

SUBMISSION to THE ACT TREASURY REVIEW OF LEASE VARIATION CHARGE

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Thank you for the opportunity to make a submission to the above Review. My interest in this issue comes from my personal experience in the building and development industry and my extensive work experience in planning and development in the ACT Government. My ACT Government experience includes working in many areas including, ACT Treasury, Planning and Building Control and 5 years as political adviser to a Minister for Planning. I have also had extensive experience as planning officer for 5 years for a Community Council. At one stage I was manager of a family building business.

I understand the ACT lease hold system, its origins, the impact of land rent and the withdrawal of land rent, the various iterations of Change of Use Charge and Lease Variation Charges, the revenue implications of such as well as the cost implications for the development of residential housing. I also was central to the development of the policy and implementation of the concept of Core and Suburban residential areas in the Territory Plan, currently RZ1 and RZ2 zones. With this experience and knowledge, I believe I have a very good all round understanding of the intent and effect of Lease Variation Charges (LVC).

GENERAL COMMENT

1. Changes in use

Since the value of leases in the ACT is determined, to some extent, by the use allowed under the lease purpose clause, any subsequent changes to the Clause which increases the value of the lease, is considered to have an increase in value which the Government can “tax”. This change may be made to a lease at multiple times not just, as the discussion paper says “to the original lease issued by the Government.” I also think it would be more accurate to say “Government can share any additional value of the lease” rather than “community should share”.

I note that, when changes are made which decrease the value of the lease, there is no compensation made to lessees for that decrease in value. Loss of rights have occurred for some residential leases. Specific examples are when development rights previously existing are removed. In the instance of

residential blocks prior to the introduction of Variation 200 to the Territory Plan, dual occupancies with unit titling could occur on any residential block meeting planning requirements. After the change to the Territory Plan, such rights were removed from properties not within the Core Areas (Currently RZ2). Later the right to unit title dual occupancies in Core areas were greatly restricted. They have subsequently been restored. More recently, the number of units that can be built on a block in a RZ2 area has been restricted by number in relation to the size of the block, as well as requiring at least one unit to have the same or more number of bedrooms to the original dwelling removed by the development.

These comments are made to demonstrate that reduction of values of a lease, due to Government policy changes, is not compensated to the leaseholder whose rights have been restricted.

2. Personal Experience re changes to residential blocks

My family has owned a house in a core area since 2001 prior to the introduction of Variation 200. The lease purpose clause is “for residential purposes”. That has not changed since the lease was issued in 1966. We should be able to construct other dwellings without a lease variation charge. In 2009 we purchased the house next door which had the same lease purpose clause.

Since the initial purchase in 2001, we have had dual occupancy rights removed under Variation 200 for Block 1 (less than 800 square metres), dual occupancy allowed for block 2 then subsequently severely restricted under changes made by the Planning Authority with respect to unit titling dual occupancies, those rights later restored, the new requirement to surrender leases and reissue under a proposal to block amalgamate and pay a lease variation charge, despite both leases being for residential purposes ie the permitted use under the original leases has not changed.

Subsequent to all this, a lease variation charge of \$7000 per unit was increased to \$30,000 to compensate “the community for the loss of revenue that would have been raised if the Government had originally sold the lease with the higher valued lease conditions in place” (Discussion paper p4). We purchased both blocks from former lessees with the lease purpose of “residential purposes”. That purpose allows multiple residential units if the Planning constraints are met. There has been no increase in higher value lease conditions. The lease purpose Clause still is the highest value permitted under

the Territory Plan for that zone. Instead, there has been a decrease in opportunity for development since purchasing the leases, through tighter development restrictions (solar access, limit to number of units based on block size etc) as well as legislative changes such as the Tree Protection Act, which effectively reduces the number of dwellings achieved on many inner Canberra blocks. In our case, a non remnant tree has reduced the number of units by one and at one stage (prior to limitations by block size) meant a reduction of \$250,000 for the value of the block. The number of units achievable is still reduced by 1 now due to limits on number per block not the tree.

3. Comments on the discussion Paper

The statement (p4) that “ the additional value of a lease that is solely due to increased development rights, it should have a minimal impact on production and consumption decisions” is not proven by any data analysis and “should” indicates a view not a fact. The following statement that “a project will be viable (or not) regardless of whether LVC is payable” is incorrect. To develop 5 units requires a LVC of \$150,000 instead of the previous LVC of a total of \$35,000. With severely increasing costs in fees and charges as detailed later in this submission, this is a significant factor in making a small multiunit development too financially risky to undertake. In particular, the initial rights etc when the leases were purchased have been severely reduced. We have decided we cannot undertake any development on the leases.

A broader analysis of the impact on the changes made since Variation 200 can be obtained by examining development applications (DAs) since then. Currently from a quick scan of open DAs on ACTPLA’S website, there are very few DAs for small multiunit developments ie those from block amalgamation in RZ2 areas. I have been advised that in such developments there was an expected 20% profit margin and now it has reduced to 10%. An examination of sale prices for units in such developments has shown very high prices for 3 bedroom units in such developments. Prices in new units small multi unit developments in areas such as non inner south or north can range from \$700000 to \$900,000 similar to a residence with on a block of 800 sq metres in the same area.

The effect is that the Government’s objective of densification around major transport routes and commercial areas (RZ2) is being affected by the cost implications of such developments, a major one which is LVC.

I strongly disagree, based on personal experience and observations of DAs as stated above, with the statement (p6) “ Betterment taxes are considered to have a minimal impact on the financial viability of development as they isolate the value attributable to Government decisions.” The claim that development activity has been strong “in recent years and this is expected to continue with a significant number of projects in the pipeline”, is seemingly not based on any actual data analysis My experience supports the views of the developers referred to in the DP. To come to a full understanding of the impact of charges, including LVC, it is useful to plot government decisions and the changes in DAs in response to those decisions. I have previously raised this with ACTPLA in the context of the “Housing Choices” project and it was agreed this was possible, but apparently not undertaken. It should also be understood that not all development is affected the same. Dual occupancies and large multiunit developments may not be impacted as much as small multiunit developments. Any analysis should look at the type of development, not just any development. It is important to undertake this analysis to see what impact the changes are having on Government objectives of sustainability, affordable housing and densification.

Lease value and equity (p6). As stated above, our development rights have not been limited by the number of dwellings specified in lease purpose clauses in our leases. They are just for “Residential Purposes”. We have held the properties over a long period of time. Recognition should be made with respect to LVC for those who are not developers but home owners who are not increasing the use rights of their properties. LVC changes have lumped everyone in the same bucket. Development rights on our properties have been reduced, not increased since the properties were first acquired.

To assess the impact of changes to the LVC, the Review should commission longitudinal data on various types unit prices for new developments after the various changes to LVC. It should also seek data from the Planning Authority with respect to DA impacts. Any assessment should differentiate between large multiunit developments, dual occupancies and small multiunit developments because economies of scale etc affect the ability to spread costs.

Housing Affordability (p 8). The excessive increase in LVC has a negative impact of housing affordability with an additional \$23,000 per dwelling unit having to be recovered by the developer. This, together with other cost imposts particularly in fees and services, will push the cost of new properties

even higher. This can be demonstrated partially with longitudinal comparisons of increases in the sale price for new dwellings in small multiunit developments. I agree with the views of “some stakeholders “(p8) with regard to increased costs adversely affecting housing affordability and rental costs which are passed on to the tenant.

For the reasons outlined above, I disagree with the claim that LVC is only payable on the value uplift in the change of the lease. In our case the development is already permitted, however, the blocks need to be amalgamated. There is no increase in value. If I amalgamated the blocks I would receive the same price for them most likely than if I sold them independently. This opinion is based on advice from real estate and developers I have consulted.

With respect to renters, there are many other significant costs increases which have contributed to Canberra being amongst the highest rental cost cities in Australia. In particular, the excessive land tax levied on rental, but not owner occupied, properties, together with the hugely escalating rates increases.

While the paper claims that “it is not evident that prices of dwellings in developments where the payment of LCV was required exceed prices paid for other similar dwellings”. The analysis should be undertaken. While market forces do apply, developers are not going to invest where they are not certain of a profit. The cost of small unit development has reached that point.

Properties for rent have decreased in some areas with subsequent increase in rents and there are less applications for small multiunit developments. The ACT Government should undertake data analysis to determine these effects.

We were considering developing the leases referred to above but costing from two separate sources have shown that the profit margin is now too small for us to commission a builder. We will continue to use the properties in another way hoping for capital growth or a relaxation of the planning laws.

The last sentence on P8 demonstrates my point. It is uneconomical and more financially risky to build town houses (for which there is an unmet need) than a large number of units. The assumption that townhouses will be built where land lease values are lower is nonsense. Town houses and small multiunit developments can only occur on specific sites in RZ2 areas. Large multiunit developments can only occur on sites which are in higher density zones. That is

what the zoning allows is the constraint, not the remoteness from central areas. P9 para 2, while the cost of such townhouses in central areas will be dearer because of land prices, there will still be more of them built if it is financially viable. This will make more such properties available reducing rental and property purchasing if enough such developments occur.

Certainly there are possibilities for consideration of policies waiving LVC for provision of more affordable housing. This would save the ACT Government from having to financially support some people to access affordable housing. What strategy is implemented ultimately depends on the outcomes desired. Do we want more townhouse developments, more affordable housing, denser residential areas etc? Once that is established, we can choose options best suited to achieving them.

P9 Alignment with Planning Policies. As explained above, the planning and legislative changes, occurring since we first acquired our leases, have impacted significantly on what can be built on those leases. The significant increase in LVC, together with the planning limitations, and the tree legislation, have combined to make our redevelopment plans not financially viable at this stage. There should be no lease variation charges for leases which allow unrestricted number of dwellings prior to block amalgamation. Such significant LVC operate to limit the redevelopment of RZ2 blocks which is contrary to the policy intent of Government to achieve greater density in such areas.

4. Financial details as an example from assessment of financial viability of redevelopment.

The combined achievable sale price of the two residential blocks, with existing single residences, referred to above is \$1.5 million. Under current planning policies a total of 5 non adaptable town house of 145 sq metres could be built on the two amalgamated blocks. Building costs for 5 units are \$1.750 million. Costs of driveways and garages are \$550,000. Further details are next page,

Based on very rough cost estimates the following costs apply for 5 units:

Land	1,500,000
LVC	150,000
Building	1,750,000
Garages drives	550,000
Fees Professional	150,000
DA	10,000
Build approval	20,000
Certification	10,000
Legal fees	10,000
Agent's fees market	100,000
Holding costs	100,000
Contingency	50,000

A total of \$4,490,000 which is \$898,000 per unit. Unit prices of a similar nature to those proposed range from \$700,000 to \$900,000

While these are rough cost estimates they do not specify costs such as services. Even if these costs are overestimated, there is not enough profit margin to proceed with such a development. It is recognised that if a builder owned and did the development there would be a different cost outcome.

I am happy to discuss any aspects of my submission. I can be contacted on [REDACTED]. I wish to keep my name and contact details confidential given the commercial nature of this submission.

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