

Australian Property Institute Limited

# SUBMISSION

## REVIEW OF LEASE VARIATION CHARGE

## RESPONSE TO THE CHIEF MINISTER, TREASURY AND ECONOMIC DIRECTORATE

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## Introduction

### About the API

The Australian Property Institute (API) is the leading membership organisation for property professionals. It is impartial, objective and independent. With more than 8,000 members, API represents a wide range of property professionals who have a significant impact on the wider property industry.

API sets and maintains the highest standards of professional practice, education, ethics and professional conduct for our members. In turn, the work of the Institute raises the bar for the entire property profession.

API membership requires minimum qualifications and experience and ongoing professional development and education, ensuring a highly qualified, highly skilled profession.

API members can be found across all sectors of the property profession, including private practice, public sector and academia. This broad base of qualified and skilled professionals is unique to the Australian Property Institute. The Institute is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of membership.

In response to the call for comment, the API has provided feedback on three of the Key Issues raised in the Consultation Paper, where we believe our members can provide professional direction based on their expertise in those areas.

### Background

- Valuers are an integral part of the LVC process.
- Each DA that requires an LVC must include a valuation by a qualified valuer.
- A valuer appointed by the Government then reviews this valuation and if necessary, ACTVO prepare their own valuation.
- This process is by definition often adversarial between valuers.
- A valuation is not a definitive figure. It is an opinion of analysis of the market at a set date.
- Opinions often differ widely. Usually a valuer acting for a DA proposal sees the market from one angle, while the valuer acting for ACT Government sees it from an alternate point of view. This does not make either party right or wrong.
- This is a major impediment to the system operating with haste.
- Many prospective developers, especially those not based in the ACT find the system complex and confusing.
- Most simply find it too hard and invest their capital in other capital markets.
- Since the LVC came into being the annual projected income for LVC payments has not been reached once. In fact most years it does not reach 50% of the amount projected.
- The system is overly complicated, not transparent and requires adjustment on various levels.

- For the purpose of this review we have divided our response into three main categories:
  1. Additional Uses
  2. Codified Tables
  3. Affordable Housing

## **1. Additional Uses**

- The system needs to be improved to be simple, straightforward and transparent.
- Most problems between valuers occur when they are valuing a property where there is no market and/or there are no sales.
- For example. There have been no sales of vacant land for office use in the ACT since 2010. In order to assess land value for office sales of improved offices must be analysed to assess the residual land value. This includes valuing the depreciated value of the improvements and also the capital value of any subleases over the building at the time of sale. Private and Government valuers have tried on numerous occasions to agree on a standard methodology. To date agreement has not been able to be reached on a methodology.
- Currently all parties feel aggrieved by most outcomes.
- Individual purpose clauses and other conditions are a reflection of the time of issue of their Crown Leases:
- For example: Older Crown Leases in Fyshwick have an “Industry or Industries” purpose clause which when Fyshwick was an industrial area was suitable. New Crown Leases in Fyshwick may contain up to 35 individual uses reflecting all of the uses in the Territory Plan including bulky goods retailing and offices uses. This is symptomatic of Freehold systems throughout Australia. It is more economic for an owner in Fyshwick to hand back their original Crown Lease and purchase a new site with more potential uses than endure the LVC process which takes no account of improvements many of which have reached the end of their economic life.
- Similarly most DA applicants feel aggrieved at the amount of LVC they are required to pay and do not feel it reflects market values if they have owned a site for 10, 20, 30 years, they are required to virtually purchase the site again at contemporary values.
- The addition of a use to a purpose clause must be a flat fee per use. There is no evidence in 95% of cases where the addition of a use to a purpose clause is able to be accurately and definitively assessed, which is what is required by legislation. This will not only make this process easier to comprehend, it will also speed it up. Once a DA is approved the payment can be made immediately. The applicant will not need to wait 4-6 weeks for the ACTVO to issue a report and then with potential further negotiations if values are not agreed.

## **2. Codified Tables - General**

- Codified tables were introduced in 2011 to provide certainty.
- The current Schedule 3 tables are far too complex and inefficient, on several bases:
- Firstly, the tables endeavor to capture all development types and zonings for commercial and individual suburbs.

- Secondly, when they were originally established they were to be updated annually and adjusted on a rolling 3 year average. This has never eventuated making a mockery of the original intentions. The values in these tables were assessed over 5 years ago and have not been updated.

### **Codified Values - Residential Values**

- Rather than try to capture unit values for each individual suburb across the ACT when adding units, a simpler way would be to assess values on a precinct basis, i.e. Belconnen, Woden, Tuggeranong, etc.
- However, we do note that increasing unit numbers for residential purposes is most relevant in Town and Group Centres, where this type of development opportunity exists, which are not covered by these tables. There is no reason why tables would not be established for Town and Group Centres.
- A major problem with this residential system of allocating a rate per unit redevelopment is the difference between units and townhouses. For example, a development in the Inner North with a residential purposes only purpose clause may propose 10 x 1 bedroom units, payment required is 8 x \$30,000 = \$240,000. The same site may be able to accommodate 4 x 3 bedroom townhouses, payment required is 2 x \$30,000 = \$60,000. A developer will naturally focus their investment on achieving the best outcome for themselves.
- An additional significant factor that has been overlooked in this process is the make-up of the land component in any development. If a developer determines that a project is viable to proceed with a maximum land cost of \$800,000 each for two adjacent blocks, they are not particularly concerned as to the make-up of the total payment. The original cost maybe \$700,000 to the land owner and \$100,000 LVC. If the LVC regime changes and the LVC raises to \$200,000, then a reduced payment of \$600,000 is available to the land holder. This has the potential of housing implications where an elderly owner requires the funds from the sale of a house to relocate to an aged care premises in the immediate vicinity of their dwelling. In addition, the price achieved as a single residential dwelling maybe higher than a redevelopment site and redevelopment will not occur which is the intention of the zoning.
- Most mixed use developments have two components, residential units and lower level commercial/retail offices or shops. This could be utilised in calculating an After Value, whilst the Before Value would be based upon the codified amount that is used for purchasing GFA in that location. Given the potential volatile state of the development market it would be imperative that these values be updated annually.
- In allocating a value, it should be noted though that these values must take into account that any development will require demolition of improvements, which will increase the cost of the land component to a developer.
- We suggest having tables for mixed use developments. These could be made up of two parts, a \$/unit figure which could be added to a rate \$/m<sup>2</sup> of GFA. The \$/unit would be codified as would be the commercial GFA. These would be added together in the After Value. For the Before Value the permitted or actual GFA (if no GFA specified in the Crown Lease) would form the basis of the Before Value. Other amounts for total rooms, child care spaces, etc. could also be incorporated into these tables.

- The short timeframe required for responses for this review does not allow detailed analysis to be provided, however we would be prepared to assist with this proposal in the future.
- Housing Affordability
- Housing Affordability and in particular the Affordable Housing Scheme appears to be administered on an ad-hoc basis.
- New developments in emerging areas have quotas that range from 10% - 30% for dwellings to meet the Affordable Housing criteria.
- ARI Redevelopment sites sold by ACT Government in Dickson, Braddon and Lyneham have no Affordable Housing criteria. Some commentators speculate that this lack of requirement is to ensure the Government receives the maximum return, rather than replacing Government Housing.
- Developers will not naturally provide Affordable Housing dwellings unless the product being constructed is within that range.
- In order to entice a developer to provide housing that meets Affordable Housing criteria, we recommend that there be no LVC levied on that number of dwellings within a development.

## SUMMARY

The Australian Property Institute suggests the following amendments to the Lease Variation Charge regime:

1. The addition of further uses to a Crown Lease be based at a set fee. We suggest \$5,000 prior to remissions.
2. Codified Tables
  - These should be simplified, by district rather than suburb.
  - They should be updated regularly to reflect the current market.
  - Consideration for fixed fees per unit and for commercial areas for mixed use developments.
3. Affordable Housing
  - Consider no LVC on a per unit basis for dwellings that meet Affordable Housing criteria.

The API is pleased to be able to provide comments for this review, however the relatively short timeframe required for these precludes us from providing detailed examples of our proposals. We are available to discuss our proposals and provide more detailed analysis should it be required.