LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN SERVICES

REPORT NO.41 FEBRUARY 2000

BETTERMENT (CHANGE OF USE CHARGE)

Preface by Chair on behalf of the committee

This is a majority report of the committee (Mr Corbell MLA dissenting) dealing with two matters of great importance to Canberra: the level and charging of betterment and change of use charge [CUC], and the future of the leasehold and planning systems.

The report carefully outlines the many issues raised during the inquiry. Members of the committee hope that this outline will facilitate community understanding of the issues, ***no matter what position is taken*** *about the conclusions of members of this committee that are shown in the report—and in the attached Dissent by Mr Corbell (commencing at page 38).*

The majority report is confined to conclusions (rather than recommendations) because the members consider this will best assist the wide-ranging debate in the Territory's parliament that will follow presentation of the report.

The committee expresses its appreciation to all those who contributed to the inquiry.

Harold Hird MLA
Chair
21 February 2000

STANDING COMMITTEE ON PLANNING AND URBAN SERVICES

The committee was established on 28/4/98 to inquire into and report on planning and lease management, road and transport services, housing and housing assistance, government purchasing and public utilities purchasing, electricity industry and regulation, construction industry policy, parks and forests, private sector employment inspectorate, building services, environment, heritage and municipal services and any other related matter (*resolution of appointment, as amended on 25/11/99*)

Committee members

Mr Harold Hird MLA (Chair)
Mr Dave Rugendyke MLA (Deputy chair)
Mr Simon Corbell MLA

Secretary – Mr Rod Power

For further information please contact the secretary on ph: 02 6205-0435 or fax: 02 6205-0432 or email: committees@act.gov.au

1. BACKGROUND

Terms of reference

1.1. On 1 July 1999 the Legislative Assembly resolved that the Standing Committee on Urban Services (since renamed the Standing Committee on Planning and Urban Services) inquire into and report on:

> the level and charging of betterment and change of use charge with particular regard to:
> (a) all recommendations of the report entitled *A Study of Betterment and the Change of Use Charge in the ACT*, by Professor Des Nicholls (the Nicholls Report)[*]; and
> (b) any other related matter;
>
> [and that] the government not implement any of the recommendations of the Nicholls Report and maintain the current rate of 75% until the standing committee has reported and the government has presented its response.

[*] The full title of the report by Professor Des Nicholls is *A Study of Betterment and the Change of Use Charge in the Australian Capital Territory – its impact on investment and a consideration of options* May 1999

Report deadlines

1.2. The assembly directed the committee to report by 30 September 1999. This date was subsequently amended twice: first (on 26 August 1999), to ‘the last sitting day in 1999’; and second (on 25 November 1999), to ‘the first sitting day of March 2000’.

1.3. The Assembly also extended the original ‘sunset’ clause—whereby the change of use charge was to remain at 75% (instead of 100%)—from 31 August 1999 to 31 March 2000 to allow full consideration by this committee and subsequent debate by the Territory’s parliament.

Conduct of the inquiry

1.4. The committee placed advertisements in the local media in mid-July 1999, inviting public comment. Another advertisement appeared in September 1999, informing the public that a public hearing would take place on 5 November 1999.

1.5. Before that date, the committee heard – in public session – a representative of the Housing Industry Association (Mr Murray). This meeting took place at the request of the Association, which was unable to make the scheduled 5 November hearing.

1.6. On 5 November 1999 the following persons addressed the committee:

- Mr Hawkins (executive director, PALM) and Mr Snell (*PALM*)

- Mr Deegan, Mr Wylucki and Mr Powderly (*Property Council*)

- Ms Maxwell and Mr Odgers (*Conservation Council*)

- Mr Stubbs and Mr Stankevicius (*ACTCOSS*).

1.7. A third public hearing took place on 12 November 1999 when representatives of the Master Builders Association (Mr Dawes, executive director, and Mr Purdon) addressed the committee.

1.8. A fourth hearing occurred on 19 November 1999 when the committee again met representatives of the Property Council to discuss some commercial-in-confidence material. Also on that day, the committee was addressed, in public session, by Mrs Pham (Commissioner, ACT Revenue), Ms McKinnon (Department of Treasury and Infrastructure) and Mr Snell (PALM); and by Professor Nicholls.

1.9. The transcript of the public hearings is available from the Committee Office of the Assembly (phone: 02 6205-0127).

1.10. Seven submissions were received by the committee. All were authorised for publication and can be obtained from the Committee Office. Their authors (in alphabetical order) are:

- *ACTCOSS*

- *Australian Property Institute (ACT Division)*

- *Conservation Council of the South East Region*

- Mr Gilbert

- *Housing Industry Association*

- *Law Society of the ACT*

- *Property Council of Australia ACT Division.*

Treatment of evidence

1.11. References to these submissions and to the transcript of public hearings appear throughout this report. Where a number in square parentheses appears after a quotation, it refers to the relevant page in the written report of Professor Nicholls or the written submission by the person named. If the letter ‘T’ (followed by a date and page number) appears in the square parentheses, it refers to the transcript of oral evidence given to the committee on that date. As with submissions, the Committee Office can provide copies of the transcript of the public hearings.

Layout of the report

1.12. In order to deal properly with the many issues raised by the inquiry, the committee has used a four-column format for the balance of this report. The first column reproduces the nineteen recommendations made by Professor Nicholls in his report. It also includes one other distinctive recommendation made to this committee in the course of the inquiry. The second column summarises (as the committee understands it) the <u>rationale</u> for the recommendation. The third column summarises comment <u>by other people</u> about the recommendation. The fourth column sets out <u>this committee’s view</u> of the recommendation.

Background to the change-of-use charge [CUC]

1.13. The following information on the change-of-use charge [CUC] was provided by the Treasurer [letter,19/11/99]:

> CUC is payable on the increase in property value that results from a change in lease purpose clause.
>
> Factors influencing variation in collections… from year to year include large one-off payments, changes in the number of development projects potentially affected by a CUC, variation in the method of calculating the CUC, legislative changes, and waivers of CUC under section 65 of the *Financial Management Act 1989*.
>
> In 1998, amendment to the *Land (Planning and Environment) Act 1991* provides for the value of associated works for a development proposal to be offset against the CUC. This gives effect to the government's policy of remitting CUC in non-viable local centres and for projects undertaken as part of the Civic and Northbourne Avenue Revitilisation initiatives.
>
> The average proportions of CUC budgeted and actual revenue to total general government budgeted and actual revenue for the period 1992-2000 are approximately 0.29% and 0.34% respectively.
>
> As a proportion of taxes, fees and fines collected, the CUC peaked at just over 1% in 1994-95 and 1995-96 and has averaged 0.67% since that period.
>
> It is difficult to quantify the total cost for administering the CUC. The cost of each application is dependent on the cost of the valuation (average cost $550), administrative processing and any appeal costs. It is estimated that the total average cost is approximately $1000.

1.14. The committee was told by PALM (which administers the CUC) that betterment 'was formally introduced into legislation in the *City Area Leases Act 1970* and carried through to the *Land (Planning and Environment) Act 1991*. Before that, increases in value of land were recovered through increases in rent' [T5/11/99,p10].

1.15. PALM's view 'as administrators of the leasehold system is that the CUC historically was put in place to recover increases in value of land to the community. There has been a lot of debate over a period of years about what that rate of recovery should be' [ibid,p11]. 'For 21 years between 1970 and 1991, the rate of betterment was 50% and the methodology remained the same throughout that whole period' [ibid,p15]. Since self-government, there has been 'seven changes to the betterment and CUC system' [ibid, p10].

1.16. These changes are listed in the Nicholls report[20-22]. The changes relate to one or more of the following:

- the amount of CUC (50% to 100%)
- whether improvements were included in the before value

- whether the before value was calculated on an assumption that no variation to the lease would be granted during the life of the lease

- whether the before value assumed no change in the purpose clause during the term of the lease

- whether remissions were allowable.

1.17. The CUC is frequently compared to Section 94 contributions in NSW. PALM notes that ‘the Section 94 scheme has gone through configurations and modifications over a period of time to ensure that within five years the funds collected [under the scheme] were applied to the infrastructure requirements’ associated with the development being approved [ibid,p12]. Such infrastructure requirements include the increased need (arising from the redevelopment) for community facilities (such as open space), stormwater, sewerage, water, roads, et cetera. The committee understands that the amount of Section 94 contribution depends upon the size of the development project; and that it is not done as an assessment but on a set of fees.

2. Issues raised by the inquiry

RECOMMEND-ATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
1. The government should recognise that it currently operates a dual system of development controls through the lease purpose clause in individual leases and through controls over zones by means of the Territory Plan and instruments under that Plan, and that this has resulted in the current system being complicated and lacking in transparency.	The 'current development approval system does not achieve the goals of transparency, simplicity and timeliness'[54]. The Territory Plan 'codifies development controls… through land use policies and design and siting controls' [9] effectively establishing 'a second source of [development] controls in addition to the lease purpose clause'[11] The Labor government in 1992 and the Liberal government in 1997 introduced policies to promote urban renewal in designated areas of Canberra (extending beyond individual leases) Four major reviews of the planning and leasehold systems have recommended 'development controls through zoning' [12], that is, 'other than through the lease purpose clause alone[17]. These reviews are: • **Lansdown** (1994) which 'proposed the effective introduction of development control plans for particular areas and types of development'[13] • **Stein** (1995) which 'proposed a dual approach to planning control. On the one hand, each individual lease must convey planning intention through the specification of development rights for that lease. On the other, Development Control Plans should be introduced to identify areas suitable for	The **Conservation Council of the South-East Region and Canberra (Inc)** queries the success of policies such as the Civic Revitalization Policy, which 'waives the CUC and lease variation component of the development application fee to promote reuse of empty office space. How much did this cost the ACT government and thus the community in lost revenue?'[3] The Conservation Council considers 'that [lease] purpose clauses are the most important instrument with respect to orderly planning in this town… [but] this fact is obscured in the Nicholls report' [T5/11/99,p34].	*The committee agrees that a dual system of development controls applies in the ACT. One is through the lease purpose clause and applies at the micro-level. The other is through the Territory Plan (and its 'instruments'), and applies at the macro-level.* *The committee agrees that the dual system is complicated, and that its many uncertainties are confusing.* *Further, the committee agrees that important elements of this dual system do not operate in a transparent manner.* *The committee's constant experience with handling*

	redevelopment and to specify the kinds of development favoured in those areas'[15] • **Mant and Collins** (1995) 'recognises the need for development control policies and 'rules''[16] • **Ernst & Young** (1998) 'strongly supports the introduction of Local Area (or Section) Master (or Development) Plans'[17]. It also recommends that the Territory Plan 'be refined to widen acceptable land uses in zones to maximum extent… [so as] to reduce the need for Territory Plan variations'. 'Under the current system, a proposed development may require approval of a lease variation before it may proceed. The lease variation must be in accordance with the Plan and any other identified formal requirements… [e.g. section master plans] if they are applicable to the development application. If the variation requires a change in the Plan, extensive delays (often in the order of a year) in obtaining approval may occur. Consequently, there is a real problem in achieving timeliness with respect to receiving development approval'[17]. 'Potential investors are terrified that they will have to go and get the [Territory] Plan changed. They know straightaway that there is a one-year delay as soon as the Plan has to be varied and it is a real put-off for them' [T19/11/99,p68]. 'In addition, it is not clear what costs/charges the lessee/developer will have to pay to get the lease varied and receive development approval… Identification of the factors involved in calculating the CUC may also lead to lengthy delays in its determination'[17].	The **Housing Industry Association** 'supports the recommendation' by Professor Nicholls[4]. The **Property Council** 'agrees' with the recommendation[4], noting that 'the inherent benefits of the Territory Plan's simplicity have been neutered by… layers of complexity'[2]. These include the need to take account of the National Capital Plan and the many planning guidelines[4]. '[While] most other jurisdictions are reducing the number of layers of planning control… the ACT is going in the other direction'[4]. The Property Council cited an instance where a 'very small residential development' in Canberra remains stalled by planning problems after six months whereas a similar development in Albury is complete [T5/11/99,p29].	*draft Variations to the Territory Plan makes it keenly conscious of the length of time involved in this aspect of the planning system.* *The committee agrees that important goals of any development control system are transparency, simplicity and timeliness. However, the over-riding need in the ACT is consistency. The committee comments further on this aspect at the section of this report dealing with Professor Nicholls' Recommendation 19.* <u>*Committee's conclusion*</u>*:* ***the committee considers that a dual system of development controls applies in the ACT, that it is complex and, in important respects, is not as transparent as it should be.***

RECOMMEND-ATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
2. The government should continue the introduction of development control measures at a localised level, possibly in the form of Local Area Development Control Plans, which may or may not include or integrate a number of Section Master Plans.	All recent reviews have supported the use of development controls through planning measures, not just through individual leases [see above]	The **Housing Industry Association** agrees[4].	<u>*In November 1997*</u> *this committee's predecessor (the Standing Committee on Planning and Environment) called for the preparation of section master plans when it reported on the revised draft Variation to the Territory Plan No.82 for the proposed B11 and B12 areas of north Canberra* (Report No.39). *The Planning and Environment Committee considered that such plans would facilitate the task of finding 'the appropriate balance between preserving an existing amenity and facilitating redevelopment of one kind or another' [p7].* *However, that committee also pointed to 'the need to set section master plans on a firm legislative footing [and] the need to clarify the manner in which section master plans (once established) are to be varied' [p6].* <u>*On 10 July 1998*</u> *the government directed PALM to prepare a 'Practice Direction' setting out the procedure for preparing and determining section master plans (including with respect to public consultation).* <u>*On 31 July 1998*</u> *the Direction was signed off.* <u>*In April 1999*</u> *this committee endorsed draft Variation No.109 [Report No.23], which was the former Variation No.82 amended in light of the government's Direction. The committee's endorsement followed the receipt of public submissions and four public hearings.*

	most needed and effective'[18].	capable of being relied upon by the purchaser such that if the information contained in the document were found to be incorrect then the Territory could be held accountable' [2].	*In its report, the committee stated that section master plans 'mark a highly significant breakthrough in bringing the land use provisions of the Territory Plan down to a more local level' [p8]. The committee also expressed the view that they are 'a new development that will take some time to bed down' [p10].* *Further, the committee expressed concern about PALM's capacity to cope with 'the new and very important addition to its work that is associated with section master plans' [p10]. Hence, the committee called upon the government to provide extra resources to PALM.* *This committee is aware that a number of section master plans have been finalised since draft Variation No.109 took effect. While at present they are mandatory only for the B11 and B12 areas of north Canberra, they are likely to prove useful in all parts of the city.* *Therefore, the committee has no problem with Professor Nicholls' recommendation that localised development control measures (such as section master plans) be continued.* *<u>Committee's conclusion</u>:* ***the use of development control measures at a localised level – such as through section master plans – should be continued. Further, the government should ensure that PALM has the resources to ensure the plans are prepared thoroughly and without undue delays.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
3. In view of the observations of the ACT Supreme Court in 1995 the government should address the situation relating to lessees who had pre-1970 leases, who applied for and had approved a lease variation allowing for multiple residential development, and who paid a CUC.	While 'the lease purpose clause for post-1970 leases allows for a "single" residential dwelling, this is not the case for pre-1970 leases', which simply state "to use the said land for residential purposes only". The court has found that the latter wording 'includes dual or multiple occupancy residential purposes', meaning that a lease variation – and CUC – is not required. However, 'it would appear that a number of leases with pre-1970 leases applied for, and were granted, lease variations and paid a CUC' [23].	**Mr Gilbert** considers that the court cases (and subsequent advice by the ACT Government Solicitor dated 20 August 1997) indicates that the CUC is 'illegal in relation to most residential redevelopment'[6] since these have involved pre-1970 leases[4]. This renders 'meaningless… the theory about the lessee having to pay for a "more valuable bundle of rights" being sold to it by the government (i.e. the right of multi-residential use of the land).' This is because 'the government doesn't have a "more valuable bundle of rights" to sell. It sold (or granted) them to the lessee when it originally issued the lease' [4]. The effect is that, 'at least in respect of pre-1970 leases, there is now no justification… for a CUC at all – let alone a 100% CUC'[4]. The **Housing Industry Association** agrees with the recommendation, noting that 'this has been a long-standing concern of industry'[4]. The **Property Council ACT** agrees with this recommendation [5]. The Council urges a review of 'out-of-date regulations, ordinances e.g. the *City Area Leases Ordinance'*[2]	*The committee is concerned by the legal doubt affecting redevelopment approvals on blocks with pre-1970 leases. This matter needs to be speedily clarified.* <u>*Committee's conclusion*</u>*: **the government should promptly advise the Legislative Assembly of the legal status of redevelopment approvals on residential blocks with pre-1970 leases.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
4. The government should recognise the inconsistency with the current system whereby the lessee pays rates and, if applicable, land tax which under the Rates and Land Tax Act *are based on an unimproved value that recognises potential, while the determination of the before value for the purpose of the determination of the CUC excludes potential.*	Rates and land tax are calculated on the basis of 'the potential market value'—but the 'before value' when calculating the CUC excludes potential.	The **Conservation Council of the South-East Region and Canberra (Inc)** considers that betterment 'should be based on a before value of the lease in its current condition, including improvements on the assumption that no change of use will be permitted for the duration of the lease. [And] the after value [should be] the value of the lease with permission for the new use'[4].	*The committee accepts the point made by Professor Nicholls.* *<u>Committee's conclusion</u>:* ***an important inconsistency applies in the current system, whereby the lessee pays rates and land tax (if applicable) on an unimproved value that recognises potential whereas the determination of the before value (when assessing CUC) excludes potential.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
5. If development approval is required to replace or vary the improvements on the lease for which a lease variation is also required, a development application relating to those improvements must be submitted at the same time as the application for the lease variation.	This will facilitate the task of calculating the added value and the CUC [29-30].	The **Conservation Council of the South-East Region and Canberra (Inc)** considers that the application 'must be accompanied by a development application' [4].	*The committee appreciates the rationale for this recommendation but considers that there are occasions when such a requirement is not appropriate (for reasons that include those listed by the Law Society and the Property Council).* <u>*Committee's conclusion*</u>*: **where possible, a development application should accompany an application for a lease variation—but this should not be mandatory in all instances.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
6. If the current method for the determination of the CUC based on added value is to continue, the application for the lease variation must be accompanied by detailed valuations of the before and after values, obtained by the applicant for the development, together with the added value and the calculated CUC.	Under 'the present system, the valuers acting for the government have to determine values without the lessee/developer having to divulge any information relating to the application'[30].	The **Australian Property Institute ACT** considers that 'the applicant should make full submissions of what they consider the before and after values should be. This should be supported by full feasibility analysis and development costings… Valuers acting for the ACT government could then provide a checking role not dissimilar to that currently operating in NSW and Victoria in consideration of stamp duty payable'[2].	*The committee can appreciate the rationale for this recommendation. However, it would be desirable to more carefully consider the ramifications for such a move before it is introduced.* *<u>Committee's conclusion</u>:* ***there should be extensive consultation with community and industry groups about the consequences of requiring applicants for a lease variation to submit detailed valuations of the before and after values (and then their own assessment of the CUC).***

RECOMMEND-	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
7. PALM should consider appropriate options for the process of confirming, or otherwise, the CUCs which accompany lease variation applications. These may include the appointment of appropriately qualified staff or contracting the task either to the AVO or to private valuers.		The **Housing Industry Association** does not support this recommendation, noting that it is 'not needed' in light of the Association's view of the recommendation above.	*The committee considers that PALM should not be constrained in the method it uses to confirm the CUCs, provided that it is done by appropriately qualified personnel and in a transparent manner.* *Committee's conclusion*: ***it is quite appropriate for PALM to consider appropriate options for the process of confirming, or otherwise, the CUCs which accompany lease variation applications.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
8. The costs associated with the confirmation, or otherwise, of the CUC should be a charge to the applicant.	This should reduce the existing complexity, uncertainty and delays[30].	The **Conservation Council of the South-East Region and Canberra (Inc)** considers that ‘applicants should pay the full cost of determining the CUC, not a set fee…[4].	*The committee considers that a flat administrative fee provides greater certainty to applicants.* *<u>Committee's conclusion</u>: **that the CUC assessment should remain as a flat fee.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
9. The recommendation of the amount of CUC and its confirmation, or otherwise, for the purposes of determining the CUC should only be permitted my members of the Australian Property Institute who have been certified as practicing valuers.	The reflects the changed role of private valuers (see recommendation 6 above): 'The Australian Property Institute has a *Code of Ethics*, *Rules of Conduct*, *Practice Standards* and Continuing Professional Development Activities in which its members must participate and satisfy annual requirements'[31].	The **Property Council** 'agrees with this recommendation'[6].	*The committee considers that it is appropriate to require only appropriately certified persons to determine the CUC.* *<u>Committee's conclusion</u>:* ***that the recommendation of the amount of CUC and its confirmation (or otherwise) should only be done by members of the Australian Property Institute who have been certified as practicing valuers.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
10. It should be recognised by the government that the beneficiaries of the added value are the lessee and the lessor (the government). It is the lessee who effectively has a leasehold in perpetuity and decides whether or not to undertake, or to sell the Crown lease for, redevelopment. The lessee also pays rates (and possibly land tax) determined from an unimproved value which includes potential. Consequently the lessee would be entitled to a percentage of any added value resulting from a lease variation.	'There have been dramatic changes in the [lease] system since [the Stein inquiry]… with the lessee having much more of the so-called bundle of rights' [T19/11/99,p59].	**Mr Gilbert** considers that 'a 50% CUC better reflects the fact that lessees have rights and powers in relation to the land at least equal to those held by government. Lessees have the right of exclusive occupancy of the land (which is what developers want, not ownership) – and the power to decide whether or not the land is going to be released for redevelopment. The government has the power to decide whether or not it can be redeveloped. And the usual practice when two parties have rights in relation to an asset which can be used to yield a benefit or profit, and the agreement of both is needed for that to happen, is for that benefit/profit to be split 50/50. And that is what a 50% CUC does, as it is reflected in the price developers can offer lessees for their land'[3].	*The committee appreciates the point made by Professor Nicholls—and especially his observation that the 'key question' is whether the lessee is entitled to some part of the added value, given that the lessee has paid rates (and land tax if applicable) on the basis of a rating value which includes potential.*

	disruption, both social and financial, which he/she would experience. It is unrealistic to believe otherwise. This financial incentive could quire reasonably come from a percentage of the added value resulting from the lease variation' [32-33].	government has received – the equivalent of freehold prices for their land… - and with their 99-year leases and automatic right of renewal, and paying rates the same as freeholders in the States, they certainly regard themselves, and not the community, as the owner. There is therefore a strong argument that… [they have] at least a moral right to at least some part of any increase in value of their land… if their land is zoned for redevelopment…	

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
11. If the CUC is to continue, the government should retain the right to grant waivers or remissions of the CUC, or make Act of Grace payments. These should be documented and tabled in the Legislative Assembly on an annual basis.	Some examples of where a waiver or remission may be appropriate include:	**ACTCOSS** opposes any CUC of less than 100% but, if the decision is made to permit 'discounts on the CUC' then the decision should be tabled in the Assembly and 'explicitly' identified in *Annual Reports* of departments and agencies[T5/11/99,p41].	*The committee agrees that the government should retain the right to grant waivers or remissions of the CUC and to make Act of Grace payments.* *<u>Committee's conclusion</u>: **that it is appropriate to retain the government's right to grant waivers or remissions of the CUC, and to make Act of Grace payments. However, all such exemptions should be based on a clearly stated policy and should be tabled in the Legislative Assembly on the first sitting day after the exemption is made**.*

RECOMM-ENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
12. The government should recognise that while a lease variation may result in an added value that may be small, or indeed zero, the increase in revenue from stamp duty, annual rates and land tax (if applicable) may be significant.	'While a lease variation may not result in a CUC, it may result in a significant increase in both rates and land. As an example, consider the hypothetical case of a commercial building on a block, where a developer wishes to redevelop the site with a block of serviced apartments. As a result of the value of the improvements being included in the before vale, demolition costs and off-site works, there was a nil CUC. However as a result of the lease variation, the unimproved value for rating purposes has increased from $1.6m to $4m. The impact of this is that rates will increase by approximately $23,000 pa.	The **Australian Property Institute ACT** agrees with the recommendation[2].	*The committee acknowledges that a lease variation may lead to greater revenue from stamp duty, annual rates and land tax.*

		Braddon as an instance where the government collects far more revenue from the 270 apartments than it did when just fourteen homes were in the section, but that redevelopment would not have occurred if CUC had been 100% [T5/11/99,p23].	

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
13. The government should ensure that the Agreement between the Office of the Commissioner for Land and Planning and PALM is known and understood by all development assessment officers. Information about the Commissioner's role in relation to the review of CUC assessments should be readily available to the public.	There exists 'an agreement dated 11 June 1997 between the Commissioner [for Land and Planning] and the Executive Director, PALM… [which outlines] the arrangement under which a CUC can be reviewed and revised… The agreement is a transparent, but not publicly accessible, document' [36-37].	The **Housing Industry Association** agrees with the recommendation[6].	*The committee considers that the Assembly—and the public—are entitled to sight the Agreement between the Office of the Commissioner for Land and Planning and PALM.* <u>*Committee's conclusion*</u>*:* ***that the Agreement between the Office of the Commissioner for Land and Planning and PALM be tabled in the Assembly and be readily available to the public.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
14. On the basis that an assessment of the CUC is provided by the applicant for approval, appeals to the AAT seeking a review of the determination of CUC should only be available to the lessee, and third party appeals should be excluded.	'Processes which allow the active involvement of third party objectors have the potential to cause problems. These problems often relate to the fact that it is difficult to filter out vexatious complainants from those with legitimate interests'[37].	The **Housing Industry Association** agree with the recommendation[6].	*The committee considers that, if an applicant is required to provide an assessment of the CUC, appeals to the AAT should only be available to the lessee and not to third parties.* <u>*Committee's conclusion*</u>*:* ***that, if an applicant is required to provide an assessment of the CUC, appeals to the AAT should only be available to the lessee and not to third parties.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
15. By adopting the approach proposed in Recommendations 6 and 7 [above], reviews by the Commissioner for Land and Planning and any subsequent appeals to the AAT should normally take place with no further submissions necessary or indeed permitted.		The **Australian Property Institute ACT** agrees[2].	*The committee considers that the recommendation by Professor Nicholls is reasonable.* *Committee's conclusion: **that, if applicant are required to lodge their own assessment of the before and after value and of the CUC, then reviews by the Commissioner for Land and Planning and any subsequent appeals to the AAT should normally take place with no further submissions necessary or permitted.***

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
16. The government should give consideration to the introduction of measures to overcome perceived barriers to the timely leasing or sale of commercial [or] industrial properties caused by the restrictive nature of individual lease purpose clauses. This may be achieved through the reclassification of leases into a small number of broadly based lease purpose clause categories. Consideration should also be given to the application of this principle to all classes of leases.	'It is well documented that the emergence of Fyshwick as a retail centre was not intended and grew in response to weak lease purpose clauses and the non-enforcement of purpose clauses.	The **Housing Industry Association** 'generally supports' this recommendation, noting that 'rationalisation of leases and lease purpose clauses would be of significant benefit to the property industry'[7].	*The committee appreciates the difficulties posed by the number of highly restrictive lease purpose clauses in places such as Mitchell and Fyshwick.* *The committee agrees that, in these areas, action should be taken to group like leases wherever possible.* *<u>Committee's conclusion</u>: **that the government should consider introducing measures to reclassify many of the leases in commercial and industrial areas (especially in Fyshwick and Mitchell) into a small number of more broadly-based lease-purpose clauses.***

	lease purpose clauses out there controlling each individual block… It is a disaster. It is stopping redevelopment… and it is stopping sales'[T19/11/99,pp62-3].		

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
17. Government and non-government agencies should cooperate in the development and maintenance of relevant land-related (both physical and financial) databases which should be kept up-to-date and be easily accessible to authorised persons.	'Anecdotal evidence indicated the problem with a lack of suitable databases relating to land has been a major difficulty for many recent reviews/inquiries, including the Lansdown review and the Stein inquiry'[40]. The ACT government has 'unfortunately' been slow to create 'up-to-date, available and user-friendly' databases on property in the ACT [40].	The **Housing Industry Association** agrees with the recommendation but adds that the 'data should be generally available'[7].	*The committee has been concerned for some time that the ACT does not have a <u>comprehensive</u>, up-to-date and publicly accessible land database, whereby all planning and lease information that is relevant to an individual lease can be sighted at the one time.* *The committee understands that such a database is operating in Tasmania (the LIST system).* *A modern, comprehensive, electronic database would go a long way to meeting the call by the Law Society for 'a form of zoning certificate' (such as is found in NSW) [see public comment under recommendation 2 by Professor Nicholls, earlier].* *<u>Committee's conclusion</u>: **that speedy measures be taken to bring in a land database for the ACT which consolidates all planning and lease information about each individual lease in the Territory; and which is publicly available, including in electronic form.***

RECOMMENDAT-ION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
18. If a system relating to the determination of an added value (as a result of a lease variation) is to continue, the percentage of this added value representing the CUC should take account of Recommendation 10 [above]. Further, if the government wishes to encourage investment from outside the ACT, the charges applied should be competitive. Taking these factors into account, the standard rate of CUC should be set at 50% of the added value.	The total revenue from the four sources of 'land-related rents (and commutations)' for the six years from 1992/93 to 1997/98 is $788.5m, of which only $24.1m (or 3%) came from the CUC [42].	**ACTCOSS** considers 'there is amply material available, empirical and theoretical, to show that a CUC is an integral part of a publicly owned leasehold system' [2]. The government has 'a responsibility to its taxpayers to maximise returns from its land'[1]. The CUC should be applied at 100% [T5/11/99,p39].	*The committee notes the arguments for various levels of CUC.* *The range of views in submissions is reflected within the committee, one of whose members (Mr Hird MLA) considers that the CUC should be zero (in order to encourage development and employment opportunities), another (Mr Rugendyke MLA) considers it should be 50% (to provide some revenue while not limiting employment and development opportunities) and the third (Mr Corbell MLA) has outlined his views in the* ***Dissent*** *accompanying this report.*

	attribute staffing costs to the determination of the CUC… While PALM currently outlays in the order of $300,000 pa to the Australian Valuation Office [AVO] for their services, that outlay will, to some degree, be offset by application fees… [which, however,] have not been determined on a full cost recovery basis…		*Notwithstanding his personal view that the level of CUC should be zero, Mr Hird joins with Mr Rugendyke in concluding that, given the desirability of providing a majority view to the Assembly,* ***the appropriate level of CUC is 50%.***

	Nicholls agrees with Stein that anecdotal evidence is to the effect ‘that the CUC acts as a deterrent to investment in the ACT’ [51]. Professor Nicholls states that such evidence comes from 'one of the major participants in property development in the ACT... and [so] must not be dismissed’[51].	detached single dwellings [but] later wants to convert to flats and applies for a CUC and only pays half the difference between the value of the land for houses versus the value of the land for flats. He is at a competitive advantage to the developer who buys greenfield land designated for flats’[2].	

		difference between development proceeding or not'[T,22/10/99,p2].	

RECOMMENDATION BY PROFESSOR NICHOLLS	**RATIONALE**	**PUBLIC COMMENT (in alphabetical order of submitter)**	**MAJORITY COMMITTEE VIEW**
19. The government should immediately introduce a modified approach to the assessment and imposition of the CUC, as described in Option 1 in Section 8.3 [of the Nicholls report]. However, as a longer-term strategy, consideration should be given to the introduction of a system based on Option 2 to overcome the problems identified in this study and achieve a system which is transparent, simple, timely and equitable, and displays accountability.	‘The lack of transparency and timeliness in the system for the determination of the CUC, and indeed the whole planning approval process in the ACT, when compared to Section 94 developer contributions, together with comments made both orally and in writing during the process [of his study], lead to the conclusion that the present system for the determination of the CUC, in the context of its role in the planning system and associated processes, has a negative impact on investment in the ACT’[52].	The **Conservation Council of the South-East Region and Canberra (Inc)** considers that 100% CUC is a ‘fundamental principle…of the ACT system… It is not a windfall gain; it is a source of revenue’ [T5/11/99,p35].	*While carefully noting the arguments <u>against</u> maintaining a CUC charge in the long-term, the committee concludes that the interests of the Territory are best served <u>by continuing with the CUC.</u>* *As outlined above, a majority of the committee consider that the appropriate level of CUC is 50%. These members are impressed by the apparent success of this level of CUC in the 20 years from 1971.* ***<u>Members are deeply conscious that the many changes to the level and basis of calculating the CUC in recent years has added to the uncertainty surrounding the issue of betterment.</u>***

by ensuring that a share of the added value is retained by the lessee when the rate of CUC as a percentage of added value is decided'[58]	goals of transparency, simplicity, timeliness, equity and accountability… [However, under this option, an investor [or] developer will still not know "up front" what the size of the CUC will be until the valuation process has been confirmed by PALM… Consequently… transparency and timeliness will always be an issue…'[59-60].	residential use only – so that there are no realistic market prices which can serve as a base for calculation of before values'[6].	***It would be desirable if the level of CUC, and the basis of its calculation, could remain in place <u>for the next twenty years</u>, once it has been dealt with by this parliament.*** *This would provide the stability that has been lacking in recent years and which is vital, not only to those wishing to develop properties in the ACT, but to those who live and, especially, those who <u>work</u>, here.* *Members note the suggestion by the MBA that payment of the CUC, in some circumstances, should be able to be staggered to assist the cash flow of a project. The ACT's Commissioner of Revenue did not think this would be a problem, provided an appropriate*

and 'appeals to the AAT… should only be on application by the lessee'. Further, 'reviews by the Commissioner and appeals to the AAT should normally take place with no further submissions necessary or indeed permitted'[58]		backward-looking charge' [T22/10/99, Mr Murray,p5].	*mechanism is established [T19/11/99,p54-56]*. *The committee concludes* ***that the suggestion to stagger payment of the CUC, in certain well-defined circumstances, should be investigated by the government.***

	four residential redevelopments in Braddon is compared to the Section 94 contributions for similar types of redevelopment in Wollongong and South Sydney, the CUC charge per bedroom in the ACT is significantly higher (double or more). As the CUC in the Braddon examples ‘was after a 50% remission’, the difference ‘had the full 100% been paid… would [be] even more dramatic’[50].	planning or the leasehold system in the ACT’ [ibid,p48].	

	94 contributions are known "up front", so that the elements of transparency and timeliness are apparent. In the case of the CUC, however, this is not so'[50].	[4]. The Council notes that 18 of Nicholls' 19 recommendations ' relate to adjustments to the current system indicating tinkering, albeit with improvements' [3]. A broader view of what is 'good policy' is needed[3].	

RECOMMENDATION OF THE PROPERTY COUNCIL ACT (not mentioned above)	**RATIONALE**	**MAJORITY COMMITTEE VIEW**
A task force of industry, government and community representatives 'consider and report on the interaction between PALM and OAM in dealing with community assets and the rate of return on those assets as compared to the revenue measures achieved by taxing private sector development'[4].	'While much is made of the potential for windfall profits for developers in relation to betterment, the case that just $1.77m gross was raised [in betterment] in 1997/98… [raises the question of] is it worth it? On the other hand some $17 billion is tied up in ACT government assets. A 10% efficiency factor in the utilisation of these assets is achievable…[and would] achieve better service delivery'[3]. While some of these assets 'have social purposes', many of the assets are not utilised as well as 'equivalent assets in other States and Territories' [T5/11/99,p19].	*While the committee appreciates that governments must be concerned about the rate of return on their physical assets, this should not take precedence over the use of such facilities to provide essential community services.* ***With this in mind, a straightforward comparison of rates of return on government and private sector assets may not generally be appropriate. However, it would be desirable for the government to compare its own performance in managing assets to that by other States and Territory with respect to like assets.***

3. CONCLUSION

3.1. The committee expresses its appreciation to Professor Nicholls and to members of industry groups, and of the public, who contributed to the inquiry. It also thanks the government officials who appeared before it.

Harold Hird MLA
Chair

21 February 2000

DISSENT BY MR SIMON CORBELL MLA

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Dissenting Report of Mr Simon Corbell MLA to Report No.41 of the Standing Committee on Planning and Urban Services, Betterment (Change of Use Charge)

Introduction

The issue of who should receive the benefit of the improved value of land under a leasehold system has been widely considered and debated both during and well before the period of ACT self-government. It is an issue which goes to the heart of the purpose of the leasehold system and the interests of the people of Canberra and the Nation.

The recommendations of Professor Nicholls, as outlined in his report, and the views of the majority of the Standing Committee amount to a complete abandonment of the leasehold system. The recommendations relating to moving away from Change of Use Charge (CUC) towards 'contributions schemes', (in NSW called Section 94 payments), fail to recognise the purpose of CUC in ensuring that the lessor, that is the community, receives proper payment for the sale of property rights held by them.

The majority report does not take account of concerns that the across the board subsidy inherent in a discounted rate of CUC is untargeted, applies equally to low quality and high quality development, and has not been required to be justified in the same level of detail as are subsidies or grants schemes provided by government in other policy areas.

Finally the evidence presented during the course of the committees inquiry did not substantiate the claim that CUC was a disincentive to investment in the development sector. Professor Nicholls comments on this matter are completely anecdotal in nature, and the evidence that was presented to the committee by witnesses could only indicate that CUC was part of the problem when it came to encouraging investment in development in the ACT. The issue of certainty is also inappropriately addressed in the majority report. While certainty is clearly an issue the way to resolve is not to simply propose a lower level of CUC or to replace it with another charge altogether.

The three key issues outlined above are dealt with in detail in the following section and explain why I must dissent from the majority report.

Issues

1) Change of Use Charge and the Leasehold System

One of the key purposes of the leasehold system is to ensure that the community receives the improved value of the land when a lease is varied.

In levying a change of use charge the government is ensuring that the owners of the land, (the Territory on behalf of the Commonwealth), receives a payment in exchange for the additional rights granted to the lessee.

As has been acknowledged by organisations such as the Property Council, "…a lease does not confer property rights on the lessee-it is no more than a contract to use the property for an agreed time at an agreed price for an agreed purpose. The property right remains vested in the owner…"[1]. Under a leasehold system the Territory seeks a payment of Change of Use Charge for the use of extra property rights not already granted under the lease. If the Territory did not levy such a charge, and levied instead some form of developer contribution, there would be no payment for the granting of these additional property rights. This would amount to the abandonment of the leasehold system and the community's interest in the improved value of the land.

As was raised in submissions to the Committee, the ACT's most valuable fixed asset is its land[2]. Revenue from land is an important stream of revenue for services in the ACT, and CUC, while small compared to other land taxes and charges, is nevertheless a not insignificant amount, $24.1m in the period 1992/93 to 1997/98.[3]

The proposal to replace CUC with a form of developer contribution, similar to the Section 94 contributions in place in NSW, does not in any way guarantee a increase in revenue for the ACT government and the Canberra community. This was outlined clearly in evidence presented by the Master Builders Association which said that the MBA would support a developer contribution in place of a CUC "…provided it is brought back ideally to 50% - the equivalent of a 50% change of use charge level…"[4]. This comment highlights the fact that a developer contribution will not, of itself, result in any increase in revenue to the Territory. Indeed it would appear to be the view of the industry that the amount proposed to be paid through a developer contribution should not be any higher than that that would be paid at 50% CUC.
The issue of whether or not replacing CUC with a developer contribution would result in an increase in other revenue for the Territory is dealt with later in this report.

The majority report does not address the fundamental difference between CUC and developer contributions. CUC is a direct contribution to the Territory's consolidated revenue, while a developer contribution is a hypothecated charge, to be applied in specified ways in the area where the development is taking place.

The application of a developer contribution in place of a CUC has been acknowledged as a more attractive charge for a developer, as they can see that their payment is being spent in ways that contribute to the overall amenity of the area where the development is taking place.[5] This view again highlights the problems with removing a CUC. Instead of having a charge which provides the entire community with the return on the improved value of the land, instead only a particular geographical area will benefit. This is inequitable, and would result in a loss of general revenue available to the Territory.

A key purpose of the leasehold system is ensure that the community receives the full return on the improved of land it leases. Removal of the CUC would remove the ability of the Territory, the community, to achieve this. Replacement of the CUC with a developer contribution would not result directly in any increase in revenue compared to a CUC, and further that revenue would be restricted to being used in the area where the development was taking place, rather than paying for services needed in the broader community.

[1] Property Council of Australia, Background Paper on the consequences of automatic right of lease renewal, 1999.
[2] Submission of the Conservation Council of the South East Region and Canberra, pg.1
[3] A Study of Betterment and the Change of Use Charge in the ACT, pg.42
[4] Mr Purdon, Transcript, 12.11.99, pg.6
[5] Mr Purdon, Transcript, 12.11.99, pg.49

2) Appropriateness of 50% Change of Use Charge

The Nicholls Report proposes a reduction in the level of CUC charged to 50%. This is view supported by the majority report. The majority report does not however take account of the untargeted nature of this subsidy compared with the policy adopted by the government in assistance to community and other organisations.

Evidence presented to the committee has highlighted the fact that the application of 75% or 50% CUC as a way of encouraging development is not a transparent or well-targeted process.[6] ACTCOSS presented the view that instead of a subsidy through a discounted CUC, the Territory should be proving incentives in a targeted way through the provision of a direct subsidy, or payment. ACTCOSS took the view that this would remove much of the ambiguity about the levels of revenue foregone as a subsidy.[7]

Evidence was also presented to the committee that the recommendations of Professor Nicholls for a 50% CUC, a view supported by the government, were not backed up by the substantive data needed to justify such a level of subsidy.[8]

The majority report fails to recognise these important issues. The application of such a large subsidy across the board without any substantive data as that which the government has required when considering other forms of assistance is inappropriate and would not be tolerated in other policy areas. A comment from a witness backs up this view "…We tend to get sent out of the room if we have not got anything to back up our claims…"[9].

Another concern which has not been addressed by the majority report relates to the type of development being encouraged. Whether CUC is calculated at a discounted rate of 75% or 50% it does not differentiate between the quality of development being proposed. Developments of a relatively low standard in terms of design and material receive the same level of subsidy as development of high design and building standards. As a matter of public policy a subsidy such as that which is currently provided through a discounted rate of CUC should have explicit aims and objectives. One of these should be to encourage high quality, sustainable development in Canberra, yet the application of discounted CUC across the board does not address this issue.

Clearly the only way to encourage high quality development is to either require 100% CUC on all development proposals which involve a lease variation, and then provide a subsidy to achieve those aims in terms of design and materials the governments believes is appropriate or, allow a remission of betterment only where specific criteria are met. The majority report proposes neither, and is seriously deficient in this respect.

The introduction of a 50% CUC will not result in any improvement in the quality of urban redevelopment, nor will it provide for open, transparent and accountable analysis of the level of subsidy provided by the Territory to the development sector. The appropriateness of moving to a 50% CUC has been poorly substantiated, and has not been

[6] Mr Stubbs, Transcript, 5.11.99,pg.40
[7] ibid.
[8] ibid.
[9] ibid.

backed by the clear, detailed and substantive analysis required of other requests for government assistance.

The majority report does not address the issue of the application of CUC as it relates to concessional leases. Currently the government allows CUC to be calculated at 75% if the remaining period of the lease is paid out, otherwise the calculation is 100%. It has become increasing apparent in a range of Draft Variations presented to this committee that the process of permitting a 75% payment has the potential to result in a windfall gain to the lessee at the expense of the Territory. It is clear that this inquiry has the opportunity to ensure that no windfall gain is allowed in any conversion of a concessional lease to a new and different purpose. As recommended by the Stein Inquiry, the government should act to ensure that 100% CUC is charged on variations to concessional leases.[10]

3) Change of Use Charge as a disincentive to Development

The report by Professor Nicholls justifies a reduction of CUC to 50% by asserting that the current level of CUC, let alone a higher level, is a disincentive to development. There is no substantive evidence in Professor Nicholls report to justify this claim. During the Committee's hearings on this inquiry evidence was presented in-camera that sought to justify the claim that CUC at 75% or higher was a disincentive to investment.

While this evidence did highlight CUC as a possible factor influencing decisions relating to development, it was conceded that it was not CUC alone which resulted in development proposals not proceeding.[11] Indeed it was recognised that it was the combination of a different planning system compared with the rest of Australia <u>and</u> a CUC which resulted projects being ruled out.

The majority report accepts that CUC is a disincentive to investment in development and recommends a lower level of 50%. It does so on no detailed analysis of the full impact of CUC on the development sector. Further Professor Nicholls himself confirms that the evidence is anecdotal in nature.[12] I do not accept that significant changes should be made to a not insignificant revenue source for the ACT and to the operations of the leasehold system on the basis of anecdotal evidence.

The issue of certainty has also arisen during the course of the committee's inquiry. There is no doubt that continued changes to the level and application of the CUC has created uncertainty in the development industry, this must clearly be addressed. In saying this however it is worthwhile noting that much of this uncertainty has resulted from attempts to reduce the level of CUC charged, from attempts to remove CUC altogether and from attempts to replace the leasehold system in the ACT. That said it is clearly in the interests of the broader community as well as the development industry to know that the system of charging for CUC will remain reasonably constant and consistent.

This can be achieved in two ways which have not been addressed by the majority report. One way stems from the recommendations of the Stein Inquiry into the Administration of the ACT Leasehold. This is through the establishment of

[10] Report into the Administration of the ACT Leasehold, pg.142

[11] Mr Deegan, Transcript, 5.11.99, pg.28

[12] A Study of Betterment and the Change of Use Charge in the ACT, pg.51

a Development Rights Register to provide prospective developers with information on the range of CUC they could expect to be charged on their project. This is outlined in the Stein report as recommendation 15.[13] During the course of the inquiry several witnesses were questioned on this matter and it was conceded that it was an issue they had not closely considered as an option.[14] This proposal has never been properly investigated by government, yet it provides a clear opportunity for the issue of uncertainty over the level of CUC to charged to be resolved.

A practical option for allowing development proponents to more easily address the payment of CUC is to allow for payments to be staged over the life of the project. This proposal was first put forward by the MBA in its submission.[15] It would appear that a sensible option available to government to address any negative perception of the impact of CUC while still receiving the full improved value of the land is through this method. In questioning of ACT Revenue it was confirmed that the staging or phasing of payments over the life of the project would not have a detrimental impact on the income stream of the Territory.[16] It was also noted that the Territory would not run the risk of not receiving the full payment, as final approvals for the building would have to be issued by the Government.[17]

Conclusion

This dissenting report has sought to deal with the key issues raised in the Nicholls Report and the majority report of the Planning and Urban Services Committee. There are a range of other issues not dealt with in this report which should be the subject of close consideration of the Assembly when this report and any legislative changes are debated.

The recommendations of the Nicholls Report amount to a fundamental shift away from the proper administration of the leasehold system in the ACT. The replacement of the Change of Use Charge with some form of developer contributions ignores and fundamentally undermines a key purpose of the leasehold system. Such a change will result in the lessor, the community, no longer receiving payment for the redevelopment rights it is providing to the lessee. Such a change is completely inappropriate. The community should receive the full value of any improvement in value resulting from a change to a lease.

Proposals that provide for a discounted rate of CUC at 50% result in an untargeted and indiscriminate subsidy to development which will apply equally to low quality and high development and which does not require the same level of justification which is needed for other government grant programs.

Finally the major evidence cited in justifying the reduction in, and the eventual removal of, CUC is entirely anecdotal. Further evidence presented to the committee conceded that it was a range of factors, not purely CUC, which resulted in development proposals not proceeding. It is completely unacceptable for a major change in public policy to occur entirely on the basis of anecdotal evidence.

For the reasons detailed above I dissent from the majority report of the Planning and Urban Services Committee and make the following recommendations.

[13] Report into the Administration of the ACT Leasehold, pg.142
[14] Mr Dawes, Transcript, 12.11.99,pg.7
[15] Mr Purdon, Transcript, 12.11.99,pg.7
[16] Ms T Pham, Transcript, 19.11.99,pg.54
[17] Ms T Pham, Transcript, pg.54

Recommendations

1) *The level of Change of Use Charge be allowed to revert to 100% at the expiration of the present sunset clause in the Land (Planning and Environment) Act 1991.*

2) *The government develop as a matter of urgency a Development Rights Register, as outlined in the Report into the Administration of the ACT Leasehold, to provide greater certainty for prospective developers.*

3) *That the Land Act be amended to ensure that variations to a concessional lease be charged at 100% Change of Use Charge.*

4) *The government establish a process for development proposals to pay CUC in stages through the life of the development project, and that the government develop mechanisms to ensure that full payment is made by the completion of the project.*

SIMON CORBELL MLA
1/3/00