

CANBERRA

TWO ISSUES IN URBAN DEVELOPMENT

PROGRAMME

Date of Discussions: Friday, 8 October 1971

Venue: Conference Room, 10th Floor, Electricity House, Canberra.

Time: 9.30 a.m. to 5.00 p.m.

This allows about $\frac{1}{2}$ day for each topic.

Lunch: In view of the scope of the two subjects for discussion, arrangements have been made for lunch to be served in a room adjoining the Conference Room.

Tea/Coffee: Morning and afternoon tea/coffee to be served in the Conference Room.

Topics for Discussion:

1. What techniques can be contemplated for the release of a major retail centre (mall) site to ensure the best return to the land owner (i.e. the Commonwealth acting for the people of Australia) consistent with viable and attractive retailing and protecting the interests of the consumer?
2. What policies and procedures should be adopted by the Commonwealth upon expiry of leases? What new conditions or premium payments should be demanded and how can one devise equity in treatment between lessees who get a renewal and those who do not?

CANBERRA - TWO ISSUES IN URBAN DEVELOPMENT

DISCUSSION ON 8 OCTOBER 1971

LIST OF THOSE ATTENDING

Sir Henry Wells	Past Chairman, U.K. Land Commission Past Commissioner for New Towns (U.K.)
? Mr Justice Else-Mitchell	Supreme Court, N.S.W.
? Professor R.C. Gates	Department of Economics, University of Queensland
Professor H. Arndt	Department of Economics, A.N.U.
Dr M. Neutze	Urban Research Unit, A.N.U.
Mr J.H. Pead	Chairman, A.C.T. Advisory Council
Mr J. Crockett	Jones, Lang Wootton
Mr B. Brammall	Canberra Times
Mr D. Burnett	Lend Lease Corporation Ltd.
Mr L.W. Engledow	Department of the Interior
Mr C. Douglas	Department of the Interior
Mr E. Wigley	Department of the Interior
Mr P.C. O'Clery	Department of the Interior
Mr R.J. Corrigan	Department of the Interior
Mr R. Lansdown	National Capital Development Commission
Mr H. Westerman	National Capital Development Commission
Mr C. Booth	National Capital Development Commission
Mr J. Howard	Director of Valuations, Commonwealth Taxation Office

AN ISSUE IN URBAN DEVELOPMENT

DEVELOPMENT OF A MAJOR

RETAIL CENTRE

What techniques can be contemplated for the release of a major retail centre (mall) site to ensure a satisfactory return to the land owner (i.e. the Commonwealth acting for the people of Australia) consistent with viable and attractive retailing and protecting the interests of the consumer?

This paper has been prepared for discussion purposes only and does not represent the official views of the Department of the Interior in any particular respect.

October 1971

INTRODUCTION

At the time the Woden Centre was leased the A.C.T. Advisory Council expressed concern at the method by which the lease was offered and suggested that the Canberra consumer would have been better served had the centre been developed by a publicly owned authority.

It was suggested that the Commonwealth was profiteering by the method of offer and that the concept of offering major retail sites in single leases for mall-type development, combined with the existing auction system, created a climate in which a single developer could develop and a single major retailer could occupy all major comparison shopping centres.

It was also argued that the community as a whole could benefit from a wider range of goods and services which might be achieved through public administration of such a centre and the profits which could be used for community purposes.

PRESENT LEASE SALE TECHNIQUE

Sites for business purposes in Canberra are generally offered for lease at auction or by application subject to reserve prices set at 75% of site value.

The lease is granted to the bidder who offers the highest amount provided the bid is not less than the reserve. There is no procedure by which the successful applicant can be selected on the basis of any other criteria.

The conditions of sale and lease documents for business sites specify:

- A minimum time in which a building costing not less than a specified amount will be commenced and completed.
- The purposes for which the land may be used.
- Any special building requirements, including mandatory facades, minimum standards of architectural design, car parking spaces required, etc.
- Any special requirements for construction of pedestrian ways or plazas on the lease or on an adjoining public area.
- General covenants relating to the maintenance and repair of buildings and undeveloped portions of the site.

IMPLICATIONS OF PRESENT SYSTEM

A feature in the offer of retail centres since 1960 has been the high competitive premiums offered by bidders. It is

difficult however to state with any authority whether high premiums are a consequence of already high prices or high prices are a reflection of high land costs.

CONSUMER

The sub-tenure systems generally adopted by developers of large malls is designed to maximise profits. One system is:

- The developer purchases a lease at auction.
- He negotiates with principal tenants and enters into agreements.
- After completion of the building development, he "sells" the lease (plus improvements) to an investor.
- The mall is then sub-leased back to the developer (lease-back agreement) at a basic rent plus a percentage of the sub-lessee's net income.
- The developer would then manage the variety of different stratas of tenancy and sub-tenancy agreements. A share in profits would generally be taken at each level.
- At the lowest level, the retailer pays a base rental on a per square foot basis plus a percentage on turn-over.

WHAT ARE THE ALTERNATIVES?

It is not practicable to put out ^{A NUMBER OF SMALL} ~~many~~ sites for retail purposes as this leads to higher development costs. The concentration of retail developments into malls can achieve maximum efficiency in land use, finance, building resources, facilities such as air conditioning, etc. To the consumer, this can mean lower prices and a wider range and depth of merchandise within a single integrated centre.

Aggregations of small stores are a thing of the past, the visual impact of the shopping area is important as are provisions for parking, traffic and pedestrian access.

Accepting that the single developer mall style development is the most effective means of development, the principal alternatives include:

- (a) Direct Commonwealth construction and administration of the mall.
- (b) Direct Commonwealth construction and administration with funds provided by private enterprise or by sale and lease-back.
- (c) Vary the present leasing techniques in order to achieve a percentage profit from a private enterprise developer instead of a cash premium.
- (d) Vary the present leasing techniques to provide for more direct Commonwealth involvement in the management of the centre.

These possible methods while having some potentially beneficial features, could not achieve the desired objective in an acceptable manner. In each case control of the centre would be almost totally the subject of direct Ministerial administration or, alternatively, there would be no control at all over who obtained the lease or the identity of the head lessee.

It ^{could be} ~~is~~ appropriate therefore that the centre ~~be~~ be developed and administered by a public Authority established for the purpose.

AN AUTHORITY

An Authority might comprise a Board of 5 persons appointed by the Governor-General, including a chairman, one advisory counsellor, one public servant and two persons having at least seven years experience in retailing land development or associated business activity.

One member of the Board could be a permanent executive officer responsible for carrying out the Authority's responsibilities. Qualified consultant agencies could be employed by the Authority where appropriate.

Functions

The functions of an Authority could include:

- (a) to finance, design and construct the Belconnen retail complex (mall) and associated facilities;
- (b) to carry out the management of such a complex; and
- (c) to provide such consumer facilities as are considered necessary for the efficient operation of the complex.

How it would Operate

An Authority could achieve its objective broadly in the following manner:

- (a) Accept a lease from the Commonwealth which contains the required purpose and land development covenants and contract to pay the full reserve price for the lease (100% of the market value of the lease).
- (b) Invite applications publicly for leasing of the major stores on a "rate for space" basis and enter into provisional rental agreements with successful applicants.
- (c) Invite tenders for provision of development finance and, in return for an assignment of the ground lease, accept the necessary capital and a sub-lease over the property, subject to a rental equal to the percentage rate of interest on capital tendered by the finance house.

(Effectively the Authority would sell the lease, rent it back and build the complex with the proceeds from the sale - the complexity of the procedure merely ensures a reasonable level of security and return to both the financier and the Authority).

- (d) Arrange for the design and construction of the complex.
- (e) Lease the remaining retail space to private enterprise retailers, as would any other manager of a mall, to achieve balanced shopping facilities.

Role of Private Enterprise

Private enterprise could:

- (a) provide the construction finance;
- (b) design and construct the complex;
- (c) provide consultant services;
- (d) operate all shops and facilities.

The Authority could co-ordinate construction and manage the centre's sub-lease (tenancy) agreements, etc.

The Reasons for Having an Authority

Broadly these are:

- (a) To place some restraints upon a continuation of present trends in the Canberra comparison shopping and development market and provide for greater community participation in a development of this kind.
- (b) To ensure, if possible, that a greater diversity of comparison goods and consumer services is available in Canberra.
- (c) To modify the rental formulas used at present and attempt to create a climate which would tend to reduce the upward pressure on rents.
- (d) Provide some return to the community by way of profit. This could be about 3% of capital cost (even though the Authority would not have provided any capital itself) and on a \$20m scheme would represent about \$ $\frac{1}{2}$ m per annum.
- (e) The way in which the Authority would be expected to operate would be basically similar to that now used by development companies (see Attachment A).

Why All This Cannot Be Readily Achieved Under
The Present System

- (a) If applications or bids are called for a lease the Minister is only empowered to accept the highest offer for a lease - he cannot pick and choose.
- (b) A direct grant without public offer would draw extreme criticism and implied malpractice by the administration.
- (c) Any conditions limiting those entitled to bid would have to be watertight. This would be virtually impossible to achieve bearing in mind the ability to form subsidiary companies and the ease with which even apparently independent companies can later be taken-over (e.g. the case of the hotel site now being built-on in London Circuit).
- (d) Ministerial control over transfers, assignments or sub-leases obtained through covenants in the lease could be defeated by a transfer such as in (c) above, and would be virtually impossible to control adequately under existing legislation. There could also be a conflict with "companies" legislation.
- (e) New legislation vesting the Minister with the necessary powers would be unlikely to be acceptable to Parliament, it is more likely that legislation could be drawn up for the establishment of an Authority which would avoid any adverse comment from Parliament.

How Far Should The Proposal Extend

Broadly it is considered that a major part of the community interest could be served by a "once off" development. The success of this experiment would obviously determine future action.

ATTACHMENT A (1)

POSSIBLE LEGISLATIVE FRAMEWORK FOR A TOWN CENTRE
COMPLEX ADMINISTRATIVE AUTHORITY

The Authority

1. The Authority should not be regarded as the servant or agent of the executive government; the extent of administrative or ministerial control should be the least possible.
2. The Authority should have broad powers to carry out financial negotiations, accept and grant sub-leases, undertake principal design work, let construction and other contracts and be responsible for long term management of the centre.

ESTABLISHMENT AND CONSTITUTION OF AUTHORITY

3. The Authority should be a body corporate with perpetual succession; have a Common Seal; be capable of acquiring, holding and disposing of real and personal property; and be capable of suing and being sued in its corporate name.

Constitution

4. The Authority should consist of a Chairman and four other members.
 - (a) The Chairman should be a person appointed (by the Governor-General) to hold Office for a period not exceeding a specified number of years.
 - (b) One member should be an elected member of the A.C.T. Advisory Council.
 - (c) One member appointed by the Governor-General should be a permanent officer of the Commonwealth Public Service.
 - (d) One member should be appointed (by the Governor-General) and should be a person having at least seven years experience in retailing, land development or appropriate business activities.
 - (e) One member (appointed by the Governor-General) who shall be executive director of the Authority having the responsibility to carry out the directives of the Board.

ATTACHMENT A (2)

5. The Authority should appoint one of the members to be Deputy Chairman. Appropriate provisions should be made for the filling of vacancies and for deputy members.

Remuneration

6. Members of the Authority should be entitled to receive fees and allowances (not full time occupation).

Removal and Resignation of Members

7. The Legislation should provide for the Governor-General to remove a member from Office for inability, inefficiency, or misbehaviour or in circumstances where a member of the Authority has a significant financial interest in any sub-lease, tenancy or contract granted by the Authority. Any member should be entitled to resign his Office in the normal way.

8. Members should also be removed from Office in cases of bankruptcy, etc., continual absence from meetings of the Board or failure to comply with the normal provisions relating to declaring an interest in any lease, sub-lease or contract. In the latter case the member should not take part in any deliberations if he, or a company in which he has a substantial interest, is concerned with any contract or lease under discussion.

Meetings of the Authority

9. The Chairman of the Authority should convene such meetings as are necessary for the efficient conduct of its affairs, provided that these are held at not less than three monthly intervals. In addition, meetings should be held on receipt of a written request signed by any member of the Board. The quorum at any meeting of the Board should be three members including the Chairman or his deputy.

Delegation by Authority

10. The Board should be able to delegate its powers to the Executive Director (some restraint may be necessary in regard to the granting of assignments, major sub-leases and principal construction contracts).

FUNCTIONS AND POWERS OF THE AUTHORITY

Functions of Authority

11. The functions of the Authority should be:

- (a) to finance, design and construct a retail shopping complex and associated facilities;
- (b) to carry out the management of such a complex; and

- (c) to carry out all functions in relation to the promoting and provision of consumer facilities as are considered necessary for the efficient operation of the complex.

Powers of the Authority

12. The Authority should have the power to do all things necessary or convenient in connection with or incidental to the performance of its functions and all things related to the performance of its functions as the Authority is authorised to do by any law of the Territory. The Authority should enable it to:-

- (a) accept leases of lands from the Commonwealth at nomination reserve prices;
- (b) negotiate sub-leases;
- (c) prepare detailed design proposals for the complex;
- (d) prepare estimates of costs and feasibility studies;
- (e) invite tenders for the provision of development finance;
- (f) enter into an agreement(s) to assign lease(s) upon completion of development, in consideration of development finance;
- (g) let contracts for the construction of the complex;
- (h) invite applications for rental space and enter into tenancy agreements;
- (i) carry out the continuing operations of the Centre and do all things necessary to effect good management and promote the interests of consumers.

LAND

13. The Authority should be empowered to accept leases of land from the Commonwealth, to assign that land either in an improved or unimproved state provided that the agreement of transfer stipulates that the purchaser will grant to the Authority a sub-lease of that land for a term not less than the unexpired term of the Crown lease, less three days.

14. The Authority should not be able to enter into any agreement relating to any land other than lands which have at some time been leased directly to it by the Commonwealth; it should not be able to bid for land offered at auction or by application. The Authority should only be permitted to carry out works beyond the confines of such land, as may be permitted in writing by the Minister for the Interior on behalf of the Commonwealth.

15. The Authority will at all times be subject to the provisions of A.C.T. legislation, with special reference to the Buildings (Design and Siting) Ordinance, Building Code and Leasing Ordinances; except that, in respect of any lease granted under the City Area Leases Ordinance the provisions relating to the restriction on transfer of unimproved land and to the transfer of land on which the reserve price or part thereof has not been fully paid, would not apply.

STAFF

16. The Authority should be empowered to appoint such officers and engage employees as considered necessary. It should be enabled to obtain the services of Commonwealth Public Servants by arrangement with the Public Service (Officer's Rights Declaration Act should apply).

FINANCES OF THE AUTHORITY

17. . The Authority should obtain initial capital from the Commonwealth. This would be normal working capital and not the capital necessary to construct and develop the Centre;
- . Subject to approval of the Treasurer, the Authority would have the power to borrow any moneys at such interest as are necessary for the efficient execution of its functions, from any source;
 - . The Authority would be required to pay the Reserve Price for any lease in accordance with the conditions of payment agreed at the time the lease was offered;
 - . The Authority would be required to keep a bank account, etc;
 - . The profits of the Authority would be used to repay initial finance provided by the Commonwealth. Any balance over and above such repayments should be applied in such manner as determined by the Authority or as directed by the Minister for the Interior or the Treasurer;
 - . The Authority would be required to keep proper accounts and be subject to audit.

GENERAL

26. The Authority would be required to make an annual report to Parliament.