1. REPORT SUMMARY

1.1 INTRODUCTION

This Report presents the results of an audit of certain lease variations executed between 1990 and 1995.

The Auditor-General's Office had received several communications from the public on the processing and calculation of lease variation charges (betterment)[1]. In late 1996 a further detailed allegation was received as a disclosure under the Public Interest Disclosure Act (1995).

The disclosure involved four cases in which it was alleged that disclosable conduct had occurred. The four cases are set out in *Chapter 2* of this Report. This Report presents the results of the Audit Office's review of the Public Interest Disclosure.

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1.2 AUDIT OBJECTIVES

The objectives of the audit were to provide an independent opinion to the Legislative Assembly on whether:

- the matters alleged in the disclosure were sustained; and

- if so, there had been a material amount of betterment foregone as a result of the matters alleged in the disclosure.

[1] The term betterment is commonly used for lease variation charges. Although the term lease variation charge is more accurate, betterment will be used in this report.

The audit also reviewed current practices to determine whether appropriate steps have been put in place to avoid a recurrence of these matters.

The opinions formed from the audit follow:

AUDIT OPINIONS

Public Interest Disclosure

- For two of the four variations examined the applications to change the purposes of the leases were treated incorrectly as pre-1990 applications when calculating the amount of betterment payable;
- For the third matter although the application was not treated as a pre-1990 application, the Department regarded itself as bound by advice as to the level of remission of betterment;

As a result:

- the amounts of betterment payable were calculated on bases which financially benefited the lessees; the Public Interest Disclosure is therefore sustained;
- betterment undercharged in these three cases aggregated to approximately $3.6m;
- For the fourth matter an error in the calculation of betterment resulted in a loss of $140,000 to the ACT; this part of the Public Interest Disclosure is therefore also sustained.

Current Procedures

- Land Act procedures which are now in place should overcome recurrence of these matters.

1.3 AUDIT FINDINGS

The audit findings for each of the matters raised are set out following:

Belconnen Golf Club (Chapter 3)

The Department[2] acted incorrectly in treating the redevelopment proposal as a pre-1990 application.

Because of the failure to follow the provisions of the Land (Planning and Environment) Act 1991 and Regulations[3] the Territory has foregone betterment of $917,000[4].

Kingston Bowling Club (Chapter 4)

The Department acted incorrectly in regarding itself as bound by earlier advice provided in different circumstances as to the remission of betterment.

It is considered that the provisions of the Land Act and Regulations were not followed when the added value of the lease purpose variation was calculated under the pre-September 1993 Land Regulations.

Because of these failures, the Territory has foregone betterment of $1,229,968

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[2] Between 1990 and 1994, the period covered by the audit, lease variations were administered mainly by the former Department of Environment, Land and Planning. References 'to the Department' are to this former department. Its responsibilities are now included in the Planning and Land Management Group in the Department of Urban Services.

[3] For the purpose of brevity, the Land (Planning and Environment) Act 1991 and the Land (Planning and Environment) Regulations will be referred to as the Land Act and the Land Regulations respectively in this report.

[4] In commenting on the report draft, the Secretary, Department of Urban Services stated

'to more accurately reflect the situation I suggest that you refer to "potential revenue forgone" as it would appear that if betterment was charged at the level you suggest some of the projects may not have proceeded and no revenue at all would have been collected'.

The level of betterment payable is one of the factors which will have an impact on the feasibility of a particular development proposal involving a purpose variation. However, the betterment is the price which the ACT community expects to receive for allowing the change of purpose. If one project on a site does not proceed because of the level of betterment to be paid, it is entirely possible that another will proceed. For this reason it is accurate to use the term 'revenue foregone'.

Forrest Bowling Club (Chapter 5)

The Department acted incorrectly in treating the redevelopment proposal as a pre-1990 application.

It is also considered that the provisions of the Land Act and Regulations were not followed when a remission of 50% was made to the betterment applying to the sub-division in the redevelopment.

Because of these failures, the Territory has foregone betterment of $1,446,020.

Bocce Club (Chapter 6)

The amount of betterment was calculated incorrectly by taking into account the value of off-site works.

This resulted in a loss of betterment to the Territory of $140,000.

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1.4 FURTHER REVENUE FOREGONE

Further audit examination reviewed two other lease variations which took place during the same period as the matters which were the subject of the allegations. This was done to see whether the same approach had been adopted for the calculation of betterment in these cases as in the three examined in the audit.

It was found that the same approach had been followed in these further dealings. This suggests that the cases examined in this Report were not one-off cases but were indicative of the general approach at the time.

It is considered, therefore, that the total amount of betterment foregone through incorrect calculation of

betterment charges may well be greater than the $3.7m identified by this audit.

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1.5 FACTORS CONTRIBUTING TO THE FOREGONE REVENUE

The failure to have appropriate procedures in place for handling and recording applications in the period prior to the commencement of the Land Act in 1992 allowed the potential for officials to be flexible in determining whether or not an application had been made, and the timing of the application. It enabled artificial interpretations to be made of the time when initial applications were received in order to bring into operation methods of assessment which attracted lower rates of betterment.

The absence of sound administrative procedures reflects poorly on the various Departmental senior executives who were responsible at different times for these important functions of the Department.

Secondly, no attempt was made to obtain legal advice relating to the status of applications or the correct approach to the calculation of betterment.

Finally, there was a failure to recognise that a preferred policy could not be followed if the law relevant to the matter provided to the contrary. An undertaking, even if given by a Minister, cannot be implemented if a change in the law no longer allows it to be carried out.

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1.6 COMMENTS BY LEASE ADMINISTRATION OFFICERS

Throughout the audit, lease administration officers (including officers who had left the Department and

the ACTGS) commented on the difficulties facing departmental staff in administering the leasehold legislation in the initial years of self-government. The situation at the time, involving significant changes in legislation and government administrations is described in *Appendix 1*.

Officers described some of the difficulties:

- leasehold law and practice was complex and cumbersome;

- many practices and procedures which had originated before self-government placed considerable responsibility on officials; and

- there were different Government community and business expectations about the administration of the leasehold system.

One officer, who was working in the Department at the time, provided a written submission to the audit. This submission generally reflected the views put to the audit. Excerpts from the submission are set out below:

"There was a process to manage applications under previous legislation which had been decided by the Government. This process was used in dealing with the development applications examined by [the audit]. It was clearly understood and articulated at all levels in the Department. It was also applied to 'old' applications in a consistent manner.

"The Land Act was introduced to address precisely the problems of unclear process and procedures which [the audit] highlights. In prescribing the process which should be followed to assess development applications, the Act sought to remove the uncertainty and lack of transparency inherent in

the old processes and legislation. Unfortunately, the Department was left with a number of old applications on its books which it sought to conclude in good faith, in a consistent manner and in accordance with Government policy.

"I can only repeat my strong view that Departmental officers acted in good faith and applied the policies and procedures as they understood them. Of greater importance to me is the knowledge that new processes and procedures aimed at open and transparent administration of the Land Act and the Leasehold System generally are now in place. This work will ensure that the problems which Departmental staff encountered in administering archaic, complex legislation and regulations will not be encountered in the future."

The written submission made reference to acting 'in accordance with Government policy. Similar comments were made by other Departmental officials at interview. Consequently requests were made for the documented policy to be supplied for audit review however no documentation has been produced. It must seem therefore that if there was a Government policy it was an unwritten policy.

1.7 CONCLUSION

The audit has disclosed that there was a failure over a long period to interpret and to apply legislation correctly and that this has resulted in a significant loss of revenue to the Territory. The audit has not, however, been able to draw a conclusion on why the incorrect interpretations and applications occurred.

Over the period many officers were involved in progressing lease variations to finality. These officials appear to have acted in a consistent manner. The evidence available to this audit was not of the

nature to allow determination, with any degree of certainty, of the reasons for these actions. Whether the reasons can be put down to incompetence, negligence, overcommitment to ensuring that developments proceeded, Ministerial influence or some other reason cannot be concluded by the audit.

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1.8 PROCEDURES FOR APPLICATIONS FOR LEASE VARIATIONS

The audit found that appropriate procedures are now in place to avoid recurrences of these matters:

- satisfactory procedures for lodging and recording applications are now in place under the Land Act; and
- improved procedures have been established for providing pre-application advice for lessees seeking a variation of the purpose for which their lease was originally granted.

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1.9 SUGGESTIONS FOR FUTURE ACTION

Legal assistance should be sought

By way of general comment, it should be noted that government officials cannot justify action that does not comply with the law by asserting either a contrary policy or that it is intended to change the law to encompass a new policy. The law in force when a decision is made must be applied and this is so even though an undertaking to the contrary may have been given. The only exception to this will be where the law itself makes provision for any such undertaking to be adhered to.

It is desirable that legal assistance should be obtained when there is any suggestion that a legal issue may arise. This involvement should occur at the outset and not after it is perceived that difficulties have arisen. If the issues involve difficult questions of law or are likely to lead to precedents for future action, the advice of the ACT Government solicitor should be obtained.

Regular audits

It seems that the circumstances that gave rise to the issues relating to the calculation of betterment exposed by this audit are unlikely to arise again. Nonetheless, such is the sensitivity of the determination and payment of betterment on variation of leases, it is appropriate for there to be an audit (either internal or external) undertaken at regular intervals of decisions taken on betterment so that members of the Assembly and public can be assured that correct procedures have been followed.

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2. LEASE VARIATIONS REVIEWED BY AUDIT

2.1 PUBLIC INTEREST DISCLOSURE

The Public Interest Disclosure (PID) to the Auditor-General, made in accordance with the Public Interest Disclosure Act 1995, asserted that the betterment for four lease purpose variations of ACT leases was calculated in such a way as to be in breach of the law.

In relation to three of the matters - Belconnen Golf Club, Canberra Women's (Kingston) Bowling Club and Canberra (Forrest) Bowling Club - it was alleged that the applications for lease purpose variations were treated as pre-1990 (i.e. pre Land Act) applications, thereby qualifying them for a more financially attractive calculation of betterment to the lessee.

The fourth matter involved the legality of discounts allowed in the calculation of betterment of the purpose variation for the Bocce Club, Kaleen.

It was alleged that as a result of these failures there was a substantial loss to ACT revenue in betterment foregone.

2.2 THE VARIATIONS IN QUESTION

The variations in the PID were as follows:

Belconnen Golf Club

The grant of a lease dated 14 March 1994 over block 5, section 98, Holt held by the Belconnen Golf Club Pty Ltd. The variation involved the surrender of the existing lease and the grant of a new lease, with the lease purpose amended to include residential. The

variation permitted part of the Club's land to be redeveloped for medium density housing.

A review of this matter is set out in *Chapter 3* of this report.

Canberra Women's (Kingston) Bowling Club

This lease variation, approved on 10 August 1994, consolidated blocks 32 and 33, section 26, Kingston which were formerly held by the Canberra Women's Bowling Club but which at the time the variation was approved were held by Dungell Pty Limited. The variation was executed on 21 November 1995. The surrender of the existing leases, and the grant of the new lease with a purpose clause which included residential, permitted the whole of the land which was the subject of the leases, together with a neighbouring block, to be redeveloped for apartments.

A review of this matter is set out in *Chapter 4* of this report.

Canberra (Forrest) Bowling Club

The grant of three leases over blocks 32 and 33, section 26, Forrest which were formerly held by the Canberra Bowling Club. The surrender of the existing lease and the grant of the three new leases involving a sub-division permitted the site to be redeveloped for townhouses.

A review of this matter is set out in *Chapter 5* of this report.

Bocce Club, Kaleen

The grant of a lease dated 18 January 1995 over block 20, section 117, Kaleen which is held by the Canberra & District Bocce Club Inc. The surrender of the

existing lease and the grant of the new lease permitted part of the Club's land to be redeveloped for medium density housing. The PID alleged that a substantial error was made in the calculation of betterment.

A review of this matter is set out in *Chapter 6* of this report.

2.3 AUDIT APPROACH

The approach to the audit involved:

- a detailed examination of relevant legislation;
- a review of the files relating to the dealings currently held by the Planning and Land Management Group in the Department of Urban Services;
- a review of a small number of files that related to similar dealings during the same period; and
- discussions with the head and some staff of the Planning and Land Management Group, other officers and with the ACT Government Solicitor and one of his officers.

2.4 LEASE HISTORY AND THE CALCULATION OF BETTERMENT

Lease administration and the calculation of lease variation charges are somewhat technical and complex areas. In order to provide some background to the matters raised in the audit, there are two appendices to this report.

- Appendix 1 - The law relating to ACT land leases
- Appendix 2 - Calculating betterment

3. BELCONNEN GOLF CLUB: HOLT

3.1 INTRODUCTION

This Chapter reviews the amount of betterment paid on a variation in the lease purpose which was needed to enable the development of residential housing within the Belconnen Golf Course.

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3.2 LEASE HISTORY

Belconnen Golf Centre Pty Ltd was granted a business lease over the golf course land in Holt in 1973 under the then *Leases Ordinance* for 50 years. The purpose clause of the lease permitted building on a portion of the land for a club house and other facilities associated with the running of the golf course. It prevented the establishment of a private golf club as the land was intended for use as a public course.

3.3 APPLICATIONS TO DEVELOP THE SITE

Applications were made in June 1982, November 1983 and August 1986 to develop the site by the inclusion of residential townhouses. These applications were refused by the National Capital Development Commission.

At various other times alterations were made to the lease to increase the area of land that the Club occupied and to redefine the area on which building was permitted.

3.4 CONVERSION OF LEASE

An application was made in February 1987 to convert the lease to a *City Area Leases Ordinance* (CALA) lease. This application was delayed due to negotiations over rental and rates arrears and it was not until 22 May 1990 that a 99 year CALA lease was issued, with effect from 21 July 1989.

The Club took up the option of paying an annual rental on the CALA lease rather than payment of a capital sum. The rent was calculated on a concessional basis i.e. 4% of the site value.

3.5 DISCUSSION ABOUT REDEVELOPMENT - 29 OCTOBER 1991

On 29 October 1991 representatives of the Club and Departmental officials held a meeting at which development of part of the lease site for medium density housing was discussed. This is the first reference on the Territory Lease file to the development under consideration.

According to the Territory Lease file note of the meeting, one of the proponents of the new development commented that "*the previous time the Club had sought approval for a similar concept it had been rejected. Accordingly they were trying to gauge our [i.e. the Department's] reaction to the possibility of a fresh application*".

3.6 ESTIMATE OF BETTERMENT - 31 AUGUST 1992

On 26 June 1992 a letter on behalf of the owners of Belconnen Golf Course to the Chief Planner sought approval in principle to the development.

On 27 July 1992 a request for a "*ball-park*" figure on betterment was sought from the Australian Valuation Office (AVO) by the Department. On the same day an

officer noted on the file that no application for the variation of the lease had been made.

On 31 August 1992, as was the practice at this time, the "ball-park" estimate of the likely betterment payable was provided to the developer. The file noted that the developer was "*shocked*" at the estimate of $2.64m which had been provided by the AVO.

The file note also referred to the possibility of the betterment being reduced on a sliding scale between 41% and nil according to the length of the lease[5].

On 7 September 1992 the developer wrote to DELP urging the adoption of the 41% reduction figure (which was based on 17 years). The use of this amount suggests that the developer accepted that the new Regulations (i.e. the Land Regulations) applied to the application and that the application was not a pre-1990 application.

3.7 MEETING - 15 OCTOBER 1992

On 15 October 1992 a meeting was held between Departmental representatives, the ACT Planning Authority (ACTPA) and Club directors. At the meeting the Directors indicated that the 36 holes would not be required and reintroduced the idea of a residential development within the golf course. According to the file note "[The developer] *was concerned that the project may fall by the wayside in consideration of the costs involved."*

[5]These figures refer to the means set out in the City Area Leases (Betterment Charge Assessment) Regulations 1991 which came into effect on 3 April 1991 for calculating the amount of remission of betterment. The remission was largely based on the number of years for which the lease had been held. The alternatives were based on a choice between the number of years since the date of the original lease (i.e. the Lands Ordinance lease in 1971) and the new lease granted after the surrender (i.e. the 1989 CALA lease).

The note of the meeting stated that ACTPA "*indicated an old application exists on their files*." At this meeting it appeared to be accepted by all parties that the 1986 application could be regarded as still current for the purposes of the betterment assessment. On this basis the betterment would be 50% of the added value of the purpose variation.

From this point on, acceptance that the 1986 application was a current application dictated the way in which betterment for the redevelopment proposal was to be calculated i.e. on the pre-1990 basis (under section 11A of CALA) as specified by the Consequential Provisions Act[6].

3.8 DEPARTMENTAL BRIEFING MEMO - 27 NOVEMBER 1992

A Departmental briefing memo on 27 November 1992 canvassed the issues in the application. On the issue of the timing of the application it stated that the earlier proposals had been historically rejected. However, the note put the view that *"It is arguable that there is an existing application, even though the residential concept has altered over the last ten years"*.

It is not quite clear what the author of the note was intending by this assertion. The ten years referred to would extend back to 1982, the year when the first application was made. It is unlikely that the author was saying that there was a valid application in existence from that year and in fact this proposition has never been argued.

At the same time the briefing provided no argument or evidence in support of the view that the proposal could be dated from 1986, nor reconciled the assertion

[6] Land (Planning and Environment) Consequential Provisions Act 1991

with the statement that the earlier proposals had been historically rejected.

3.9 LETTER TO DEVELOPER - 8 DECEMBER 1992

On 8 December 1992 the Department wrote to the developer confirming that the application for variation would be treated as a pre-1990 application and attract a 50% reduction in betterment in accordance with the pre-1990 policy.

In November 1993 the then current (CALA) lease was surrendered and a new lease granted following the payout by the Club of the land rent applicable to the lease.

3.10 FINALISATION OF THE NEW LEASE ARRANGEMENT

On 12 February 1994 the new leasing arrangements were determined. This involved the surrender of the 1993 lease, the issue of a holding lease and the issue of a new lease on completion of the redevelopment project. A separate 99 year lease was granted for the remaining golf course land.

On 18 February 1994 the added value provided by the AVO was $2,630,000. The previously advised reduction of 50% in the betterment payment was confirmed in a letter of 2 March 1994 and the betterment of $1,315,000 was paid on 14 March 1994.

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3.11 SHOULD THE 1986 PROPOSAL HAVE BEEN REGARDED AS AN APPLICATION ?

The Department advised that it considered that the application which had been made in 1986 could be

regarded as a pre-1990 application for the purposes of the calculation of betterment.

This view is difficult to sustain for the following reasons:

- The 1986 application was refused by the NCDC. In a letter to the developer on 5 November 1986 the NCDC stated that: "*...the Commission concluded that the scheme would not provide sufficient benefit to the community and Commonwealth and therefore should not proceed*." Consequently the 1986 application was an application which had been 'determined' for the purposes of the Consequential Provisions Act. It could not be resuscitated; and

- Throughout the early negotiations the developer referred to the application as a new application. It was the Department which raised the possibility of a 50% remission of betterment after the developer asserted that the project would be placed in jeopardy because of the initial estimate of betterment payable.

****

3.12 WHAT WAS THE CORRECT AMOUNT OF BETTERMENT?

It is considered that the application was made at the very earliest on 22 June 1992 when the Club wrote to the Department seeking approval in principle for the development. On this basis, the Land Act applied and betterment should have been calculated using the Regulations in force as at 12 February 1994 when the variation was executed.

The Australian Valuation Office has advised the following before and after values for the variation at this date:

Before	$ 420,000
After	$2,900,000
Added Value	$2,480,000

This would have resulted in the increase in value of $2,480,000 being reduced by a remission of 10% (for a concessional lease of up to 20 years) under the Regulations applying at the time. Had the development proceeded on this basis there would have been betterment payable of $2,232,000.

The actual amount paid was $1,315, 000 resulting in an undercharge of betterment of $917,000.

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3.13 AUDIT CONCLUSION

The Department acted incorrectly in treating the redevelopment proposal as a pre-1990 application.

Because of the failure to follow the provisions of the Land Act and Regulations, the Territory has foregone betterment of $917,000.

4. CANBERRA WOMEN'S BOWLING CLUB: KINGSTON

4.1 INTRODUCTION

This chapter reviews the amount of betterment paid on the change of lease purpose relating to the Kingston Bowling Club redevelopment in 1994.

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4.2 LEASE HISTORY

The Canberra Women's Bowling Club (CWC) was granted a concessional lease on 20 April 1961 over Block 32 Section 26 Kingston for a term of 25 years commencing on 20 October 1958. That lease was surrendered and a new lease granted on 9 September 1968 comprising block 32 and the neighbouring block 33 but without change in term. On 15 December 1983 a CALA lease for 99 years from 20 October 1983 was granted.

Under the then applicable policy, the Club paid out the land rent commitment on 25 September 1984. The amount payable was determined at 50% of the unimproved value. The existing lease was surrendered and a new lease granted on 4 February 1985.

The only use permitted of the land was as "*a bowling club or for any purpose incidental thereto*".

4.3 ADVICE SOUGHT ON USES OF THE SITE

On 7 April 1989 representatives of the club and then, on 28 February 1990, developers, had sought advice from the Department on alternative uses of the land. These appear to have been general inquiries. No

specific proposal for redevelopment was found on the files.

4.4 TRANSFER OF LEASE

On 29 March 1990 CWC transferred its lease to Lakeside Investments Pty Ltd. This was permissible under the lease.

The alternative uses were discussed after the sale to Lakeside but a response from the Department on 5 November 1990 was that the lease purpose should be maintained. This approach was confirmed following a meeting on 11 March 1991.

The lease was transferred again in late 1991 to another developer.

4.5 REPRESENTATION BY DEVELOPER - 29 NOVEMBER 1991

Further representations were made by the lessee and by the end of 1991 it had become apparent that the Department was prepared to support redevelopment. In a letter to the Department on 29 November 1991 the prospective developer sought clarification on the betterment charges associated with the blocks asserting that the pre-1990 rules should apply.

The Department replied to the developer on 12 December 1991 stating that "... *any application for redevelopment and change of purpose will attract a 50% betterment charge in accordance with current policies and legislation*."

This reply was important because the Department relied on it (incorrectly) two years later.

In the reply, the Department did not address the developer's assertion that the matter should be treated as a pre-1990 application. A file note accompanying

the reply makes it clear that the advice was intended to address the possibility of an application being made at that time i.e. December 1991 (before the Land Act came into effect). Such an application would have been made under CALA.

Betterment would be assessed according to the CALA Regulations sliding scale which had been introduced in April 1991 (often referred to as CALA Mark II). This treatment also assumed that the lease would not be regarded as a non-concessional lease.

By coincidence, the amount of betterment advised (50% of the added value) was the same as the amount the developer had sought in the submission.

4.6 APPLICATION FOR VARIATION - 18 JUNE 1993

A formal Land Act application for a variation of the purpose to "residential purpose (including medium density and multiple unit dwelling)" was made on 18 June 1993.

4.7 CALCULATION OF BETTERMENT - PURPOSE VARIATION

The approval of the development proposal proceeded in accordance with the requirements of the Land Act.

In relation to the calculation of betterment, an undated notation to a file note (which itself had been prepared on 26 May 1994) stated that *"FAS has instructed that previous advice given in respect of the remission to apply must be honoured"*.

The audit was not able to determine the identity of the FAS (First Assistant Secretary - Land Division, Department of Environment, Land and Planning) referred to. At around the time, May/June 1994, there were two possible officers - one permanent, and the other acting when the permanent officer was on leave.

The Department was unable to say who the officer was, and both of the two possible officers have advised that they do not remember the matter.

There was no information on the file about the reason for this decision. It is appears that the Department simply regarded itself as bound by the earlier advice to the developer (*see paragraph 4.5*).

According to a letter from the developer's agent (dated 11 July 1994) it had been agreed at a meeting with (unknown) departmental officers on 8 July 1994 that:

"*The betterment payable...is to be determined on the basis of ... "a fifty (50%) remission....*

"The before and after values based on vacant land taking into account potential as determined under the provisions of Land Act prior to the September 1993 amendments."

Two questions arise in relation to these matters:

- did the 1991 advice bind the Department? and

- what was the effect of the timing of the before and after values as before the September 1993 amendments ?

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4.8 DID THE 1991 ADVICE BIND THE DEPARTMENT ?

It appears that the department regarded itself as bound by the advice given in December 1991. This advice was that '*any application...will attract a 50%*

betterment charge in accordance with current policies and legislation'. As the advice had been provided to the developer about two and a half years earlier (and prior to the commencement of the Land Act) it should not have been regarded as being current.

However, if there was any concern about the legal status of the advice, then legal advice should have been sought.

Such advice would almost certainly have indicated that an undertaking that requires action that is contrary to the law - which this did because the Land Act now applied - is not enforceable against the government.

4.9 TIMING OF THE BEFORE AND AFTER VALUES

The developer and the Department agreed that the calculation of the added value should be based on the *"provisions of the Land Act prior to the September 1993 amendments."* This distinction is important as it had an impact on the calculation of added value, and therefore the amount of betterment.

4.10 VALUATION UNDER LAND ACT

Prior to the September 1993 amendments to the Land Regulations, the before value was based on the market value of the lease. This approach *(Method C - see Appendix 2)* assumes that any potential increase in the value of a lease from a purpose variation would already be reflected in the market value of the lease before the variation.

Using this approach, there may not be any increase in the value following the variation as the increase may be already incorporated in the market value.

This deficiency in the Regulations was corrected by the September 1993 amendments resulting in *Method D* being introduced *(see Appendix 2).*

However, under the Land Act, the calculation of the added value should have been made as at the ***date of the variation***. In practice, the Administrative Appeals Tribunal has adopted the ***date of approval*** of the lease variation as the appropriate valuation date in the majority of betterment cases.

In this case, the variation was approved on 5 May 1994 and betterment was paid on 10 August 1994. By agreeing to an earlier date, the department was ignoring the provisions of the Land Act which required the added value to be calculated using *Method D*. Using the pre-September 1993 approach (*Method C*), the Department had allowed betterment to be calculated in such a way that the lowest added value possible was used to calculate betterment.

4.11 DETAILS OF BETTERMENT CALCULATED

There was some difference of opinion between the Department and the Australian Valuation Office (AVO) and then between the developer's valuer and the AVO, over the calculation of the added value. However, after discussions with the developer, the AVO advised that the added value to the lease from the purpose change was $430,000. Applying remission of 50% the betterment payable was $215,000.

It was agreed that the development should also include block 50, an adjoining unused block, to provide an access road to the site and that one lease would be issued to the developer for blocks 32, 33 and 50.

The market value of Block 50 was estimated by the AVO to be $37,800. The amount paid in total was therefore $252,800.

4.12 REPAYMENT OF BETTERMENT

As a result of the public consultation process the number of units approved for construction was reduced from 54 to 50.

Subsequently the developer's valuer sought and was given a refund of $52,161 on the basis that the figure initially calculated and paid had been based on an understanding that a greater floor area of the blocks could be used for construction than was in fact the case. The refund reduced the total amount paid by the lessee to $200,639.

The revised calculation of added value and betterment was approved by the AVO. The audit reviewed generally the circumstances of the repayment. It appears that matter was handled appropriately.

****

4.13 WHAT WAS THE CORRECT AMOUNT OF BETTERMENT ?

Under the Land Act, betterment would have been calculated as at the date of the variation of the lease purpose. The variation was approved on 5 May 1994, paid on 10 August 1994 and a new lease issued on 20 November 1995.

The AVO has provided the following before and after values for the variation as at May 1994:

Before:	$ 150,000
After:	$1,700,000
Added Value:	$1,550,000

In 1994 betterment was calculated using the Land Act and Regulations. Under the Regulations:

- the varied lease (i.e. the 1980 CALA lease) was a concessional lease; and
- the length of time the varied lease had been held was 14 years;

Under the Schedule to the Regulations a remission of 10% of the added value was appropriate. On this basis, the betterment was $1,395,000. Including the market value of Block 50 ($35,607[7]), the amount which should have been paid was $1,430,607.

The amount paid for betterment and Block 50 was $200,639. Consequently, the amount of betterment undercharged was $1,229,968[8].

****

4.14 AUDIT CONCLUSION

The Department acted incorrectly in regarding itself as bound by advice provided as to the remission of betterment in different circumstances two and a half years earlier.

It is considered that the provisions of the Land (Planning and Environment) Act and Regulations were not followed when:

- the added value was calculated under the pre-September 1993 Land Regulations and

[7] This amount ($35,607) reflects the proportional reduction of the initial market value ($37,800) because of the development limit on the site.

[8] As mentioned in paragraph 4.5, the Department considered that the lease was a non concessional lease. The issue of concessionality is complex and decisions in cases may involve legal adivce. If this lease was regarded as concessional, the level of remission would have been 32% and the betterment payable $1,054,000. After taking into account Block 50, the betterment foregone would have been $888,968.

- a remission of 50% was made to the betterment applying to the sub-division in the redevelopment.

Because of the failure to follow the provisions of the Land Act and Regulations, the Territory has foregone revenue of $1,229,968.

5. CANBERRA (FORREST) BOWLING CLUB

5.1 INTRODUCTION

This chapter discusses the amount of betterment paid on the change of lease purpose relating to the Forrest Bowling Club redevelopment in 1994.

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5.2 LEASE HISTORY

In the early years of Canberra's development, the Commonwealth Government built several facilities for use by community groups. The Canberra Bowling Club commenced in the 1920s in Blandfordia, as the suburb was then known. It appears that the Club occupied the site up to the 1950s on an informal basis, with work required on the greens being provided by the Commonwealth as required.

In 1955 the Commonwealth formalised the occupation of the site. The Club entered into a Special Purpose Lease for a rental of 45 Pounds ($90) per year. The lease term was 25 years.

This rent was calculated as 4% of the value of the lease. Following a request by the Club in the early 1960s for land on which to construct a third green, the then Denison Street which ran between the Club and the Tennis Club was closed and the Club's rent increased to 50 Pounds ($100) per year.

In 1980, when the 1955 lease expired, a City Area Leases Ordinance (CALA) lease for 99 years was arranged. The purpose of the lease was for a bowling club and ancillary activities.

The lease rent was 4% of the UCV of the land. Following some disputation, the UCV of the land was determined to be $71,000.

5.3 PROPOSALS TO INCLUDE RESIDENTIAL ACCOMMODATION

From the early 1970s the Club appeared to be facing increasing financial difficulties because of declining membership. In order to alleviate these difficulties the Club made several proposals to vary the lease purpose to include residential accommodation by way of motel type units.

In late 1988, a developer, acting on behalf of the Club, proposed a redevelopment of the site which would involve the provision of serviced apartments. The National Capital Development Commission (NCDC) response was favourable although it noted that the land use change would require public consultation. There was no further mention of this proposal on the Territory Lease file.

In 1990 the rent was increased to $7,000 per year following revaluation of the site to $175,000.

5.4 PROPOSAL FOR TOWNHOUSE DEVELOPMENT - 1991

A proposal for a townhouse development of the site was submitted in December 1990. A variation of the Territory Plan was released for comment in May 1991.

5.5 NEW PROPOSAL - APRIL 1993

In April 1993 the Club advised Departmental officers that the earlier development had fallen through and that a new development was to be negotiated. A formal application was requested from the Club. This application was not provided at this stage.

In September 1993 the developer requested that the site be sub-divided into three blocks. One block would contain the bowling club; the other two would contain the townhouses. Sub-division of the site would make it easier to finance and sell the townhouses.

A formal Land Act application, with payment of fee, for sub-division and change of purpose to include residential was made on 23 December 1993.

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5.6 WAS IT A PRE-1990 APPLICATION ?

It appears from the Territory Lease files that there were strong differences of opinion in the Department from 1990 about whether the matter should be treated as a pre-1990 application.

However, an annotation to a file note dated 6 April 1992 from the Secretary of the Department stated that:

"*Clearly, the old rules should apply. This redevelopment has been around for 20 years*."

This appears to have settled the matter. The matter was to be treated as a pre-1990 application for the purposes of betterment. On this basis, the variation would be achieved by way of a surrender and regrant under CALA.

This approach was not changed after the 1991 proposal fell through and the 1993 proposal was commenced (see below).

5.7 SUB-DIVISION

The issue of the sub-division also presented the Department with problems. The sub-division was only proposed in September 1993. Initially the Department was adamant that this would require a separate application under the Land Act and attract betterment under Land Act rules. This would involve betterment at 100% of the added value.

The sub-division was processed as a Land Act application. After strong representations from the developer, the Department conceded and allowed a remission of betterment of 50% on the added value of the sub-division.

The application itself and the subsequent file notes indicate that the variation and the sub-division were the one transaction. It is considered that it should have been treated as a single Land Act application, encompassing the lease variation and the sub-division.

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5.8 AMOUNT OF BETTERMENT ASSESSED AND PAID

The AVO provided the Department with the following before and after values using *Method A* (the method applying to pre-1990 applications).

Before:	$700,000
After:	$1,100,000
Added value	$400,000

Method A required a before value of the land and improvements reflecting the existing 'bowling club' purpose. The after value reflects the value of the same lease with a purpose clause which permitted 'lawn bowling club and residential'. Required on and off site works were included in the calculation of the after value. In this case, the after value was discounted by a requirement to include provision for car parking in the value of the development.

The amount of betterment, using a remission of 50%, was calculated to be $200,000. Finally a further allowance of $19,520 was made for off site works.

The betterment of $50,000 for the sub-division was also discounted by 50%. There was no statutory basis for this remission.

The following amounts of betterment were paid[9]:

[9] As well as betterment, the club was required to pay out the lease ($175,000) and some back rent. These matters appear to be correct and will not be discussed.

Lease variation	$180,480
Sub-division:	$25,000
Total	**$205,480**

5.9 BETTERMENT CALCULATION WAS INCORRECT

It is considered that the calculation of the amount of betterment was incorrect. The reasons for the differences are as follows:

5.10 PRE-1990 APPLICATION

The Department treated the variation of purpose application for the redevelopment as a pre-1990 (i.e. pre Land Act) application.

Under this treatment, betterment was assessed at a rate of 50% of the added value. As well, the added value was calculated with a range of deductions which did not apply under the Land Act.

This approach was not supported by the facts. The formal application was made on 23 December 1993. The only actions before 1990 were proposals or applications which had been determined.

5.11 REMISSION APPLIED TO THE SUB-DIVISION

A remission of 50% was applied to the added value from the sub-division application. As well, deductions to the added value were allowed.

This was wrong and illegal, as it was contrary to the Land Regulations. Even on the Department's own approach (of treating the sub-division as a Land Act matter) there should have been no remission of betterment on the sub-division.

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5.12 ESTIMATE OF CORRECT AMOUNT OF BETTERMENT

If the application had been treated fully under the Land Act, betterment would have been calculated as at the date of the variation of the lease purpose and sub-division. This date was 15 July 1994. The AVO has provided the following before and after values for the application as at this date:

Before:	$ 175,000
After:	$2,010,000
Added Value:	$1,835,000

The after value is the value of the sub-divided lease, including the change of purpose for two of the blocks.

Betterment should have been calculated using the Land Act and Regulations. Under the Regulations:

- the varied lease (i.e. the 1980 CALA lease) was a concessional lease; and
- the length of time the varied lease had been held was 14 years;

Under the Schedule to the Regulations a remission of 10% of the added value was appropriate. On this basis, the betterment was $1,651,500.

The amount of betterment paid was $205,480. Consequently, the amount of betterment foregone was $1,446,020.

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5.13 AUDIT CONCLUSION

The Department acted incorrectly in treating the redevelopment proposal as a pre-1990 application.

It is also considered that the provisions of the Land Act and Regulations were not followed when a remission of 50% was made to the betterment applying to the sub-division in the redevelopment.

Because of the failure by the Department to follow the provisions of the Land Act and Regulations, the Territory has foregone betterment of $1,446,020.

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6. BOCCE CLUB: KALEEN

6.1 INTRODUCTION

The principal issue raised in relation to the Bocce Club dealing is whether the betterment payable should have been reduced by an amount attributable to off-site works, the construction of which was a condition of the approval.

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6.2 LEASE HISTORY

The Canberra & District Bocce Club Inc (Bocce Club) was granted a concessional CALA lease of land in Kaleen on 25 November 1986 to provide courts for the playing of bocce, club premises and associated facilities. In 1989 additional land was sought. This was approved, the existing lease was surrendered and a new lease of both the old and the new land was granted on 28 August 1989.

6.3 INITIAL PROPOSAL - 13 SEPTEMBER 1990

On 13 September 1990 a discussion was held between the President of the Club and Departmental officers The discussion canvassed the possibility of a community retirement village being erected on the Club's land.

A provisional site plan for the proposal was lodged with the Department for consideration. The Department also consulted the Interim Territory Planning Authority which opposed the proposal. The proposal was rejected by the Department and this was advised in a letter from the Department to the President on 15 November 1990. The intention to

reject the proposal had been endorsed by the Chief Minister on 6 November 1990.

6.4 SECOND PROPOSAL - 8 OCTOBER 1991

It is apparent from the file that at this time the Club was experiencing financial difficulties and was unable to meet its commitments under the lease. There was considerable correspondence and discussion between the Department and the Club. In April 1991 it emerged that the Greek Club would be interested in buying out the Bocce Club. Again there were considerable negotiations over the terms on which such a transfer might be approved.

By October 1991 the prospect of a buy out by the Greek Club had apparently diminished and a letter from an agent of the Bocce Club dated 8 October 1991 was received by the Department reviving the redevelopment proposal. On 3 February 1992 the Department was advised that the sale to the Greek Club was not to be pursued.

On 30 June 1992 a note on the file indicates that the then Minister had given support to the development proposal and this superseded a draft letter rejecting the proposal. Site plans for the redevelopment were lodged on 21 August 1992. The consideration of the design and siting aspects of the proposal thereafter proceeded in accordance with the procedures in the Land Act.

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6.5 ASSESSMENT OF BETTERMENT - 29 AUGUST 1994

The assessment of betterment was made under the CALA Regulations. The Department requested a valuation using *Method B* on the basis that this was a post 1990 application thus attracting this method of

valuation. On 9 August 1994 an amount of $801,000 for added value was advised, not allowing for deductions.

On 29 August 1994 a figure of $661,000 was determined by the Department. This amount took into account a reduction of $140,000 for off-site works, namely an access road ($90,000) and upgrading of a floodway ($50,000).

The amount of betterment paid was $661,000.

6.6 BETTERMENT WAS NOT CALCULATED CORRECTLY

The approach taken to calculating the betterment charge was incorrect.

Prior to 3 April 1991, (i.e. under *Method A*) the amount of betterment payable on a variation of a lease was reduced by the cost of off-site works. However the position changed with the making of regulation 3(3) of the City Area Leases (Betterment Charge Assessment) Regulations. As from 3 April 1991 (under *Method B*) betterment could not be reduced by the applicant undertaking works. The same approach is adopted in reg 13(3) of the Land Regulations.

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6.7 AUDIT CONCLUSION

The amount of betterment was calculated incorrectly by taking into account the value of off-site works.

This resulted in a betterment undercharge of $140,000 to the Territory.

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6.8 DEPARTMENT'S COMMENTS

The current Chief Executive of the Department of Urban Services commented:

"... the report's conclusion that the loss of revenue to the ACT was $140,000 is correct. The Annexures provided [with the Chief Executive's letter] would support the conclusion that there was a misunderstanding of which rules applied to pre-Land Act applications brought about by the constant changes to betterment calculation methods."

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7. APPENDIX 1 - THE LAW RELATING TO ACT LAND LEASES

7.1 INTRODUCTION

This appendix discusses the law and practice relating to land leases in the ACT as it applied to lease purpose variations.

7.2 HISTORY OF ACT LAND TENURE SYSTEM

The history of the ACT land tenure system is summarised in *Chapter 4* of the *Report into the Administration of the ACT Leasehold* (15 November 1995) known as the Stein Report.

The Stein Report identifies the 3 crucial periods for the purposes of this Report:

- pre February 1990
- February 1990 to April 1992; and
- after April 1992.

7.3 PRE- FEBRUARY 1990

The grant and variation of leases was governed by the provisions applying under the various lease acts (formerly ordinances) applying at the time. These included the Leases Act 1918 and the Leases (Special Purposes) Act 1925, the City Area Leases Act 1936 and other enactments listed in Schedule 2 of the Land (Planning and Environment) (Consequential Provisions) Act 1991.

Variations to the purposes of leases could be achieved in three ways:

- section 11A City Area Leases Act (CALA) (for CALA leases only);
- section 72A Real Property Act (RPA); and
- surrender and regrant.

7.4 SECTION 11A CALA

The City Area Leases Ordinance 1936 became the City Area Leases Act 1936 (CALA) on self-government in 1988. Under s 11A of the Act a lessee who sought the variation of a lease issued under the CALA was required to apply to the Supreme Court for approval. This was seen as providing transparency in the lease variation process. It also enabled persons opposed to the variation to put their case in a public forum.

Prior to the enactment of Act No 12 of 1991 amending subsection 11A(1) of CALA, it was possible only to vary "any provision, covenant or condition of a lease in relation to the purpose for which the land subject to the lease may be used" (emphasis added). The critical issue here is that it was possible only to have purpose variations made by this method. Any other variation, including a variation to development rights, had to be made by alternative methods of varying a lease.

7.5 SECTION 72A REAL PROPERTY ACT

Section 72A of the Real Property Act 1925 allowed the Minister to vary a purpose provision of a lease by Instrument, where it would have been lawful for that lease to have been surrendered and another lease granted over the same land to the same lessee.

This method of varying a purpose provision of a lease was used to vary non-CALA leases in situations where surrender of the lease was either unnecessary or

inappropriate and CALA leases where either a s11A CALA application or the surrender of the lease was either unnecessary or inappropriate.

After Self-Government in 1989, policy restrictions were applied to the use of s72A RPA to vary the purpose of a lease.

It is understood that the procedure was commonly used in the period post-1991 for what were described as minor variations of a lease. The criteria adopted to attract the use of the section were that the variation should be of a minor nature; that it would be unlikely to raise public objection; that the variation was supported by the Planning Authority; and that no significant betterment payment was involved.

7.6 SURRENDER OF THE LEASE AND SUBSEQUENT GRANT

This method was referred to, in a shorthand manner, as a "surrender and re-grant". It was used to vary CALA and non-CALA leases where other than, or more than, a purposive variation was to be effected.

Even in cases where a purposive provision of a CALA lease was varied by application to the ACT Supreme Court under s11A CALA, it was often necessary to supplement that variation by a surrender and re-grant in order that non-purposive provision could be varied.

It is understood that the power to carry out a surrender and regrant was based on common law lease powers for non-CALA leases. For CALA leases, section 17 of the CALA was said to provide authority for the procedure.

As the procedure has now been superseded by the provisions of the Land Act the audit did not examine he legal basis of common law surrender and regrant.

7.7 NO FORM OF APPLICATION

Except for an application to the Supreme Court under section 11A of CALA here was no form for an application to vary the purpose of a lease under any of these approaches. The AGO was advised by the Department that no set form was required. Usually a letter was provided but an oral inquiry could be treated as constituting an application for the purpose of timing the administrative processes which followed.

The nature of what might be accepted as a variation was often determined in discussion between a lessee and the Department. There was apparently a close relationship between lessees and the approving authority which was influenced by an approach of making the system work.

Forms relevant to the various types of applications that may be made under the Land Act have been administratively determined.

7.8 FEBRUARY 1990-APRIL 1992

This period was an interim period, following the announcement of reforms to lease administration and prior to the commencement of the Land Act 1991.

CALA continued as before and variations of leases could be considered under section 11A. Section 11A was amended to allow for, amongst other things, applications to the Court to 'vary, amend, omit, or add any provision, covenant or condition of a lease'.

The betterment regime was also amended in anticipation of presentation of the Land (Planning and Environment) Bill to the Assembly, in line with the Government's policy (see Appendix 2).

Section 72A RPA and surrender and regrant continued to be the only mechanisms by which non-CALA leases could be varied.

7.9 FROM 2 APRIL 1992

The Land (Planning and Environment) Act 1991 (Land Act) came into effect on 2 April 1992. This Act repealed the various land and lease enactments which had been in existence, such as the City Area Leases Act and the Real Property Act, and replaced them with a single enactment covering all aspects of land and lease administration.

The Land Act established new procedures for the assessment of an application to vary a lease and the subdivision and consolidation of land. It initiated processes for accountability and transparency through its public notification requirements and the rights of affected parties to object and appeal. It provided for applications to be made in a formal manner and required the Government to keep, maintain and provide public access to a register of applications, approvals and orders.

There were statutory timeframes within which applications had to be approved or refused.

7.10 CONCLUDING "OLD' APPLICATIONS

The Land Planning and Environment (Consequential Provisions) Act 1991 (which will be called the *Consequential Provisions Act*) also commenced on 2 April 1992. It set out various transitional provisions including arrangements for the management of existing applications under the old law and other transitional provisions.

Section 26 of the Consequential Provisions Act provided that an application which had been made but

not determined (under a repealed Act e.g. the CALA or the RPA) was to be continued to be dealt with under that repealed Act.

By 2 April 1992, Departmental officers were handling "applications for lease variations" in three separate streams-

- applications made pre-February 1990;
- applications made between 22 February 1990 (or 3 April 199 1) and 2 April 1992; and
- applications made on or after 2 April 1992.

The number of lease variation applications was high. An average of 40 applications were in train in the Department from April 1992 onwards. Seven or eight new applications were received each week. As there was no form of application for a lease variation prior to the Land Act, large numbers of proposals or enquiries about variations which had been made before February 1990 were treated as valid applications made under the pre-1990 regime.

7.11 SUNSET CLAUSE

The Land (Planning and Environment) (Consequential Provisions) Act 1991 was amended in 1995 with section 26 providing a "sunset clause" for these old applications. Section 26 deemed refused, on 1 July 1995, any application made under a provision of a repealed Act, where that application had not been determined.

At present, PALM is undertaking a review of all the Disallowable Instruments under the Land Act which deal with the grant of leases to community, sporting and church groups. Among other things, the review will address in detail questions of eligibility for the

grant of land on concessional terms and provisions for transfer with Ministerial consent.

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8. APPENDIX 2 - CALCULATING BETTERMENT

8.1 CONCEPT OF BETTERMENT[10]

The concept of betterment payments as a mechanism for reducing profit taking in a leasehold system is discussed in the Stein Report Chapter 15. Put briefly, it is considered that, in a Crown leasehold system of land tenure, a lessee who obtains a variation of the purpose for which a lease has been granted such as to increase the value of the lease on resale should not be entitled to retain the benefit of that increase in value. This increased value is called betterment.

8.2 CALCULATION OF THE AMOUNT OF BETTERMENT PAYABLE

As is outlined in the Stein Report there are various competing views about the appropriateness of the concept of betterment. These views have affected the application of betterment principles in the ACT. In particular, the reduction of the amount of betterment which would otherwise be payable has been controversial. The requirements for calculation of betterment in the three periods referred to previously are of significance to a consideration of the dealings the subject of this report.

The calculation of the amount of betterment payable for a lease variation has been based on two elements:

- the added value to the lease arising from the variation; and

[10] As mentioned earlier, the term betterment is used to describe lease variation charges in the CALA and the Land Act.

- the proportion of the added value which is required to be paid as betterment.

Between 1990 and 1994 there were four methods for calculating the amount of betterment payable, reflecting changes to the Acts and Regulations over that period. The four methods are known as Method A (pre- February 1990), Method B (February 1990 to April 1992), Method C (April 1992 to September 1993) and Method D (after September 1993).

8.3 METHOD A - PRE-FEBRUARY 1990

The formula for determining the amount of betterment for CALA leases was in accordance with subsections 9A, 9B and 11A of the CALA which were unchanged since 1970. Betterment payable on a variation was calculated for all leases at 50% of the added value of the land following the variation, less $1,500.

Betterment for purpose variations under non-CALA leases was not bound by the provisions of section 11A of the CALA. These arrangements reflected the type of lease involved and whether or not it was a land rent lease. Nevertheless, it is understood that the CALA betterment of 50% of the added value was usually applied.

8.4 ADDED VALUE

The method of calculation of added value was determined by s 11A of the CALA. The calculation took into account the current market value, including improvements, on the day before and the day after the variation. The before value was to assume no variation in lease purpose. The before value was then deducted from the after value and half this figure less $1,500 was the betterment payable.

8.5 FEBRUARY 1990 -APRIL 1992 - METHOD B

From 3 April 1991 (retrospective to 22 February 1990) betterment on CALA leases was to be determined according to the City Area Leases (Betterment Charge Assessment) Regulations (Betterment Assessment Regulations). The Regulations permitted a reduction on the amount otherwise payable on a sliding scale based on the length of time that a lease had been held. It also provided for a different scale according to whether the lease was a full charge lease or was concessional.

In brief, this last distinction turned on whether a lessee had paid the full value of the lease either by way of a single premium or by way of land rent. Many clubs and community lessees had received a benefit by way of the purchase of a lease at a reduced value or had paid a lower rental. It was considered that, on variation of their lease, these lessees should not receive the same reduction in betterment as lessees who had paid the full value for their lease.

Many leases, including 'concessional leases', were not CALA leases and therefore not subject to the Regulations. It is understood, however, that betterment was calculated using the CALA rules.

8.6 ADDED VALUE

Section 11A of the CALA was amended to provide that the value of the land before and after the variation was to be calculated by reference to its unimproved value as determined in accordance with the Rates and Land Tax Act 1926. This meant that the value of improvements was to be disregarded but the before value could reflect development potential.

8.7 FROM 2 APRIL 1992 - METHODS C AND D

A new method and rates for the calculation of betterment was fixed by the Land (Environment and Planning) Act and the Land (Environment and Planning) Regulations.

The Land Act introduced a new method for calculation of value. The previous assumption that leases would extend for 99 years was omitted. The sliding scale of reduction that applied previously in the CAL Regulations was generally unchanged in the Land Regulations.

8.8 ADDED VALUE

Methods C and D varied in the way in which added value was determined.

8.9 2 APRIL 1992 TO SEPTEMBER 1993: METHOD C

Under method C the added value was based on the unimproved value of the land, assuming no land rent was payable. The unimproved value was based on market evidence. The potential for redevelopment, if established by market evidence, was included in the before value of the block.

8.10 SEPTEMBER 1993 TO DATE: METHOD D

This method reverted to the pre-1990 definition in that it assumed no variation to the lease purpose would occur during the life of the lease. The after value remained the unimproved value immediately after the variation was approved.

8.11 BETTERMENT ON PRE-1990 APPLICATIONS

Under the Land (Planning and Environment) (Consequential Provisions) Act 1991, the City Area

Lease Act and other lease acts were repealed as from 2 April 1992. However section 26 of the Consequential Provisions Act provided that a repealed Act should apply to an application made but not determined under that Act before the commencement day (of the new legislation). This provision enabled applications still in the pipeline to continue under the old arrangements.

In this case the amount of betterment was determined as if the application were a pre-1990 application and thereby to be dealt with under the CALA by virtue of the application of the Consequential Provisions Act.

For the calculation of betterment, this transitional provision was important. Under the old rules, betterment was calculated as 50% of the increase in the value of the property following the change in lease purpose.

Under the Land Act and Regulations the betterment is calculated as being the full amount of the increase less a remission amount based on the length of the lease and the type of lease (full charge, concessional or free of charge).