Australian Capital Territory

Planning and Development (Change of Use Charge on Disused Service Station Sites) Policy Direction 2010 (No 1)

Disallowable instrument DI2010 - 103

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 the period from 1 June 2010 to 30 June 2011. The instrument is a Disallowable Instrument under s177 (2).

Background
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 be commenced on a redevelopment project. The high cost of remediation - which can be in the order of $1 million - appears to have held up redevelopment of these sites. To engender investment in the then 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.

In May 2010, it was announced in the 2010-2011 Territory Budget that the scheme would be extended until the end of the 2010-2011 financial year. The scheme will operate until 30 June 2011, subject to approved redevelopment reaching the first building inspection stage at specified times.

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:

(a) an application for a variation of the purposes permitted under the lease has been lodged with the planning and land authority on or before 1 June 2010 in respect of a leasehold that:

(i) has previously been used as a service station; and
(ii) has ceased to operate as a service station before 1 June 2009.

(b) no change of use charge in respect of the above application, or part thereof, was paid by the lessee, or any person on behalf of the lessee, prior to 1 June 2009 (whether or not such change of use charge was assessed prior to 1 June 2009);

(c) a development application in respect of the leasehold, consistent with the variation of the purposes permitted under the lease made pursuant to paragraph (1)(a) above, has been lodged with the planning and land authority on or before 30 July 2010; and

(i) if the development application is approved prior to 30 July 2010, the lessee has provided to the planning and land authority, a certificate dated no later than 30 December 2010 from a building certifier, appointed under s19 or section 19A of the *Building Act 2004,* certifying works in accordance with the approved development application have reached the stage of completion of excavation, placement of formwork and placement of steel reinforcing for the footings as set out in section 33(a) of the *Building (General) Regulation 2008;* or
(ii) if the development application is approved after 30 July 2010, the lessee has provided to the planning and land authority a certificate dated within six months of the date of approval of the development application from a building certifier, appointed under s19 or section 19A of the *Building Act 2004*

certifying works in accordance with the approved development application have reached the stage of completion of excavation, placement of formwork and placement of steel reinforcing for the footings as set out in section 33(a) of the *Building (General) Regulation 2008*

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 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.

The instrument will operate retrospectively from 1 June 2010. This is to ensure the benefit of the remission in the change of use charge continues on without any gaps from the previous policy direction in disallowable instrument DI 2009 -140.

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

* The proposed law does not adversely affect any rights and does 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 and continued in the 2010-2011 Budget.