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28 August 2006

Dr. Hanna Jaireth,
P&E Committee Secretary,
Legislative Assembly for the ACT,
GPO Box 1020,
Canberra ACT 2601

Dear Dr. Jaireth,

I refer to your letter of 9 August asking me to make a submission to your Committee on ACTPLA's draft Planning and Development Bill.

2. I don't intend to address my comments to particular sections of the 396-section, 341-page draft Bill. Rather, I intend to comment on certain ACTPLA proposals as explained in the various Planning System Reform Project documents issued with the draft Bill, on the assumption that the draft Bill simply gives legal expression to the proposals explained in the accompanying documents.

3. Let me say at the outset that the submission I made to ACTPLA when the Reform Project documents were first put out last year appears to have made no impression whatsoever. Some comments have been ignored, and in some cases precisely the opposite to what I suggested is apparently going to be done. Therefore, it seems to me the best way of making a submission to your Committee is to provide you with a copy of the Submission dated 17 July 2005 I made to ACTPLA last year (copy attached - as well as a copy of an article on the matter I wrote for the Canberra Times, published on 6 April 2006), and supplement that with some additional comment on the issues I raised in that Submission, arising from the current documentation that's been issued - particularly the one titled Govt. Response to Community Comments November 2005.

4. I suggest that my July 2005 Submission is just as important as what I am saying in this submission, and the two should be read in conjunction.

LEASES - LEASE PURPOSE CLAUSES

5. General. In my Submission of July 2005, I pointed out that the arguments advanced for lease-purpose clauses were nonsensical, and explained why it would be preferable to abolish them and recognise the reality that it is the Territory Plan and its Codes, Guidelines, etc. which determine the use to which land can be put and which control development. Apparently this is not being accepted, the decision being that "the lease will remain as the mechanism to provide a clear statement of rights and obligations for the parties to the lease, *including permitted use and maximum permitted intensity of use*".

6. With respect, that response is meaningless. First, obviously leases must remain if ACT land is to remain leasehold - and, of course, a lease will always state the rights and responsibilities of the lessee and the lessor. And to simply state that they will continue to include lease-purpose clauses doesn't answer at all the point that, with the Territory Plan having now become the prime planning

document and the document dictating the uses to which land can be put in all parts of Canberra, lease-purpose clauses in individual leases are now superfluous, a waste of time and money, an unnecessary duplication of planning and development controls, etc. (see my Submission of 17 July). They're simply a hangover from the early days when Canberra was small, didn't have a zoning Plan dictating land use, and development was small enough to be controlled through individual lease provisions.

7. The reality, which isn't admitted in the documentation, is that the *sole* purpose lease-purpose clauses serve now is to provide a 'trigger' for the change-of-use charge, the charge payable when the lessee wants to use the land for a higher-value purpose than the purpose stated in the lease. However, elsewhere I am suggesting that the change-of-use charge, the most inefficient and costly Govt. impost in existence in Australia, be abolished and replaced by a development tax related *to the development itself,* and not to changes in the value of the land on which the development is taking place (a most uncertain and imprecise calculation at the best of times). I hope that your Committee will recommend that that proposal be given serious consideration. If it were to be adopted, then the last remaining reason for a lease-purpose clause in Canberra's leases would disappear.

8. Residential Leases. The documentation states that "Commercial and industrial leases will be issued with a broader range of uses than has previously been the case". If lease-purpose clauses are to continue, logically residential leases should also specify a 'broader range of uses' - in the sense that residential development *generally* should be permitted, without specification of the number of residences that can be built on the land. Again, the Territory Plan and its Codes, etc. will dictate the number of dwellings, heights, setbacks, plot ratios, etc. of residential development on land in each zone . And a broader purpose-clause (in the sense indicated) would only be equitable to lessees, who have paid the equivalent of freehold prices for their land, and should therefore be entitled to the development rights that usually go with freehold; they should not have to pay a second time (a change-of-use charge) if they want to put more than one dwelling on the land. The only limitation on the number of dwellings on a block of land should be whatever the Territory Plan permits.

9. In fact, residential leases issued before 1971 specified 'residential purposes only', without limitation as to the number of residences. What I am suggesting is merely a return to the pre-1971 practice.

THE CHANGE-OF-USE CHARGE

10. You will see that in my 17 July 2005 Submission, I explained why the change-of-use charge should be abolished (on the grounds of equity, yielding insufficient Govt. revenue, and the potential for legal challenge), and replaced by a levy related to *development itself,* instead of to changing values of the land on which the development takes place (as does the change-of-use charge). I saw (and see) this as preferable to the then proposal to develop a system of flat fees for permission to use the land for a higher purpose, instead of the ridiculous and uncertain current practice of calculating charges according to uncertain land values (often in theoretical, non-existent markets!). I objected to the 'flat-fee' proposal because the charge would still be related to land values and uses, rather than development itself, and would therefore still have the equity, revenue and legal problems the current change-of-use charge has.

11. However, the current documentation states that the 'flat-fee' proposal has been postponed for further development and analysis, there to be 'further consultation' and 'examinations of options'. I would hope that one of the 'options' to be examined will be my proposal to abolish the change-of-use charge and replace it with a more transparent, more efficient levy related to development itself instead of land values. I hope that your Committee will recommend that that option be one of those examined.

SECTION MASTER PLANS AND NEIGHBOURHOOD PLANS

12. In the 2005 documentation it was proposed to 'downgrade' section master plans and neighbourhood plans, in that they would "cease to be matters for consideration in development assessment", and their role confined to "providing recommendations for variations to the Territory Plan...". You will see that in my July 2005 Submission I supported this downgrading, pointing out that they are simply a waste of time and money, and with one exception providing residents with no more protection of residential amenity than does the Territory Plan itself and its various Codes, etc..

13. However, I now see from the latest documentation that, although the proposal is said to have been 'agreed' by the Govt. (p.33 of Govt. response to Community Comments), another document says that "Most existing master plans (and) neighbourhood plans .... will continue as zone requirements or precinct codes". This would appear to be an 'upgrading' of section master plans, rather than a 'downgrading'! In my opinion, for the reasons set out in my July 2005 Submission, section master plans should be scrapped forthwith.

14. However, as I indicated in my July 2005 Submission, there is one important rule in B11 area section master plans which provides existing residents in that area with protection of residential amenity that the Territory Plan does not, i.e. the non-isolation Principle and Control measure, or the provision that ensures a single-storey homeowner cannot be left isolated between *two* three-storey developments, one on each side. This is probably the most important protection of residential amenity of all for existing residents of the B11 area, and clearly should be enshrined in the Territory Plan itself, or one of its Codes, instead of merely in 'subsidiary' section master plans.

15. I would hope that your Committee will recommend that this non-isolation rule be included in the Territory Plan, in accordance with a promise in the 2005 documentation that "current master plans (will) be reviewed to determine whether their planning rules would be better located in codes...." (Technical Paper No. 2, May n2005, para. 7.3.2).

ACTPLA 'FLEXIBILITY'

16. One recommendation in the July 2005 documentation was that "an assessment (be made) of opportunities to convert planning policy requirements into explicit rules and objective, largely quantitative criteria". I interpreted this as a possibility of reducing the excessive 'flexibility' that ACTPLA retains for itself in considering development applications, their ability to virtually ignore specified rules, standards, etc. and substitute for them whatever they think is desirable - e.g. in the Urban Housing Code, Appendix III.3 to the Territory Plan (see my July 2005 Submission, under the heading 'ACTPLA Flexibility').

17. And the current document Govt. Response to Community Comments says this recommendation is "agreed and is to be implemented". However, on the face of it the proposed new system of 'Code

assessment', or 'Merit assessment' for development applications would seem to give ACTPLA even *greater* flexibility in considering development applications, greater scope to depart from laid-down Standards, rules, etc. than they have now. And if that 'flexibility', or ACTPLA's power, is in fact exercised to too great an extent, this whole Reform Project is a wasted exercise; we will be well away from 'explicit rules and objective, *largely quantitative* criteria', and the development application process will continue to lack timeliness and certainty.

18. It might be helpful, and act as a curb on too much ACTPLA 'flexibility', if somewhere in Territory Plan, it was stated that the specified standards, rules, criteria, etc. are to apply *unless the applicant for a development, ACTPLA,* ***and persons "materially affected"*** *(to be defined for appeal purposes anyway), agree otherwise.*

SUMMARY

19. I suggest your Committee recommend that

- Reconsideration be given to the retention of lease-purpose clauses in leases.
- If such clauses are to be retained, residential leases, as well as commercial and industrial leases, be issued with a 'broader range of uses' - in particular, that there be a reversion to the pre-1971 practice of issuing residential leases as 'for residential purposes only', without specification as to the number of permitted residences.
- In relation to the proposed further analysis of a codified development rights charging system, and examination of other options, one such option to be considered is the abolition of the current change-of-use charge altogether, and its replacement with levies related to the development itself, instead of to the change in value of the land on which the development is to take place.
- Consistent with the agreement that section master plans 'cease to be matters for consideration in development assessment', section master plans be abolished instead of becoming Precinct Codes in the Territory Plan.
- The .non-isolation' rule currently in B11 section master plans, the rule ensuring that a single-storey homeowner cannot be left isolated between two 3-storey developments, one immediately on each side, be incorporated in the Territory Plan itself, and not simply in section master plans.
- Consistent with the intention stated in the 2005 documentation to convert planning policy requirements into "explicit rules and objective, largely quantitative criteria", it be provided that quantitative criteria or standards laid down in the Territory Plan or its Codes must not be departed from unless the applicant for the development, ACTPLA, *and any person 'materially affected' by the development,* agree.

Yours sincerely,

R. S. GILBERT

SUBMISSION ON PLANNING SYSTEM REFORM PROJECT

BY

R. S. GILBERT

GENERAL

On the face of it, much of what is proposed in relation to leasehold administration, the Territory Plan, and the development assessment process is to be welcomed. However, if ACTPLA is left with too much 'flexibility' in its administration of leases and the revised Territory Plan and its Codes, Planning Guidelines, etc. (and I make a suggestion about this later), the manner in which the new plans, rules, etc. are administered becomes more important than the rules themselves - so whether the reforms in fact result in a more efficient planning and development control system, and a more efficient development application assessment system, won't be known for some time.

However, subject to that, most of the reforms proposed would seem to provide a platform for improvement in the efficiency, equity, transparency, and timeliness that is very much needed in this area of public administration - both by substituting more sensible rules for existing ones, and by eliminating or cutting down on the unnecessary duplication and excessive, detailed control that exists at present.

This submission, therefore, is confined to one or two suggestions in areas where, in my view, the reform proposals do not go far enough - suggestions which, if adopted, would in my view make it more likely that improvement in the system will in fact be achieved.

LEASES - LEASE PURPOSE CLAUSES

The arguments put forward for retention of lease-purpose clauses in leases are not convincing. In fact, with respect, some of the arguments are quite nonsensical. For example, it is said (para. 4.1 of Technical Paper 1) that an important reason for having purpose clauses is that "it provides the basis for compliance action should a lessee use the lease for purposes that have not been approved". In other words, the purpose in having a rule is to police observance of the rule! That's rather like having a notice erected in a public place that simply says 'anyone throwing stones at this notice will be prosecuted'!

The reality is that, while lease purpose clauses might have been a legitimate way of controlling development and land use in the 1920s, 30s (and even up to the 1970s), with the advent of the Territory Plan as the key planning and development control document in the ACT, lease-purpose clauses in individual leases have become redundant. They are an unnecessary, costly, time-consuming, and detailed duplication of the control over land use and development now exercised by the Territory Plan and its various Codes, Guidleines, etc. - and a most inefficient form of attempted control at that. To try to plan and control development of a city, or part of a city, as large as Canberra is now through **individual leases,** rather than (or, even worse, as well as) by broad zoning and other rules that have general application, is cumbersome, ridiculous, and unnecessary in this day and age, and serves no real purpose.

Thus while the proposal to have broader lease-purpose clauses in commercial and industrial leases (why not residential leases as well?) is a step in the right direction, it doesn't go far enough. It would be preferable to abolish lease-purpose clauses entirely, and leave the Territory Plan and its various Codes, Guidelines, etc. to determine the use to which land can be put and control development. That would bring the ACT more into line with the States, where planning and development doesn't depend on (non-existent) 'purpose' controls in individual land-ownership or occupancy documents.

The only meaningful justification for lease-purpose clauses is that they serve as a basis for imposition of the change-of-use charge (or any new impost related to land rights that might replace the change-of-use charge). However, I am suggesting below that the change-of-use charge should be abolished, and replaced **not** by the system of fees and charges the Reform proposes related to **rights** of development, but by an impost related to **development itself.** If that were done, the last remaining justification for lease-purpose clauses would disappear.

THE CHANGE-OF-USE CHARGE PROPOSALS

One of the quite legitimate criticisms of the change-of-use charge is its lack of transparency and uncertainty as to the amount payable, and the delays, disputes, etc. that this generates in the development application assessment process - a problem that will always exist so long as calculation of the impost depends on the uncertainties surrounding land values (often in theoretical, rather than real, property markets).

The proposal to replace the change-of-use charge with a (presumably flat) fee related to the right of use of the land might overcome the problem of lack of transparency and uncertainty. But it would not overcome other problems associated with the change-of-use charge - problems of equity; problems of the Govt. not receiving the revenue it should (if it wants to levy development); and/or the problem of potential legal challenge to the charge if it is being administered in a way that amounts to 'double-dipping' by the Govt., by imposing a charge for development rights lessees already possess. And these problems will remain so long as any levy is related to land development **rights**, as distinct from **the development itself.**

The 'equity' problem is that Canberra's homeowners have been paying - and the Govt. has been receiving - the equivalent of freehold prices for land for some time now. And it would therefore be equitable for the Govt. to confer on those homeowners the rights in relation to land use that commonly go with freehold title. That means the right to use the land for whatever purpose the Govt.'s planning or development laws permit, **without further payment,** as in the States. The change-of-use charge (or any other levy related to development rights) amounts to Govt. 'double-dipping', given the freehold-equivalent price the Govt. got for the land in the first place.

The 'insufficient revenue' problem is the fact that, if the provisions of the Land Act governing lease variations and calculation of the change-of-use charge are being properly applied (in accordance with two 1996 Supreme Court decisions and legal advice given to the Govt. by the ACT Govt. Solicitor in 1997), the change-of-use charge is not yielding as much revenueas it shouldin respect of redevelopment. This is admitted in para. 7.1 of Technical Paper 1, which says that "the CUC is applied to only a small percentage of development approvals each year"; and "The revenue collected from CUC is also relatively small...".

One of the reasons for this is that the residential redevelopment that has been - and is - occurring in inner north and south Canberra, which converts land from single-residential use to multi-residential use, predominantly involves land covered by leases issued before 1971 - leases which already give the lessee the right to use the land for multi-residential purposes (even though, up to now, only one residence has stood on the land). This means (as the Supreme Court said) there is no need to now apply for a variation of the lease purpose clause to permit multi-residential use (the lessee already has that right); and even if the lessee did in fact apply for a variation, (as the ACT Govt. Solicitor said) no change-of-use charge would be payable, as the variation would not increase the value of the land. (The change-of-use charge is essentially 75% of the increase in the value of the land if permission is given to use it for multi-residential purposes instead of single-residential purposes. However, with pre-1971 leases already giving the lessee the right of multi-residential use, any 'approval' of the right to use the land for multi-residential purposes - which, as indicated earlier, is really unnecessary and merely confirmation of that right - does not increase the value of the land.)

Thus if the Supreme Court ruling and the ACT Govt. Solicitor's advice is being applied, while the Govt.'s impost on redevelopment is related to **rights** to develop rather than to **the development itself,** the Govt. is collecting little if any revenue in respect of the great bulk of redevelopment that has been in recent years, and is still,occurring in inner north and south Canberra.

True, Variation 200 to the Territory Plan now requires a developer who wishes to sub-divide the land to (say) enable him to grant individual strata title to buyers of the individual apartments or townhouses he is building, to first apply for a lease variation to specify the number of dwellings involved - e.g. to vary the lease to state, instead of that the land is "for residential use only" (as most of these leases do), that the lessee has the right to use the land to build (say) a minimum of 1 dwelling and a maximum of (say) 10. However, if the Govt. Solicitor's advice is being applied, the change-of-use charge payable would still be only 75% of the increase in value **resulting from the sub-division itself** (i.e. from the ability to grant individual strate titles, instead of all units being owned under some form of community title); the basic variation to specify 'a maximum of 10 dwellings' is merely a spelling out in detail of the rights the lessee already has in relation to the land, and should still not require payment of a change-of-use charge **in respect of that variation.**

Thus, on the basis of the 1996 Supreme Court decisions and the Govt. Solicitor's 1997 advice, the Govt. is (or should be) collecting considerably less revenue from redevelopment than if its impost were related to **development itself**, rather than to the **right** to redevelop.

The 'potential legal challenge' problem would arise if the lease variation and change-of-use charge provisions of the Act were **not** being applied in accordance with the Supreme Court decisions and the Govt. Solicitor's advice - e.g. if lessees were being required to apply for lease variations 'under duress'; and/or the change-of-use charge was being calculated so that in some way, perhaps indirectly, the lessee was being required to pay a charge in respect of rights in relation to the land he already held. In those circumstances, the Govt. would be leaving itself open to legal challenge - and, in my opinion, the Court could well decide that

- the Govt., having already conferred a contractual right of multi-residential use of the land on the lessee when it first issued the lease, cannot go back years later when the right has become more valuable and, either directly or indirectly, try to 'have a second bite at the cherry' and extract an additional payment for those rights; and/or
- the Govt. cannot now, retrospectively, 'legislate out' rights that it itself had conferred on lessees years earlier under mutually agreed contracts; and/or
- any charge based on differences in land values according to the right of use of the land cannot be applied if the Govt. in fact is not granting the lessee any more valuable rights; and/or

- while the Govt. can apply the provisions of the Act concerning consolidation and sub-division to impose a charge in respect of any increased value resulting from that consolidation or sub-division, it cannot use those provisions to try to impose a charge in respect of the use of the land that gave rise to that consolidation or sub-division .

All of these problems (the 'equity' problem, the 'insufficient revenue' problem, and the 'potential legal challenge' problem) would be solved if the Govt. were to scrap the change-of-use charge altogether, and (if it wants to tax redevelopment) instead impose a levy (even the scale of fees proposed by the Reform Project) on **redevelopment itself,** instead of on the lessee's **right** to redevelop.

SECTION MASTER PLANS AND NEIGHBOURHOOD PLANS

The proposal to 'downgrade' section master plans and neighbourhood plans is welcome. However, it would be preferable to eliminate them altogether. They were introduced to get the community involved in the planning process, and to provide certainty and prtection for residents of the area as to what kind of development could occur in their section or neighbourhood. In fact, only a very small proportion of the community interests itself in such documents (e.g. in the case of the Turner Neighbourhood Plan, only about 5%) - and those who do interest themselves usually don't represent the views of the 'silent majority' in the community anyway.

And, with one exception mentioned later, section master plans and neighbourhood plans provide no more certainty or protection for residents than does the Territory Plan itself and its Codes anyway - particularly given that they are merely 'planning guidelines' which ACTPLA must 'carefully consider' when dealing with development applications, but does not necessarily have to apply (I also discuss this aspect of ACTPLA 'flexibility' later). They are unnecessary, a waste of time and money, and their existence is yet another reason why the development application process is so drawn out and inefficient.

One important point, however, is that the section master plans for most B11 sections contain a Control measure which **does** provide B11 area residents with protection of residential amenity and property values that the Territory Plan and its Codes do not. That is a 'non-isolation' Principle and Control measure, which ensures that a single-storey homeowner will not be left isolated between two multi-storey developments, one on each side.

Para. 7.3.2 of Technical Paper 2 states that "section master plans contain planning rules that may be more appropriately located in codes or planning guidelines". And "Current master plans should be reviewed to determine whether their planning rules would be better located in codes or planning guidelines". And the role of section master plans (if they are not to be abolished altogether) is said to be to "confined to provding recommendations for variations to the Territory Plan".

There is no doubt that the non-isolation Principle and Control measure mentioned earlier, obvously intended to have general application in the B11 area, would be 'more appropriately located' in the Territory Plan itself or its Urban Housing Code (an Appendix to the Plan) than in individual section master plans. Whether section master plans are eliminated altogether or merely 'downgraded' in the way the Reform Project presently proposes, that Principle and Control measure should be incorporated in the Territory Plan or one of its Codes - particularly as it is probably the most important protection of residential amenity that existing residents of an area have.

ACTPLA 'FLEXIBILITY'

One of the recommendations in Technical Paper 3 is "That the review of planning rules include an assessment of opportunities to convert planning policy requirements into explicit rules and objective, largely quantitative criteria".

This is one of the most important recommendations to emerge from this review. At present the Territory Plan and its Codes give ACTPLA a considerable degree of flexibility as to whether or not the Standards, rules, etc. laid down are to be applied in individual cases, or whether ACTPLA will substitute for those Standards, rules, etc, something else that it considers more appropriate. For example, the Urban Housing Code (Appendix III.3 to the Territory Plan, and the key control over development in the B11 and B12 medium density areas) lays down in detail what it calls Acceptable Standards in regard to a great variety of matters (e.g. permitted setbacks, building heights, etc.). However, the 'fine print' in the Introduction to the Code states that "Other solutions (i.e. other than the Standards laid down) which would result in an equal or better outcome (in ACTPLA's opinion) may still be considered". And "Other solutions may be used as an alternate method....". And "(ACTPLA) may in unusual circumstances ('unusual' is not defined) diverge from a suggested acceptable standard.....".

In my view, such 'flexibility' gives ACTPLA more power in relation to development applications than a regulatory authority should have, can tend to make the specified Standards meaningless, creates uncertainty as to what will be permitted and what will not, causes delays in the development application assessment system (it's a human tendency for regulators to look for ways to exercise powers they're given), and generally is a barrier to achievement to more transparent and efficient development application processing.

That is why the proposal to have 'explicit rules' and 'largely quantitative criteria' (rather than leaving ACTPLA with too much flexibility to decide what is to be applied and what is not) is so important, and should be pursued vigorously. For a start, the 'flexibility' given to ACTPLA in the Introduction to the Urban Housing Code mentioned earlier should be eliminated, and it be made clear that the Acceptable Standards are just that - Standards that will be applied **unless the developer, ACTPL and persons affected by the proposed development (e.g. adjoining homeowners) agree otherwise**.

And that philosophy of having the Territory Plan and its Codes specifying clear, certain Standards and rules, and cutting down on ACTPLA's abiltiy to ignore them and substitute other requirements, should be given effect to in every area of the Territory Plan and its Codes.

R. S. GILBERT 17 JULY 2005

Does the reform of the ACT's planning system processes go far enough?

Many recommendations make sense, but doubt remains over how they will be administered, RON GILBERT writes

THE TERRITORY'S chief planning executive, Neil Savary, in his Opinion article on March 30, discussed the ACT Planning and Land Authority's Planning System Reform Project.

The project aims to (according to the minister when launching the project in 2004), "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".

Given the widespread criticism of the present system, this is commendable. And in that regard many of the project's draft recommendations issued for public comment in May 2005, referred to by Savary, make sense.

But two important questions arise — whether the proposed changes go far enough; and how ACTPLA will administer the new rules and processes.

As to whether the proposed reforms go far enough, in my view they do not, in two respects. First, although it is proposed to have broader lease-purpose clauses in commercial and industrial leases (why not residential leases also?), it would be preferable to abolish lease-purpose clauses in leases entirely, and leave the Territory Plan and its various codes to control development and determine the use to which land can be put.

It is ridiculous to try to control development and land use in a city the size of Canberra through individual leases, instead of (or, worse still, as well as) by the zoning and other controls provided in the Territory Plan and its codes. Such detailed duplication is unnecessary, costly and time-consuming.

In fact, ACTPLA's reform project itself fails to establish a valid reason for continuing lease-purpose clauses. It says, "they provide a basis for compliance action should a lessee use the lease for purposes that have not been approved".

In other words, the reason for having a rule is to police its observance! That's like erecting a notice in a public place saying simply, "Anyone throwing stones at this notice will be prosecuted."

Another example of the proposed changes not going far enough is a proposal to continue the much-criticised change-of-use (betterment) charge, the levy imposed on development that requires a variation in the purpose clause of the lease. (The charge is a percentage of the estimated increase in land value.) Although a proposal for flat fees regarding particular land uses (rather than the present nonsense of estimating differences in land values in theoretical markets) is an improvement, it won't eliminate all the problems the charge poses.

This includes the problem of equity, where people who have already paid the equivalent of freehold prices for their land are charged, but do not have the development rights which usually go with freehold, and have to pay the government again if they want to redevelop.

It also includes problems of the government not getting the revenue it should from a development levy related to land use — because most leases in redevelopment areas already permit the land to be used for redevelopment, thus obviating the need for a change of land use and the resultant payment of a change-of-use charge.

Finally, it presents problems of possible legal challenge if the government is administering the change-of-use provisions in a way that indirectly imposes a charge for land rights the lessee already possesses.

These problems would be avoided if the change-of-use charge were scrapped, and any development levy related to the development itself rather than land values.

Another important matter is the manner in which ACTPLA administers whatever new rules and processes are decided on as a result of the reform project.

As Savary acknowledged in his article, there is a distinction between "what the new rules are and how they are administered".

The main cause for concern here is the possibility that ACTPLA will retain too much administrative flexibility. In the fine print of the existing Territory Plan and its codes, ACTPLA has a considerable degree of flexibility as to whether the rules and standards laid down will be applied in individual cases, or ACTPLA will substitute for them rules and standards that it thinks more appropriate. This makes for uncertainty, delays and a lack of consistency.

It is therefore welcome to see that, in the draft proposals issued last May, ACTPLA said the reform project would assess opportunities to "convert planning policy requirements into explicit rules and objective, largely quantitative criteria".

It is to be hoped this is done, and ACTPLA doesn't end up retaining for itself too much administrative flexibility, or power to depart from the rules and standards laid down in individual cases.

Otherwise, the whole exercise will have been for nothing.

■ Ron Gilbert is a former deputy chairman of the Trade Practices Commission.