

# PLANNING SYSTEM REFORM PROJECT



## Report on the granting and administration of concessional leases in the Australian Capital Territory

Government Response to Report Recommendations



ACT Government



ACT Planning & Land Authority

ACT Planning and Land Authority

**Planning System Reform Project**

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## Strategic recommendations

### RECOMMENDATION 1:

That the definition of a concessional lease should be the same as the one contained in Regulation 22 of the Land (Planning and Environment) Regulations (as qualified) and that it should be included in the *Land (Planning and Environment) Act 1991* (the 'Land Act').

### RESPONSE:

Agreed.

The Legislative Assembly passed an amendment to the *Land (Planning and Environment) Act 1991* on 26 August 2005, giving effect to this recommendation.

### RECOMMENDATION 2:

That the following classes of leases are excluded from the definition of concessional lease:

- a. a standard residential lease, being a lease granted for residential purposes only [Section 159 of the Land Act];
- b. a lease granted over a block of land which has been developed, under a holding lease, as part of a Private Enterprise Land development, unless the lease is over a block which has first been returned to the Australian Capital Territory;
- c. a lease regranted as a consequence of a variation of a lease where the prior lease was not a concessional lease;
- d. a lease granted to a government organisation or a Territory owned corporation;
- e. a lease for rural purposes;
- f. a further lease provided that the original lease was not a concessional lease;
- g. a lease granted after 11 April 1974 [the reintroduction of the ability to charge land rent under the *City Area Leases Act 1936*] which required as an annual land rent payment more than 5 cents and in respect of which the land rent requirement had been extinguished by a lump sum payment to the Government; and
- h. a lease belonging to a class of leases which the Executive has declared by Disallowable Instrument to be non-concessional.

### RESPONSE:

Agreed, subject to refinement and clarification of the exemptions categories.

The Legislative Assembly passed an amendment to the *Land (Planning and Environment) Act 1991* and Regulations on 26 August 2005, giving effect to this recommendation.

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**RECOMMENDATION 3:**

That the Land Act should continue to empower the Government to grant leases for less than market value subject to the conditions contained in the later recommendations in this report.

**RESPONSE:**

Agreed.

**RECOMMENDATION 4:**

That the Land Act be amended to include the right of a lessee or party with a registered interest in a lease to make an application to the ACT Planning and Land Authority for a declaration as to whether or not a lease is a concessional lease. The declaration is to be registered in the Land Titles Register and the applicant or person with a registered interest would have a right of appeal. If the declaration is not made within 30 days of lodgement of the application, the lease is deemed to be non-concessional and the lessee has a right of appeal.

**RESPONSE:**

Generally agreed.

To be adopted subject to modification as follows:

- the Authority may also initiate a declaration that a particular lease is concessional;
- reference to “30 days” being changed to “30 business days”;
- the default decision being that the lease is a concessional lease if no decision is made within that time; and
- the lessee also has a right of appeal against the default decision.

A formal register of concessional leases should also be established to record both known and future declared concessional leases. The Authority will work with the Registrar General’s Office to implement this as an integral element of the current Land Titles Register.

**RECOMMENDATION 5:**

That the Government make no immediate change to the subsidies provided in association with concessional leases but that after the other recommendations of this review have been considered, resolved and implemented, the Government conduct a review of those subsidies.

**RESPONSE:**

Agreed.

Current charging policies are to be reviewed as part of the Planning System Reform Project currently being undertaken. This may include the development of new policies in consultation with whole-of-government, to provide a clear and transparent framework for future concessional lease grants.

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**RECOMMENDATION 6:**

That concessional leases granted for a community use (not including leases for licensed clubs) should be excluded from the definition of concessional lease after 20 years from the date of grant.

**RESPONSE:**

Not agreed.

This recommendation is not sufficiently justified. Leases granted for less than market value, irrespective of the purposes for which they were granted, should continue to be treated as concessional and be regulated under the concessional lease system. Further, the role of Government should continue in determining if and when the community benefit is sufficient to justify the deconcessionalisation of a lease.

**RECOMMENDATION 7:**

That the Territory Plan be varied:

- to include in all areas subject to land use policies which permit or have leases with concessional community uses a requirement that, for any proposal which would have the effect of depleting the range of community or recreational facilities available within the area, a mandatory preliminary assessment in accordance with Appendix II of the Plan may be required;
- to include a requirement that for a concessional lease for community purposes, the permissible uses within the Plan for that land use policy area only are permissible uses, if the preliminary assessment confirms that a change of use to non-community permissible uses will not unreasonably deplete the community facilities available in the area.

**RESPONSE:**

Agreed in principle.

A more rigorous whole-of-government approach to community needs assessment is required. However, achieving this via the preliminary assessment process is generally contrary to other directions being taken under the Planning System Reform Project. Therefore, a means of incorporating appropriate community needs assessment for evaluating new proposals and proposals to change community uses should be developed consistent with the principle of this recommendation and implemented as part of the broader Planning System Reform Project that is underway.

In the meantime, the interim guidelines being used for transfer of leases should be strengthened and extended to apply to any proposals that may have the effect of depleting the range of community facilities.

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**RECOMMENDATION 8:**

That the change of use charge for concessional leases should remain at 100% for changes to non-community uses.

**RESPONSE:**

Agreed.

**RECOMMENDATION 9:**

That as soon as the Government's response to this report is known, the ACT Planning and Land Authority authorise the adoption of the procedure statements produced earlier by the consultants and which are based on the current requirements of the Land Act and subordinate legislation as an interim measure, pending the introduction of new arrangements. Those procedure statements are to be read in conjunction with the guideline.

**RESPONSE:**

Agreed in principle.

The procedure statements will be adopted, subject to their review and refinement in line with the full Government response to the report recommendations. They will provide the base set of procedures that can then be incrementally refined and built upon to implement other recommendations in this Government response, as part of the broader Planning System Reform Project.

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## Procedural recommendations

### **RECOMMENDATION 10:**

That as soon as the Government's response to this report is known, the Land Development Agency and the ACT Planning and Land Authority take urgent action to publish their respective policies and procedures to enable the ACT Executive to satisfy its statutory responsibilities with respect to concessional leases under the provisions of Section 29(2)(a) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (C'wlth) ("PALM Act").

### **RESPONSE:**

Agreed in principle.

Section 29 of the PALM Act sets the principle "...that new estates in Territory Land shall be granted only in accordance with procedures that are notified to the public". Work is being undertaken as part of the Planning System Reform Project to address this matter. The ACT Planning and Land Authority will work with the Land Development Agency to progressively implement revised statements under Section 29 of the PALM Act in conjunction with the Planning System Reform Project.

### **RECOMMENDATION 11:**

That as soon as the Government's response to this report is known, the Land Development Agency and the ACT Planning and Land Authority commit to a program of staff training with respect to its policies and procedures relating to concessional leases.

### **RESPONSE:**

Agreed in principle.

Adoption of this recommendation will be progressively implemented in conjunction with the introduction of the reforms under the Planning System Reform Project.

### **RECOMMENDATION 12:**

That a new section be included in the Land Act under which all future concessional leases are to be granted. The new section will contain any restrictions as decided and the class of use and lessee will be determined by Disallowable Instrument. The section under which the lease is granted will be noted on the Title.

### **RESPONSE:**

Agreed in principle.

Adoption of this recommendation is subject to the preparation of comprehensive drafting instructions including principal, subordinated and transitional provisions for leases granted under current and previous legislation and will be undertaken in conjunction with the Planning System Reform Project.

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## Community concessional leases

### **RECOMMENDATION 13:**

That Section 163(8) should be amended to allow a transfer of the lease with the consent of the ACT Planning and Land Authority.

RESPONSE:

Not agreed.

This recommendation is rejected as redundant in light of recommendation 12.

### **RECOMMENDATION 14:**

That the needs assessment of community services undertaken in the ACT Planning and Land Authority should be supported on a whole-of-government basis and that particular attention should be given to the identification of those services which will require support through the grant of concessional leases.

RESPONSE:

Agreed in principle.

An inter-departmental committee will be established and work undertaken to develop a whole-of-government policy approach for the development of policy and rules to support future grants and administration of concessional leases, including:

- needs assessment and prioritisation;
- future use of land currently allocated for community facilities;
- criteria and charging policies for the grant of land for community facilities; and
- practical measures to improve the transparency for assistance provided to community organisations through the concessional lease system.

### **RECOMMENDATION 15:**

That the Land Act and subordinate legislation continue to require consent for any assignment or transfer of a community concessional lease but not for a sub-lease or a parting with possession and that the criteria for consent to transfer be:

- a. that the transferee is an organisation which would have been eligible to be granted the concessional lease;
- b. that the transferee is able to demonstrate its capacity to satisfactorily continue to operate the lease in accordance with the purpose clause; and
- c. that the transferee is able to demonstrate that there will be no loss of public benefit arising from the transfer.



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**RESPONSE:**

Agreed in principle.

This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project.

**RECOMMENDATION 16:**

That the Land Act be amended to include a deconcessionalisation process that requires an application, the payment of a capital sum and the registration of notice of the deconcessionalisation in the Land Titles Register.

**RESPONSE:**

Agreed in principle.

Consistent with current administrative practice, the Minister will be the statutory decision maker on applications for deconcessionalisation of a lease.

This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project. In the meantime, the interim guidelines for the assessment of applications to pay out the concession should be strengthened to allow the use of needs assessment to better inform and support a decision.

**RECOMMENDATION 17:**

That the heads for consideration for determining an application to deconcessionalise should be:

- a. does the Government wish to continue to monitor the owners of the lease through granting consents to a transfer etc?
- b. is there any community dis-benefit through the deconcessionalisation of this lease?
- c. is the application a prelude to a lease variation application and if so, has the change and the potential development been identified? and
- d. should the Government buy back or acquire this lease?

**RESPONSE:**

Agreed in principle.

For any application to deconcessionalise a lease, the hand back of the lease to the Territory will be the first option, effectively a first right of refusal for the Minister. This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project.

In the meantime, the interim guidelines for the assessment of applications to pay out the concession should be strengthened to allow the use of needs assessment to inform and support a decision in relation to deconcessionalisation.

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**RECOMMENDATION 18:**

That the payment required to deconcessionalise a community concessional lease should be as defined in Regulation 22, subject to a deduction for any capital sum paid towards the grant of the lease calculated in values as at the date of the payment.

**RESPONSE:**

Agreed in principle.

This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project.

In the meantime, the interim guidelines currently being used provide for payment of the market value to deconcessionalise a lease. This practice should continue.

**RECOMMENDATION 19:**

That only the lessee applicant and any party with a registered interest in the lease should have a right to appeal a decision on deconcessionalisation, including a right to appeal against the amount payable to deconcessionalise.

**RESPONSE:**

Agreed in part as follows:

- decision on deconcessionalisation – no appeal right; and
- amount determined as payable to deconcessionalise a lease – lessee appeal right.

In line with the Government responses to recommendations 7 and 14, current arrangements for needs assessment are to be examined to provide for better-informed and more transparent decision-making. Improved community consultation will be addressed as part of this process.

This approach will be refined in line with and implemented as part of the broader Planning System Reform Project.

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## **Business concessional leases**

### **RECOMMENDATION 20:**

That if the Government decides to provide support to “business leases” through direct financial grants rather than by granting leases at less than market value, Section 164 be repealed.

### **RESPONSE:**

Agreed in principle to the discontinuation of business concessional leases.

The Department of Economic Development is reviewing its current policies for offering incentives to business with a view to developing an alternative to concessional leases that provides for greater transparency.

### **RECOMMENDATION 21:**

That the Land Act and subordinate legislation continue to require consent for any assignment or transfer of a business concessional lease but not for a sub-lease or a parting with possession and that the criteria for consent be:

- a. that the transferee is an organisation which would have been eligible to be granted the concessional lease; and
- b. that the transferee is able to demonstrate its capacity to satisfactorily continue to operate the lease in accordance with the purpose clause.

### **RESPONSE:**

Agreed in principle.

The adoption and implementation of this recommendation is supported in relation to existing business concessional leases, but will also become redundant in view of the response to recommendation 20 above.

### **RECOMMENDATION 22:**

That the Land Act should be amended to provide that all commercial concessional leases not granted pursuant to Section 164 should have their status as concessional leases lifted after a period of five years.

### **RESPONSE:**

Agreed in principle.

The adoption and implementation of this recommendation is supported in relation to existing business concessional leases, but will also become redundant in view of the response to recommendation 20 above.

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**RECOMMENDATION 23:**

That the application of Regulation 22 to leases granted under Section 164 of the Land Act should be limited to five years from the date of the grant of the lease.

**RESPONSE:**

Agreed in principle.

The adoption and implementation of this recommendation is supported in relation to existing business concessional leases, but will also become redundant in view of the response to recommendation 20 above.

**RECOMMENDATION 24:**

That the change of use charge for business concessional leases should remain at 100% for the first five years of the lease, after which the normal rate should apply.

**RESPONSE:**

Agreed in principle.

The adoption and implementation of this recommendation is supported, but will also become redundant for business leases in view of the response to recommendation 20 above.

**RECOMMENDATION 25:**

That the heads of consideration for determining an application to deconcessionalise a business concessional lease should be:

- a. does the Government wish to continue to monitor the owners of the lease through granting consents to a transfer etc?
- b. is such a transfer in line with Government policy and objectives?
- c. will the transfer etc enhance the economic position of the ACT?
- d. is there any community dis-benefit through the deconcessionalisation of this lease?
- e. is the application a prelude to a lease variation application and if so, has the change and the potential development been identified? and
- f. should the Government buy back or acquire this lease?

**RESPONSE:**

Agreed in principle.

For any application to deconcessionalise a lease, the hand back of the lease to the Territory will be the first option, effectively a first right of refusal for the Minister. This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project.

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In the meantime, the interim guidelines for the assessment of applications to pay out the concession should be strengthened to allow the use of needs assessment to inform and support a decision in relation to deconcessionalisation.

The adoption and implementation of this approach to business leases will become redundant in view of the response to recommendation 20 above.

**RECOMMENDATION 26:**

That the payment required to deconcessionalise a business concessional lease should be as defined in Regulation 22 subject to a deduction for any capital sum paid towards the grant of the lease calculated in values as at the date of the payment.

**RESPONSE:**

Agreed in principle.

This recommendation will be refined in line with and implemented as part of the broader Planning System Reform Project.

In the meantime, the interim guidelines currently being used provide for payment of the market value to deconcessionalise a lease. This practice should continue.

The adoption and implementation of this approach to business leases will become redundant over time in view of the response to recommendation 20 above.

**RECOMMENDATION 27:**

That only the lessee applicant and any party with a registered interest in the lease should have a right to appeal a decision on deconcessionalisation, including a right to appeal against the amount payable to deconcessionalise.

**RESPONSE:**

Agreed in part as follows:

- decision on deconcessionalisation – no appeal right.
- amount determined as payable to deconcessionalise a lease – lessee appeal right.

In line with the Government response to recommendations 7 and 14, current arrangements for needs assessment are to be examined to provide for better informed and more transparent decision-making. Improved community consultation will be addressed as part of this process.

The adoption and implementation of this approach to business leases will become redundant over time in view of the response to recommendation 20 above.