

Australian Capital Territory

Planning and Development (Change of Use Charge on Disused Service Station Sites) Policy Direction 2009

Disallowable instrument DI2009–140

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 remit 100% of the change of use charge paid for a lease variation required in relation to the redevelopment of disused service station sites, for 12 months from 1 June 2009.

The instrument is a Disallowable Instrument under s177(2).

Policy objective

There are a number of disused service station sites in the Territory. Such sites must be evaluated for contamination and remediated before construction work can commence on a redevelopment project. The high cost of remediation - which can be in the order of \$1 million - appears to have been held up redevelopment of these sites. To engender investment in the current economic circumstances, and encourage a better use of the sites through support for the costs of remediation, the Government announced in the 2009-2010 Territory Budget a scheme to remit 100% of the change of use charge on the redevelopment of disused service station sites. The scheme will operate for a period of 12 months from 1 June 2009, subject to approved redevelopment reaching the first building inspection stage during that period.

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 s 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 change 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. It states that the authority must remit 100% of the amount of a charge of use charge paid in respect of a variation of a lease if the following conditions are met:

- (1) an application for a variation of the purposes permitted under the lease has been lodged with the authority on or before 1 June 2010 in respect of a leasehold that has previously been used as a service station and had ceased to operate as a service station before 1 June 2009;
- (2) no charge of use charge was paid prior to 1 June 2009;
- (3) a development application consistent with the variation of the change of use to the purposes permitted under the lease has been approved by the authority on or before 1 June 2010
- (4) the lessee has provided to the authority a certificate from a building certifier certifying works in accordance with the development application has reached the stage of completion of excavation, placement of formwork and footings on or before 1 June 2010.

The policy direction states that the authority shall not remit a change of use charge for a variation of a lease where the change of use charge in respect of that variation was paid before 1 June 2009.

The policy direction will have the effect of permitting a refund of the change of use charge which has been paid and work construction work commenced, rather than a direct 'up-front' waiver of the charge. This is because under section 276 of the Act the authority must not execute a variation of a lease until the applicable change of use charge has been paid. In addition, construction work must have reached the first inspection stage before the authority can remit the charge. Development approval is required before building could commence, and approval is only given for development that is consistent with the use permitted by the lease.

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 remove an existing liability by providing a 100% remission of the change of use charge in the specified circumstances.
- The proposed law amends a charge consistent with Government policy announced in the 2009-2010 Budget.