The primary source for this paper is "Canberra in Crisis" by Frank Brennan, 1971

The Road to Leasehold – the origins of the Canberra leasehold system.. by Leo Foley / March 2008

Canberra is the offspring of politics and a social ideal.

- The politics were those of Federation and nation making.
- The ideal was one of social and economic freedom.

In the early years of Federation, there was a widespread belief in the need for government ownership of all the land within the proposed federal territory. It was considered that the taking of the unearned increment for the people would make the capital city a paying proposition within a few years. In 1901, the Prime Minister, Edmund Barton spoke of the territory to be chosen for the seat of government: "we shall be able to get the land on fair terms, lease it on fair terms and still make a profit for the Commonwealth".

These were the years when the words 'unearned increment' were basic to any discussion of leasehold tenure in the proposed Federal Territory. As King O'Malley (Labour, Tas) saw it, 'Every dollar spent by the people of Australia in the erection of that capital will create an unearned increment in the property for miles around. The question is, are the people of Australia prepared to spend thousands, yea millions, and then lose the benefit of their expenditure? I say the unearned increment created by the expenditure of the people's money belongs to the people…"

The Constitution

Section 125 of the Commonwealth of Australian Constitution Act provided for the seat of government to be within territory belonging to the Commonwealth. In 1901, the Parliament moved "… to secure an area of not less than 1000 square miles…, the ground only to be let on leases to utilisers…"

Later, Section 9 of the Seat of Government (Administration) Act 1910 provided:
"No Crown land in the Territory shall be disposed of for any estate of freehold".

Legislators of the time were determined that they "shall not play into the hands of the speculators". Instead, Edmund Barton, first Prime Minister of Australia, termed the arrangement as a matter of good business: "we shall lease it on fair terms and still make a profit for the Commonwealth". .

Ideology rode high. Austin Chapman sought a "brand of municipal socialism which would present to the world a spectacle not previously seen in; an entire city, and all connected with the city owned and managed for the people of Australia."

The development of Canberra was informed by the experience of Washington in the United States. Reference was made to the land in Pennsylvania Ave which, while locked up in private hands for 100 years, was said to have increased in value by hundreds of millions of dollars through the unearned increment.

Most Australians supported the development of a Territory for the seat of government. But no one was willing to pay for it. What better way to escape the dilemma than to establish an onus on the yet unknown residents of the as yet unselected Territory to meet the cost of developing the capital.

Some optimistic members of Parliament considered that the capital city would be a paying income from land rent would almost certainly overtake the expenditure.

By 1920, however, political parties had lost their zeal for land tenure reform. Parliament was uninterested, but for the lone voice of John Grant, who declared himself to be a disciple of Henry George.

The City Leases Ordinance 1921 empowered the Minister to grant leases of land within the city area for periods not exceeding 99 years. The basic provisions were:

- an annual rent of 5% of the unimproved value of the land;
- the value of the land to be reappraised after 20 years;
- the construction of a building, in accordance with the lease, was to be commenced within one year and completed within two years of the granting of the lease.

John Grant moved to disallow the 20 year revaluations, saying that a five-year period between reappraisals was essential. This later proved to be an important point.

The first sale of leases was held in December, 1924. Residential land was sold at auction for £400 pounds, but the bid prices merely fixed the capital values, so all the purchaser paid at auction was the first year's land rent, which amounted to 5% of the capital value.

In 1925, the seeds of destruction for the leasehold system were sown. The Federal Capital Commission consented to leases being transferred without a building being erected on the leased land. Parliament after Parliament had previously insisted that land in the Territory should be made available to land users only. That restriction had been intended to keep land speculators away, but the door was opened allowing the land speculators to enter. It was the greatest of many mistakes made by the Commission.

By the end of 1929, 485 leases had been granted. Of this number, 186 had been surrendered. But around 130 had been transferred by speculators, a very large proportion of the existing leases.

Senator Elliott, a fierce critic of the land rent system, attempted to obtain a site for his legal practice. He was informed via the commission that there was no land for sale. Local agents, however, advised that there were a great number of sites which previous purchasers were willing to sell. He purchased leases for four blocks from two Sydney woman, who had secured them just four months earlier for the first year's land rent of 20 pounds per block (80 pounds). He paid them 1100 pounds for the four blocks.

In 1928, the head of the Federal Capital Commission (Butters) informed the Parliamentary Public Accounts Committee that the residential blocks auctioned in 1924 were really "a substantial gift by the Commonwealth Government to the purchasers".

The majority of Australians were either ignorant of this orgy of land speculation or indifferent. Canberra was seen as faraway and artificial, and people had grown indifferent to land and its administration.

The system was under pressure on other fronts too. Residents of Canberra found they could not buy into the property market in Melbourne or Sydney, because they had not benefited from the capital gain (the unearned increment). One witness claimed that the leasehold system "might not

be a disadvantage if the whole of Australia were under leasehold, but the difference in tenure is against Canberra."

Another witness, commenting on purchasers who had paid more than the going rate for a lease. claimed that "the Federal Capital Commission is virtually in the position of trustees for the people of Australia. As such it should take care of the assets committed to its care, but at the same time it should protect the beneficiaries from their own folly and not take advantage of their weakness."

The Commission critics of the time were attacking the whole concept of leasehold, calling for its abandonment. John Grant died in 1928, and with him, the ideology of the founders was gone.

The demise of the system: lessons for the future

The leasehold system suffered from many faults and failures. A few of them are now listed to emphasise the importance of introducing a complete system from the start, rather than assuming that those who will take over its administration will have the knowledge and commitment of the founders.

A river is at its purest closest to its source

The absence of any published works elucidating basic principles of the Canberra leasehold system has always been notable. As the years passed, the land administrators' knowledge and appreciation of historical origins and development of Canberra's leasehold system lessened.

From the beginning, absolute principles should have been laid down:

- the lessee is entitled to the undisputed occupancy of the leased land and to its exclusive use during the currency of the lease;
- the lessee is entitled to nothing more or nothing less;
- in particular he is not entitled to increments in the value of the land accruing over the term of the lease.

Treasury, by the late 1950s, had little knowledge of the difference between freehold and leasehold, and was not interested in the difference, preferring to regard them both as being equal sources of revenue, without distinction.

The land critics of the 1950 — 1970 period differed from the critics of the Federal Capital Commission period, who attacked the concept of leasehold itself. The more modern-day ones attacked the administration or operation of the system. They found fertile ground.

Dark clouds gathered over Australia's experiment. By 1970, the rosy dawn predicted by its sponsors began to look suspiciously like a sunset. The leasehold system of land tenure had not failed in itself but its operation was obstructed and destroyed by indifferent administration.

The 'Purpose Clause'

In Canberra, the planner was given the power, through the 'Purpose Clause' of the lease, to control land use down to minute particulars. Such power and such arbitrariness was unnecessary.

The purpose clause should merely have indicated the general purpose for which the leased land may be used, without being too particular. If, for example, the planners arrange only one butcher, or one foodstore in a suburban shopping centre, it creates a monopoly affecting cost and quality of service. Abolishing competition is not town planning. It is more akin to a system of licensing of businesses.

Valuation problems

- Supply: the Commonwealth is the landowner, controlling the number of blocks available for purchase, making them relatively scarce or plentiful. Prices rise if blocks are scarce.
- Demand: the Commonwealth can also affect demand to some degree by transferring persons to and from the city. This was important in Canberra's formative years.
- It is anomalous that the authority who values the land is also the land owner and the receiver of rents. Valuation should be thoroughly independent of all other Commonwealth agencies and responsible to Parliament.

There is no land market in Canberra in the same sense as there is in a freehold area.

The Premium

Premium payments have been allowed to obtain land. It departs from the principle that no capital outlay is required to become the holder of a Canberra lease – just a year's rental.

20-year reappraisals

In early days, it was necessary to make the lease as attractive as possible by leaving the rent at a modest and unaltered level for a long period. 20 years was fixed. By 1970, the same justification no longer existed. Rents set in 1952 may have been reasonable, but by 1957 they were low, very cheap by 1962 and peppercorn in 1969.

Rates in Canberra

Each block received two separate valuations:

- a valuation for land rent purposes, and
- an annual valuation for rating purposes.

Public servants seconded to the capital paid not only their house rental, but land rent and rates as well. They were disgruntled.

In 1928, a Board of Review considered the question 'why were any rates at all imposed in Canberra?' That is, in a land rent system, why were rates necessary?

The justification for rates being levied in Canberra was found to be that since rates were payable in other parts of Australia, therefore they should also be paid in Canberra. No consideration was made of the payment of land rent

A misunderstanding of the concept of rates lies at the heart of the problem. Rates levied on the unimproved value of land are, in the words of the late Lord Goshen, rent charged in favour of the community. Essentially, they are no different from the land rent paid for a crown lease.

In a progressive community land values have a constant tendency to rise. If the rent is fixed for 20 years, annual rates increases could be regarded as a supplementary rent. However, this is not the concept of rates that is popularly held.

Rates are regarded as a payment for municipal services and they are justified on the ground that municipal services add value of the land. In Canberra, where the annual rental value of unimproved land should be entirely absorbed by rent, rates were an absurdity. It is impossible to separate Commonwealth and municipal expenses so there is no basis for the level of rates to be estimated.

Rates in Canberra should have been abolished and the land rent remain as the sole payment for all leased land.

History rewritten

In 1965, the joint committee was informed that "the originators of the scheme never contended that the Commonwealth must show a profit from the venture…" That is how history can be rewritten. Not one word in the public records of Australia will be found to support that statement. In fact, it is the complete opposite of the original objectives of the policy of leasehold tenure.

Confused minds, freehold minds and small minds proved inadequate to implement the grand undertaking. It led to the demise of the system.

John Gorton's changes

Under pressure from lessees, in a by-election, The Prime Minister, John Gorton, put forward changes to the system that took effect from 1971.

- the payment of land rent ceased;
- the reappraisal of land values every 20 years for rental purposes ceased; and
- the income lost in consequence was to be made up by increased rates.

The changes signalled the complete breakdown of the administration of Canberra's leasehold system. Although leasehold tenure remained, the system was gutted. Leases were sold outright at auction, with no annual rent payable (5c per annum, if and when demanded).

It was estimated that the government transferred $100 million in equity to lessees at that time, resulting in the loss of an important source of revenue.'

What of the future?

By 1970, there were 23,000 lessees in Canberra. But what of the next 23000 lessees?
All land has a rental value and if the Commonwealth does not get this value, the lessees will. The rent will be capitalised into land prices. Hence, all Canberra leases sold at exactly the same price as freehold.

Lessees pay their rates which need not exist, and they pay for their homes, shops and offices against the ever rising barrier of high land costs. In short, instead of paying land rent to the Commonwealth, they pay interest to the mortgagee companies for the money to build.

Should the Commonwealth ever require to resume leased land for public purposes, it will have to buy back at enormous cost land which has been so lightly given away.

A tremendous responsibility rested on parliamentary representatives to see that the interests of Australians and their children's interests were protected. They should have referred to Australia's formative years when the words unearned increment were basic to any discussion of leasehold tenure in the proposed Federal Territory. As King O'Malley said at the Federal convention held in Adelaide in 1897: "the unearned increment created by the expenditure of the people's money belongs to the people…" The experiment failed due to their lack of understanding.

Every decade the land rent should be increasing substantially and in one lifetime if the leasehold system was properly administered and land rent collected in the manner suggested, Canberra could be one of the richest cities in the world. It would be unique in that it would have no municipal rates and far from being a drain on Commonwealth finances it could begin repaying to the Commonwealth the capital expenditure of past years. This was the vision of its founders.

Postscript

Extract from "Selling off the farm: will the ACT find cause for regret?" Julie P. Smith, 1997(?)
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Public leasehold helped build Canberra with high urban amenity. It kept land cheap and allowed planners to direct development and jobs to new towns, rather than inflating inner-city property

values by squeezing development into an increasingly costly and inaccessible central business district.

Disquiet over lease administration has grown since ACT self government in 1989.

In 1995, following exposure of substantial errors in calculating charges for redeveloping cheap commercial or community leases, the ACT government appointed a judicial inquiry into lease administration, headed by Justice Stein of the NSW Land and Environment Court. (see below)

The Stein Inquiry identified a litany of woes in ACT lease administration. It recommended restructuring the land and planning bureaucracy to improve management of the land asset. It also recommended a spill of senior positions, noting the importance of professionalism and integrity required by a public leasehold system.

The inquiry findings noted a 1983 report by World Bank economist William Doeble which stated: "Since urban land is such a valuable commodity, and particular locations command semi-monopolistic prices, the temptations for corruption and favouritism are great. Even in honest administrations there is constant temptation to use favourable lease terms as a hidden subsidy to deserving groups or individuals."

The inquiry also rejected perpetual leasehold – sought by commercial property owners who claimed public leasehold discouraged investment.

In 1996, the ACT government passed legislation rejecting the inquiry's major recommendations. ACT Labor supported the Liberal government's legislation which changed the charge for renewing public leases. Instead of a 10 per cent fee, as recommended, renewal would be free.

These changes cut the economic flesh off public land ownership in the ACT, giving a potential windfall of $115 million to $1.2 billion to commercial leasees. The greatest benefit from this goes to central Canberra commercial property owners.

Extract from "Bills Digest No135, 1997-98"; Australian Parliamentary Library

The Stein Report (1995) rejected conversion to a system of leases in perpetuity (or freehold) because of the primacy of lease purpose clauses in controlling planning and development in the ACT. Justice Stein of the NSW Land and Environment Court also argued that conversion to

freehold or perpetual leases would affect the ACT Government's ability to extract a charge for development rights ('betterment') on ACT land. He said that:

"Since the Government's residual interest in the land is diminished (by perpetual leasehold), it will be in a weaker position to exact a betterment charge. The failure of the NSW land development legislation in the early 1970s was largely a product of the opposition of private landholders to accepting a development rights levy within a freehold tenure system. This experience is indicative of the lessening of political control which likely would follow conversion to a system of perpetual leasehold in the ACT."