

Australian Capital Territory

Planning and Development (Reduction of Change of Use Charge) Policy Direction 2009

Disallowable instrument DI2009–137

made under the

Planning and Development Regulation 2008 section 177

EXPLANATORY STATEMENT

Overview

The instrument sets out a policy direction pursuant to section 177 of the *Planning and Development Regulation 2008* (the regulation) for determining the circumstances in which the planning and land authority (the authority) must apply the charge of use charge at rate of 50% for a lease variation, for 12 months from 1 June 2009.

The instrument is a Disallowable Instrument under section 177(2).

Policy objective

In the 2009-2010 Territory Budget the Government announced that it would introduce a range of initiatives to help to generate additional economic activity and investment, thus lessening the impacts of the global economic slowdown on ACT businesses and industry. One of the budget initiatives was that the Government would commence work on the codification of change of use charges. Pending the outcome of the work necessary to implement this reform, the rate of the change of use charge would be reduced from 75% to 50% for a period of 12 months from 1 June 2009.

Authorising law

Section 276 of the *Planning and Development Act 2007* (the Act) provides that the authority must not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge worked out by the authority, less any remission under section 278, plus any increase under section 279. The change of use charge is worked out under section 277, which sets the rate at 75% of the uplift in value.

Section 278 provides for the authority to remit all or part of a change of use charge for a variation of a lease under section 276 as prescribed by regulation.

Section 278(2) provides that a regulation may prescribe the amount to be remitted.

Section 175 of the regulation provides for the remission of charge of use charges generally. Section 175(1) sets out the circumstances when the authority must remit all, or part of, a change of use charge for a variation of a lease. A circumstance can be stated in a policy direction (section 175(1)(b)). The amount of the change of use charge to be remitted is an amount worked out in accordance with a policy direction, if one exists, or, in any other case, an amount the planning and land authority decides is appropriate in the circumstances (section 175(2)).

Section 177 of the regulation provides that the Minister may make a policy direction for section 175(1)(b) or (2)(a).

The policy direction

The policy direction implements the budget initiative to lower the rate of the change of use charge for 12 months from 1 June 2009, pending the codification of the charge. It reduces the rate from 75% to 50%, and requires that the planning and land authority to remit the difference.

The policy direction states that section 182 of the Regulation still applies. Section 182 increases the change of use charge by an extra 25% if the lease is a recently commenced lease, that is, a lease that is 5 years or less old. For these leases, the effect of policy direction is to reduce the current of 100% to 75%.

The policy direction applies where all of the following conditions are met:

- (1) An application for a variation of the purposes permitted under the lease is lodged with the authority between 1 June 2009 and 1 June 2010;
- (2) The application is accompanied by a development application for the construction of a structure on the leasehold which has been approved or is subsequently approved in substantially for the same form; and
- (3) The chief planning executive of the authority determines that the variation applied for is necessary and proportionate to the accompanying development application.

For the avoidance of doubt, the policy direction states that it does not apply to the remissions of change of use charge in relation to leases held by the commissioner for housing (remissions on these are dealt with by s176 of the regulation) or to concessional leases.

Regulatory impact statement

The *Legislation Act 2001* section 36 states:

(1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

- (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—

- (i) adversely affecting the person's rights; or
- (ii) imposing liabilities on the person;
- (k) an amendment of a fee, charge or tax consistent with announced government policy.

A regulatory impact statement is not required for this instrument for the following reasons:

- The proposed law does not adversely affect any rights and do not impose liabilities, but rather operates to temporarily reduce in part an existing liability by reducing the rate at which the change of use charge is levied, from 75% to 50% in specified circumstances.
- The proposed law amends a charge consistent with Government policy announced in the 2009-2010 Budget.