



Combined Community Councils of the ACT

Belconnen • Gungahlin • Inner South • North Canberra • Tuggeranong • Weston Creek • Woden Valley

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PO Box 3310, Manuka ACT 2603

Ms Katy Gallagher MLA
Chief Minister
GPO Box 1020
Canberra, ACT 2601

Dear Chief Minister,

The Management of Concessional Leases

Firstly we would like to thank you for your extensive reply of 22 May 2014 to our concerns relating to the management of Concessional Leases. In that letter you indicated that the issue would be raised through the Time-to-Talk website and this was confirmed at a presentation made to the Planning and Development Forum in June this year.

To date, this topic has not been activated on the website. However, the issues of concern are well known and have been addressed by articles in the Canberra Times (13 August 2014) by Jack Waterford and by Minister Corbell (27 August 2014). We would therefore like to take this opportunity to make five recommendations for your government to consider, and these are summarised below (The numbers refer to the original Recommendations made by the CCC). These are based on the original recommendations in our letter of 11 March 2014, your letter of 22 May 2014 and our consideration of these comments, as summarised in the Attachment A. We consider that, if these are implemented, the management of concessional leases would improve significantly.

Summary of Recommendations

R1a. The definition of 'Eligible Person' as stated in the communication of 22 May 2014 be added to the Dictionary contained in the Planning and Development Act 2007, so that everyone has access to the definition.

R3a. The government should establish an accessible catalogue of all concessional leases with links to the Territory Plan and produce a timetable to complete this work.

R5a. The factors for deciding whether the deconcessionalisation of a lease is in the public interest (s261 of the Planning and Development Act) be reviewed, along with the process of analysing these factors, to include more relevant and measurable criteria.

R6a. The Planning and Development Act be modified so that lessees are not able to make windfall profits by not complying with the terms of their Concessional Leases.

R7a. Any decision by the Treasurer to waive or reduce deconcessionalisation discharge fees, or lease variation charges, should be accompanied by a formal statement to the Legislative Assembly demonstrating why this decision is in the public interest.

Supporting Arguments

Definition of Eligible Person

We consider that the government's definition, as stated in the communication of 22 May 2014, is clear. We recommend that this be added to the Dictionary contained in the Planning and Development Act 2007, so that everyone has access to the definition (**R1a**).

Catalogue of Concessional leases

We welcome the government's decision to identify and report the details of Concessional Leases from 2010. The government still needs to establish an accessible catalogue for all Concessional Leases with links to the Territory Plan. In this way it will be easy to determine whether any Section/Block is covered by a Concessional Lease. We recognise that this is likely to involve considerable work, but we recommend that it should be done and that the government produces a timetable to complete the task (**R3a**).

Deconcessionalisation must be seen to be in the public interest

Determining whether or not the deconcessionalisation of a lease is in the public interest is probably the most contentious issue relating to the management of concessional leases.

The government, as a major beneficiary, may have a conflict of interest. For example, in the Brumbies' case, the government was keen to have the de-concessionalisation proceed to support the club's financial viability. The planning system should not be used to hide subsidies to football clubs or any other institution or agency. By all means support sporting clubs, but make sure the support is transparent.

Furthermore, the Social Impact Assessments (SIA), required under the Planning and Development Act are generally prepared by or for the proponent. Consequently there will be a conflict of interest in preparing any SIA.

In addition, as far as we know there is no evidence that a concessional lease has been put out to tender, or offered, to other community organisations at a reasonable price.

We therefore recommend that the factors for deciding whether the deconcessionalisation of a lease is in the public interest (s261 of the Planning and Development Act) be reviewed, to encompass more relevant and measurable criteria; and that the analysis includes any disadvantage to the local or regionalised public (**R5a**). In particular, this should ensure that

the questions specified in the government's 2002 guidelines for managing Concessional Leases are addressed, such as:

- Is the local and/or broader community aware of, and supportive of the proposed change?
- Is there evidence that other persons or organisations are unwilling or unable to take over the lease in its current form? and
- What is the demonstrated benefit such as an improved return to the ACT?
- Has there been a cost benefit analysis?
- Does the DA comply with the Planning and Development ACT (2007)?

And other questions such as:

- Does the DA comply with the Government's Planning Strategies such as: the Strategies in the 2012 ACT Planning Strategy, the Key Sustainable Development Principles in ACT Territory Plan (see Attachment B) and the Principles in the Transport for Canberra Plan 2012-2031?

There needs to be a more comprehensive and transparent process by the government of the extent to which all the factors comply with current government policy and it needs to demonstrate that they have been analysed.

Non-Compliance of Concessional Lease

At present there appears to be no incentive for clubs to comply with the conditions of their Concessional Lease. In fact, there are several instances where non-compliance is rewarded. We argue that this situation is not only unethical but is not consistent with good governance. If the terms of an existing concessional lease are not being complied with, the Government should consider either terminating the lease and using the land for some other purpose; or charging the full annual rent at commercial (non-concessional) rates.

For the government to state that

"The Planning and Development Act does not provide that a lease should lapse when it no longer meets a set of criteria that it was granted under,...." is not satisfactory.

If this is indeed the situation then The Planning and Development Act needs to be modified to rectify the current situation (**R6a**).

The Treasurer should not waive or reduce Lease Variation Charges or Deconcessional Discharge Fees unless it has been demonstrated to be in the public interest

It appears to be common practice, in recent years, for the Treasurer to waive or reduce Lease Variation Charges or Deconcessional Discharge Fees without formally outlining clearly why his/her decision is in the public interest (**R7a**). It is important that these decisions are clear and transparent.

Minister Corbell discussed this issue on 14 October 1999 in a Motion of Disallowance to Variation to the Territory Plan No. 94 relating to a proposed redevelopment by the Federal Golf Club.

It is worthwhile quoting part of his statement as recorded by Hansard.

ACTLA Debates – Hansard Oct 1999

Simon Corbell moving a Motion of Disallowance on Variation No 94 on 14 October 1999. Page 3111

“The trend since self-government has been, regrettably, to allow the conversion of these types of leases to provide for residential development. Developments at the Yowani, Belconnen and Capital golf courses have been permitted, as have developments at the Canberra Women's Bowling Club in Kingston and the Canberra Bowling Club at Forrest. This trend has emerged as concessional leaseholders have sought to realise the inherent value of their leases, many of which are now located in established, sought-after locations, by converting them partly to residential use and returning the profits to the organisation. **It is a trend, which has brought a windfall gain to the concessional leaseholder at the expense of the community, which granted the lease at a discounted rate. That type of transfer of subsidy the Territory cannot afford.**”

We have emphasised the last two sentences because these were true in 1999 and are still correct today. They identify a major concern of our Council with the present management arrangements of concessional leases and we believe it is time for the government to rectify the situation. Many of these leases relate to valuable open and green space land: once it has gone, it has gone forever.

We therefore recommend that: any decision by the Treasurer to waive or reduce the deconcessionalisation discharge fee, or lease variation charge, should be accompanied by a formal statement to the Legislative Assembly demonstrating why this decision is in the public interest **(R7a)**.

As we stated earlier, the planning system should not be used to hide subsidies to football clubs or any other institution or agency. All De-concessional Fees and Lease Variation Charges should be paid in full and the sporting club, community organisation or business enterprise should apply for grants from the government through the normal budget process.

As always, we will be happy to discuss any of these points with you or your officers.

Yours sincerely,



Gary Kent
Session Convenor
Combined Community Councils of the ACT
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25 November 2014

cc Leader of the Opposition
Chair, Standing Committee on Planning, Environment and Territory and Municipal Services

ATTACHMENT A

Summary of CCC's recommendations, the responses by the government and CCC's responses to the government's statements

CCC recommendations 11 March 2014	Government Response 22 May 2014	Action Proposed by CCC
<p>R1 Section 265 of the Planning and Development Act 2007 be amended (1) to define 'eligible person'; (2) to require that a concessional lease may only be granted to an eligible person; and (3) to clarify that negotiations to sell a concessional lease may not be entered into without EPD's knowledge and consent.</p>	<p>Defined as: "the eligible person is as if that person was the person originally granted the lease, that is, that person would meet the same criteria for the direct sale."</p>	<p>The definition is good. This definition should be added to the Dictionary in the 2007 Planning and Development Act, so that everyone can access it. See R1a in the text.</p>
<p>R2 When granting any new concessional lease, the terms of the lease should be such that, should the terms of the lease no longer be complied with, the concessional lease should lapse.</p>	<p>"A lease is granted for a specific term, usually 99 years, and does not end until the term has been reached. While there is a capacity for the government to terminate a lease under section 383 of the Act, it would be a measure of last resort."</p>	<p>The current situation is not satisfactory. There will always be problems as long as the concessional lease holder can derive substantial benefit by not complying with the conditions of the concession that was granted. Once the green space is gone it has gone forever.</p>
<p>R3 To improve consistency and transparency, the Government should establish and make publicly available a data base of all concessional leases in the ACT and the financial arrangements that apply regarding annual leasing charges for each of these concessional leases.</p>	<p>Legislative provisions have been incorporated in the Planning Act to identify concessional leases through the 2010 Planning and Development (Concessional Leases) Amendment Act. See the explanatory statement in the 2010 Act.</p>	<p>We were not aware of these improvements. They are very welcome. The government still needs to establish an accessible catalogue for all concessional leases with links to the Territory Plan. We recommend that the government produces a timetable to complete this work. See R3a in the text.</p>
<p>R4 A list of concessional leases granted during the previous year, together with the deemed cultural, economic or social benefits of each concessional lease,</p>	<p>Section 242 of the Planning Act requires the Planning Minister to table a report on all direct sales in the Assembly. These are available from 2010:</p>	<p>See our comments on R3 above.</p>

<p>and the financial arrangements between each recipient lessee and the Government, should be included in the EPD Annual Report.</p>	<p>(http://www.economicdevelopment.act.gov.au/land/direct_sales/recent_direct_sales).</p>	
<p>R5 To permit an open debate when a decision is controversial, the Planning and Development Act 2007 be amended to require the Planning and Land Authority to inform people, who have made submissions on the Development Application to deconcessionalise the lease, that the Minister’s decision to allow the Planning and Land Authority to consider the deconcessionalisation of a lease is appellable to the ACAT.</p>	<p>The current processes are fine.</p> <p>The Minister must be satisfied that the deconcessionalisation is in the public interest and the decision is a notifiable instrument.</p>	<p>The current process is not satisfactory.</p> <p>The Minister has no obligation to show the degree of community support (local or broader) to deconcessionalise the lease or provide evidence that other persons or organisations are unwilling to take over the lease in its current form. The Minister should show a demonstrated public benefit. See R5a in the text.</p>
<p>R6 If the terms of an existing concessional lease are not being complied with, the Government should consider either terminating the lease and using the land for some other purpose; or charging the full annual rent at commercial (non-concessional) rates.</p>	<p>The 99-year lease situation makes this option unacceptable to the government.</p> <p>“The Planning and Development Act does not provide that a lease should lapse when it no longer meets a set of criteria that it was granted under,....”</p>	<p>Not satisfactory.</p> <p>The Planning and Development Act needs to be modified to rectify this unsatisfactory situation – perhaps by reducing the length of the Concessional lease. See R6a in the text.</p>
<p>R7 No decision to wave or reduce the deconcessionalisation discharge fee or a lease variation charge should have effect without it being approved in the Legislative Assembly.</p>	<p>The current processes are fine. The Treasurer has the power to waive the payment amount under section 131 of the Financial Management Act.</p>	<p>This is not satisfactory. The Treasurer should not be able to waive these payments in an <i>ad hoc</i> way. He/she should be seen to be making decisions that are in the public interest. See R7a in the text.</p>

ATTACHMENT B

Suggestions for some criteria which must be met to meet Public Interest test

The Development must be aligned with the Strategies in the 2012 ACT Planning Strategy¹

Strategy 1	Strategy 2	Strategy 3	Strategy 4	Strategy 5	Strategy 6	Strategy 7	Strategy 8	Strategy 9
Urban Intensification is focused in town centres, around group centres, along major public transport routes	Land use & transport design/ investment are integrated to improve mobility and choice of convenient travel	Existing housing stock is improved & more choice is provided in housing types	Convenient access given to facilities, services – group & local centres reinforced as community hubs	Vibrant, pleasant urban parks and places are provided – safe and accessible for the most vulnerable	Design ensures urban change creates amenity, diversity, sustainable built form, and adds to Canberra's landscape setting	City's efficiency, resilience, environmental sustainability are improved (eg through innovative technologies)	Land & resources are valued eg by connecting natural systems, and conserving agriculturally productive land	Prosperous region /diverse economy facilitated by better travel/info networks and opportunities for new enterprises

The Development must be aligned with the Key Sustainable Development Principles in ACT Territory Plan²

Environmental Sustainability				Social Sustainability					
1.5 Resource conservation measures will be applied, particularly in transport, subdivision planning, design & construction	1.6 Pattern of development reflects land capability constraints resulting from topography, soils, drainage, natural hazards, and ecosystems, eg provide and protect wildlife corridors	1.7 Integrated catchment management and water sensitive urban design, especially to protect ACT water supply & maintain environmental flows in rivers and streams.	1.10 Integrated land use and transport planning to maximize accessibility and transport efficiency, reduce energy consumption etc	1.18 Accessible community, cultural, sporting and recreational facilities.	1.19 Variety of open space types are provided in the district/local area to meet recreational needs.	1.21 Affordable, adaptable and special-needs housing is promoted; existing stock is modified or redeveloped to meet emerging social needs.	1.23 Needs of the disabled recognized in urban planning, particularly design and operation of transport and access systems	1.24 Road hierarchy in new areas: convenient commercial & community facilities; open spaces network; off-road system for pedestrians and cyclists; and accessible public transport	1.26 Identified places of heritage significance will be protected.

1 See 2012 ACT Planning Strategy at http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/planning_strategy

2 See Sustainable Development Principles in the Strategic Direction section of the ACT Territory Plan at <http://www.legislation.act.gov.au/ni/2008-27/current/default.asp#Strategic+Direction>