initial grant of lease. For example, an application to vary the number of allowed dwellings on a multi-dwelling residential lease can be made on the same day the lease is granted. A similar criticism has been made about the initial grant of commercial, industrial and mixed-use leases. As discussed in section 5.1, a holding lease would ensure that the uses offered for sale would be delivered.

The reason for a direct grant or restricted bidder process for a new lease is often to implement government policy, such as provision of a community facility. Allowing a lessee to apply for a variation to change the lease purpose clause could mean that an intended service or facility may no longer be provided. This effectively subverts government policy.

However, the variation of the lease is currently possible because direct grants normally have a restriction placed on the transfer of the lease but not on the right to apply for a variation of the lease. Currently, the only way to restrict the opportunity for additional uses is through the Territory Plan, using area specific policies to limit the available uses for a specific block to those in the lease. This approach is not practical because it is impossible to predict where direct grants will be considered and ultimately granted.

The proposed solution is to prevent lease purpose clauses from being varied within the first five years of leases granted through a direct grant or restricted bidder process for the delivery of community, health, education or religious uses. This restriction may be achieved through either a specific provision in the lease or through legislation. If the lessee were unable through any circumstances to deliver the specified uses in accordance with the lease requirements, then the lease would be either surrendered by the lessee, or terminated by the Territory. A new lease could then be granted for the provision of the same or other purposes as appropriate.

5.4 Lease variation as a ‘development’ requiring approval

Recommendations:

- *Amend the Land Act to enhance existing provisions that enable the Authority to require additional information when assessing a development application. This additional information can include plans for any application to vary use or permitted intensity of development, where the proposal is assessed as potentially impacting on the surrounding area.*
- *Review the use of the surrender and re-grant mechanism as a means of giving effect to a development approval that varies a lease.*

Section 233 of the Land Act enables the ACT Planning and Land Authority (the Authority) to request further information to enable the detailed assessment of a development proposal. If the information is not provided within the specified period (or any approved extension of the period) the Authority is deemed to have refused the application. Previous reviews have raised concerns that development applications for lease variations to change use do not require an associated development scheme or plan that shows how the use will be implemented.

The Authority has mostly been able to persuade applicants to provide detailed plans to support a change of use. However, a recent Administrative Appeals Tribunal decision (AT04/93 – Stryver) revealed that there is no legal power to insist on accompanying plans. The result of this case was that the applicant was able to gain approval of use change without the plans that would have enabled a proper assessment of its suitability and impact.

Amendments should be considered to clarify that the additional information can include the provision of plans, where it is determined that this is necessary to undertake a robust assessment of the planning impact of the proposed additional uses or intensity of development. The community will then be able to have confidence that decisions to approve a change of use are made with regard to all relevant information. It also helps the community better assess the potential impacts of a change of use on their living environment.

A change in use does not always result in any planning impacts for the surrounding area, nor does it require external alterations on the lease site. An example is an additional commercial use for an existing building, with no increase in the permitted intensity of development. In these cases, public notification and third-party appeal rights for the required lease variations are not helpful. They should not be permitted on existing leases that fully comply with planning requirements.

Technical paper 3 – Streamlining development assessment and building approval processes in the ACT addresses in detail the issues around assessing development applications and third-party appeal rights. The paper includes a detailed consideration of the Development Assessment Forum model for dividing development applications into tracks that require different levels of assessment depending on the complexity of the application and compliance with design and siting and other assessment codes. The final

form of those recommendations will influence the detailed development of the further information provisions, and the applications that would not be subject to third-party appeal rights.

Some development applications involve a range of matters that impact on the lease, such as the addition of land, variations of lease boundaries, subdivisions, and consolidation of multiple leases. In these cases a lease may be varied but, if there is a significant change of uses and redevelopment, it may be more appropriate for the lease to be surrendered so a new lease can be granted with a new block identifier for the combined parcels. Criteria should be developed that define the circumstances in which the approval of a development application will require the surrender and regrant of a lease instead of a variation.

6. Licences and short-term leases

Recommendation:

- *Develop criteria for the grant of licences and short-term leases.*

An aspect of land administration that has become clouded in recent years relates to the circumstances and conditions under which it is appropriate to grant a licence or short-term lease (less than 99 years and frequently less than 25 years) rather than a long-term lease. The fundamental difference between a licence and a lease is that a lease grants an interest in the land and a licence does not. It is most relevant for ensuring that future planning requirements for an area are not compromised.

Licences are issued under s.217 of the Land Act for land that is not public land. A licence for public land requires the written recommendation of the Conservator of Flora and Fauna (s.210 of the Land Act). Both sections of the Land Act also specify the circumstances in which a licence is not required for the land to be occupied and used for an approved purpose.

A permit to use unleased Territory land can be granted under the *Roads and Public Places Act 1937* (RPP Act). This Act is commonly used for the outdoor café seating. The *Land (Planning and Environment) (Compliance) Amendment Act 2003* addressed a previous situation where two documents were required for use of unleased public land (as defined by the RPP Act)—a permit under the RPP Act and a licence under the Land Act. Now there are reciprocal provisions that preclude the need to have both, depending on whether a permit or licence has been issued in the first instance.

The Land Act gave government the capacity to grant a licence over land instead of a lease. Before that, short-term leases were used to allow a particular use or temporary activity that did not warrant the grant of a long-term lease, such as a scout hall. Since the commencement of the Land Act, various types and iterations of licence have emerged to cater for new types of activities, such as telecommunications infrastructure and facilities, car fairs, and construction compounds. These licences vary to such an extent that it is often difficult to distinguish the characteristics that set them aside from a lease.

Licences can be a useful tool for allowing a temporary activity without compromising the long-term planning objectives for an area, or where the nature of the proposed activity does require an interest in the land, so there is no justification for granting a lease. It is proposed to establish criteria to determine the circumstances in which a licence is more appropriate than the grant of a lease.

The proposed criteria are all of the following:

- the use of the land is temporary, and
- the use of land is non-exclusive, and
- it is appropriate to prohibit the transfer of the use to another entity, and
- a low level of investment is required to undertake the activity, and
- there is a minimal requirement for services and infrastructure, and
- the ability to terminate the use of the land on short notice is desirable, and
- it is determined that there should be no right to compensation for improvements on expiry or termination of licence, and
- the land must be reinstated to its original condition on expiry or termination of the licence.

One example is the licences that are granted for car fairs. These activities take place on weekends and during the week the areas may be used for car parking. There is virtually no requirement for infrastructure for this activity, and the licensee needs to invest very little money. Should the car park require maintenance or future infrastructure planning change the requirements for the area, then the ability to terminate the licence without compensation is desirable.

Where the proposal does not meet the licence criteria, consideration should then be given to whether or not a short-term lease is appropriate. The need for title to secure financing and exclusive use of the land would be key factors that would result in the consideration of short-term leases. The nature of the activity is also a factor. For example, a scout hall may be an appropriate activity for a particular location in the short-term, but it is likely that changing demographics would result in the scout hall not being required in that location in the long term. In that circumstance a 25-year lease may be more appropriate than a long-term lease or licence.

Criteria should be publicly available. Then individuals and organisations can determine their eligibility for a lease or licence before they approach the relevant agency about their proposed activity. It will also assist in providing for temporary activities on land without compromising long-term planning objectives.

7. Payment for use of land

Recommendations:

- *Develop a codified development rights charging system that includes a public register containing a list of fees that would apply depending on the type of use to be added. The register would also establish charges to increase the intensity of allowed development, where that restriction is provided for in the lease.*
- *Conduct a detailed investigation of the options for infrastructure charging.*

Canberra's original system of leasehold was based on land rents, however, land rent was abolished in 1971 for leases granted under the City Area Leases Ordinance and replaced by a premium leasehold system. Under this system an upfront payment of the capital value of land is required and subsequent premiums are paid to reflect increases in lease value that result from any approval to change the nature or intensity of use permitted under the lease. The subsequent premium, originally called 'betterment', is the 'change-of-use charge'.

7.1 Change-of-use charge (CUC)

A lessee wishing to change the use of their lease is required to make a development application for a variation to the lease purpose clause. If the variation is approved, and the new use is assessed as adding value to the lease, then a change-of-use charge (CUC) is determined according to that added value. Section 184A of the Land Act sets out a formula for the calculation of CUC for a variation of a nominal rent lease, which is 75 per cent of the added value. However there are circumstances prescribed in the Land (Planning and Environment) Regulation 1992 where CUC can be either reduced or increased by 25 per cent, to a maximum of 100 per cent.

The potential conflict between the rights of developers and the community interest are most often raised over proposals for redevelopment of commercial and residential sites. Developers prefer a system that is designed to provide a quick and seamless approvals process, and that costs associated with the development are known and minimised wherever possible. The community is often concerned that the change does not necessarily support its aspirations, and that the current system is not accessible or transparent. A further criticism is the perception that CUC is too negotiable.

It is clear that alternatives to the existing CUC system need to be considered. This observation has been made in many of the previous reviews and reports on leasehold and planning administration in the ACT.

The method of calculating CUC has been the subject of extensive review and criticism. The key observations are that the current system lacks certainty and transparency, acts as a disincentive to investors and developers, and does not provide sufficient financial return to the Territory for the administrative effort taken to administer it. It must also be acknowledged that the potential returns through CUC have been reduced as a result of

government policies over time, which discounts the rate of CUC that applies in order to encourage particular planning and development outcomes.

One of the most important observations made in a number of these reviews is that there is no empirical evidence to support the argument that the charging of CUC is a disincentive to development. The disincentive that is related to CUC is the confusion over how it is determined and what will be its final cost. Developers desire a certainty of process and costs, which must be matched against the right of government to require payment in return for granting additional development rights for a lease.

Appendix D shows that CUC is applied to only a small percentage of development approvals each year; nevertheless those approvals are for significant and often complex commercial and residential developments and redevelopments. The revenue collected from CUC is also relatively small and highly variable from year to year.

In considering an alternative to CUC, it is important to understand why the charge is being levied. A common misconception in past considerations of this issue is that CUC is the leasehold version of developer contributions, such as the scheme in NSW under s.94 of the *Environment, Planning and Assessments Act 1979*. Such an interpretation fails to understand that CUC is not an infrastructure or development charge, but a payment for the increased rights achieved through the variation of the lease purpose clause. The two charges are fundamentally different in their reasons for being and for calculation, and the additional use rights charge would not be calculated under a development application. It would be a fee payable to vary a lease to be consistent with a development application approval.

A move to broader purpose clauses with a single permitted intensity of development would reduce the circumstances where a CUC should be payable. Even so, there will still be developments where CUC would be payable, such as in variations of existing leases to add new uses or additional gross floor area. A new scheme is therefore desirable.

The preferred approach is a codified rights charging system. This concept was raised in the Stein Report and referred to as a development rights register. The recommendation in the Stein Report was unclear as to whether the register would be a block-by-block calculation of fees for additional rights, or a codified charging system. Any alternative to the existing CUC needs to deliver a system that enables both the developer and the community to know what it would cost to purchase the right to additional uses or increased intensity of use in a lease.

The proposal in this review is for a public register that contains a codified list of fees for each of the various types of use that can be added. The register could also contain charges that were designed to encourage development to meet government planning objectives, such as those identified in the City West Master Plan. The register would also provide fees to increase the intensity of allowed development, where that restriction is provided for in the lease. While not extending to a block-by-block set of fees, the codified

fees would need to factor in geographic differences, such as the value of a commercial lease in the city centre compared with the same use in a local centre.

7.2 Infrastructure charging

The ACT Government can currently impose a charge that is a contribution to the cost of off-site works. It is not a direct charge for infrastructure provision, because the calculated amount is not paid to government to provide the infrastructure, and the scope of work identified is directly related to the development site and its immediate vicinity. A crucial feature of this charge is that it is often deducted from any CUC payable, which means that the net effect is that the developer does not pay for the off-site works.

This system is not satisfactory because it fragments the provision of necessary infrastructure in redevelopment areas, and does not provide the benefits to the local community that could be achieved through an infrastructure charging system such as the NSW Section 94 Scheme under the *Environmental Planning and Assessment Act 1979 (NSW)*.

The Section 94 Scheme allows the developer to calculate the infrastructure charge prior to final approval of a development scheme. That charge is then paid to the local council, who can use the money to provide for infrastructure within that local area. However the work must still provide infrastructure benefit to the development for which the charge was collected.

It is recognised that the Section 94 contribution scheme in NSW is detailed and can become quite complex. Care needs to be taken to ensure the nexus between the contribution collected and the infrastructure or services provided is not onerous. However the ACT is at a distinct advantage because there are not multiple local council areas that develop their own charging schedules. The introduction of a transparent and upfront infrastructure charge that developers could factor into their development scheme would be a significant improvement to the existing scheme of off-site works.

It is recommended that a detailed investigation will be undertaken of the options for infrastructure charging.

8. Administration

The administration of the leasehold system is not restricted to the grant of leases and subsequent variation of leases through the development application process. Other leasehold administration processes include extension of time to the building and, development covenants, and consent to transfer of leases.

In addition to the areas identified as most likely to benefit from reform, the continual review and improvement of all processes within the leasehold administration system is desirable. In addition to the range of administrative changes that would support proposals already outlined in this paper, the greatest opportunity for reform lies in the management of unleased land and compliance.

8.1 Management of unleased land

Recommendations:

- *That the Authority, in consultation with other government land management agencies, prepares and maintains a Land Custodianship Map. The Map would identify the custodial agency for all unleased Territory land.*

The management of unleased Territory land is as important as the management and administration of leased land. Some categories of unleased land have the potential to be leased, for example residential greenfield areas. Other areas have specific prohibition on leasing, such as certain public land categories such as wilderness areas. The government agency responsible for managing unleased land depends on being able to identify all current and potential uses. For example, Environment ACT manages public land wilderness areas and national parks; however, Canberra Urban Parks and Places manages vacant urban land and urban open space (which can also be public land).

The *Emergencies Act 2004* has increased the number of legislated management responsibilities required of land managers. It is appropriate to review the current management agencies for all unleased Territory Land, to ensure that the most appropriate government agencies are managing unleased land, and that the management strategies comply with legislated requirements. A map showing custodial arrangements for unleased land would be helpful regardless of the outcome.

The initial map would be prepared in consultation with potential custodian agencies before being adopted by the Authority. Subsequent changes to custodianship responsibility would be agreed to by affected agencies and the relevant Ministers before being adopted. The map would be made available to government and the community, with a web-based system such as ACTMapi. Such a system would help the community identify the appropriate agency to contact about any management issues.

The advantages of this system for custodian agencies is that the map clearly defines which agency has land management responsibilities for the land, and that this is an agreed outcome. Responsibilities may include bushfire fuel management, weed control, amenity mowing and maintenance, litter control, management of illegal dumping, fencing and access control, pest animal control, ranger responsibilities, etc. The custodian agency would be the land manager for the purposes of the Emergencies Act.

The advantage for the Authority, or its delegate, is that it knows which agency must be consulted before granting a lease or a licence after considering any comments. This would not replace the current requirements for the approval of the Conservator of Flora and Fauna in relation to all public land.

While the Authority would retain its role in the granting of leases and licences for land it would typically not be a custodian agency. Its current land management responsibilities could be handed over to existing or newly formed land management agencies.

There are three options for implementing this proposal.

1. for the Land Act to require the Authority to prepare and maintain a Land Custodianship Map
2. under the *Planning and Land Act 2002 or the Land (Planning and Environment) Act 1991*, the relevant Minister issues a direction that the Authority must prepare and maintain a Land Custodianship Map that identifies the custodian agency for all unleased Territory land
3. the Map is prepared as an administrative process.

Providing for the Land Custodianship Map through legislative provisions would not necessarily produce a better or different map from one produced through an administrative process. It is recommended that the administrative approach be taken, ensuring that all agencies with land management responsibilities are consulted during the development of the map.

8.2 Compliance

Recommendations:

- *Prepare legislative amendments to provide for a complaints system for compliance matters.*
- *Review the list of controlled activities in the Land Act, against which compliance action can be taken.*
- *Review the definition of development in the Land Act to clarify its relationship with controlled activities.*

In any reform process of legislative and administrative systems, one of the keys to success is an effective compliance function. This was recognised in the Stein Report and a number of earlier reports on leasehold administration.

Leases are now only one element of the land and planning system. The development application and approval process provides the mechanism for placing conditions on a

specific development, which in combination with the lease requires compliance by the lessee. Compliance is also a relevant consideration in relation to the construction occupations regulatory responsibilities of the Authority, and is considered in *Technical paper 3 – Streamlining development assessment and building approval processes in the ACT*.

Without a strong compliance function, the capacity of the Government to achieve desired planning outcomes is seriously compromised. For example, allowing a lessee to breach lease purpose clauses means the lessee is potentially benefiting from the use of rights that have not been purchased. The Land Act prescribes the procedures for compliance action in relation to controlled activities, which covers both leasing and conditions of development approval.

Simplifying the legislative provisions for lease and development compliance will help the community better understand the consequences of unapproved activities. It will also greatly enhance the administrative efficiency of the compliance function within the Authority and contribute to maintaining the integrity of the planning and leasehold systems in the ACT.

INVESTIGATING COMPLAINTS AND ACTING ON ORDERS

In 2003 there were a series of amendments to the orders provisions in the Land Act. One of the major amendments was to enable the Authority to propose an order on its own initiative, instead of needing to rely on an application from an individual. This provision was designed to enable the Authority to commence action on a controlled activity without needing an application for an order. It also designed to overcome the problem of complainants wanting action on a compliance breach, but not wanting to apply for an order because their identity would be revealed to the lessee allegedly in breach as part of the notification process. There are no provisions in the Land Act to enable the Authority to withhold the identity of the applicant for the order. The new provision is almost identical to the existing provision relating to the application for an order by an individual.

An unintended consequence of this amendment is that complainants consider it the responsibility of the Authority to investigate the need for a proposed order; therefore the complainant should not need to apply for an order. The problem of the complainants' identity being notified to the lessee allegedly in breach still remains. While the Authority now has the power to commence action without an application for order, the current provisions in the Land Act do not provide for a process to deal with complaints of alleged controlled activities.

Unless the complainant chooses to use the application for order process, there is no requirement for the Authority to advise the outcome of any investigation, or in fact even investigate a complaint. A complainant is also not required to provide their name or contact details if they are seeking the Authority to undertake investigative and possible compliance action. This results in a system that is not transparent and lacks the level of accountability required for a regulatory process.

There is a need to revisit the existing legislation and consider amendments that would introduce a more formal complaints process. The *Construction Occupations (Licensing) Act 2004* has a complaints process that could be used as a model for a complaints process for lease and development compliance. Complaints of a lessee undertaking a controlled activity would be required to be made in writing, with the name and contact details of the complainant. Unlike the existing system, this personal information would remain confidential. The Authority would be obliged to investigate the complaint, but would have the power to request further information or request verification of any or all aspects of the complaint. If the information requested was not provided in the timeframe specified the Authority would not be obliged to investigate the complaint. Neither would the Authority be required to investigate a complaint that was considered to be frivolous or vexatious.

If the Authority accepts the complaint and considers it has sufficient information to proceed to investigate, it would be obliged to undertake the investigation. Where the investigation of the complaint determines that a controlled activity is taking place, the Authority could proceed to issue a proposed order to the lessee or occupier of the lease. The Authority would be required to advise the complainant in writing of the outcome of the investigation. The complainant would be able to withdraw a complaint, but this would not prevent the Authority from continuing to investigate the alleged controlled activity. There would be no appeal against the outcome of an investigation, but the complainant would still have the right to complain to the Ombudsman if dissatisfied with the handling of their complaint.

The introduction of a formal complaints process would resolve the current problems with complainants not wishing to apply for an order, but having expectations that the Authority should investigate anonymous complaints. It would require both the complainant and the Authority to meet reasonable obligations for the provision of information and investigation of complaints. A formal complaints process would provide for a consistent and accountable approach to lease and development compliance.

CONTROLLED ACTIVITIES AND DEVELOPMENT

Another area of compliance administration and regulation that could be improved is the way in which the legislation provides for controlled activities, and its interaction with the definition of development.

Undertaking a development is listed as a controlled activity. The definition of development is complicated and includes both the building of structures and the use of land. The inclusion of development as a controlled activity enables compliance action to be taken where the building or earthworks is done without the necessary approval, or a use of land is taking place without approval.

There would be benefits in simplifying the way in which activities that are subject to compliance action are described in the legislation. Possible changes to the definition of

development will impact on the way in which the legislative relationship between development and controlled activity are remodelled.

Schedule 5 of the Land Act lists ten controlled activities that are subject to orders. Of these items there are some that may no longer appropriately be considered controlled activities, such as permitting a shrub or plant to overhang a public place. There are also controlled activities that would benefit from the development of administrative criteria to help determine if a controlled activity is being undertaken. One good example is item 4 in Schedule 5—failure to keep a leasehold clean.

8.3 Access to leasing and planning information

Recommendation:

- *Investigate options for on-line access to information relevant to planning and leasehold administration.*

There are a number of Government agencies that collect information relevant to leasing, planning and development in the ACT. Some information is freely available to the community, such as the Territory Plan on-line. Other information, such as a title search for a leased parcel, is available on application through the Registrar-General's Office. Much of the information is of interest to potential lessees, such as the planning policies for a site and the range of uses available under the existing lease. Currently there is no single place for the public to access this broad range of information.

There is a range of options for the accessing the data that could be included in a one-stop-shop for information on land, and there are other jurisdictions that have models that could be considered. The Northern Territory has a Record of Administrative Interests and Information, which is established under the *Land Title Act 2000 (NT)*. The record includes information from a range of custodians, such as the Registrar General, the Surveyor General and the Building Advisory Service. The information includes the type of tenure (Northern Territory has both freehold and leasehold), the history of transfers, parcel size, building permits, and the relevant planning scheme zone for the parcel of land. The public can access the information for a fee by applying to the Registrar.

A web and map based model is used by some local councils in Western Australia and Victoria. The information made available in this way varies from council to council, but it includes in most cases the property address and relevant planning policy. Some include related information such as the closest school and health facilities to the identified parcel.

Both models have elements that could be combined to provide the ACT community with access to web-based plans that provide a range of planning, leasing and development information on a block-by-block basis. Options for on-line access to consolidated information on planning, development and leasehold administration should be investigated.

Appendix A—Current legislative framework

AUSTRALIAN CONSTITUTION AND SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910 (C'WTH)

The Constitution states under section 125 in part that:

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth...

The *Seat of Government (Administration) Act 1910* (C'wth), which provides in section 9 that:

...no Crown lands in the territory shall be sold or disposed of for any estate of freehold...

AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT) ACT 1988 (C'WTH)

The *Australian Capital Territory (Planning and Land Management) Act 1988* provides for the land within the ACT to be either National Land or Territory land. Section 29 states that the ACT Executive is responsible for the management of Territory land on behalf of the Commonwealth. Section 29(3) provides that the term of an estate in Territory land granted on or after self-government (11 May 1989):

shall not exceed 99 years or such longer period as is prescribed, but the estate may be renewed

There are a number of leases granted under the Church Lands Leases Ordinance 1924 (subsequently an Act on self-government), and the Australian National University (Lands) Ordinance 1953 that were granted in perpetuity.

LAND (PLANNING AND ENVIRONMENT) ACT 1991

The *Land (Planning and Environment) Act 1991* (the Land Act) is the primary legislation for granting and managing land in the ACT. The Act establishes the Territory Plan and provides regulatory mechanisms for environmental assessments and inquiries, land management, development control, and the range of associated appeal rights. Most relevant to this paper, Part 5 of the Land Act provides for granting and administration of leases and licences, including calculation of change-of-use charge for lease variations.

Significant land management policy is also embodied in the Land Planning and Environment Regulation 2002 and in disallowable instruments made under various Part 5 provisions. There are numerous disallowable instruments under Part 5, setting down

criteria to be met by either potential or actual leaseholders to demonstrate eligibility for them to undertake a range of lease transactions including:

- the grant of a lease
- the grant of a further lease
- the transfer of leases
- refund of amount paid for the grant of a lease
- policy direction for land rent payout.

PLANNING AND LAND ACT 2002

The *Planning and Land Act 2002* establishes the Planning and Land Authority, including the office of the Chief Planning Executive, the Planning and Land Council, the Land Development Agency, including its Board, and each of their respective corporate governance arrangements.

Appendix B—Reviews relevant to leasehold

Significant studies and reviews on leasehold since self-government in 1988 include the following:

Concessional Lease Review, KLA Australia Pty Ltd, unpublished report to the ACT Planning and Land Authority, Canberra, 2004.

Planning and Development in the ACT - A status report – Cousins, R, unpublished report to ACT Planning and Land Management, 2001.

Development Assessment Review – Summary Report, Sansom, G (UTS), unpublished report to Planning and Land Management, 2000.

A Study of Betterment and Change of Use Charge in the ACT – Its Impact on Investment and a Consideration of Options Nicholls D, Report to the ACT Government, 1999.

Report on the Review of Legislative Provisions, Administrative Arrangements and procedures in ACT Land and Planning Enforcement, Smith Kostryko Cohen Pty Ltd, unpublished report to ACT Planning and Land Management, 1999.

Report into the administration of the ACT Leasehold, Stein P, Troy P, Yeomans, R, ACT Government Printer, Canberra, 1995.

Red Tape Task Force Report – From Red Tape to Blue Print for Regulatory Reform, ACT Department of Business, Arts, Sport and Tourism, ACT Government Printer, Canberra, 1995.

Leasehold Policies and Land Use Planning in the ACT – Urban Research Program Working Paper No 44, Bourassa, Neutze and Strong, ANU, 1994.

Report on the Canberra Leasehold System, House of Representatives Standing Committee on Transport, Communications and Infrastructure, Australian Government Publishing Service, Canberra, 1988.

Appendix C—Types of leases

The purposes for which leases are granted can be grouped into four general categories. These categories do not always align with the land use policy areas in the Territory Plan. For example, a community activity centre is a use that would fit into the category of community facility lease. However, this use can be found in the commercial, residential, community facility, restricted access recreation, entertainment accommodation and leisure land use policies. The four categories described below are helpful in identifying the leases that are potentially affected by changes that may result from this review process.

RESIDENTIAL

In most cases residential leases limit the use to the erection of a single residential dwelling. However, there are a number of older residential leases where the lease does not indicate if there is a restriction on the number of allowed dwellings. Multi-dwelling residential leases allow for more than one residential dwelling to be constructed but normally stipulate the minimum and maximum number of units that can be constructed on the lease. This restriction assists in the valuation of the lease for the initial grant of the lease, which is now normally done through an auction process undertaken by the Land Development Agency.

RURAL LEASES

Leases with rural uses are restricted to the rural and broadacre land use policy areas. These two land use policies are distinct from the types of uses permitted in the urban areas of the ACT. There is a clear distinction between rural uses and broadacre use, and the broader category of urban type uses.

Some rural leases are granted for a short term (less than 99-years) to support planning objectives such as environmental protection or future urban expansion, particularly within the broadacre land use areas. Rural leases also specifically limit the number of dwellings to ensure there is no introduction of rural residential in the ACT, which is not in accordance with an explicit Government policy.

COMMERCIAL, INDUSTRIAL AND MIXED-USE LEASES

Multiple combinations of uses are possible within the commercial, industrial and mixed-used leases. While leases with commercial, industrial or mixed-use purposes clauses is not the largest group of lease use, they are the leases which are more likely to have a number of development applications over the life of the lease. They are also the leases most likely to have development applications that include a variation to the purpose clause, which results in a change-of-use charge for increased rights. The majority of issues raised in this paper affect primarily this category of lease, in addition to concessional and community facility leases.

CONCESSIONAL AND COMMUNITY FACILITY LEASES

Concessional and community facility leases exist primarily to provide certain services for the benefit to the community that the market would not always identify as profitable if they had to pay for the land at values which reflected their highest potential commercial use. This includes aged-care facilities, education, religious, and recreational facilities. It is important to note that community facility leases are not always granted on a concessional basis, but their market value may be less than for higher order uses. These leases can be granted in a number of land use policy areas and are sometimes the subject of either direct grants or restricted auction or tender. This is one way that the government can ensure the provision of a specific facility that has been identified as necessary to meet the identified needs of the community.

The outcome of a recent review in 2004 of arrangements for granting and administering concessional leases is expected to be announced by the ACT Government shortly.

Appendix D—Change-of-use charge revenue

| Categories of CUC statistics | Financial years | | Total |
|------------------------------------|-----------------|-----------|------------|
| | 02-03 | 03-04 | |
| Total number of DAs each year | 6074 | 5448 | 11522 |
| Number of DAs with CUC | 58 | 87 | 145 |
| CUC amount (\$) | 3,836,374 | 9,161,563 | 12,997,937 |
| Refunds (\$) | 235,875 | 340,855 | 576,730 |
| Number of AAT appeals or mediation | 9 | 4 | 13 |
| Number of AAT reductions in CUC | 1,870,000 | 226,875 | 2,096,875 |
| Total revenue collected (\$) | 1,730,499 | 8,594,833 | 10,325,332 |
| Total reduction in revenue (\$) | 2,105,875 | 566,730 | 2,533,104 |

Note: AAT—Administrative Appeals Tribunal

Appendix E—Leasehold in Australia and other countries

The ACT is not the only jurisdiction that leases land. It is, however, one of the few in the world that has no freehold land. All the other Australian States and Territories have freehold land. Of the countries examined in this review, only Hong Kong has no freehold options available.

AUSTRALIA

Just less than 63 per cent of the land in Australia is held under either freehold or Crown leasehold. Crown leasehold covers 42.1 per cent of land, and 20.6 per cent is private freehold. Tasmania is the only jurisdiction that has no Crown leasehold. The majority of leases in the States and the Northern Territory are pastoral leases, though some jurisdictions also provide in legislation the ability to grant leases for other purposes.

Pastoral leases

Pastoral leases contain conditions that primarily control the stocking of the land to ensure the assessed carrying capacity is not exceeded. The leases do not control development on the land, but normally contain requirements to maintain any improvements on the land, such as fencing and sheds.

The tenure of pastoral leases vary from State to State, ranging from less than 50-year terms to perpetual leasehold with some jurisdictions providing for both types of tenure. The majority of pastoral leases in the Northern Territory were converted to freehold in the early 1990s. South Australia is also undertaking a process of conversion to freehold, which is available for up to 8000 leases in the state. Pastoral leases do not offer a useful comparison for the ACT as the relationship of the lease to an urban planning scheme does not arise.

Kosciusko National Park

A potentially more relevant comparison exists in the leasehold schemes for the some of the developed ski field areas within Kosciusko National Park. The power to lease and license land within a National Park in NSW is provided for under the *National Parks and Wildlife Act 1974*, with specific provisions for the leasing and licensing of land in Kosciusko National Park. The Act specifies the range of permissible uses, however a lease cannot be granted for any use unless a plan of management exists that identifies the purposes for which the lease or licence is to be granted, the specific area of land proposed for the use a lease, and the location of any proposed building or structure on the land.

Until 2002 the regulation of the use and development of the ski fields areas, including the village of Thredbo, was undertaken through lease administration in accordance with the Kosciusko National Park Plan of Management and the Act. As a result of recent changes, land use and development is now regulated through the *Environmental Planning and*

Assessment Act 1979 and relevant planning instruments and policies, in conjunction with leasehold administration and the Plan of Management under the *National Parks and Wildlife Act 1974*.

OTHER COUNTRIES

There are a number of developed and developing countries that utilise a form of leasehold to achieve a range of objectives, from controlling land use, to the collection of revenue to assist in the provision of infrastructure. A table of the key features of leasehold systems in developed countries is in the table at the end of this section.

When examining the nature of leasehold in other jurisdictions it becomes apparent that there is no model leasehold system. Each country has modified its leasehold system according to its needs and priorities. The Netherlands and Sweden both moving more towards freehold, and Israel now encourages upfront premium payment for leases.

Leases are not viewed as the primary land use control mechanism but are used primarily for the management of the government's estate and in particular to provide for specific needs. All jurisdictions examined rely on their planning schemes to specify the types of uses allowed within specified planning zones, and the required standards for building. One common use for leasehold is the provision of affordable housing, which can mean different things in other countries, but has particular relevance for Canberra today.

In Hong Kong, the statutory plans and their guidelines take precedence over the lease, even if the lease is not restricted. New leases specify that the Building Ordinance and Town Planning Ordinance control land use. Even if a lease allows for a specific purpose, building proposals that fail to meet the requirements to the two Ordinances can be rejected, with no obligation to pay compensation to the lessee. The need to specify that the Ordinances take precedence over the lease was a way of removing the confusion between established lease conditions and changing planning rules. Enforcement of Outline Zoning Plans by using lease conditions had been considered difficult, which in part was due to changing administrations, and varied structures of leases, particularly the level of restricted and unrestricted development rights.

The only opportunity to change lease conditions came with an application to modify or renewal. In Hong Kong the lease terms vary from 75 to 99 years, which meant that where a zoning plan changed, the rights in existing leases were potentially restricted by the new plan with no immediate opportunity to vary the lease to be consistent with the planning rules. The difference between the lease and the plan was considered confusing and restricted the ability of the plans to direct the orderly planning and ultimately, redevelopment, of Hong Kong. Where a new zoning plan introduces new use opportunities, the lessee, like lessees in Canberra, can apply to add the new use to their lease, subject to assessment and approval, and the payment of an additional premium.

In Israel, there was a decision very early in the development of the leasehold system in the urban sector, that the lease should not be used for land use planning control. The

Planning and Building Law requires that both government bodies and private developers must obtain approval for land use and development initiatives from the statutory planning and building control bodies. The lease only provides for existing development rights under current planning regulations. If the planning regulations change and remove rights, the lessee has the right to apply for compensation for a decline in property value as a result of downzoning. While downzoning occurs, it is more common that zoning changes increase the potential rights, and therefore the value, of the leases in the zone.

Lessees have the right to apply for new development rights introduced as a result of a changed statutory plan, and must have the plan for development approved by the relevant municipality. An approval of an increased development right also requires the payment of a permit fee. The lessee may also be liable to pay a betterment levy under the Planning and Building Law.

The experience of developed countries suggests that it is not realistic to use a leasehold land tenure system to achieve equally the policy objectives of maximising land value capture and meeting social or non-financial objectives. While both objectives can be met to some extent, decisions to provide leases at less than market value in order to meet social objectives clearly compromise the policy objective of maximising land value capture, and *vice versa*. It is ultimately a matter of choosing which of these objectives is the principal focus of leasehold for each jurisdiction, and recognising the limitations that such a choice places on the ability to achieve the secondary objective.

Table: Key elements of leasehold in selected countries and the ACT

Extract from *Leasing Public Land – Policy Debates and International Experiences*
 Steven C. Bourassa and Yu-Hung Hong (2003) pp18-20 with additional information added in italics

| Element | Canberra | Netherlands | Sweden | Finland | Israel | Hong Kong |
|--|---|---|--|---|---|--|
| Underlying principles | Orderly development of land Stop speculation through transfer of undeveloped leases | To encourage quality housing Regulate use Maintain buildings on lease land Assembling land for redevelopment schemes Capture increases in land values for the community | To capture the appreciation of land values To some extent, subsidise housing costs by setting ground rents below their fair market values No primary function in controlling urban growth and land use | Policy instrument for accomplishing certain public goals, such as promoting affordable housing, creating employment and capturing increased land values | National Land ownership | Manage Urban Growth Develop Public Housing Promoting Special Industries Capture land value |
| Lease term | 99 years Some rural leases 20 years | 50 years or indefinite | 60 years—residential 20 years minimum for other purposes | 5-60 years—residential 50 years commercial 20-30 industrial | Basic term of 49 years Residential is usually multiples thereof | 50 years (75 years before 1997) for most residential and commercial land leases |
| Using lease conditions to control land use | Government includes a purpose clause that defines permissible land uses. Land development must commence and be completed within the time specified in the lease | Lease conditions are used to control land use only if they complement the land use plan and other existing regulations | Land use was controlled to some extent by lease conditions until 1953. Now detailed plans are the major instruments for controlling land use Also includes building and development covenants | Lease conditions play no role in controlling land use. Land use is controlled by the detailed plan Also includes building and development covenants | Lease conditions usually are not used as a direct mechanism for regulating land use | Government uses lease conditions to specify the land use, yet the enforcement of land use regulations still relies heavily on the Planning Department and Buildings Department |

| Element | Canberra | Netherlands | Sweden | Finland | Israel | Hong Kong |
|------------------------------------|--|--|--|---|--|---|
| Right of renewal | Yes for nominal fee | Leases with a 50-year term usually are renewable. Level of payment is reviewed during lease renewal | Residential leases are automatically renewed for another 40 years if lessor does not cancel them (minimum 20 years for other leases) | Leases for housing are renewable if lessor does not need the land for other public purposes. For industrial lots, land contracts are not automatically renewable | In recent decades, new or renewed contracts for residential use are for two automatically renewable terms and lately, for four such terms, totalling 196 years | The Basic Law—the mini-constitution of Hong Kong—does not specify if leases, extended for 50 years in 1997 of after 1997, will again be renewable after 2047. Yet lessees assume under normal circumstances their contracts will be renewed based on government's past practice |
| Ownership of leasehold improvement | Lessee owns improvements to land at the end of lease | If lease expires or is terminated prematurely, lessee is compensated for the value of improvements to land | If government lessor cancels contract, it must pay compensation to lessee for buildings and other fixtures erected on land. Lessor does not have to pay compensation if contract is for non-residential purposes, and it is stipulated in contract that compensation shall not be paid | Land improvements belong to lessee. If the contract is not renewed, lessor will compensate lessee for improvements to land. The exception is industrial leases that land improvements will not be compensated | Israeli real-property law does not allow for the separation of ground from buildings, so legally all land improvements belong to the state. But most leases state that if a lease expires or is terminated prematurely, lessee must be compensated for the value of improvements to land | Lessee possesses all improvements to land |

| Element | Canberra | Netherlands | Sweden | Finland | Israel | Hong Kong |
|---|---|--|---|---|--|--|
| Additional requirements for redevelopment | Lessee must pay a betterment charge of 75 per cent (50 per cent between 1971 and 1990) of the increase in land value caused by redevelopment. In certain circumstances prescribed by legislation the percentage can be increased or decreased | If lessee wants to redevelop land, permission must be obtained from lessor. Lease payment will also be revised | If redevelopment is for new purposes or increased use a new lease must be signed between lessee and government lessor. Payment of land rent will be revised | The lessee needs to establish a new contract with the government and pay a new land rent | Lessee is required to submit an application to the lessor for approval (beyond planning law approval). If approved lessee will pay a permit fee | For land redevelopment initiated by lessee, government approval is needed, along with payment of a modification premium |
| Lease payments | Before 1971 annual land rent was payable with adjustments to any increases in land value over time. In 1971 the government abolished all residential land rents and adopted a premium system | Lessee pays government an annual land rent through the term of the lease. Yet, lessee also has the right to convert all annual rental payments into a premium paid at the beginning of lease | Lease payment to government is in the form of an annual land rent. Rent is adjusted every 10 or 20 years | Lessee pays annual land rent to government equal to four to five per cent of estimated land value. Land rent will be adjusted every 30 years according to real increase in land value and also annually according to any change in cost of living | Lessee is encouraged (in new leases, required) to pay the entire lease value in one lump sum in advance (discounted to present value). Upon sale of leasehold, lessee is then exempt from a consent fee (about half the increase in market value) for the transfer permission. To redevelop the leased land, all lessees must pay a permit fee (about half the added value) to government lessor | Lessee will pay lump sum premium for leasing land at beginning of lease. When lessee wants to modify lease conditions for land redevelopment, a modification premium is required. Lessee also pays annual land rent, calculated at three percent of estimated rental value of land and building. Government revises estimated rental values annually |

| Element | Canberra | Netherlands | Sweden | Finland | Israel | Hong Kong |
|------------------------------------|--|--|---|--|---|---|
| Transferability of land rights | Lessee has the right to transfer leasehold rights to another party. For a new lease, transfer must be done after completion of development. Some leases (such as community use) restrict transfers to ensure that the use of the original lease will be continued after transfer | Lessee can sell leased land rights in the open market or transfer them to another party | Site leasehold can be transferred freely | Land rights (freehold and leasehold) are freely transferable. Subleasing is not permitted | Lessee can sell, sublease, or bequeath state-owned property at will (with only a notice given to the state), but leases on land owned by the Jewish National Land can be transferred to Jewish person only | No restriction on any transfer of leased land rights |
| Government right to repossess land | Government has rarely repossessed land to ensure security of tenure. Government had retained enough land for public purposes, thus chose not to repossess land for redevelopment purposes as the city grew | Although government can repossess land, lessee rights are quite well protected by law. The procedure of re-entry may be quicker than compulsory purchase. Lessee will be compensated if land is repossessed. | Lessor can cancel lease at specified periods. The first chance is after 60 years for residential leases, the next chance is after 40 years. For other types of leases, lessors may cancel after a minimum of 20 years | Government has the right to repossess land with just compensation to lessees for fair market value of any leasehold improvements | In cases of expropriation for public purposes, the law treats urban leaseholders as equal to freeholders. Full compensation is due for the fair market price of improvements as well as land (the value is usually almost identical to freeholds). Compulsory dedication rules are also identical | Government has legal right to repossess land for public purposes. It must however, compensate leaseholders for any improvements to land |

